



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

FIRST SECTION

CASE OF KOLYADA v. RUSSIA

(Application no. 31276/02)

JUDGMENT

STRASBOURG

30 November 2006

FINAL

28/02/2007

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 Kolyada 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 9 November 2006,

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

PROCEDURE

1. The case originated in an application (no. 31276/02) 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 Zoya Stepanovna Kolyada (“the applicant”), on 5 July 2002.

2. The applicant was represented by Mr V. Kolomin, a lawyer practising in Moscow. The Russian Government (“the Government”) were represented by their Agent, Mr P. Laptev, Representative of the Russian Federation at the European Court of Human Rights.

3. On 10 January 2006 the Court decided to give notice of 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 1955 and lives in the village of Zhodino, the Minsk Region of Belarus.

5. The applicant is a former employee of the municipal enterprise Teplovodokanal in the town of Neryungri (*Муниципальное предприятие*

«Управление «Тепловодоканал» г. Нерюнгри). Before her retirement she filed a claim for salary arrears with the Labour Disputes Board (*Комиссия по трудовым спорам*) of Teplovodokanal.

6. On 19 January, 3 February and 18 May 1998 the Labour Disputes Board found in the applicant's favour and awarded her salary arrears totalling 96,684.67 Russian roubles (RUR). The decisions became final immediately as no appeal lay against them. On the basis of the decisions in the applicant's favour, specific enforcement documents – certificates from the Labour Disputes Board (*удостоверения Комиссии по трудовым спорам*) – were issued. On 20 May 1998 the applicant forwarded the certificates to the bailiffs' service with a view to execution.

7. The decisions of the Labour Disputes Board of 19 January, 3 February and 18 May 1998 were enforced in full by 5 January 2001. As their execution had been delayed, the applicant filed court claims against her former employer requesting index-linking of the awards.

8. On 16 March 2001 the Neryungri Town Court of the Republic of Sakha (Yakutiya) granted her claims in part and awarded her RUR 30,084. On the same date a writ of execution was issued. Later the applicant appealed against the judgment as she was not satisfied with the amount of the award.

9. On 4 May 2001 the bailiffs' service instituted enforcement proceedings in respect of the writ of execution of 16 March 2001. Three days later the bailiffs' service levied execution on the debtor's account.

10. The judgment of 16 March 2001 was upheld on appeal by the Supreme Court of the Republic of Sakha (Yakutiya) on 11 July 2001.

11. On an unspecified date the bailiffs' service closed the enforcement proceedings on the ground that the salary arrears had been paid to the applicant on the basis of the Labour Disputes Board certificates.

12. On 27 April 2002 the Neryungri Prosecutor's Office informed the applicant that it had submitted a request for supervisory review of the bailiffs' service's decision to close the enforcement proceedings, since they concerned not the payment of the salary arrears, but their index-linking pursuant to the judgment of 16 March 2001.

13. The enforcement proceedings were reopened on 1 March 2006.

14. On 9 March 2006 the bailiffs' service transferred the sum of RUR 30,084 to the applicant by postal order.

15. The enforcement proceedings were closed on 4 May 2006.

16. On 17 May 2006 the post office transferred the sum of RUR 30,084 back to the sender because the applicant had refused to take receipt of it.

17. On 7 July 2006 the bailiffs' service again transferred the sum of RUR 30,084 to the applicant by postal order. It appears that the applicant again refused to accept it.

THE LAW

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

18. The applicant complained about the lengthy non-enforcement of the judgment of the Neryungri Town Court of the Republic of Sakha (Yakutiya) of 16 March 2001, as upheld on 11 July 2001. She relied on Articles 1, 3 and 6 of the Convention. The Court will examine the complaint under Article 6 of the Convention and Article 1 of Protocol No. 1. 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 provides:

“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.”

19. The Government submitted that, as a result of a bailiff's error in the course of the enforcement proceedings conducted in 2001, the amount of RUR 30,084, instead of being transferred to the applicant, had been used to cover the bailiffs' fees. The mistake had been rectified on 9 March 2006, when the amount was transferred to the applicant by postal order. The Government acknowledged that the five-year delay in executing the judgment in the applicant's favour constituted a violation of her rights under Article 6 of the Convention and Article 1 of Protocol No. 1.

20. The applicant averred that the Neryungri Town Court's judgment of 16 March 2001 had not been executed since she had not accepted the sum transferred to her on 9 March 2006. She claimed that the reopening of the enforcement proceedings in 2006 had been illegal and considered that she had therefore had no right to accept the money. She stated, furthermore, that the amount had dropped significantly in value since 2001 and that no index-linking had been offered to her. Overall, she insisted that her rights under Article 6 of the Convention and Article 1 of Protocol No. 1 had been violated.

A. Admissibility

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 Court notes that in the course of the enforcement proceedings reopened in 2006 the sum of RUR 30,084 was transferred to the applicant by postal order on 9 March 2006. Although this amount was due to the applicant under the Neryungri Town Court's judgment of 16 March 2001, as upheld on 11 July 2001, she refused to take receipt of it. The Court considers that by transferring the amount of RUR 30,084 to the applicant the domestic authorities executed the judgment in question. The fact that the applicant refused to accept the money does not affect this conclusion.

23. The Court further notes that the delay in executing the judgment in the applicant's favour totalled approximately five years. 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 v. Russia*, no. 63973/00, § 45, 6 October 2005; and *Gorokhov and Rusyayev v. Russia*, no. 38305/02, 17 March 2005).

24. Having examined the material submitted to it, the Court notes that in the present case the Government have acknowledged the violation of the applicant's rights under Article 6 of the Convention and Article 1 of Protocol No. 1 as a result of the lengthy delay in executing the judgment in her favour. Thus, the present case does not disclose any reason to deviate from the Court's previous case-law cited above.

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

II. APPLICATION OF ARTICLE 41 OF THE CONVENTION

26. 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

27. The applicant claimed 12,561 United States dollars in respect of pecuniary damage arising out of the delayed enforcement of the Labour Disputes Board's decisions of 19 January, 3 February and 18 May 1998. She also claimed RUR 68,062 in respect of pecuniary damage sustained as a result of the delayed enforcement of the Neryungri Town Court's judgment of 16 March 2001, as upheld on 11 July 2001, comprising the judgment debt in the amount of RUR 30,084 and interest calculated on the basis of the refinancing rate of the Central Bank of Russia in the amount of RUR 37,978. The applicant also claimed 20,000 euros (EUR) for non-pecuniary damage.

28. The Government contested the applicant's claim. They stated, firstly, that the alleged damage caused by the late payment of her salary in 1998 was irrelevant to the present application. Furthermore, the Neryungri Town Court's judgment of 16 March 2001 had already been fully executed, and the claim for interest was excessive. They submitted that should the applicant file a claim for interest with the domestic courts, the amount calculated on the basis of the refinancing rate of the Central Bank of Russia would come to RUR 36,500. Finally, the Government considered the applicant's claim for non-pecuniary damage to be excessive, especially taking into account her refusal to accept the amount transferred to her in execution of the judgment of 16 March 2001.

29. Inasmuch as the applicant's claim for pecuniary damage concerns the delayed enforcement of the Labour Disputes Board's decisions of 19 January, 3 February and 18 May 1998, the Court does not discern any causal link between the violation found and the pecuniary damage alleged. The Court further notes that the Neryungri Town Court's judgment of 16 March 2001, as upheld on 11 July 2001, was fully executed with a delay of approximately five years. Having regard to this and the material in its possession, the Court awards the applicant the amount of EUR 1,080 for pecuniary damage, plus any tax that may be chargeable on that amount.

30. 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

31. The applicant also claimed reimbursement of the costs and expenses incurred in the proceedings before the Court. In particular, she claimed EUR 1,200 as remuneration for her representative under the contract of 15 February 2006.

32. The Government noted that costs and expenses should not be reimbursed unless they had been real, necessary and reasonable as to the amount.

33. The Court reiterates that according to its case-law, an applicant is entitled to reimbursement of his costs and expenses only in so far as it has been shown that these were actually and necessarily incurred and were reasonable as to quantum. The Court notes that this case was not particularly complex. It therefore finds the amount which the applicant claims in respect of her representative's remuneration excessive, taking into account the amount of legal work required in this case. Having regard to the information in its possession and the above criteria, the Court considers it reasonable to award the sum of EUR 850 for the proceedings before the Court, plus any tax that may be chargeable on that amount.

C. Default interest

34. 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;
3. *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, EUR 1,080 (one thousand eighty euros) in respect of pecuniary damage, EUR 2,700 (two thousand seven hundred euros) in respect of non-pecuniary damage, and EUR 850 (eight hundred and fifty euros) in respect of costs and expenses, to be

converted into Russian roubles at a rate applicable at the date of settlement,

- (b) any tax that may be chargeable on the above amounts;
- (c) 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;

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

Done in English, and notified in writing on 30 November 2006, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Søren Nielsen
Registrar

Christos Rozakis
President