



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

FIRST SECTION

CASE OF VELSKAYA v. RUSSIA

(Application no. 21769/03)

JUDGMENT

STRASBOURG

5 October 2006

FINAL

05/01/2007

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 Velskaya 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 14 September 2006,

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

PROCEDURE

1. The case originated in an application (no. 21769/03) 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 Yelena Leonidovna Velskaya (“the applicant”), on 18 June 2003.

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

3. On 22 February 2005 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 Mirnyy, in the Sakha (Yakutiya) Republic.

5. On 28 November 2002 the Mirninskiy District Court of the Sakha (Yakutiya) Republic granted the applicant's civil action against the Ministry of Finance and awarded her 127,825 Russian roubles (“RUR”, approximately 4,055 euros).

6. On 25 December 2002 the Supreme Court of the Sakha (Yakutiya) Republic upheld the judgment on appeal.

7. On 18 February 2003 the applicant's representative submitted a writ of execution to the Ministry of Finance.

8. At the time the application was lodged with the Court the judgment remained unenforced.

9. According to the Government, on 25 November 2004 the Presidium of the Supreme Court of the Sakha (Yakutiya) Republic, by way of a supervisory review, quashed the judgments of 28 November and 25 December 2002 and dismissed the applicant's claim.

II. RELEVANT DOMESTIC LAW

1. The RSFSR Code of Civil Procedure (in force until 1 February 2003)

10. A judicial decision became legally effective upon expiry of the time-limit for lodging an appeal if no such appeal had been lodged. If an appeal had been lodged, the judgment became effective on the date when it was upheld on appeal (Article 208).

11. A judgment was to be enforced after it had become legally effective, unless it provided for immediate enforcement (Article 209).

2. Enforcement Proceedings Act (Law of 21 July 1997)

12. Once instituted, enforcement proceedings must be completed within two months upon receipt of the writ of enforcement by the bailiff (Section 13).

THE LAW

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

13. The applicant complained under Article 13 of the Convention and Article 1 of Protocol No. 1 about the non-enforcement of the judgment of 28 November 2002 as upheld on 25 December 2002. The Court considers that this complaint falls to be examined under Article 6 § 1 of the Convention and Article 1 of Protocol No. 1 (see *Burdov v. Russia*, no. 59498/00, ECHR 2002-III). The relevant parts of these provisions read as follows:

Article 6 § 1

“In the determination of his civil rights and obligations ..., everyone is entitled to a fair ... hearing within a reasonable time... 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...”

A. Submissions by the parties

14. The Government submitted that the judgment of 28 November 2002, as upheld on 25 December 2002, could not be enforced because it had been quashed by way of supervisory-review as “the lower courts considerably violated the provisions of the substantive law in the course of proceedings in respect of the applicant's case”.

15. The applicant maintained her complaints.

B. The Court's assessment*1. Admissibility*

16. 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.

2. Merits

17. Turning to the facts of the present case, the Court observes that on 28 November 2002 the applicant obtained a judgment by which the Ministry of Finance was to pay her a certain sum of money. The judgment of 28 November 2002 was upheld on appeal on 25 December 2002 and became enforceable on that date. From that moment on, it was incumbent on the debtor, a State agency, to comply with it. The District Court issued the applicant with a writ of execution and it was submitted to the debtor on 18 February 2003. However, no attempts were made to execute the judgment. On 25 November 2004 the Presidium of the Supreme Court of the Sakha (Yakutiya) Republic quashed the judgments of 28 November and 25 December 2002 and dismissed the applicant's claims.

18. It follows that at least from 25 December 2002 to 25 November 2004 the judgment of 28 November 2002 was enforceable and it was incumbent on the State agency to abide by its terms.

19. The Government cited the quashing of the judgment of 28 November 2002 as the sole reason for its non-enforcement. In this respect, the Court reiterates that it has recently addressed and dismissed the same argument by the Government in the case of *Sukhobokov v. Russia* (no. 75470/01, 13 April 2006). In particular, the Court held that “the quashing of the judgment, which did not respect the principle of legal certainty and the applicant's “right to a court”, cannot be accepted as a reason to justify the non-enforcement of the judgment” (see *Sukhobokov*, cited above, § 26).

20. Having examined the material submitted to it, the Court notes that the Government did not put forward any fact or argument capable of persuading the Court to reach a different conclusion in the present case. The Government did not advance any other justification for the failure to enforce the judgment of 28 November 2002, as upheld on appeal on 25 December 2002. Having regard to its case-law on the subject (see *Burdov v. Russia*, no. 59498/00, ECHR 2002-III; and, more recently, *Poznakhirina v. Russia*, no. 25964/02, 24 February 2005; *Wasserman v. Russia*, no. 15021/02, 18 November 2004), the Court finds that by failing to comply with the judgment of 28 November 2002 in the applicant's favour the domestic authorities violated her right to a court and prevented her from receiving the money which she was entitled to receive.

21. The Court finds accordingly that there was a violation of Article 6 § 1 of the Convention and Article 1 of Protocol No. 1 on account of non-enforcement of the judgment of 28 November 2002.

II. APPLICATION OF ARTICLE 41 OF THE CONVENTION

22. 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.”

23. The applicant did not submit a claim for just satisfaction. 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;
3. *Holds* that there is no call to award the applicant just satisfaction.

Done in English, and notified in writing on 5 October 2006, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Søren NIELSEN
Registrar

Christos ROZAKIS
President