CONSEIL DE L'EUROPE

COUNCIL OF EUROPE

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

FIRST SECTION

CASE OF POZNAKHIRINA v. RUSSIA

(Application no. 25964/02)

JUDGMENT

STRASBOURG

24 February 2005

FINAL

06/07/2005

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 Poznakhirina v. Russia,

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

Mr C.L. ROZAKIS, *President*,
Mrs S. BOTOUCHAROVA,
Mr A. KOVLER,
Mrs E. STEINER,
Mr K. HAJIYEV,
Mr D. SPIELMANN,
Mr S.E. JEBENS, *judges*,
and Mr S. NIELSEN, *Section Registrar*,

Having deliberated in private on 1 February 2005,

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

PROCEDURE

1. The case originated in an application (no. 25964/02) 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 Ms Svetlana Anatolyevna Poznakhirina, a Russian national, on 6 May 2002.

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

3. On 19 May 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

4. The applicant was born in 1951 and lives in Novovoronezh, Voronezh Region.

5. In 1999 the applicant brought proceedings against the Chief Department of Finance of the Voronezh Region to claim welfare payments to which she was entitled in respect of her child.

6. On 5 January 2000 the Novovoronezh Town Court of the Voronezh Region awarded the applicant 3,387.87 roubles (RUR). This judgment entered into force on 15 January 2000.

7. On 10 February 2000 the enforcement order was issued and sent to the bailiff service of the Tsentralnyy District of Voronezh.

8. On 10 April 2000 the applicant complained to the Department of Justice of the Voronezh Region about the bailiffs' failure to execute the judgment in her favour.

9. On 20 April 2000 the Department of Justice of the Voronezh Region informed the applicant that her award would be enforced in accordance with the order of priority set out by the Federal Law on Enforcement Procedure.

10. On 26 June 2001 the bailiff terminated execution proceedings in respect of the judgment of 5 January 2000, as the debtor had no sufficient funds. The applicant was suggested to bring an action against the Administration of the Voronezh Region.

11. On 13 February 2002 the Tsentralnyy District Court of Voronezh granted the applicant's request to resume enforcement proceedings. In this decision the court dismissed the bailiff's argument that an action against the Administration of the Voronezh Region was necessary to secure execution of the judgment against the Chief Department of Finance. The court found that the judgment of 5 January 2000 could be enforced as it stood.

12. The sum awarded has not been paid to the applicant.

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 judgment of 5 January 2000 violated her "right to a court" under Article 6 § 1 of the Convention and her right to the peaceful enjoyment of possessions as guaranteed in Article 1 of Protocol No. 1 to the Convention. These Articles in so far as relevant provide 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 contested the admissibility of the application on the ground that the applicant had failed to exhaust domestic remedies. They submitted that the applicant's original claim for the benefits at issue should have been brought against the Administration of the Voronezh Region, and not only against the Chief Department of Finance. They asserted that such claim would have yielded a judgment with better chances of enforcement.

15. In reply to the Government's objection, the applicant referred to the decision of the Tsentralnyy District Court of Voronezh dated 13 February 2002, in which it was established that no further action was necessary to secure the enforcement of the judgment.

16. The Court reiterates that Article 35 § 1 of the Convention, which sets out the rule on exhaustion of domestic remedies, provides for a distribution of the burden of proof. It is incumbent on the Government claiming non-exhaustion to satisfy the Court that the remedy was an effective one available in theory and in practice at the relevant time, that is to say, that it was accessible, was one which was capable of providing redress in respect of the applicant's complaints and offered reasonable prospects of success (see *Selmouni v. France* [GC], no. 25803/94, § 76, ECHR 1999-V, and *Mifsud v. France* (dec.), no. 57220/00, § 15, ECHR 2002-VIII). The Court further recalls that the domestic remedies must be "effective" in the sense either of preventing the alleged violation or its continuation, or of providing adequate redress for any violation that had already occurred (see *Kudła v Poland* [GC], no. 30210/96, § 158, ECHR 2000-XI).

17. The Court notes that the validity of the judgment of 5 January 2000 against the Chief Department of Finance is undisputed. Moreover, a separate court decision of 13 February 2002 confirmed that it could be enforced. The Court considers that having obtained a judgment and an execution order against a particular State authority the applicant should not be required to institute, on her own initiative, other proceedings against different State agency to meet her claims. Moreover, even assuming that the applicant brought an action against the Administration of the Voronezh Region, the underlying problem of the non-enforcement of the judgment of 5 January 2000 would remain. The Court concludes that such an action would not have been an effective remedy within the meaning of Article 35 § 1 of the Convention.

18. The Court therefore does not accept that the applicant was required to exhaust domestic remedies through a further court action against another defendant.

19. 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

20. The Government acknowledged that the applicant was entitled to the sum awarded to her under the judgment of 5 January 2000. They explained that this amount had not been paid to her due to the budget deficit of 2000-2002. They contended, however, that all outstanding benefits from this period were to be paid by the end of 2003.

21. The applicant maintained her complaint. She alleges that the judgment in question has not been enforced to date.

Article 6 § 1 of the Convention

22. 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, and *Hornsby v. Greece*, judgment of 19 March 1997, *Reports of Judgments and Decisions* 1997-II, p. 510, § 40).

23. The Court further observes that it is not open to a State authority to cite the lack of funds or other resources as an excuse for not honouring a court award. Admittedly, 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. The applicant should not be prevented from benefiting from the success of the litigation on the ground of alleged financial difficulties experienced by the State (see *Burdov v. Russia*, cited above, § 35).

24. Turning to the instant case, the Court notes that the judgment of 5 January 2000 has until now remained unenforced in its entirety for almost five years.

25. By failing for such a substantial period of time to take the necessary measures to comply with the final judicial decisions in the present case, the Russian authorities deprived the provisions of Article 6 § 1 of their useful effect.

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

Article 1 of Protocol No. 1 to the Convention

27. 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, and *Stran Greek Refineries and Stratis Andreadis v. Greece*, judgment of 9 December 1994, Series A no. 301-B, p. 84, § 59). The judgment of 5 January 2000 provided the applicant with an enforceable claim and not simply a general right to receive support from the State. The judgment had become final as no ordinary appeal was made against it, and enforcement proceedings had been instituted. It follows that the impossibility for the applicant to have this judgment enforced for a substantial period of time constitutes an interference with her right to peaceful enjoyment of her possessions, as set forth in the first sentence of the first paragraph of Article 1 of Protocol No. 1.

28. By failing to comply with the judgment of 5 January 2000, the national authorities have prevented the applicant from receiving her award. The Government have not advanced any justification for this interference and the Court considers that the lack of funds cannot justify such an omission (see *Burdov v. Russia*, cited above, § 41).

29. There has accordingly been a violation of Article 1 of Protocol No. 1 to the Convention.

II. APPLICATION OF ARTICLE 41 OF THE CONVENTION

30. 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

31. The applicant claimed RUR 6,520 in respect of pecuniary damage, of which RUR 3,388 was for the principal amount awarded and unpaid to the applicant and RUR 3,132 was for the interest payable at the statutory rate. The applicant claimed EUR 20,000 in respect of non-pecuniary damage which she had sustained as a result of the authorities' failure to enforce the judgment.

32. The Government did not contest the applicant's claim for pecuniary damage. In respect of non-pecuniary damage, they submitted that the amount claimed by the applicant was unreasonable and unsubstantiated. They claim that, in any event, the award should not exceed the amount awarded by the Court in the *Burdov v. Russia* case. Alternatively, they submitted that the finding of a violation would in itself constitute sufficient just satisfaction for the non-pecuniary damage sustained by the applicant.

33. The Court notes that the State's outstanding obligation to enforce the judgment at issue is not in dispute. Accordingly, the applicant is still entitled to recover the principal amount of the debt in the course of domestic proceedings. The Court recalls that the most appropriate form of redress in respect of a violation of Article 6 is to ensure that the applicant as far as possible is put in the position he would have been had the requirements of Article 6 not been disregarded (see *Piersack v. Belgium* (Article 50), judgment of 26 October 1984, Series A no. 85, p. 16, § 12, and, *mutatis mutandis*, *Gençel v. Turkey*, no. 53431/99, § 27, 23 October 2003). The Court finds that in the present case this principle applies as well, having regard to the violations found. It therefore considers that the Government shall secure, by appropriate means, the enforcement of the award made by the domestic courts. For this reason the Court does not find it necessary to make an award for pecuniary damage in so far as it relates to the principal amount.

34. The Court accepts, however, the applicant's claim in respect of pecuniary damage in so far as it relates to the interest. It awards the applicant the sum of RUR 3,132 under this head.

35. The Court notes that the applicant's loss as a result of non-enforcement of the judgment in her favour was mostly of a pecuniary nature, which is compensated for by the award in respect of pecuniary damage. It observes that in the judgment *Burdov v. Russia* (cited above, §47) it made an award of EUR 3,000 for non-pecuniary damage suffered as a result of non-enforcement of a judgment in the applicant's favour. In that case the judgment at issue concerned a Chernobyl-victim's pension payable as compensation for health damage leading to disability, which was the applicant's main source of income. In the present case, on the contrary, the applicant was gainfully employed and the payment at stake was a marginal benefit which was not the applicant's means of support. Having regard to

the nature of the breach in this case, the Court finds that the finding of a violation constitutes in itself sufficient just satisfaction for the non-pecuniary damage, if any, sustained by the applicant.

B. Costs and expenses

36. The applicant also claimed EUR 1,834.61 for the costs and expenses incurred as a result of a visit to Strasbourg which she undertook to familiarise herself with the file concerning the application.

37. The Government contested the applicant's claims concerning reimbursement of her trip to Strasbourg, since the applicant's attendance was not required by the Court and was undertaken on the applicant's own initiative.

38. According to the Court's case-law, an applicant is entitled to reimbursement of the costs and expenses only in so far as it has been shown that these have been actually and necessarily incurred and were reasonable as to quantum. In the present case, although the applicant was permitted, at her request, to have access to her case file, her attendance was not required by the Court. Regard being had to the information in its possession and the above criteria, the Court rejects the claim for costs and expenses in respect of the applicant's travel to Strasbourg.

C. Default interest

39. 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 to the Convention;

4. *Holds*
   (a) that the respondent State, within three months from the date on which the judgment becomes final according to Article 44 § 2 of the Convention, shall secure, by appropriate means, the enforcement of the award made by the domestic court, and in addition pay the applicant

RUR 3,132 (three thousand one hundred and thirty two roubles) in respect of pecuniary damage, plus any tax that may be chargeable;
(b) that from the expiry of the above-mentioned three months until settlement simple interest shall be payable on the above amount at a rate equal to the marginal lending rate of the European Central Bank during the default period plus three percentage points;

5. *Holds* that the finding of a violation constitutes in itself sufficient just satisfaction for any non-pecuniary damage sustained by the applicant;

6. *Dismisses* the remainder of the applicant's claim for just satisfaction.

Done in English, and notified in writing on 24 February 2005, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Søren NIELSEN
Registrar

Christos ROZAKIS
President