



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

FIRST SECTION

CASE OF GIZZATOVA v. RUSSIA

(Application no. 5124/03)

JUDGMENT

STRASBOURG

13 January 2005

FINAL

13/04/2005

This judgment will become final in the circumstances set out in Article 44 § 2 of the Convention. It may be subject to editorial revision.

In the case of Gizzatova v. Russia,

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

Mr C.L. ROZAKIS, *President*,

Mr L. LOUCAIDES,

Mrs N. VAJIĆ,

Mrs S. BOTOUCHAROVA,

Mr A. KOVLER,

Mr K. HAJIYEV,

Mr D. SPIELMANN, *judges*,

and Mr S. NIELSEN, *Section Registrar*,

Having deliberated in private on 9 December 2004,

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

PROCEDURE

1. The case originated in an application (no. 5124/03) 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, Mrs Fadiya Khamatnurovna Gizzatova.

2. The Russian Government (“the Government”) were represented by their Agent, Mr P. Laptev, Representative of the Russian Federation at the European Court of Human Rights.

3. On 30 October 2003 the Court decided to communicate the application to the Government. Under the provisions of Article 29 § 3 of the Convention, it decided to examine the merits of the application at the same time as its admissibility.

THE FACTS

THE CIRCUMSTANCES OF THE CASE

4. The applicant was born in 1940 and lives in Birsk in the Bashkortostan Republic of the Russian Federation.

A. Judgments in the applicant's favour

5. On 17 February 1998 the Birsk Town Court of the Bashkortostan Republic granted the applicant's civil action for compensation for work-related injuries against the municipal enterprise "Baltachevskaya rayselkhoztekhnika" (МУП «Балтачевская райсельхозтехника», "the municipal enterprise") and awarded her a lump sum of 18,526.99 Russian roubles (RUR) and monthly payments of RUR 788.40. No appeal was lodged against the judgment and it became final on 28 February 1998.

6. As the municipal enterprise stopped monthly payments from 1 January 1999, the applicant lodged a new civil action for the recovery of amounts outstanding and legal fees. On 17 January 2000 the Birsk Town Court of the Bashkortostan Republic allowed the action and awarded the applicant RUR 2,457.84.

7. On 22 November 2000 the Birsk Town Court of the Bashkortostan Republic amended, at the applicant's request, the judgment of 17 February 1998. The court ordered that the amount of monthly payments indicated in that judgment should be regularly adjusted to take account of increases of the minimum monthly wage.

8. On 15 January and 30 September 2002 the Birsk Town Court allowed two further civil actions lodged by the applicant and awarded her interest on outstanding amounts and legal fees in the total amount of RUR 7,445.12.

B. Enforcement of the judgments

9. On 27 March 1998 and 9 December 2000 the Baltachevsk district service of court bailiffs opened enforcement proceedings against the municipal enterprise. Between 1 July 2000 and 1 September 2001 it recovered RUR 16,526.14.

10. Unsatisfied with the bailiffs' performance, the applicant complained to a court. On 11 December 2001 the Baltachevsk District Court of the Bashkortostan Republic granted her complaint. It found that as at 1 November 2001 the outstanding payments amounted to RUR 13,513.88. The municipal enterprise did not contest its obligation to pay, but claimed that it was unable to do so owing to insufficient funds. The court ordered that the bailiffs should seize the municipal enterprise's property with a view to enforcing the judgment.

On the same day the bailiffs seized a lorry belonging to the municipal enterprise. However, it could not be sold because there was no willing purchaser and the applicant refused to accept the seized lorry in part payment of the debt, insisting on monetary compensation.

11. The applicant complained to a prosecutor's office about the court bailiffs' failure to enforce the judgment of 17 February 1998 in full. On 5 July 2002 an investigator of the prosecutor's office of the Baltachevsk

District informed her that a criminal case had been opened against the bailiffs under Article 315 of the Criminal Code (“Non-enforcement of a conviction, judgment or a court decision”).

On 8 July 2003 the prosecutor’s office of the Baltachevsk district prosecutor ordered the chief court bailiff of the Bashkortostan Republic to take measures to enforce the judgment of the Baltachevsk District Court.

12. Between 2002 and the present time the following payments were made to the applicant in order to enforce the judgments in her favour:

- by a wire transfer of 3 June 2002 – RUR 3,000;
- by a wire transfer of 13 September 2002 – RUR 1,000;
- by a wire transfer of 13 August 2003 (the proceeds from the sale of the municipal enterprise’s lorry) – RUR 63,720;
- by a cheque of 15 January 2004 – RUR 37,200.01;
- by a cheque of 15 January 2004 – RUR 5,404.39.

THE LAW

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

13. The applicant complained that the prolonged non-enforcement of the judgments in her favour violated her “right to a court” under Article 6 § 1 of the Convention and her right to the peaceful enjoyment of possessions provided in Article 1 of Protocol No. 1 to the Convention. The relevant parts of these provisions read as follows:

Article 6 § 1

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

Article 1 of Protocol No. 1

“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

14. The Government did not invoke any grounds for inadmissibility.

15. The Court notes that the application is not manifestly ill-founded within the meaning of Article 35 § 3 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 claim that the debt to the applicant has been fully extinguished, according to the calculations of a court bailiff. In their opinion, the only issue of the application is the applicant's disagreement with the calculations in the part concerning monthly payments. They explain that by the terms of the additional decision of the Birsk District Court of 22 November 2000 the periodic payments to the applicant were to be raised in proportion to increases of the minimum monthly wage, while the federal law of 26 November 2002 determined that the calculation of periodic payments in compensation for work-related injuries was not to be based on the minimum monthly wage. There was therefore a discrepancy between the applicant and the court bailiffs as regards the amount of monthly payments after 26 November 2002. The Government indicate that on 19 January 2003 the bailiff requested the Birsk District Court to clarify the procedure of enforcement of its decision of 22 November 2000 with a view to eliminating the disagreement.

17. The applicant does not contest the calculations of the Government. She submits, however, that the enforcement of the judgments was belated owing to unlawful actions and omissions of the State court bailiffs. She also provides a copy of a decision of the Birsk District Court of 30 January 2004, by which the bailiff's request for clarification was dismissed. The court held that the federal law of 26 November 2002 could not be applied retrospectively to the applicant's entitlement under the decision of 22 November 2000.

1. Article 6 § 1 of the Convention

18. The Court reiterates that Article 6 § 1 secures to everyone the right to have any claim relating to his civil rights and obligations brought before a court or tribunal; in this way it embodies the "right to a court", of which the right of access, that is the right to institute proceedings before courts in civil matters, constitutes one aspect. However, that right would be illusory if a Contracting State's domestic legal system allowed a final, binding judicial decision to remain inoperative to the detriment of one party. It would be inconceivable that Article 6 § 1 should describe in detail the procedural guarantees afforded to litigants – proceedings that are fair, public and

expeditious – without protecting the implementation of judicial decisions; to construe Article 6 as being concerned exclusively with access to a court and the conduct of proceedings would be likely to lead to situations incompatible with the principle of the rule of law which the Contracting States undertook to respect when they ratified the Convention. Execution of a judgment given by any court must therefore be regarded as an integral part of the “trial” for the purposes of Article 6 (see *Burdov v. Russia*, no. 59498/00, § 34, ECHR 2002-III; *Hornsby v. Greece*, judgment of 19 March 1997, *Reports* 1997-II, p. 510, § 40).

19. Turning to the instant case, the Court notes that the Government do not contest the State responsibility for the debts of the municipal enterprise arising from the judgments in the applicant’s favour (see, by contrast, *Gerasimova v. Russia* (dec.), no. 24669/02, 16 September 2004). It is also not contested by the parties that the judgments in the applicant’s favour have now been executed. The Court observes, however, that the execution of the judgment of 17 February 1998 – at least in part – lasted for about five years, even after the supplementary judgments of 17 January 2000 and 15 January and 30 September 2002 were taken to make up for the debtor’s failure to abide by the first one. It was not until 15 January 2004, after the application had been communicated to the respondent Government, that the debt accruing from these judgments has been finally settled.

20. In this connection, the Court recalls that a delay in the execution of a judgment may be justified in particular circumstances, but the delay may not be such as to impair the essence of the right protected under Article 6 § 1 (see *Burdov v. Russia*, cited above, § 35). In the instant case the Government did not advance any justification for the delay which spanned over a period of several years. Accordingly, by failing for such a substantial period of time to take the necessary measures to comply with the final judicial decision in the present case, the Russian authorities deprived the provisions of Article 6 § 1 of all useful effect.

There has accordingly been a violation of Article 6 § 1 of the Convention.

2. Article 1 of Protocol No. 1 to the Convention

21. The Court reiterates that a “claim” can constitute a “possession” within the meaning of Article 1 of Protocol No. 1 if it is sufficiently established to be enforceable (see *Burdov v. Russia*, cited above, § 40, with further references).

22. The judgment of the Birsik District Court of 17 February 1998 and the subsequent judgments of the same court of 17 January 2000, 15 January and 30 September 2002 were final and enforceable. However, the applicant did not receive from the State the judgment debt as soon as it became enforceable or, at least, within the two-month time-limit set in the domestic law.

23. By failing to comply with the final and enforceable judgments in the applicant's favour the national authorities prevented the applicant from receiving the money she could reasonably have expected to receive. The Government have not advanced any justification for this interference.

24. There has accordingly been a violation of Article 1 of Protocol No. 1.

II. APPLICATION OF ARTICLE 41 OF THE CONVENTION

25. 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

26. The applicant claims RUR 32,063.25 in respect of pecuniary damage representing the interest on the amounts paid after a substantial delay. She also claims EUR 10,000 in respect of non-pecuniary damage.

27. The Government do not contest the applicant's claim in respect of the pecuniary damage. In respect of non-pecuniary damage, they consider that the amount claimed by the applicant is unreasonable and unsubstantiated. In any event, they submit that the finding of a violation constitutes in itself sufficient just satisfaction for the non-pecuniary damage sustained by the applicant.

28. The Court notes that in the present case it found a violation of Article 6 § 1 of the Convention and Article 1 of Protocol No. 1 in that the compensation for a work-related injury had only been paid to the applicant after a significant delay. In this connection the Court recalls that the adequacy of the compensation would be diminished if it were to be paid without reference to various circumstances liable to reduce its value, such as an extended delay in enforcement (see *Metaxas v. Greece*, no. 8415/02, § 36, 27 May 2004; *Stran Greek Refineries and Stratis Andreadis v. Greece*, judgment of 9 December 1994, Series A no. 301-B, § 82). Taking into account that the Government did not dispute the method of calculation employed by the applicant, the Court accepts the applicant's claim in respect of pecuniary damage and awards her the sum of RUR 32,063.25 under this head, plus any tax that may be chargeable on that amount.

29. The Court also accepts that the applicant suffered distress because of the State authorities' failure to enforce several judgments in her favour. However, the amount claimed in respect of non-pecuniary damage appears excessive. The Court takes into account the amount and nature of the award

in the instant case, i.e. compensation for a work-related injury which has been the applicant's primary source of income, and the period of the authorities' inactivity. Making its assessment on an equitable basis, it awards the applicant EUR 1,600 in respect of non-pecuniary damage, plus any tax that may be chargeable on that amount.

B. Costs and expenses

30. The applicant did not claim costs and expenses. Accordingly, there is no call to make an award under this head.

C. Default interest

31. 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;
3. *Holds* that there has been a violation of Article 1 of Protocol No. 1;
4. *Holds*
 - (a) that the respondent State is to pay the applicant, within three months from the date on which the judgment becomes final according to Article 44 § 2 of the Convention, the following amounts:
 - (i) RUR 32,063.25 (thirty-two thousand and sixty-three Russian roubles and 25 kopecks) in respect of pecuniary damage;
 - (ii) EUR 1,600 (one thousand six hundred euros) in respect of non-pecuniary damage, to be converted into Russian roubles at the rate applicable at the date of settlement;
 - (iii) any tax that may be chargeable on the above amounts;
 - (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;
5. *Dismisses* the remainder of the applicant's claim for just satisfaction.

Done in English, and notified in writing on 13 January 2005, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Søren NIELSEN
Registrar

Christos ROZAKIS
President