CONSEIL DE L'EUROPE

COUNCIL OF EUROPE

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

FIFTH SECTION

CASE OF SHAMINA v. RUSSIA

(Application no. 70501/01)

JUDGMENT

STRASBOURG

13 July 2006

FINAL

13/10/2006

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 Shamina v. Russia,

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

Mr P. LORENZEN, *President*,
Mr K. JUNGWIERT,
Mr V. BUTKEVYCH,
Mrs M. TSATSA-NIKOLOVSKA,
Mr A. KOVLER,
Mr J. BORREGO BORREGO,
Mrs R. JAEGER, *judges*,
and Mrs C. WESTERDIEK, *Section Registrar*,

Having deliberated in private on 19 June 2006,

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

PROCEDURE

1. The case originated in an application (no. 70501/01) 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 an Russian national, Ms Anna Yegorovna Shamina ("the applicant"), on 6 March 2001.

2. The applicant was represented by Ms S. Poznakhirina, a lawyer practising in Novovoronezh. 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 9 July 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.

THE FACTS

THE CIRCUMSTANCES OF THE CASE

4. The applicant was born in 1918 and lives in Novovoronezh.

5. On 30 November 2000 the Novovoronezhskiy Town Court of the Voronezh Region granted the applicant's claim against the Novovoronezh Social Security Service and awarded her 7,721.87 Russian roubles (RUR) for pension arrears.

6. The judgment was not appealed against and entered into force. On 4 January 2001 a writ of execution was issued.

7. The judgment was executed on 2 March 2005.

THE LAW

I. THE GOVERNMENT'S REQUEST TO STRIKE OUT THE APPLICATION UNDER ARTICLE 37 OF THE CONVENTION

8. In the letter of 25 April 2005 the Government informed the Court that they had reached friendly settlement with the applicant. They enclosed a copy of the friendly settlement agreement signed by the applicant. On 28 April 2005 the applicant's representative submitted that the applicant had placed her signature on the friendly settlement agreement with the Government under psychological pressure put by the authorities. She had had no intention to withdraw her complaint before the Court and insisted on the examination of her application. In a letter of 2 September 2005 the Government invited the Court to strike out the application, in accordance with Article 37 of the Convention, referring to the friendly settlement agreement signed by the applicant.

9. The Court does not have to decide whether the applicant indeed signed the agreement under the psychological pressure allegedly put by the authorities for the following reasons. The agreement sent by the Government was concluded outside the framework of the Court's friendly settlement negotiations. Not only the applicant did not confirm to the Court her will to reach friendly settlement with the Government, but, on the contrary, she contested the validity of the agreement and clearly expressed her wish to have her application examined by the Court. In these circumstances the Court finds that the parties did not reach friendly settlement on the basis of respect for human rights as defined in the Convention or its Protocols (Article 37 § 1 *in fine* of the Convention and Rule 62 § 3 of the Rules of Court).

10. The Court reiterates that under certain circumstances an application may indeed be struck out 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], (preliminary issue), no. 26307/95, § 76, ECHR 2003-VI). It notes, however, that this procedure is an exceptional one and is not, as such, intended to circumvent the applicant's opposition to a friendly settlement.

11. Furthermore, the Court observes that a distinction must be drawn between, on the one hand, declarations made in the context of strictly confidential friendly-settlement proceedings (Article 38 § 2 of the Convention and Rule 62 § 2 of the Rules of Court) and, on the other hand, unilateral declarations made by a respondent Government in public and adversarial proceedings before the Court (see *Androsov v. Russia*, no. 63973/00, § 45, 6 October 2005).

12. On the facts, the Court observes that the Government have failed to provide it with 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 it to continue its examination of the case.

13. That being so, the Court rejects the Government's request to strike the application out under Article 37 of the Convention and will accordingly pursue its examination of the admissibility and merits of the case.

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

14. The applicant complained under Article 6 of the Convention and Article 1 of Protocol No. 1 about the prolonged failure to execute the judgment in her favour. Article 6, in so far as relevant, provides 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 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. In their observations of 15 December 2004 on the admissibility and merits of the application the Government stated that the matter of the execution of the judgment was being examined by the Pension Fund.

16. The applicant contended that the failure to execute the judgment in due time had violated Article 6 of the Convention and Article 1 of Protocol No. 1.

A. Admissibility

17. 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

18. On 9 March 2005 the Government informed the Court that the judgment in the applicant's favour had been executed on 2 March 2005.

19. The applicant insisted that her rights under Article 6 of the Convention and Article 1 of Protocol No. 1 had been violated.

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 those in the present case (see, among other authorities, *Burdov v. Russia*, no. 59498/00, ECHR 2002-III; *Androsov*, cited above; and *Gorokhov and Rusyayev v. Russia*, no. 38305/02, 17 March 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 execute the final judicial decision in the applicant's favour the domestic authorities deprived the provisions of Article 6 § 1 of all useful effect and prevented her from receiving the money she could reasonably have expected to receive.

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

III. 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 RUR 13,102.29 in respect of pecuniary damage, comprising the judgment debt in the amount of RUR 7,721.87 and interest calculated on the basis of the refinancing rate of the Central Bank of

Russia in the amount of RUR 5,380.42. She also claimed 20,000 euros (EUR) for non-pecuniary damage.

25. The Government considered that should the Court find a violation in this case that would in itself constitute sufficient just satisfaction. However, should the Court find it necessary to award damages, the amount of the award should be calculated with regard to the particular circumstances of the case and to the Court's case-law, for example the *Burdov* judgment cited above.

26. The Court notes that after the applicant had submitted her claims for just satisfaction the judgment in her favour was executed. Having regard to the evidence in its possession, the Court awards the applicant the amount of RUR 5,380.42 for pecuniary damage.

27. The Court considers that the applicant must have suffered distress and frustration resulting from the State authorities' failure to execute a final judicial decision in her favour, and that this cannot be sufficiently compensated for by the finding of a violation. However, the amount claimed appears excessive. The Court has taken into account the award it made in the case of *Burdov* (cited above), the nature of the decision whose non-enforcement was at issue in the present case, the delay in the execution proceedings and other relevant aspects. Making its assessment on an equitable basis, it awards the applicant EUR 2,700 in respect of non-pecuniary damage, plus any tax that may be chargeable on that amount.

B. Costs and expenses

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

29. Accordingly, the Court makes no award under this head.

C. Default interest

30. 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;

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 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, RUR 5,380.42 (five thousand three hundred and eighty roubles and forty-two kopecks) in respect of pecuniary damage and EUR 2,700 (two thousand seven hundred euros) in respect of non-pecuniary damage, 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 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 13 July 2006, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Claudia WESTERDIEK
Registrar

Peer LORENZEN
President