



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

FIFTH SECTION

CASE OF KAZMINA v. RUSSIA

(Application no. 72374/01)

JUDGMENT

STRASBOURG

15 June 2006

FINAL

15/09/2006

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 Kazmina v. Russia,

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

Mr P. LORENZEN, *President*,

Mrs S. BOTOUCHAROVA,

Mr K. JUNGWIERT,

Mr V. BUTKEVYCH,

Mrs M. TSATSA-NIKOLOVSKA,

Mr R. MARUSTE,

Mr A. KOVLER, *judges*,

and Mrs C. WESTERDIEK, *Section Registrar*,

Having deliberated in private on 22 May 2006,

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

PROCEDURE

1. The case originated in an application (no. 72374/01) 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, Tatyana Mikhaylovna Kazmina (“the applicant”), on 18 April 2001.

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

3. On 13 December 2004 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.

4. On 1 April 2006 this case was assigned to the newly constituted Fifth Section (Rule 25 § 5 and Rule 52 § 1).

THE FACTS

5. The applicant was born in 1936 and lives in Novovoronezh.

6. The applicant receives an old-age pension. From April 1998 to April 1999 she received her pension several months in arrears. According to the applicant, inflation during this period meant that the pension paid several months in arrears had lost significant part of its value by the time it was paid.

7. On an unspecified date the applicant lodged an action against the Novovoronezh Social-Security Authority for index-linking of her pension in line with inflation.

8. On 27 October 2000 the Novovoronezh Town Court of the Voronezh Region found for the applicant and ordered the defendant authority to pay the applicant 2,044.87 Russian roubles (RUR) as the pension indexation and RUR 91.79 as a court fee.

9. The defendant authority did not appeal against the judgment. On 7 November 2000 the judgment came into force.

10. On 21 November 2000 the Town Court issued a writ of execution for the total amount of RUR 2,136.66.

11. On 23 November 2000 the Court Bailiffs' Department of Novovoronezh instituted enforcement proceedings. It invited the Head of the Novovoronezh Social-Security Authority to pay the judgment debt within a fixed time limit. This was not done.

12. On 6 December 2000 the bailiff issued an order for collection of the money from the defendant's bank account. However, according to letter No. 3980 of 10 September 2001 from the Court Bailiffs' Department, no money had entered the defendant's bank account since 1 November 2000, which made it impossible to enforce the judgment.

13. The applicant's complaints about the non-enforcement to the Novovoronezh Town Prosecutor and the Voronezh Region Department of the Ministry of Justice were to no avail.

14. On 14 December 2000 the bailiff applied to the Novovoronezh Town Court seeking for clarification as to the enforcement of judgments against the Social-Security Authority. By a decision of 17 January 2001 the court rejected this request.

15. On 5 March 2001 the Bailiffs' Department returned the writ of execution to the applicant notifying her that the judgment of 27 October 2000 could not be enforced because of the defendant's lack of funds.

16. The applicant's further requests for execution of the judgment brought the same negative result communicated to the applicant by the Bailiffs' Department on 18 October 2001, 30 August 2002, 29 May 2003, 23 June and 26 August 2005.

17. On 5 September 2005 the applicant submitted the writ of execution to the Bailiffs' Department anew.

18. The judgment of 27 October 2000 has 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

19. The applicant complained about the non-enforcement of the judgment in her favour. She relied on 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

20. The Government submitted that it was open to the applicant to complain in court about the inactivity of the Court Bailiffs’ Department of Novovoronezh which was responsible for the enforcement of the judgment. Article 46 of the Constitution of the Russian Federation guaranteed the judicial protection of everyone’s rights and freedoms. Section 90 of the Federal Law on Enforcement Proceedings provided that an application against a court bailiff concerning enforcement proceedings or the refusal to carry out enforcement proceedings could be lodged with a court within a ten-day term running from the act complained of. As the applicant had chosen not to do so, she had failed to exhaust domestic remedies and her application should be declared inadmissible.

21. The applicant disagreed. She submitted that under Article 13 of the Code of Civil Procedure judgments which had come into force were subject to obligatory enforcement, including for state organs and public officials. Hence, she was not under the obligation to complain in court about the

failure of the court bailiff to enforce the judgment. The applicant also noted that she had complained about the non-enforcement to the Novovoronezh Town Prosecutor and to the Voronezh Region Department of the Ministry of Justice.

22. 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 *Kudła v. Poland* [GC], no. 30210/96, § 158, ECHR 2000-XI).

23. The Government put forward no reasons why an action against the bailiff service should be considered an effective remedy. Neither party suggested that it was any inefficiency of the bailiff service which prevented the enforcement of the judgment 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 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 *Plotnikov v. Russia*, no. 43883/02, § 17, 24 February 2005).

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

25. 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

26. The Government did not make any submissions on the merits of the case.

27. The applicant maintained her complaints.

28. The Court reiterates that execution of a judgment given by any court must 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). 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).

29. The Court further 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, for example by way of a final judicial decision (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).

30. Turning to the instant case, the Court notes that the judgment of 27 October 2000 has until now remained unenforced for more than five and a half years.

31. The Court has found violations of Article 6 § 1 of the Convention and Article 1 of Protocol No. 1 in many cases raising issues similar to the ones in the present case (see, among other authorities, *Burdov* and *Plotnikov*, cited above).

32. 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 such a substantial period of time to comply with the final judicial decision in the applicant’s favour the Russian authorities prevented her from receiving the money which she could reasonably have expected to receive.

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

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 applicant claimed in respect of pecuniary damage RUR 2,136.66 as the judgment debt and RUR 1,891.47 as statutory interest for the period of non-enforcement calculated on the basis of the annual refinancing rate of

the Central Bank of Russia. She also claimed 3,000 euros (EUR) in respect of non-pecuniary damage.

36. The Government did not comment on the claims.

37. In respect of the claim concerning the amount due under the judgment the Court considers that the Government shall secure, by appropriate means, the enforcement of the award made by the domestic court. 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 (see *Plotnikovy*, cited above, § 33). As regards the claim representing statutory interest for the period of non-enforcement, the Court, having regard to the circumstances of the instant case and deciding on an equitable basis, awards the applicant EUR 55.

38. As regards the applicant's claim for non-pecuniary damage, the Court accepts that the applicant must have suffered distress, anxiety and frustration caused by the prolonged non-enforcement of the judgment in her favour. The Court finds this claim reasonable, and consequently allows it in full.

B. Costs and expenses

39. The applicant also claimed RUR 593.80 for administrative costs, such as postage and photocopying incurred in the domestic enforcement proceedings and before the Court. She submitted supporting documents for the amount of RUR 371.40.

40. The Government did not comment on the claim.

41. According to the Court's case-law, an applicant is entitled to reimbursement of his or her 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 awards the sum of EUR 11.

C. Default interest

42. 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;
3. *Holds* that there has been a violation of Article 1 of Protocol No. 1 to the Convention;
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 domestic court's judgment of 27 October 2000, and in addition to pay to the applicant the following amounts, to be converted into Russian roubles at the rate applicable at the date of settlement:
 - (i) EUR 55 (fifty five euros) in respect of pecuniary damage;
 - (ii) EUR 3,000 (three thousand euros) in respect of non-pecuniary damage;
 - (iii) EUR 11 (eleven euros) in respect of costs and expenses;
 - (iv) 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. *Dismisses* the remainder of the applicant's claim for just satisfaction.

Done in English, and notified in writing on 15 June 2006, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Claudia WESTERDIEK
Registrar

Peer LORENZEN
President