



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

FIRST SECTION

CASE OF GASAN v. RUSSIA

(Application no. 43402/02)

JUDGMENT

STRASBOURG

24 February 2005

FINAL

24/05/2005

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 Gasan 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. 43402/02) 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 Mrs Lyudmila Gennadievna Gasan, a Russian national, on 10 October 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 13 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 1965 and lives in Rostov-on-Don.

5. In 2001 the applicant brought an action for damages against the Ministry of Internal Affairs following her husband's death during his military service in Chechnya.

6. On 29 August 2001 the Leninskiy District Court of Rostov granted the applicant's claim. Her award consisted of a lump-sum compensation of 204,462 roubles (RUR) and a monthly payment of RUR 2,271.80, subject to future adjustment to a statutory rate.

7. On 17 September 2001 the applicant obtained an execution order, which she submitted to the Ministry of Finance of the Russian Federation for payment.

8. On 4 July 2003, after the case had been communicated to the Government, the applicant was paid RUR 313,508.40 pursuant to the execution order.

THE LAW

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

9. The applicant complained that the prolonged non-enforcement of the judgment of 29 August 2001 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

10. The Government contested the admissibility of the application on the grounds that applicant was no longer a victim. They submitted that the judgment in question had been enforced. They asserted that the applicant had thus been afforded redress at the national level and that her application should be declared inadmissible. In the alternative, they argued that the applicant had not exhausted domestic remedies. They submitted that she

should have requested an enforcement of her award by the court bailiff service following the failure of the Ministry of Finance to pay under the execution order.

11. The applicant did not accept that she had lost victim status owing to the fact that her award had been enforced. She argued that it had taken the authorities almost two years to execute the judgment, in respect of which the authorities had neither acknowledged the violation nor afforded redress to her. She also contested the objection concerning non-exhaustion of domestic remedies, claiming that she had acted in accordance with the law, having submitted the execution order to the Ministry of Finance.

12. The Court, firstly, reiterates that “a decision or measure favourable to the applicant is not in principle sufficient to deprive him of his status as a 'victim' unless the national authorities have acknowledged, either expressly or in substance, and then afforded redress for, the breach of the Convention” (see *Amuur v. France*, judgment of 25 June 1996, *Reports of Judgments and Decisions* 1996-III, p. 846, § 36, *Dalban v. Romania* [GC], no. 28114/95, § 44, ECHR 1999-VI, and *Rotaru v. Romania* [GC], no. 28341/95, § 35, ECHR 2000-V). Only when these conditions are satisfied does the subsidiary nature of the protective mechanism of the Convention preclude examination of an application (see, for example, *Jensen and Rasmussen v. Denmark* (dec.), no. 52620/99, 20 March 2003).

13. In the instant case, neither the Government nor other domestic authorities have acknowledged that the applicant's Convention rights were unjustifiably restricted by the non-enforcement of the judgment. Furthermore, no redress has been offered to the applicant for the delay, as required by the Court's case-law.

14. The Court therefore agrees with the applicant that the mere fact that the authorities complied with the judgment after a substantial delay cannot be viewed in this case as automatically depriving the applicant of her victim status under the Convention. It rejects the Government's objection as to the loss of victim status.

15. As to the alleged non-exhaustion of the domestic remedies by the applicant, 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 observes 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).

16. Turning to the present case, it is undisputed that the Ministry of Finance was competent to effect payments under the execution order on behalf of the State. The Court reiterates that a person who has obtained an enforceable judgment against the State as a result of successful litigation can not be required to resort to enforcement proceedings in order to have it executed (see *Metaxas v. Greece*, no. 8415/02, § 19, 27 May 2004). The Court considers that after a competent State agency was served with a judgment the recourse by the applicant to another State agency should not in principle have been necessary to secure its enforcement. The Court considers that in the present case recourse to the bailiff service would only have produced repetitive results and could not be said to have constituted an effective remedy against non-enforcement (see *Yavorivskaya v. Russia* (dec.), no. 34687/02, 15 May 2004, and *Jasiūnienė v. Lithuania* (dec.), no. 41510/98, 24 October 2000).

17. The Court therefore does not accept that the applicant was required to apply to the bailiff service in order to exhaust domestic remedies.

18. 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

19. The Government submitted that in view of the fact that the judgment in question had been enforced no violation of the applicant's Convention rights has taken place.

20. The applicant maintained her complaints.

Article 6 § 1 of the Convention

21. 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* 1997-II, p. 510, § 40).

22. The Court further observes 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. 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).

23. Turning to the instant case, the Court notes that the judgment of 29 August 2001 remained inoperative for about two years. No justification was advanced by the Government for this delay. 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.

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

Article 1 of Protocol No. 1 to the Convention

25. 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 29 August 2001 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 constituted 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.

26. Not having found any justification for such an interference (see paragraph 23 above), the Court concludes that there has been a violation of Article 1 of Protocol No. 1 to the Convention.

II. APPLICATION OF ARTICLE 41 OF THE CONVENTION

27. 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

28. The applicant claimed 50,000 euros (EUR) in respect of non-pecuniary damage.

29. The Government considered that should the Court find a violation in this case that would in itself constitute sufficient just satisfaction. They also contended that in any event the applicant's claims were excessive and if the Court decides to make an award it should not exceed the amount awarded by the Court in the *Burdov v. Russia* case.

30. The Court considers that the applicant must have suffered distress and frustration resulting from the State authorities' failure to enforce a judgment in her favour, which cannot sufficiently be compensated by the finding of a violation. However, the amount claimed appears excessive. The Court takes into account the award it made in the case of *Burdov v. Russia* (cited above, § 47), the nature of the award whose non-enforcement was at stake in the present case, the delay before the enforcement and other relevant aspects. Making its assessment on an equitable basis, it awards the applicant EUR 3,000 in respect of non-pecuniary damage, plus any tax that may be chargeable on that amount.

B. Costs and expenses

31. The applicant sought reimbursement of her costs and expenses incurred before the domestic authorities and the Court. However, she has neither quantified the amount nor submitted any receipts or other vouchers on the basis of which such amount could be established. Accordingly, the Court does not make any award under this head.

C. Default interest

32. 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 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, EUR 3,000 (three thousand euros) in respect of non-pecuniary damage, to be converted into the national currency of the respondent State at the rate applicable at the date of settlement, plus any tax that may be chargeable on that amount;
 - (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. *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