



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

FIRST SECTION

CASE OF KLETSOVA v. RUSSIA

(Application no. 24842/04)

JUDGMENT

STRASBOURG

12 April 2007

FINAL

10/12/2007

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 Kletsova v. Russia,

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

Mr L. LOUCAIDES, *President*,

Mr A. KOVLER,

Mrs E. STEINER,

Mr K. HAJIYEV,

Mr D. SPIELMANN,

Mr S.E. JEBENS,

Mr G. MALINVERNI, *judges*,

and Mr S. NIELSEN, *Section Registrar*,

Having deliberated in private on 22 March 2007,

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

PROCEDURE

1. The case originated in an application (no. 24842/04) 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 Grigoryevna Kletsova (“the applicant”), on 31 May 2004.

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

3. On 22 February 2005 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

I. THE CIRCUMSTANCES OF THE CASE

4. The applicant was born in 1961 and lives in Kamyshin, the Volgograd Region.

1. Proceedings concerning compensation for defamation

5. On 26 July 2000 the Kamyshin Town Court of the Volgograd Region (“the Kamyshin Town Court”) allowed the applicant's civil claim for defamation against the Prosecutor's Office of the Volgograd Region and

awarded her 300 Russian roubles (“RUR”). The award was payable by the Treasury of the Russian Federation. The judgment was not appealed against and became enforceable on 7 August 2000.

6. On 28 August 2000 the applicant submitted a writ of execution to the bailiffs' service.

7. On 30 August 2000 the bailiffs' service returned the writ of execution to the court because it did not have the debtor's address. It asked the court to re-submit a corrected version within ten days.

8. On 10 September 2000 the bailiffs' service discontinued the enforcement proceedings because the writ of execution had not been re-submitted.

9. On 3 October 2000 the applicant was told that the writ had been returned to the court on 30 August 2000.

10. On 20 November 2003, following the applicant's request, the bailiffs' service informed her of the decision of 10 September 2000 to discontinue the enforcement proceedings.

11. On 15 April 2005 the amount of RUR 300 was transferred into the applicant's account.

2. Proceedings concerning maintenance works in the applicant's flat

12. On 25 June 2003 the Justice of the Peace of the 14th Court Circuit of the Kamyshinskiy District of the Volgograd Region partly allowed the applicant's civil action against the municipal housing maintenance enterprise of Kamyshin (*муниципальное предприятие “Жилищное управление” г. Камышина*). It ordered that the municipal enterprise should perform certain maintenance works in the applicant's room within ten days after the judgment becomes final. In particular, it should repair and whitewash the ceiling and paint the floor. The court also awarded the applicant RUR 200 for non-pecuniary damage.

13. On 12 September 2003 the Kamyshin Town Court upheld the judgment on appeal; the judgment became enforceable.

14. The municipal enterprise performed the maintenance works in accordance with the judgment but did not pay the monetary award.

15. On 15 June 2004 the Commercial Court of the Volgograd Region initiated insolvency proceedings against the debtor.

16. On 6 August 2004 the court issued a new writ of execution and sent it to the bailiffs' service. Enforcement proceedings commenced and the applicant's name was placed on the list of creditors in the insolvency proceedings.

17. By a letter of 9 August 2004, the President of the Kamyshin Town Court informed the applicant that in September 2003 the writ of execution had been handed over to a bailiff who had subsequently lost it.

18. On 15 April 2005 the municipal enterprise transferred the amount of RUR 200 into the applicant's account.

19. On 16 September 2005 the amount of RUR 5 charged by the bank for the transfers (see paragraphs 11 and 18 above) was reimbursed to the applicant.

THE LAW

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

20. The applicant complained about the non-enforcement of the judgments of 26 July 2000 and 25 June 2003 in her favour. This complaint falls to be examined under Article 6 § 1 of the Convention and Article 1 of Protocol No. 1. 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 ... 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

21. As regards the proceedings concerning compensation for defamation the Government contended that the applicant had failed to submit the writ of execution of the judgment of 26 July 2000 directly to the Ministry of Finance and therefore had not exhausted domestic remedies available to her under Russian law. Furthermore, the Government claimed that it had been open to the applicant to re-submit the writ of execution to the bailiffs' service.

22. The Court notes that the enforceability of the judgment of 26 July 2000 against the Prosecutor's Office of the Volgograd Region has not been disputed. The Court reiterates that a person who has obtained an enforceable judgment against the State as a result of successful litigation cannot be

required to resort to enforcement proceedings in order to have it executed (see *Metaxas v. Greece*, no. 8415/02, § 19, 27 May 2004). After a competent State agency was served with a judgment, recourse by the applicant to another State agency should not in principle be necessary to secure its enforcement. The Court considers that in the present case recourse to the bailiff service or to the Ministry of Finance would only have produced repetitive results and could not be said to have constituted an effective remedy against the non-enforcement (see, *mutatis mutandis*, *Yavorivskaya v. Russia* (dec.), no. 34687/02, 15 May 2004, and *Jasiūnienė v. Lithuania* (dec.), no. 41510/98, 24 October 2000).

23. For the above reasons, the Court finds that the application cannot be rejected for non-exhaustion of domestic remedies. It concludes that the application is not manifestly ill-founded within the meaning of Article 35 § 3 of the Convention. No other ground for declaring it inadmissible has been established.

B. Merits

24. As regards the proceedings against the municipal maintenance enterprise, the Government submitted that the amount awarded by the judgment of 25 June 2003, as upheld on 12 September 2003, was not paid in good time because the bailiffs only received the writ of execution on 6 August 2004. By that date the insolvency proceedings against the municipal enterprise had been opened, and the payment under the judgment was made in the order of priority established by Russian law for creditors in insolvency proceedings. The Government did not put forward any arguments to justify the delay in the enforcement of the judgment of 26 July 2000 other than those examined by the Court above (see paragraph 21 et seq.).

25. The applicant insisted that the delay in the enforcement of the judgments in her favour was attributable to the Government.

26. The Court recalls that the judgments were enforced on 15 April 2005. Thus, the execution of the judgment of 26 July 2000 took more than four and a half years and the execution of the judgment of 25 June 2003, as upheld on 12 September 2003, took approximately one year and seven months.

27. 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 the ones in the present case (see *Burdov v. Russia*, no. 59498/00, § 34 et seq., ECHR 2002-III; *Gerasimova v. Russia*, no. 24669/02, §§ 14-22 and *Gizatova v. Russia*, no. 5124/03, 13 January 2005, §§ 18-29).

28. Having examined the material submitted to it in respect of the judgment of 26 July 2000, the Court considers that the Government have

not put forward any fact or argument capable of persuading it to reach a different conclusion in the present case.

29. As regards the judgment of 25 June 2003, the Court notes that the Government have not suggested that the municipal enterprise enjoyed such institutional and operational independence from the State that it would absolve the latter from responsibility under the Convention for its acts and omissions (see *Mykhaylenky and Others v. Ukraine*, nos. 35091/02, 35196/02, 35201/02, 35204/02, 35945/02, 35949/02, 35953/02, 36800/02, 38296/02 and 42814/02, §§ 41-46, ECHR 2004-XII; and *Lisyanskiy v. Ukraine*, no. 17899/02, §§ 17-20, 4 April 2006).

30. Furthermore, as regards the insolvency proceedings against the municipal enterprise, which allegedly prevented the national authorities from enforcing the judgment of 25 June 2003, as upheld on 12 September 2003, in good time, the Court reiterates that 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 (see, *mutatis mutandis*, *Burdov*, cited above, § 35). 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*, cited above, § 35). Accordingly, also in respect of this judgment, the Court does not find any reason to deviate from its established case-law.

31. The Court finds, therefore, that by failing for a considerable period of time to comply with the enforceable judgments in the applicant's favour the domestic authorities impaired the essence of her right to a court and prevented her from receiving the money she had reasonably expected to receive.

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

II. OTHER ALLEGED VIOLATIONS OF THE CONVENTION

33. The applicant also invoked Article 17 of the Convention referring to the fact that the Government excessively limited her right to access to a court.

34. Having regard to its above finding in respect of Article 6 of the Convention and Article 1 of Protocol No. 1 the Court does not find that any separate issue arises under Article 17 of the Convention. It therefore rejects this part of the application under Article 35 § 4 of the Convention.

III. APPLICATION OF ARTICLE 41 OF THE CONVENTION

35. 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

36. The applicant claimed 500,000 euros (“EUR”) in respect of pecuniary damage and EUR 50,000 in respect of non-pecuniary damage.

37. The Government submitted that no just satisfaction should be paid to the applicant as the judgments concerned small amounts and were not connected to the applicant's livelihood.

38. The Court observes that the applicant did not substantiate her claim for pecuniary damage. The Court accordingly rejects this claim.

39. 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 the non-pecuniary damage sustained by the applicant.

B. Costs and expenses

40. The applicant did not seek reimbursement of costs and expenses relating to the proceedings before the domestic courts or the Convention organs and this is not a matter which the Court has to examine of its own motion (see *Motière v. France*, no. 39615/98, § 26, 5 December 2000).

C. Default interest

41. 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* admissible the applicant's complaints about the non-enforcement of the judgments of 26 July 2000 and 25 June 2003, as upheld on 12 September 2003, and the remainder of the application inadmissible;
2. *Holds* that there has been a violation of Article 6 § 1 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 the non-pecuniary damage sustained by the applicant;

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

Done in English, and notified in writing on 12 April 2007, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Søren NIELSEN
Registrar

Loukis LOUCAIDES
President