



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

FIRST SECTION

CASE OF GERASIMOVA v. RUSSIA

(Application no. 24669/02)

JUDGMENT

STRASBOURG

13 October 2005

FINAL

13/01/2006

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 Gerasimova v. Russia,

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

Mr C.L. ROZAKIS, *President*,

Mrs N. VAJIĆ,

Mrs S. BOTOUCHAROVA,

Mr A. KOVLER,

Mrs E. STEINER,

Mr K. HAJIYEV,

Mr D. SPIELMANN, *judges*,

and Mr S. NIELSEN, *Section Registrar*,

Having deliberated in private on 22 September 2005,

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

PROCEDURE

1. The case originated in an application (no. 24669/02) 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 a Russian national, Ms Galina Petrovna Gerasimova (“the applicant”), on 20 May 2002.

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

3. The applicant alleged that the judgment of the Commercial Court of the Samara Region of 4 September 1995 had not been executed by the State.

4. The application was allocated to the First Section of the Court (Rule 52 § 1 of the Rules of Court). Within that Section, the Chamber that would consider the case (Article 27 § 1 of the Convention) was constituted as provided in Rule 26 § 1.

5. By a partial decision of 13 November 2003, the Court declared the application partly inadmissible and communicated the complaint concerning the failure to execute the judgment of the Commercial Court of the Samara Region of 4 September 1995 to the respondent Government. By a decision of 16 September 2004, the Court declared the remainder of the application admissible.

6. On 1 November 2004 the Court changed the composition of its Sections (Rule 25 § 1). This case was assigned to the newly composed First Section (Rule 52 § 1).

7. The applicant and the Government each filed observations on the merits (Rule 59 § 1). The Chamber having decided, after consulting the

parties, that no hearing on the merits was required (Rule 59 § 3 *in fine*), the parties replied in writing to each other's observations.

THE FACTS

I. THE CIRCUMSTANCES OF THE CASE

8. The applicant was born in 1953 and lives in Chapayevsk, Samara Region.

9. On 4 September 1995 the Commercial Court of the Samara Region (*Арбитражный суд Самарской области*) granted a claim by the applicant's employer – a private company – for recovery of damages against the Chapayevsk Social Security Service (*Управление социальной защиты населения администрации г. Чапаевска*).

10. On 15 August 1997 the applicant's employer assigned her a part of the judgment debt in the amount of RUR 114,000,000 towards salary due.¹ The applicant applied to the Chapayevsk Town Court of the Samara Region for execution of the judgment on 29 May 1998.

11. It appears that by 2001 only the amount of RUR 16,000² has been paid to the applicant. As the judgment had not been executed in full, in 2001 she filed a claim with the Chapayevsk Town Court of the Samara Region against the Chapayevsk Social Security Service for recovery of the sum with interest.

12. The Chapayevsk Town Court of the Samara Region dismissed the claim on 5 April 2001 on the ground that the applicant had failed to substantiate her calculation of the amount of the interest. On 19 September 2001 the Presidium of the Samara Regional Court, following an application for supervisory review lodged by the President of the Samara Regional Court, quashed the judgment of 5 April 2001 and remitted the case for a fresh examination.

13. On 21 June 2002 the Chapayevsk Town Court of the Samara Region dismissed the claim and indicated that the execution of judgment by the Chapayevsk Social Security Service had been carried out according to the sums allocated from the budget. Thus, in 2000 the budget estimate provided for RUR 16,000 to be paid in instalments during that year. The estimate for

¹ The amount is indicated without regard to the revaluation of 1998. In accordance with the Presidential Decree “On the Modification of the Face Value of Russian Currency and Standards of Value” of 4 August 1997, 1,000 “old” roubles became 1 “new” rouble as of 1 January 1998.

² The amount is indicated with regard to the revaluation of 1998. It thus corresponded to 16,000,000 “old” roubles.

2001 provided for RUR 5,000 to be paid to the applicant, and the estimate for 2002 provided for RUR 12,000, out of which RUR 5,000 was paid to the applicant as of 1 June 2002. The outstanding debt remained at RUR 87,445.

It is not clear whether any further payments have been made.

THE LAW

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

14. The applicant complained under Article 6 § 1 of the Convention and Article 1 of Protocol No. 1 that the State had failed to execute fully and in due time the judgment of the Commercial Court of the Samara Region of 4 September 1995.

Article 6 of the Convention, in so far as relevant, reads as follows:

“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 to the Convention reads as follows:

“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.”

15. The Government, in their additional observations of 12 January 2005 following the Court's decision on admissibility of 16 September 2004, insisted that the Russian Federation could not be held responsible for non-execution of the judgment against the Chapayevsk Social Security Service as this was a municipal institution and not a State organisation. They further reiterated that the applicant had failed to exhaust domestic remedies as she had not applied to the bailiffs' service for enforcement of the judgment. The Government furnished statistical data concerning the efficiency of the bailiffs' service in the Russian Federation and, in particular, in Chapayevsk in 1998 and 1999. In this respect they also submitted that the present case was substantially different from the case of *Burdov v. Russia* (no. 59498/00, ECHR 2002-III), since the judgment in question did not concern payment of

social benefits. The Government made no submissions on the merits of the case.

16. The applicant contended that she had applied to the bailiffs' service in due course and that the Russian Federation was responsible for non-execution of the judgment.

17. The Court observes that it has examined and rejected the Government's objections in its decision on admissibility of 16 September 2004. The Government did not make any new submissions that would warrant a fresh examination of the same issues. In particular, the general statistics concerning the efficiency of the bailiffs' service in 1998 and 1999 is not relevant for the case at hand since in the aforementioned decision the Court found that the execution of the judgment was prevented by the failure to make adequate budgetary provisions by appropriate legislative measures, over which the bailiffs could not possibly have any control. The Court further observes that nothing in the *Burdov* case suggests that the application of principles concerning the execution of a final judgment established in the Court's case-law (see, among others, *Hornsby v. Greece*, judgment of 19 March 1997, *Reports of Judgments and Decisions* 1997-II, p. 510, § 40, and *Immobiliare Saffi v. Italy* [GC], no. 22774/93, § 74, ECHR 1999-V) is limited to instances related to payment of social benefits. In any event, the Court reiterates that, according to Rule 55 of the Rules of Court, any plea of inadmissibility must be raised by the respondent Contracting Party in its written or oral observations on the admissibility of the application rather than during the procedure on the merits (see *K. and T. v. Finland* [GC], no. 25702/94, § 145, ECHR 2001-VII, and *N.C. v. Italy* [GC], no. 24952/94, § 44, ECHR 2002-X). The Government's objection must therefore be dismissed.

18. Turning to the merits of the case, the Court notes that on 15 August 1997, pursuant to the assignment of claims, the applicant became a creditor in the amount of RUR 114,000,000 under the final judgment of 4 September 1995 of the Commercial Court of Samara Region against the Chapayevsk Social Security Service. On 21 June 2002, when the Chapayevsk Town Court of the Samara Region dismissed the applicant's claim for recovery of the sum under the judgment with interest due to the failure to execute it, the outstanding amount came to RUR 87,445. The judgment has not to date been fully executed, which is not in dispute by the parties.

19. The Court further observes that, as is apparent from the judgment of the Chapayevsk Town Court of the Samara Region of 21 June 2002, the judgment has not been executed because the Chapayevsk Social Security Service had no cash funds since the sums allocated to it from the town budget were insufficient. The applicant was thus precluded from receiving the judgment debt until the local authority had made appropriate budgetary provisions. It does not appear, however, that the local authority has taken

adequate measures to comply with the judgment. In fact, the judgment has not been fully executed to date, that is more than ten years since it became enforceable and more than eight years since the applicant acquired rights under the judgment. The Government did not offer any justification for that omission.

20. The Court has frequently found violations of Article 6 § 1 of the Convention and Article 1 of Protocol No. 1 in cases raising issues similar to the ones in the present case (see *Burdov*, cited above, § 34 et seq.; *Wasserman v. Russia*, no. 15021/02, § 35 et seq., 18 November 2004; and *Poznakhirina v. Russia*, no. 25964/02, § 22 et seq., 24 February 2005).

21. Having examined the material submitted to it, the Court notes that the Government have not put forward any fact or argument capable of persuading it to reach a different conclusion in the present case. Having regard to its case-law on the subject, the Court finds that by failing for years to comply with the enforceable judgment in the applicant's favour the domestic authorities prevented her from receiving the money she could reasonably have expected to receive.

22. There has accordingly been a violation of Article 6 of the Convention and Article 1 of Protocol No. 1.

II. APPLICATION OF ARTICLE 41 OF THE CONVENTION

23. 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

24. The applicant claimed USD 638,000 in respect of pecuniary damage, of which USD 40,000 was for the principal amounts awarded by the judgment of the Commercial Court of the Samara Region of 4 September 1995 and also by a judgment of 2 October 1996. The outstanding part of the amount claimed related to alleged damage to the applicant's property caused by State authorities, the poor state of the environment the applicant had to live in, a fine allegedly imposed on her in 1994-1995 and items allegedly seized in the course of searches of the applicant's flat conducted in 1999-2001. The applicant further submitted that she had suffered non-pecuniary damage as a result of the authorities' failure to execute the judgment of 4 September 1995 and also a failure to execute the judgment of 2 October 1996 in full in due time, but did not specify her claims in that respect.

25. The Government submitted that the applicant's claims relating to the failure to execute the judgment of the Commercial Court of the Samara Region of 4 September 1995 were excessive and unsubstantiated. They considered the rest of the claims, including those relating to the complaints that the Court declared inadmissible by the partial decision on admissibility of 13 November 2003, to be irrelevant. In the Government's view, the finding of a violation would constitute sufficient compensation in the present case.

26. The Court notes that the State's outstanding obligation to enforce the judgment of the Commercial Court of the Samara Region of 4 September 1995 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 in had the requirements of Article 6 not been disregarded (see *Makarova and Others v. Russia*, no. 7023/03, § 47, 24 February 2005 and *Poznakhirina v. Russia*, no. 25964/02, § 33, 24 February 2005). The Court finds that in the present case the same principle applies, having regard to the violations found. It therefore considers that the Government should 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.

27. As regards the remainder of the applicant's claims for pecuniary damage, the Court notes, firstly, that by the partial decision on admissibility of 13 November 2003 it declared the applicant's complaints concerning the alleged failure to execute the judgment of the Commercial Court of the Samara Region of 2 October 1996 and the search of the applicant's flat inadmissible. The other claims made by the applicant do not relate to the subject of the present proceedings. Accordingly, the Court rejects the applicant's claim for pecuniary damage.

28. On the other hand, the Court accepts that the applicant suffered distress because of the State authorities' failure to enforce the judgment at issue. The Court takes into account the amount and nature of the award, the lengthy period of the authorities' inactivity and the fact that the judgment has not been fully enforced. Making its assessment on an equitable basis, it awards the applicant EUR 2,400 in respect of non-pecuniary damage, plus any tax that may be chargeable on that amount.

B. Costs and expenses

29. The applicant did not make any claims in respect of the costs and expenses incurred before the domestic courts and before the Court.

30. Accordingly, the Court makes no 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. *Holds* that there has been a violation of Article 6 of the Convention;
2. *Holds* that there has been a violation of Article 1 of Protocol No. 1;
3. *Holds*
 - (a) that the respondent State, within three months from the date on which the judgment becomes final in accordance with 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 applicant EUR 2,400 (two thousand four hundred 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;
 - (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;
4. *Dismisses* the remainder of the applicant's claim for just satisfaction.

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

Søren NIELSEN
Registrar

Christos ROZAKIS
President

In accordance with Article 45 § 2 of the Convention and Rule 74 § 2 of the Rules of Court, the concurring opinion of Mr Kovler is annexed to this judgment.

C.L.R.
S.N.

CONCURRING OPINION OF JUDGE KOVLER

Whereas I concur with the Chamber's finding that there has been a violation of Article 6 of the Convention on account of a lengthy non-enforcement of a judicial decision in the applicant's favour and, as a consequence, a violation of Article 1 of Protocol No. 1, I would like to discuss in more detail the Government's objection to the admissibility of the application founded on the premise that self-government (municipal) bodies do not form part of the system of State bodies by virtue of Article 12 of the Russian Constitution (see paragraph 15 of the judgment) and, consequently, the State is not responsible for the acts of the Chapayevsk Social Security Service.

1. As the national judge, I bear witness to many discussions about Article 12 of the Constitution and, especially, of its provision that “local self-government bodies shall not form part of the system of State bodies”. Contradictory interpretations of that provision were given in the light of Article 132 § 2 of the Constitution which conferred public-law functions on the local self-government bodies: “Local self-government bodies may be vested by law with certain State functions and accordingly receive material and financial resources which are necessary for their implementation. The implementation of the State functions shall be controlled by the State”.

It is understood that the Chapayevsk Social Security Service exercised precisely public-law functions, including the social protection of the population, even though emoluments were payable from the local rather than federal budget.

2. The protection of social rights of individuals is an integral part of the general system for the protection of human rights which, under the Russian Constitution, is either under the exclusive jurisdiction of the federation (Article 71) or under the joint jurisdiction of the federation and its constituent entities (Article 72), but never, and I emphasise – never, under the exclusive jurisdiction of a constituent entity.

If it were otherwise, the State would not be responsible for ensuring effective respect for many individual rights, including those enshrined in Article 1 of Protocol No. 1. Obviously, such a construction would be contrary to Article 1 of the Convention and to the “ordinary meaning” of the term “jurisdiction”. Explaining the meaning of Article 1 of the Convention, the Court noted that it “makes no distinction as to the type of rule or measure concerned, and does not exclude any part of the member States' 'jurisdiction' from scrutiny under the Convention” (*Matthews v. the United Kingdom* [GC], no. 24833/94, § 29, ECHR 1999-I).

I will not speculate about a possible breach of the “vertical of power”. If the term “jurisdiction” is to be linked to the concept of “responsibility”, the argument that a State is not responsible for the acts (failures to act) of the agencies located within its territory, even if those are municipal agencies, is

unsustainable. Indeed, as the Court noted on many occasions, a State is not responsible for the obligations of “third parties”, such as private individuals, companies or banks (see, among others, *Shestakov v. Russia* (dec.), no. 48757/99, 18 June 2002). However, it is highly unlikely that the Court would include municipal bodies in that category of “third persons”, even having regard to the respondent State's margin of appreciation.

Once the Court rejected the argument by a State that denied its responsibility for the acts of the independent judicial authorities: “In all cases before the Court, what is in issue is the international responsibility of the State” (*Lukanov v. Bulgaria*, judgment of 20 March 1997, *Reports of Judgments and Decisions* 1997-II, § 40).