



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

FIRST SECTION

CASE OF SUNTSOVA v. RUSSIA

(Application no. 55687/00)

JUDGMENT

STRASBOURG

17 November 2005

FINAL

17/02/2006

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 Suntsova v. Russia,

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

Mr C.L. ROZAKIS, *President*,

Mrs S. BOTOCHAROVA,

Mr A. KOVLER,

Mrs E. STEINER,

Mr K. HAJIYEV,

Mr D. SPIELMANN,

Mr S.E. JEBENS, *judges*,

and Mr S. QUESADA, *Deputy Section Registrar*,

Having deliberated in private on 25 October 2005,

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

PROCEDURE

1. The case originated in an application (no. 55687/00) 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 Lyudmila Grigoryevna Suntsova, a Russian national, on 12 September 1999.

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 September 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

I. THE CIRCUMSTANCES OF THE CASE

4. The applicant was born in 1948 and lives in Volgograd.

5. Pursuant to a decision of the Volgograd Central District Administration of 14 October 1987 the applicant began receiving a monthly single mother allowance in respect of her daughter who was born on 15 April 1986.

6. In 1998, from April to July, the applicant received no payments.

On 4 September 1998 the applicant brought proceedings before the Central District Court of the City of Volgograd (*Центральный районный суд города Волгограда*) requesting the payment of outstanding sums.

7. By a judgment of 21 September 1998 the court allowed the applicant's claim and ordered the Finance Department of the Volgograd Regional Administration (*Волгоградское облфинуправление*) to pay the applicant 467.56 roubles (RUR).

8. Following the entry into force of the judgment, the court's bailiff instituted enforcement proceedings for recovery of the sum awarded to the applicant. However, the applicant was informed that in 1998 the court judgment could not be enforced, because the defendant lacked sufficient funds.

9. The applicant complained about the non-enforcement of the judgment to the Department of Justice of the Volgograd Regional Administration (*Управление юстиции администрации Волгоградской области*), which on 16 February 1999 forwarded her complaint to the bailiff's service of the first instance court for reply and necessary measures.

In an undated letter of 1999, the bailiff's service informed the applicant that it had issued a writ of execution, but had not yet received from the defendant the sum due to the applicant.

10. According to the Governments submissions, which were not contested by the applicant, the sum of RUR 467.56 was paid to her twice – on 29 September 2000 and on 9 October 2002.

II. RELEVANT DOMESTIC LAW

11. Section 9 of the Federal Law on Enforcement Proceedings of 21 July 1997 provides that a bailiff's order on the institution of enforcement proceedings must fix a time-limit for the defendant's voluntary compliance with a writ of execution. The time-limit may not exceed five days. The bailiff must also warn the defendant that coercive action will follow, should the defendant fail to comply with the time-limit.

12. Under Section 13 of the Law, the enforcement proceedings should be completed within two months of the receipt of the writ of enforcement by the bailiff.

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 about the prolonged non-enforcement of the judgment in her favour. The court will examine this complaint under Article 6 § 1 of the Convention and Article 1 of Protocol No. 1 to the Convention. These Articles, in so far as relevant, 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 contested the admissibility of the application on the grounds that the judgment concerned had been executed and the applicant had failed to challenge the bailiff’s actions in court, i.e. she had not exhausted the domestic remedies. Furthermore, the applicant had failed to initiate any domestic proceedings with respect to her claim for compensation of non-pecuniary damage caused by the non-enforcement of the judgment in her favour.

15. The applicant maintained that she complained against the bailiff’s inactivity to the Department of Justice of the Volgograd Regional Administration.

16. As regards the Government’s argument that the judgment in question has already been enforced, the Court considers 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 (see, e.g., *Petrushko v. Russia*, no. 36494/02, § 16, 24 February 2005).

17. As to the alleged non-exhaustion of 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. However, once this burden of proof has been satisfied it falls to the applicant to establish that the remedy advanced by the Government was in fact exhausted or was for some reason inadequate and ineffective in the particular circumstances of the case or that there existed special circumstances absolving him or her from the requirement (see *Selmouni v. France* [GC], no. 25803/94, § 76, ECHR 1999-V).

The only remedies which Article 35 of the Convention requires to be exhausted are those that relate to the breaches alleged and at the same time are available and sufficient. The existence of such remedies must be sufficiently certain not only in theory but also in practice, failing which they will lack the requisite accessibility and effectiveness; it falls to the respondent State to establish that these various conditions are satisfied (see *Mifsud v. France* (dec.) [GC], no. 57220/00, § 15, ECHR 2002-VIII).

18. Turning to the present case, the Court notes that the Government put forward no reasons why an action against the bailiff's service should be considered an effective remedy. There is no suggestion that it was inefficiency of the bailiff's service which prevented the enforcement of the judgment at issue. In fact, the Government conceded that the delays in enforcement of the judgment concerned had been caused by circumstances beyond the bailiff's control. Apparently, the reason for the delay was the lack of funds. The Court therefore finds that an action against the bailiff's service would not have enhanced the applicant's prospects of receiving her award. The Court considers that in the present case it could not be said to have constituted an effective remedy against non-enforcement (see *Plotnikovy v. Russia*, no. 43883/02, § 17, 24 February 2005).

19. The Court therefore does not accept that the applicant was required to exhaust domestic remedies through a further court action against the bailiff's service.

20. The Court observes 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

21. The Government stressed that the judgment in the applicant's favour had been executed. The delays in the enforcement of the judgment had been caused by circumstances beyond the bailiff's control. At the relevant time, the Bailiff's Service of the Volgograd Region had had to deal with more than 18,000 enforcement documents concerning recovery of child benefit arrears totalling RUR 18,500,000.

22. The applicant maintained her complaints.

23. The Court observes that the judgment of 21 September 1998 remained inoperative for about two years. No acceptable justification was advanced by the Government for this delay.

24. 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, among other authorities, *Burdov v. Russia*, no. 59498/00, ECHR 2002-III and, more recently, *Petrushko*, cited above, or *Poznakhirina v. Russia*, no. 25964/02, 24 February 2005).

25. Having examined the material submitted to it, the Court notes that the Government did 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 two 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.

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

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."

28. The applicant claimed RUR 100,000 in respect of pecuniary and non-pecuniary damage.

29. The Government objected to the claim, noting that the applicant had not initiated any settlement of this issue in domestic courts.

30. The Court notes that the applicant has not submitted any documents supporting her claim for pecuniary damage. The Court does not discern any causal link between the violation found and the pecuniary damage alleged; it therefore rejects this claim.

31. As regards the compensation for non-pecuniary damage, the Court would not exclude that the applicant might have suffered distress and

frustration resulting from the State authorities' failure to enforce the judgment in her favour. However, having regard to the nature of the breach in this case and making its assessment on an equitable basis, the Court considers that the finding of a violation constitutes in itself sufficient just satisfaction for any non-pecuniary damage sustained by the applicant (see, in a similar context, *Poznakhirina*, cited above, § 35).

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. *Dismisses* the applicant's claim for just satisfaction.

Done in English, and notified in writing on 17 November 2005, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Santiago QUESADA
Deputy Registrar

Christos ROZAKIS
President