



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

FIRST SECTION

CASE OF GERASIMENKO v. RUSSIA

(Application no. 24657/03)

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 Gerasimenko 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. 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. 24657/03) 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 a Russian national, Ms Lyubov Nikolayevna Gerasimenko, on 19 April 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 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 1955 and lives in Voronezh.

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

6. On 25 December 2000 the Levoberezhny District Court of Voronezh awarded the applicant 10,017.45 Russian roubles (RUR). This judgment entered into force on 6 January 2001.

7. On 23 January 2001 a writ of execution was issued and sent to the bailiffs.

8. On 26 July 2001 the bailiffs discontinued the enforcement proceedings in respect of the judgment of 25 December 2000 and returned the writ of execution to the applicant, as the debtor had insufficient funds.

9. On 26 April 2002 the applicant requested the Department of Justice of the Voronezh Region to ensure the enforcement of the judgment in her favour.

10. By letter of 7 May 2002 the Department of Justice of the Voronezh Region invited the applicant to re-submit the writ of execution to the bailiffs.

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

II. RELEVANT DOMESTIC LAW

12. 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.

13. 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

14. The applicant complained about the lengthy 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

15. 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.

16. The applicant disagreed with the Government’s arguments and maintained her complaints. As regards the friendly settlement proposal, the applicant claimed that the authorities of the Voronezh Region had never made any offers to her, and that, in any event, the amount of the judgment debt transferred to her account in 2004 had lost its purchasing power due to inflation.

17. 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-...).

18. 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).

19. 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).

20. 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.

21. 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

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

23. The applicant maintained her complaint.

24. The Court observes that the judgment of 25 December 2000 remained inoperative for about three years and one month. No justification was advanced by the Government for this delay.

25. 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).

26. 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.

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

II. OTHER ALLEGED VIOLATIONS OF THE CONVENTION

28. The applicant also complained that the lengthy non-enforcement of the judgment in her favour violated her rights to effective domestic remedies under Article 13 of the Convention.

29. The Court considers that this complaint is linked to the above issues of non-enforcement to such an extent that it should be declared admissible as well. However, having regard to the finding relating to Article 6 § 1 (see paragraph 27 above), the Court considers that it is not necessary to examine whether, in this case, there has been a violation of Article 13.

III. APPLICATION OF ARTICLE 41 OF THE CONVENTION

30. 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

31. As regards compensation for pecuniary damage, the applicant claimed RUR 19,442.20 as the interest payable at statutory rate of 25 % for the default period as well as 31,000 US dollars (USD), of which USD 10,000 represented the amount she could have earned during the period when, instead, she had sought the enforcement of the judgment in her favour and USD 20,000 was the compensation for the losses her child had sustained as a result of the untimely enforcement of the judgment of 25 December 2000. The applicant did not clarify her claims as to the remaining USD 1,000. She also claimed USD 45,000 in respect of non-pecuniary damage.

32. The Government contested the applicant's claims as wholly excessive and unjustified. As regards the pecuniary damage, they pointed out that under national law it was open to the applicant to file a court claim, seeking interest for the delayed payment of her judgment debt, and that the domestic courts would calculate such interest on the basis of a statutory rate which was currently equal to 14 %. Therefore, in the Government's view, the interest accrued by the applicants should amount to RUR 4,500. As to the non-pecuniary damage, the Government considered that should the Court find a violation in this case that would in itself constitute sufficient just satisfaction.

33. Having regard to the materials in its possession, the Court accepts the Government's argument and awards the applicant RUR 4,500, plus any tax that may be chargeable, in respect of pecuniary damage.

34. In so far as the compensation for non-pecuniary damage is concerned, 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

35. The applicant also claimed RUR 10,000 for the costs and expenses incurred before the domestic courts and the Court.

36. The Government considered the applicant's claims to be unfounded and manifestly excessive and noted that the documents submitted by the applicant lacked evidence that she had incurred such costs.

37. According to the Court's case-law, an applicant is entitled to reimbursement of his costs and expenses only in so far as it has been shown that these have been actually and necessarily incurred and were reasonable as to quantum. In the present case, regard being had to the information in its possession and the above criteria, the Court considers it reasonable to award applicant the sum of EUR 20 in respect of costs and expenses, plus any tax that may be chargeable on that amount.

C. Default interest

38. 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 of the Convention and Article 1 of Protocol No. 1 to the Convention;
3. *Holds* that there is no need to examine the complaint under Article 13 of 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 in accordance with Article 44 § 2 of the Convention, the following amounts:
 - (i) RUR 4,500 (four thousand five hundred roubles) in respect of pecuniary damage;
 - (ii) EUR 20 (twenty euros) in respect of costs and expenses, to be converted into the national currency of the respondent State at the rate applicable at the date of settlement;
 - (iii) any tax that may be chargeable on the above amounts;

(b) 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. *Holds* that the finding of a violation constitutes in itself sufficient just satisfaction for any non-pecuniary damage sustained by the applicant;
6. *Dismisses* the remainder of 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