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

FIRST SECTION

CASE OF BELYATSKAYA v. RUSSIA

(Application no. 40250/02)

JUDGMENT

STRASBOURG

27 July 2006

FINAL

11/12/2006

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 Belyatskaya v. Russia,

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

Mr C.L. ROZAKIS, *President*,
Mr L. LOUCAIDES,
Mrs F. TULKENS,
Mrs N. VAJIĆ,
Mr A. KOVLER,
Mrs E. STEINER,
Mr K. HAJIYEV, *judges*,
and Mr S. NIELSEN, *Section Registrar*,

Having deliberated in private on 6 July 2006,

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

PROCEDURE

1. The case originated in an application (no. 40250/02) 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 Anna Petrovna Belyatskaya ("the applicant"), on 27 September 2002.

2. The applicant, who had been granted legal aid, was represented by Mr I. Telyatyev, a lawyer practising in Arkhangelsk. 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 15 November 2004 the Court decided to communicate the application. 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 1958 and lives in the town of Arkhangelsk.

1. First set of proceedings

5. The applicant instituted proceedings against the Social Security Department and the Finance Department of the Arkhangelsk Regional

Administration (*Управление социальной защиты населения и Финансовое управление администрации Архангельской области*), seeking to recover unpaid child allowance for the period between June 1998 and December 1999.

6. On 16 February 2001 the Oktyabrskiy District Court of Arkhangelsk (*Октябрьский районный суд г. Архангельска*) granted the applicant's claims in so far as they concerned the Finance Department and ordered the latter to pay 2,244.16 Russian roubles (approximately 85 euros at the material time) to the applicant.

7. No appeal was lodged and this judgment became final on 26 February 2001.

8. On 9 April 2001 the Oktyabrskiy District Bailiff's Office of Arkhangelsk (*Служба судебных приставов по Октябрьскому району г. Архангельска*) received the execution writ in respect of the judgment.

9. By letter of 13 March 2002 the Regional Prosecutor's Office (*прокуратура Архангельской области*) informed the applicant that the unpaid child allowances were paid by the Finance Department in turns, depending on the availability of funds.

10. On 19 May 2003 the amount due was paid to the applicant by the Social Security Department.

11. On 16 September 2003 the Bailiff's Office terminated the enforcement proceedings on the ground that the judgment had been enforced. As indicated in a letter of the Bailiff's Office of 13 September 2004, the delayed enforcement of the judgment had been caused by lack of funds.

2. Second set of proceedings

12. On 22 April 2002 the applicant instituted proceedings in the Lomonosovskiy District court of Arkhangelsk (*Ломоносовский районный суд г. Архангельска*) against the Oktyabrskiy District Bailiff's Office and the State Treasury, seeking pecuniary and non-pecuniary damages for the non-enforcement of the judgment.

13. She claimed that the Bailiff's Office had failed to take the necessary actions to enforce the judgment and requested that damages be recovered from the State Treasury.

14. On 23 April 2002 the Lomonosovskiy District Court of Arkhangelsk refused to deal with her claim for lack of territorial jurisdiction. The court found that, since the applicant in her claim insisted that damages be recovered from the State Treasury, she should have applied to the relevant court in Moscow where the office of the State Treasury was situated.

15. On 8 May 2002 the applicant filed an appeal against this decision which was received by the court on 13 May 2002. In her appeal she argued that, as long as in her claim she had indicated both the Bailiff's Office and the State Treasury as defendants, she was free in her choice as to which of

the two courts, which had territorial jurisdiction over the defendants, to apply. Since the Oktyabrskiy District Bailiff's Office was situated under the territorial jurisdiction of the Lomonosovskiy District Court, she had chosen to apply to this court.

16. On 14 May 2002 the District Court found that the appeal had been filed out of time and no request for leave to appeal out of time had been made. It advised the applicant to submit such request by 24 May 2002, indicating the reasons for missing the appeal time-limit. Otherwise, her appeal would be returned.

17. On 20 May 2002 the applicant submitted such request. In her request she argued that she had not missed the appeal time-limit as the decision of 23 April 2002 was received by her only on 30 April 2002. The appeal was filed on 8 May 2002, i.e. within the required ten days.

18. The court scheduled a hearing on the applicant's request on 4 June 2002. The Government submitted that the applicant had been properly notified of that hearing but failed to appear.

19. The applicant did not comment on that point.

20. Accordingly, by letter of 4 June 2002 the District Court returned the applicant's appeal on the ground that she had failed to comply with the instructions given in its decision of 14 May 2002.

21. The outcome of the proceedings remains unclear.

II. RELEVANT DOMESTIC LAW

22. According to Articles 13, 209 and 338 of the Code of Civil Procedure (*Гражданский процессуальный кодекс РСФСР*), in force at the material time, a court judgment, which has become final, is binding and must be executed.

23. Section 9 of the Law on Enforcement Proceedings of 21 July 1997 (*Закон об исполнительном производстве*) provides that a bailiff's order on the institution of enforcement proceedings shall fix a time-limit for the defendant's voluntary compliance with the writ of execution. The time-limit cannot exceed five days. The bailiff shall also warn the defendant that coercive action will follow, should the defendant fail to comply within the time-limit.

THE LAW

I. ALLEGED VIOLATION OF ARTICLES 6 § 1 OF THE CONVENTION AND 1 OF PROTOCOL NO. 1

24. The applicant complained that the authorities' refusal to enforce the judgment in her case violated her rights under Article 6 § 1 of the Convention and her right to the peaceful enjoyment of possessions as guaranteed in Article 1 of Protocol No. 1. These Articles in so far as relevant provide 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

25. The Government accepted that the delay in the enforcement of the judgment in the applicant's favour had taken place and submitted that at the relevant time there had been systematic delays in payments of similar payments due to the nation-wide changes in the system of distribution of budgetary allocations. They also argued that since the judgment has been enforced the applicant cannot be regarded as a victim within the meaning of Article 34 of the Convention.

26. The applicant maintained her complaints.

27. As to the applicant's alleged loss of victim status, the Court reiterates that "a decision or measure favourable to the applicant is not in principle sufficient to deprive her of her status as a 'victim' unless the national authorities have acknowledged, either expressly or in substance, and then afforded redress for, the breach of the Convention" (see *Amuur v. France*, judgment of 25 June 1996, *Reports of Judgments and Decisions*

1996-III, p. 846, § 36, *Dalban v. Romania* [GC], no. 28114/95, § 44, ECHR 1999-VI, and *Rotaru v. Romania* [GC], no. 28341/95, § 35, ECHR 2000-V). Only when these conditions are satisfied does the subsidiary nature of the protective mechanism of the Convention preclude examination of an application (see, for example, *Jensen and Rasmussen v. Denmark* (dec.), no. 52620/99, 20 March 2003).

28. In the present case, the Court observes that the mere fact that the authorities complied with the judgment after a substantial delay cannot be viewed as automatically depriving the applicant of her victim status under the Convention. The domestic authorities have not acknowledged that the applicant's Convention rights were unjustifiably restricted by the non-enforcement of the judgment and until now no redress has been offered to the applicant for the delays, as required by the Court's case-law (see, e.g., *Petrushko v. Russia*, no. 36494/02, § 16, 24 February 2005).

29. Accordingly, the Court rejects the Government's objection as to the loss of victim status.

30. The Court notes that the complaint 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

31. The Court notes that the judgment dated 16 February 2001 came into force on 26 February 2001 and remained without enforcement until 19 May 2003, i.e. for the period of two years, two months and twenty-one days.

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

33. 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 substantial period to comply with the enforceable judgment in the applicant's favour the domestic authorities prevented her from receiving the money which she was entitled to receive under the final and binding judgment.

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

II. OTHER ALLEGED VIOLATIONS OF THE CONVENTION

35. The applicant also complained under Article 6 about the authorities' alleged denial of access to court in respect of her claim for damages filed on 22 April 2002. She submitted that the court decisions in this respect were arbitrary. She further complained under Article 14 in conjunction with Article 6 about discrimination, claiming that other persons, who had filed similar claims with the courts, had their claims examined.

36. The Government contended that this complaint was groundless. They argued that the applicant had not justified her failure to appear at the hearing on 4 June 2002 and that the decision to return her claim had been reasonable, given in particular the fact that nothing had precluded her from re-submitting the claim to the court again.

37. The applicant disagreed and maintained her complaints.

38. Having examined the case-file and the parties' submissions, the Court finds it established that the applicant was properly notified of the hearing on her request scheduled for 4 June 2002. The Court further notes that since the applicant failed to appear at that hearing and did not justify her absence, the decision of the District Court of 4 June 2002 to return the appeal cannot be regarded as unreasonable or arbitrary. It follows that the applicant's allegation about the denial of access to court is unsubstantiated.

39. Furthermore, the Court notes that the facts as submitted do not disclose any appearance of discrimination against the applicant. It follows that this part of the application must be rejected as being manifestly ill-founded, pursuant to Article 35 §§ 3 and 4 of the Convention.

III. APPLICATION OF ARTICLE 41 OF THE CONVENTION

A. Damage

40. The applicant claimed EUR 20,000 for non-pecuniary damage.

41. The Government submitted that the applicant's claims were excessive and that no award should be made as the judgments in the applicant's favour had in any event been enforced.

42. 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 judgments 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 applicants (see, in a similar context, *Poznakhirina*, cited above, § 35 and *Shestopalova and Others v. Russia*, no. 39866/02, § 33, 17 November 2005).

B. Costs and expenses

43. The applicant did not submit any claims under this head and the Court accordingly makes no award in respect of costs and expenses.

FOR THESE REASONS, THE COURT UNANIMOUSLY

1. *Declares* the complaint concerning the delayed enforcement of the judgment of 16 February 2001 admissible and the remainder of the application inadmissible;

2. *Holds* that there has been a violation of Article 6 of the Convention and Article 1 of Protocol No. 1;

3. *Holds* that the finding of a violation constitutes in itself sufficient just satisfaction for any non-pecuniary damage sustained by the applicant;

4. *Dismisses* the remainder of the applicant's claim for just satisfaction.

Done in English, and notified in writing on 27 July 2006, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Søren NIELSEN Registrar	Christos ROZAKIS President