



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

FIRST SECTION

CASE OF MAKAROVA AND OTHERS v. RUSSIA

(Application no. 7023/03)

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 Makarova and Others 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. 7023/03) 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 three Russian nationals Ms Raisa Grigoryevna Makarova, the first applicant, Mr Georgiy Mikhailovich Zabolotskiy, the second applicant, and Ms Anna Nikitichna Zabolotskaya, the third applicant, on 3 October 2003.

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 applications at the same time as their admissibility.

THE FACTS

4. The applicants were born in 1930, 1931 and 1935 respectively and live in Novovoronezh, Voronezh Region.

5. In 2000 the applicants each brought a set of proceedings against the welfare office of Novovoronezh to claim a raise of their pensions by a statutory index ratio.

6. On 7 August 2000 the Novovoronezh Town Court of the Voronezh Region granted the second and the third applicants' claims. It awarded them

arrears of 2,110.58 roubles (RUR) and RUR 1,521.09 respectively. Both judgments entered into force on 17 August 2000.

7. On 28-29 August 2000 the bailiff service instituted enforcement proceedings in respect of the judgments of 7 August 2000.

8. On 22 January 2001 the Novovoronezh Town Court of the Voronezh Region granted the first applicant's claim. It awarded her arrears of RUR 1,062.11. This judgment entered into force on 1 February 2001.

9. On 30 January 2001 the bailiff service terminated execution proceedings in respect of both judgments of 7 August 2000, which had not been enforced.

10. On 14 March 2001 the Voronezh Regional Office of the Pension Fund reported to the Town Administration of Novovoronezh that certain judgments concerning pension raise could not be enforced for lack of funding from the Pension Fund of the Russian Federation.

11. On 31 May 2001 the bailiff service informed the second and the third applicants that the judgments in their favour could not be enforced for lack of funds on the debtor's accounts. It also informed the applicants that they could apply again for enforcement of the same judgments.

12. On 20 August 2001 the Ministry of Justice of the Russian Federation reported to the Chairman of the Novovoronezh legislature that the bailiff service could not enforce certain judgments against the welfare office concerning pension matters. It pointed out that following a budgetary reform the welfare office was neither authorised, nor allocated funds to, make relevant payments. The bailiff office was thus unable to seize funds to secure enforcement of the judgments.

13. The judgments of 7 August 2000 and of 22 January 2001 have not been enforced to date.

THE LAW

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

14. The applicants complained that the prolonged non-enforcement of their respective awards provided for in the judgments of 7 August 2000 and of 22 January 2001 violated their “right to a court” under Article 6 § 1 of the Convention and their 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

15. The Government made a number of objections to the admissibility of the present application. Firstly, they requested the Court to dismiss the application as an *actio popularis* because it was lodged by three persons. They construed the right of individual petition in Article 34 of the Convention as requiring each applicant to file a separate application. Secondly, they contested the admissibility of the application on the ground that the applicants had failed to exhaust domestic remedies. They claimed that the applicants should have brought an action against the Administration of the Voronezh Region, which was liable for outstanding debts of the welfare office. They also alleged that the applicants should have brought an action against the bailiff service which was in charge of the execution proceedings.

16. The applicants contested both objections. They maintained that each of them was personally affected by the alleged violations of their rights. As for the alleged non-exhaustion of domestic remedies, the applicants cited the reasons given by the authorities for the non-enforcement of the judgments, notably the unavailability of financial resources. They claimed that institution of proceedings against the Administration of the Voronezh Region, or against the bailiff service, would not have addressed the problem of inadequate funding which had prevented the enforcement of the judgments in question.

17. The Court recalls that Article 34 of the Convention requires that an individual applicant should claim to have been actually affected by the violation he alleges. That Article does not institute for individuals a kind of *actio popularis* for the interpretation of the Convention; it does not permit individuals to complain against a law *in abstracto* simply because they feel

that it contravenes the Convention (see *Klass and Others v. Germany*, judgment of 6 September 1978, Series A no. 28, pp. 17-18, § 33).

18. In the instant case the Court is satisfied that each applicant appears to have been affected by the alleged violations of the Convention rights and each of them signed the application forms filed with the Court. The Court therefore dismisses this objection.

19. Turning to the second objection, 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 *Kudla v. Poland* [GC], no. 30210/96, § 158, ECHR 2000-XI).

20. The Court notes that the validity of the judgments held against the welfare office on 7 August 2000 and on 22 January 2001 is undisputed. The Court considers that having obtained a judgment and an execution order against a particular State authority the applicants should not be required to institute, on their own initiative, other proceedings against different State agency to meet their claims. Moreover, even assuming that the applicants brought an action against the Administration of the Voronezh Region, the underlying problem of non-enforcement of the judgments at issue 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.

21. In so far as the Government suggest an action against the bailiff service, no reasons were put forward why it should be considered an effective remedy. Neither party suggested that it was the inefficiency of the bailiff service which prevented the enforcement of the judgments at issue; it was apparently the lack of funds. The Court therefore finds that an action against the bailiff office would not have enhanced the applicants' prospects of receiving their awards. The Court considers that in the present case it could not be said to have constituted an effective remedy against non-enforcement.

22. The Court therefore does not accept that the applicants were required to exhaust domestic remedies through a further court action against the Administration of the Voronezh Region or the bailiff service.

23. The Court notes that this 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

24. The Government did not dispute the validity of the judgments in question and admitted that the authorities were under obligation to enforce them. They did not present any justification for the failure to do so.

25. The applicants maintained their complaints.

Article 6 § 1 of the Convention

26. 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).

27. The Court further reiterates 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).

28. Turning to the instant case, the Court notes that the judgments of 7 August 2000 have remained unenforced for more than four years, and the judgment of 22 January 2001 has remained unenforced for almost four years.

29. 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.

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

Article 1 of Protocol No. 1 to the Convention

31. 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 judgments of 7 August 2000 and the judgment of 22 January 2001 provided their respective beneficiaries with enforceable claims and not simply a general right to receive support from the State. The judgments had become final as no ordinary appeal was made against them, and enforcement proceedings had been instituted. It follows that the impossibility for the applicants to have the judgments enforced for a substantial period of time constitutes an interference with their right to peaceful enjoyment of their possessions, as set forth in the first sentence of the first paragraph of Article 1 of Protocol No. 1.

32. By failing to comply with above judgments, the national authorities prevented the applicants from receiving their awards. The Government have not advanced any other justification but the lack of financial resources for this interference. However, the Court considers that the lack of funds cannot justify such an omission (see *Burdov v. Russia*, cited above, § 41).

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

II. APPLICATION OF ARTICLE 41 OF THE CONVENTION

34. 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

35. The first applicant claimed RUR 1,424 in respect of pecuniary damage, of which RUR 1,062 was for the principal amount of her unpaid award and RUR 362 was for the interest payable at the statutory rate. The second applicant claimed RUR 3,615 in respect of pecuniary damage, of which RUR 2,110 was for the principal amount of his unpaid award and

RUR 1,505 was for the interest payable at the statutory rate. The third applicant claimed RUR 2,606 in respect of pecuniary damage, of which RUR 1,521 was for the principal amount of her unpaid award and RUR 1,085 was for the interest payable at the statutory rate. Each applicant claimed EUR 20,000 in respect of non-pecuniary damage which they had sustained as a result of the authorities' failure to duly enforce the judgments.

36. The Government do not contest the applicants' claims in respect of pecuniary damage. As for the non-pecuniary damage, they consider that the amounts claimed are unreasonable and unsubstantiated. They believe that, in any event, their awards should not exceed the amount awarded by the Court in the *Burdov v. Russia* case.

37. The Court notes that the State's outstanding obligation to enforce the judgments at issue is not in dispute. Accordingly, the applicants are 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 awards 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.

38. However, it considers that interest is payable from the day the judgments at issue became final and enforceable, i.e. from 17 August 2000 and 1 February 2001 respectively. As the Government did not dispute the calculations of interest presented by the applicants, and as the Court does not find them unreasonable, it makes the awards on that basis. The Court awards the first applicant RUR 362, the second applicant RUR 1,505 and the third applicant RUR 1,085 in compensation for pecuniary damage, plus any tax that may be chargeable on these amounts.

39. The Court also accepts that the applicants suffered distress because of the State authorities' failure to enforce the judgments. However, the amounts claimed in respect of non-pecuniary damage appear excessive. The Court takes into account the award made in the *Burdov v. Russia* case (cited above, § 47), such factors as the applicants' age, personal income, the nature of the awards in the present case, i.e. arrears in respect of the increase of retirement pension, the length of the enforcement proceedings and other relevant aspects. Making its assessment on an equitable basis, it awards the first applicant EUR 1,200, the second applicant EUR 1,500 and the third

applicant EUR 1,500 in respect of non-pecuniary damage, plus any tax that may be chargeable on these amounts.

B. Costs and expenses

40. The applicant made no claims under this head.

C. Default interest

41. 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 in respect of each applicant;
3. *Holds* that there has been a violation of Article 1 of Protocol No. 1 to the Convention in respect of each applicant;
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 awards made by the domestic courts, and in addition pay the following amounts:
 - to the first applicant RUR 362 (three hundred and sixty two roubles) in respect of pecuniary damage and EUR 1,200 (one thousand two hundred euros) in respect of non-pecuniary damage,
 - to the second applicant RUR 1,505 (one thousand five hundred and five roubles) in respect of pecuniary damage and EUR 1,500 (one thousand five hundred euros) in respect of non-pecuniary damage,
 - to the third applicant RUR 1,085 (one thousand and eighty five roubles) in respect of pecuniary damage and EUR 1,500 (one thousand five hundred euros) in respect of non-pecuniary damage;
 - to all applicants any tax that may be chargeable on the above amounts;
 - (b) that the amounts awarded in euros shall be converted into the national currency of the respondent State at the rate applicable at the date of settlement;

(c) 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 applicants' claims 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