



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

FIRST SECTION

CASE OF BRATCHIKOVA v. RUSSIA

(Application no. 66462/01)

JUDGMENT

STRASBOURG

17 November 2005

FINAL

12/04/2006

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 Bratchikova v. Russia,

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

Mr C.L. ROZAKIS, *President*,

Mr L. LOUCAIDES,

Mr P. LORENZEN,

Mrs N. VAJIĆ,

Mrs S. BOTOUCHAROVA,

Mr A. KOVLER,

Mr K. HAJIYEV, *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. 66462/01) 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 Lyubov Dmitriyevna Bratchikova, on 18 August 2000.

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 7 October 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 1959 and lives in Voronezh.

5. The applicant receives welfare payments for her child. In 2000 she brought civil proceedings against a local welfare authority, claiming arrears in those payments for 1997 – 2000.

6. On 28 January 2000 the Kominternovskiy District Court of Voronezh awarded the applicant 6,882.59 Russian roubles (RUR). This judgment entered into force on 8 February 2000.

7. On 6 March 2000 the writ of execution was issued and sent to the bailiffs.

8. On 4 November 2000, in reply to the applicant's complaint about the bailiffs' failure to enforce the judgment in her favour, the Department of Justice of the Voronezh Region informed the applicant that her award would be enforced in the order of priority set out by the Federal Law on Enforcement Procedure.

9. On 26 July 2001 the bailiffs discontinued the enforcement proceedings in respect of the judgment of 28 January 2000 and returned the writ of execution to the applicant, as the debtor had insufficient funds.

10. In January – February 2004 the applicant was paid the amount due pursuant to the writ of execution.

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 OF THE CONVENTION AND ARTICLE 1 OF PROTOCOL No. 1 TO THE CONVENTION

13. The applicant complained about the lengthy non-enforcement of the judgment of 28 January 2000. 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 informed the Court that the authorities of the Voronezh Region had attempted to secure a friendly settlement of the case and that the applicant had refused to accept the friendly settlement on the terms proposed by the authorities. By reference to this refusal and to the fact that, in any event, the judgment in the applicant’s favour had been enforced, the Government invited the Court to strike out the application, in accordance with Article 37 of the Convention.

15. The applicant disagreed with the Government’s arguments and maintained her complaints. As regards the friendly settlement proposal, she claimed that the authorities of the Voronezh Region had never made any offers to her, and only negotiated once with her minor daughter.

16. The Court firstly observes that the parties were unable to agree on the terms of a friendly settlement of the case. The Court recalls that under certain circumstances an application may indeed be struck out of its list of cases under Article 37 § 1 (c) of the Convention on the basis of a unilateral declaration by the respondent Government even if the applicant wishes the examination of the case to be continued (see *Tahsin Acar v. Turkey* [GC], no. 26307/95, § 76, ECHR 2003-...).

17. On the facts, the Court observes that the Government failed to submit with the Court any formal statement capable of falling into the latter category and offering a sufficient basis for finding that respect for human rights as defined in the Convention does not require the Court to continue its examination of the case (see, by contrast, to *Akman v. Turkey* (striking out), no. 37453/97, §§ 23-24, ECHR 2001-VI).

18. 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).

19. In the light of the above considerations, the Court rejects the Government's request to strike the application out under Article 37 of the Convention.

20. 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

21. The Government advanced no arguments on the merits of the application.

22. The applicant maintained her complaint.

23. The Court observes that the judgment of 28 January 2000 remained inoperative for four years. No 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 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."

A. Damage

28. The applicant claimed compensation of non-pecuniary damage, having failed to specify the amount. The Government considered that

should the Court find a violation in this case that would in itself constitute sufficient just satisfaction.

29. 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).

B. Costs and expenses

30. The applicant did not claim reimbursement of her costs and expenses incurred before the domestic authorities and the Court. Accordingly, the Court considers that there is no call to award her any sum on that account.

FOR THESE REASONS, THE COURT UNANIMOUSLY

1. *Declares* the application admissible;
2. *Holds* that there has been a violation of Article 6 of the Convention and Article 1 of Protocol No. 1 to the Convention;
3. *Holds* that the finding of a violation constitutes in itself sufficient just satisfaction for any non-pecuniary damage sustained by the applicant.

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