



EUROPEAN COURT OF HUMAN RIGHTS
COUR EUROPÉENNE DES DROITS DE L'HOMME

FIRST SECTION

CASE OF ROZHNYATOVSKAYA v. RUSSIA

(Application no. 35002/05)

JUDGMENT

STRASBOURG

13 December 2011

FINAL

13/03/2012

This judgment has become final under Article 44 § 2 of the Convention. It may be subject to editorial revision.

In the case of Rozhnyatovskaya v. Russia,

The European Court of Human Rights (First Section), sitting as a Chamber composed of:

Nina Vajić, *President*,
Anatoly Kovler,
Peer Lorenzen,
Khanlar Hajiyeu,
Mirjana Lazarova Trajkovska,
Linos-Alexandre Sicilianos,
Erik Møse, *judges*,

and Søren Nielsen, *Section Registrar*,

Having deliberated in private on 22 November 2011,

Delivers the following judgment, which was adopted on that date:

PROCEDURE

1. The case originated in an application (no. 35002/05) against the Russian Federation lodged with the Court under Article 34 of the Convention for the Protection of Human Rights and Fundamental Freedoms (“the Convention”) by a Russian national, Ms Irina Vasilyevna Rozhnyatovskaya (“the applicant”), on 4 July 2005.

2. The Russian Government (“the Government”) were represented by Mr G. Matyushkin, the Representative of the Russian Federation at the European Court of Human Rights.

3. On 9 January 2009 the President of the First Section decided to give notice of the application to the Government.

4. In accordance with the pilot judgment *Burdov v. Russia* (no. 2) (no. 33509/04, ECHR 2009-...), this application was adjourned pending its resolution at the domestic level.

5. The Government later informed the Court that enforcement of the judgment in the applicant’s favour was impossible as the applicant had failed to submit the documents to the correct enforcement body and that the debtor had been dissolved. The Court therefore decided to resume examination of the present case.

THE FACTS

THE CIRCUMSTANCES OF THE CASE

6. The applicant was born in 1970 and lives in Kuzmolovskiy, Leningrad Region.

7. The applicant served as a military officer.

8. On 25 July 2003 the Military Court of the Sertolovo Garrison issued a default judgment recovering 34,277.10 Russian roubles (RUB) in the applicant's favour from military unit 93921 as an allowance for direct participation in combat action.

9. The judgment was not appealed and became final on 5 August 2003.

10. Following the applicant's inquiry with the Ministry of Defence concerning the enforcement proceedings on 24 February 2004, she was apprised of the procedure.

11. On 8 February 2005 the bailiff service terminated the enforcement proceedings, returning the writ of execution to the applicant for submission to the Federal Treasury where the debtor's account was opened.

12. However, the applicant has never submitted the documents to the Federal Treasury and the judgment remains unenforced to date.

13. According to the Government, on an unspecified date military unit 93921 was dissolved.

THE LAW

I. ALLEGED VIOLATION OF ARTICLE 6 § 1 OF THE CONVENTION AND ARTICLE 1 OF PROTOCOL No. 1

14. The applicant complained that the authorities had failed to enforce the judgment of 25 July 2003 against the State. She relied on Article 6 of the Convention and Article 1 of Protocol No. 1, which in the relevant part read as follows:

“In the determination of his civil rights and obligations ... everyone is entitled to a fair ... hearing ... by [a] ... tribunal ...”

“Every natural or legal person is entitled to the peaceful enjoyment of his possessions. No one shall be deprived of his possessions except in the public interest and subject to the conditions provided for by law and by the general principles of international law.

The preceding provisions shall not, however, in any way impair the right of a State to enforce such laws as it deems necessary to control the use of property in accordance with the general interest or to secure the payment of taxes or other contributions or penalties.”

A. Admissibility

15. The Court notes that the application is not manifestly ill-founded within the meaning of Article 35 § 3 (a) of the Convention. It further notes that it is not inadmissible on any other grounds. It must therefore be declared admissible.

B. Merits

16. The Government submitted that the applicant herself bore responsibility for the non-enforcement, having never re-submitted the enforcement documents to the Federal Treasury, as she had been advised. They added that they had no possibility to enforce the judgment on their own initiative in the absence of the pertinent documents at the enforcement body coupled with the fact that the military unit had been dissolved.

17. The Court reiterates that an unreasonably long delay in the enforcement of a binding judgment may breach the Convention (see *Burdov v. Russia*, no. 59498/00, ECHR 2002-III). To decide if the delay was reasonable, it will look at how complex the enforcement proceedings were, how the applicants and the authorities behaved, and what was the nature of the award (see *Raylyan v. Russia*, no. 22000/03, § 31, 15 February 2007).

18. The Court further reiterates that a person who has obtained a judgment against the State may not be expected to bring separate enforcement proceedings (see *Metaxas v. Greece*, no. 8415/02, § 19, 27 May 2004). Where a judgment is against the State, the defendant State authority must be duly notified thereof and is thus well placed to take all necessary initiatives to comply with it or to transmit it to another competent State authority responsible for compliance (see *Akashev v. Russia*, no. 30616/05, § 21, 12 June 2008). Where the creditor's cooperation is required, it must not go beyond what is strictly necessary and in any case does not relieve the authorities of their obligation under the Convention to take timely and *ex officio* action, on the basis of the information available to them, with a view to honouring the judgment against the State (*ibid*, § 22).

19. The Court observes that in the instant case the judgment of 25 July 2003 has been pending enforcement for over eight years. It notes that the enforcement proceedings were not particularly complex given the nature of the award and that no significant delays can be attributed to the applicant. Indeed, once the judgment became final, she submitted the relevant

documents to the bailiffs but the latter closed the enforcement proceedings eighteen months later without any conclusive result. The applicant's alleged failure to re-submit the enforcement documents to the right enforcement body cannot relieve the authorities of their obligation in accordance with the principles stated above. Nor can do so the fact of the dissolution of the debtor military unit, as the State at large remains responsible for the payment of the judicial award.

20. In view of the above, the Court considers that the authorities failed to comply with their obligation under the Convention and that there has accordingly been a violation of Article 6 § 1 of the Convention and of Article 1 of Protocol No. 1.

II. APPLICATION OF ARTICLE 41 OF THE CONVENTION

21. Article 41 of the Convention provides:

“If the Court finds that there has been a violation of the Convention or the Protocols thereto, and if the internal law of the High Contracting Party concerned allows only partial reparation to be made, the Court shall, if necessary, afford just satisfaction to the injured party.”

A. Damage

22. The applicant claimed 34,277.10 Russian roubles (RUB) (approximately 865 euros (EUR)), equal to the amount of the judicial award due to her, in respect of pecuniary damage and EUR 10,000 in respect of non-pecuniary damage.

23. The Government contested the claims as excessive. They added that in the case of finding of a violation, the just satisfaction award covering non-pecuniary damage should not exceed EUR 4,500.

24. The Court reiterates that the most appropriate form of redress in respect of the violations found would be to put the applicants as far as possible in the position they would have been if the Convention requirements had not been disregarded (see *Piersack v. Belgium* (Article 50), 26 October 1984, § 12, Series A no. 85 and, *mutatis mutandis*, *Gençel v. Turkey*, no. 53431/99, § 27, 23 October 2003). It thus considers it appropriate to award the applicant the amount due to her under the domestic judgment as pecuniary damage.

25. Furthermore, the Court accepts that the applicant suffered distress and frustration due to the authorities' lengthy failure to honour the State's debt to her. It also notes that the award represented the applicant's remuneration for employment and was likely her only means of subsistence. Deciding on an equitable basis and having regard to all relevant factors (see

Burdov (no. 2), cited above, §§ 154-157), the Court awards the applicant EUR 6,000 in respect of non-pecuniary damage.

B. Costs and expenses

26. The applicant did not submit any claim for costs and expenses. The Court therefore does not consider it necessary to make any award under this head.

C. Default interest

27. The Court considers it appropriate that the default interest should be based on the marginal lending rate of the European Central Bank, to which should be added three percentage points.

FOR THESE REASONS, THE COURT UNANIMOUSLY

1. *Declares* the application admissible;
2. *Holds* that there has been a violation of Article 6 § 1 of the Convention and Article 1 of Protocol No. 1;
3. *Holds*
 - (a) that the respondent State is to pay the applicant, within three months from the date on which the judgment becomes final in accordance with Article 44 § 2 of the Convention, the following amounts, to be converted into Russian roubles at the rate applicable at the date of settlement:
 - (i) EUR 865 (eight hundred and sixty-five euros), plus any tax that may be chargeable, in respect of pecuniary damage;
 - (ii) EUR 6,000 (six thousand euros), plus any tax that may be chargeable, in respect of non-pecuniary damage;
 - (b) that from the expiry of the above-mentioned three months until settlement simple interest shall be payable on the above amounts at a rate equal to the marginal lending rate of the European Central Bank during the default period plus three percentage points;
4. *Dismisses* the remainder of the applicant's claim for just satisfaction.

Done in English, and notified in writing on 13 December 2011, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Søren Nielsen
Registrar

Nina Vajić
President