



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

FIRST SECTION

CASE OF GLUSHAKOVA v. RUSSIA

(Application no. 38719/03)

JUDGMENT

STRASBOURG

12 April 2007

FINAL

12/07/2007

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 Glushakova v. Russia,

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

Mr L. LOUCAIDES, *President*,

Mrs N. VAJIĆ,

Mr A. KOVLER,

Mrs E. STEINER,

Mr K. HAJIYEV,

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. 38719/03) 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 Valentina Viktorovna Glushakova ("the applicant"), on 15 November 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 28 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. On 4 May 2006 the Court put additional questions to the parties.

THE FACTS

4. The applicant was born in 1927 and lives in the town of Shakhty of the Rostov Region.

A. Proceedings concerning payment of arrears and a penalty

5. In the 1980s the applicant's son took part in the emergency operation at the site of the Chernobyl nuclear plant disaster. Until March 1996 the Shakhty Town Social Security Service (hereafter - the Service) made monthly payments to the son as a compensation for health damage.

6. After the Service stopped payments, the applicant's son sued it for arrears and a penalty. On 28 February 1997 the Shakhty Town Court awarded him 30,640,341 Russian roubles (“RUR”) in arrears and the same amount as the penalty.

7. On 24 April 1997 the arrears, but not the penalty, were paid.

8. After the son's death, on 26 March 1999 a notary public issued the applicant with an inheritance certificate certifying her right to one half of the penalty awarded by the judgment of 28 February 1997. The applicant's grandson was issued with a certificate confirming his right to the second half of the penalty.

9. As the penalty had not been paid, the Shakhty Town Court, upon the applicant's and her grandson's request, ordered the following increases of the penalty to take account of the inflation:

- in the judgment of 14 February 2000, by RUR 57,165.71;
- in the judgment of 13 August 2001, by RUR 29,764.6; and
- in the judgment of 29 March 2002, by RUR 17,254.96.

Those judgments were not appealed against and became effective.

10. On 30 May 2002 the Service paid the penalty in the original amount established in the judgment of 28 February 1997, but not the amounts awarded in the subsequent judgments.

11. In 2003 the applicant and her grandson asked the Shakhty Town Court to reconfirm their right to the sums awarded by the judgments of 14 February 2000, 13 August 2001 and 29 March 2002.

12. On 14 March 2003 the Shakhty Town Court held that the applicant and her grandson each should receive RUR 52,092.63 (approximately 1,540 euros), representing one half of the amounts awarded by the judgments of 14 February 2000, 13 August 2001 and 29 March 2002. The judgment of 14 March 2003 was not appealed against and became final.

13. On 20 December 2004 the money due to the applicant and her grandson under the judgments of 14 February 2000, 13 August 2001 and 29 March 2002, as pronounced by the judgment of 14 March 2003, were paid to them in full.

B. First pension dispute

14. On 11 November 2002 the Shakhty Town Court accepted the applicant's action against the Service and awarded her RUR 23,619.55 (approximately 733 euros). That judgment was upheld on appeal on 23 July 2003 and enforced in full on 16 August 2004.

C. Second pension dispute

1. Dispute for payment of arrears and an increase of pension

15. In 2002 the applicant sued the Service and the Shakhty Town Council for an increase of her pension, payment of arrears and compensation for damage.

16. On 8 May 2003 the Shakhty Town Court partly accepted her action and ordered that the Service should adjust her pension to take account of increases in the minimum subsistence level. The Town Court also awarded her RUR 9,563.92 (approximately 271 euros) in arrears. The judgment became final on 16 July 2003 after the Rostov Regional Court upheld it.

17. On 11 December 2003 the Service paid the applicant RUR 9,563.92, but it did not increase her pension in line with the subsistence level.

2. The applicant's attempts to initiate a supervisory review

18. In November 2003 the applicant asked the President of the Rostov Regional Court to initiate a supervisory review in respect of the judgment of 8 May 2003. On 30 April 2004 her request was disallowed.

3. Proceedings for clarification of the judgment of 8 May 2003

19. In 2004 the applicant asked the Shakhty Town Court to clarify the judgment of 8 May 2003. She complained that the judgment had not been enforced in full because the monthly pension payments had not been increased.

20. On 15 November 2004 the Shakhty Town Court confirmed the applicant's right to the pension in the increased amount. It held that from 1 January to 31 December 2002 the applicant should have been paid RUR 2,255.65 per month and from 1 March 2003 she should have been paid RUR 2,842.11 per month. The Town Court also ordered that the Service should subsequently increase pension payments in accordance with the law.

21. According to the Government, the judgment of 8 May 2003, as clarified by the judgment of 15 November 2004, was enforced in full in December 2005.

D. Other proceedings against the Service

22. On 11 and 29 June, 23 August, 2 and 22 September 2004 the Shakhty Town Court accepted the applicant's actions against the Service for the adjustment of various unrelated judgment awards made in her favour in 1997, 1999, 2000 and 2003 and awarded her RUR 720.5 (approximately EUR 21), RUR 11,628.63 (approximately 331 euros), RUR 7,545.76 (approximately EUR 210), RUR 5,803.24 (approximately 162 euros),

RUR 6,183.69 (approximately 172 euros), and RUR 2,524.42 (approximately 70 euros). The judgments were not appealed against and became final.

23. The judgments were enforced in full on 2 November 2005 when the sums were credited to the applicant's account.

THE LAW

I. ALLEGED VIOLATION OF ARTICLE 6 OF THE CONVENTION AND ARTICLE 1 OF PROTOCOL NO. 1 ON ACCOUNT OF PROTRACTED NON-ENFORCEMENT OF THE JUDGMENTS

24. The applicant complained under Articles 6 and 14 of the Convention and Article 1 of Protocol No. 1 that the final judgments of 14 February 2000, 13 August 2001, 29 March and 11 November 2002, 14 March and 8 May 2003, 11 and 29 June, 23 August, 2 and 22 September 2004 had not been enforced in good time. 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, § 26, 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. Admissibility

25. The Government informed the Court that the Service had attempted to secure a friendly settlement which the applicant had refused to accept. Referring to that refusal, to the fact that the judgments in the applicant's favour had been fully enforced, and to the Court's decision in the case of *Aleksentseva and Others v. Russia* (nos. 75025/01 et seq., 4 September 2003), the Government invited the Court to strike the application out of its list of cases, in accordance with Article 37 of the Convention.

26. The applicant disagreed with the Government. She claimed that the Government had not offered compensation for the loss of the value of the judgment debts. The sum offered had not covered the pecuniary and non-pecuniary damage she had sustained due to protracted non-enforcement of the judgments.

27. The Court observes that it has already on a number of occasions examined the same argument by the Russian Government and rejected it (see *Silchenko v. Russia*, no. 32786/03, §§ 33-37, 28 September 2006; *Kazartsev v. Russia*, no. 26410/02, §§ 11-15, 2 November 2006, etc.). The Court does not find any reason to depart from that finding in the present case and dismisses the Government's request to strike the application out under Article 37 of the Convention.

28. 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

29. The Government claimed that the judgments had remained unenforced because it had taken the debtor, a State body, "a certain period of time for performance of the procedures... for unconditional financial maintenance of execution of such judicial decisions".

30. The applicant maintained her complaints.

31. The Court observes that on 14 February 2000, 13 August 2001 and 29 March 2002 the applicant obtained judgments in her favour by which she was to be paid certain sums of money by the Shakhty Town Social Security Service, a State body. The judgments were not appealed against and became final and enforceable. On 14 March 2003 the Shakhty Town Court, by the final judgment, confirmed the applicant's right to receive the money under the abovementioned judgments. The judgments of 14 February 2000, 13 August 2001 and 29 March 2002, as pronounced on 14 March 2003, were fully enforced on 20 December 2004 when the sums were credited to the applicant's account. Thus, the judgments remained unenforced for several years.

32. The Court further observes that on 8 May 2003 the Shakhty Town Court issued the applicant with a judgment under which the Service was to pay her a lump sum in pension arrears and was to adjust her pension to take account of increases in the minimum subsistence level. The judgment became final on 16 June 2003 when the Rostov Regional Court upheld it on appeal. The lump sum was paid to the applicant in December 2003. However, the adjustment of monthly payments was not effected. On 15 November 2004 the Town Court clarified its judgment of 8 May 2003, prescribing particular amounts of monthly pension payments due to the

applicant. The judgment of 8 May 2003, as clarified on 15 November 2004, was enforced in full in December 2005.

33. On 11 November 2002 the applicant obtained another judgment by which the Service was to pay her a certain sum of money. The judgment became final on 23 July 2003. It was enforced in full on 16 August 2004. The Court further notes that on 11 and 29 June, 23 August and 22 September 2004 the Shakhty Town Court issued judgments in the applicant's favour by which the Service was to pay the applicant certain sums of money. The judgments were not appealed against, became final and were enforced on 2 November 2005.

34. The Court observes that the final judgments in the applicant's favour indicated in paragraphs 32 and 33 above remained unenforced for more than a year.

35. 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, § 19 et seq., ECHR 2002-III; *Gizzatova v. Russia*, no. 5124/03, § 19 et seq., 13 January 2005; *Gerasimova v. Russia*, no. 24669/02, § 17 et seq., 13 October 2005).

36. 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. The Court finds that by failing for years 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 legitimately expected to receive.

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

II. OTHER ALLEGED VIOLATIONS OF THE CONVENTION

38. Lastly, the applicant complained under Articles 6, 13 and 14 of the Convention and Article 1 of Protocol No. 1 that the proceedings concerning an increase of her pension had been unfair, in that the Town Court had made incorrect calculations and discriminated against her, that her request for a supervisory review had been dismissed and that it had taken the President of the Regional Court almost a year to make a decision on her request for a supervisory review.

39. Having regard to all the material in its possession, and in so far as these complaints fall within its competence *ratione materiae*, the Court finds that they do not disclose any appearance of a violation of the rights and freedoms set out in the Convention or its Protocols. 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

40. 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

41. The applicant claimed RUR 578,366 in respect of pecuniary damage, of which RUR 122,627 represented inflation losses resulting from the lengthy non-enforcement and interest on the judgment awards at the marginal interest rate of the Russian Central Bank and RUR 455,739 represented the amounts which, in her view, should have been paid to her under the judgment of 8 May 2003, taking into account inflation rates and various coefficients established under the Russian law for pension payments. The applicant further claimed EUR 39,915 in respect of non-pecuniary damage.

42. The Government argued that the applicant had failed to exhaust domestic remedies in respect of her claims for compensation for pecuniary damage. As to the claims in respect of non-pecuniary damage, they were unsubstantiated and unreasonable.

43. The Court reiterates, firstly, that an applicant cannot be required to exhaust domestic remedies to obtain compensation for pecuniary loss since this would prolong the procedure before the Court in a manner incompatible with the effective protection of human rights (see *Papamichalopoulos and Others v. Greece* (Article 50), judgment of 31 October 1995, Series A no. 330-B, § 40, and *Gridin v. Russia*, no. 4171/04, § 20, 1 June 2006). Nor is there a requirement that an applicant furnish any proof of the non-pecuniary damage he or she sustained.

44. As to the applicant's claims in respect of the sums she had expected to receive under the judgment of 8 May 2003, the Court observes that on 15 November 2004 the Town Court clarified the judgment indicting sums of monthly pension payments due to the applicant. Those sums were paid to the applicant in full in December 2005. The Court notes that the applicant's right to receive higher amounts was not upheld in the domestic proceedings and the applicant did not claim separately any interest for the period that lapsed between the original award and the Court's judgment. The Court therefore rejects this claim.

45. As regards the remaining claims in respect of pecuniary damage, the Court observes that in the present case it has found a violation of Article 6 § 1 of the Convention and Article 1 of Protocol No. 1 in that the awards in the applicant's favour had not been paid to her in good time. It recalls that

the adequacy of the compensation would be diminished if it were to be paid without reference to various circumstances liable to reduce its value, such as an extended delay in enforcement (see *Gizatova v. Russia*, no. 5124/03, § 28, 13 January 2005; *Metaxas v. Greece*, no. 8415/02, § 36, 27 May 2004). Having regard to the materials in its possession and the fact that the Government did not furnish any objection to the applicant's method of calculation of compensation, the Court awards the applicant RUR 122,627 in respect of pecuniary damage, plus any tax that may be chargeable.

46. The Court further considers that the applicant must have suffered distress and frustration resulting from the State authorities' failure to enforce the judgments in her favour. The Court takes into account the relevant aspects, such as the length of the enforcement proceedings and the nature of the awards, and making its assessment on an equitable basis, awards the applicant EUR 3,900 in respect of non-pecuniary damage, plus any tax that may be chargeable on that amount.

B. Costs and expenses

47. The applicant also claimed EUR 100 and RUR 840.40 for the costs and expenses incurred before the Court, of which RUR 840.40 represented postal expenses and expenses for preparation of documents and EUR 100 represented expenses for presentation of her case before the Court without legal assistance.

48. The Government argued that RUR 840.40 should only be granted to the applicant because those expenses were reasonable.

49. According to the Court's case-law, an applicant is entitled to reimbursement of his costs and expenses only in so far as it has been shown that these have been actually and necessarily incurred and were reasonable as to quantum. The Court notes that the applicant was not represented in the Strasbourg proceedings. However, she must have incurred expenses in providing her written pleadings (see *Lauko v. Slovakia*, judgment of 2 September 1998, *Reports of Judgments and Decisions* 1998-VI, § 75). The Court further observes that the applicant provided receipts and vouchers to substantiate her expenses for preparation of documents and sending them to the Court. Having regard to the information in its possession and the above criteria, the Court considers it reasonable to award the sum of EUR 125 covering costs under all heads, plus any tax that may be chargeable on that amount.

C. Default interest

50. 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 complaint concerning the protracted non-enforcement of the judgments in the applicant's favour 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*
 - (a) that the respondent State is to pay the applicant, within three months from the date on which the judgment becomes final according to Article 44 § 2 of the Convention, the following amounts, to be converted, where appropriate, into Russian roubles at the rate applicable at the date of settlement:
 - (i) RUR 122,627 (one hundred twenty-two thousand six hundred and twenty-seven Russian roubles) in respect of pecuniary damage;
 - (ii) EUR 3,900 (three thousand and nine hundred euros) in respect of non-pecuniary damage;
 - (iii) EUR 125 (one hundred and twenty-five euros) in respect of costs and expenses;
 - (iv) any tax that may be chargeable on the above amounts;
 - (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;
4. *Dismisses* the remainder of 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