



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

FIRST SECTION

CASE OF NEOFITA v. RUSSIA

(Application no. 3311/06)

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 Neofita 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. 3311/06) 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 Nikolayevna Neofita (“the applicant”), on 23 November 2005.

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 4 April 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

4. The applicant was born in 1960 and lives in the town of Neryungri in the Sakha (Yakutiya) Republic.

5. On 11 July 2003 the Neryungri Town Court accepted the applicant's claim against the Government of the Russian Federation and awarded her 72,967 Russian roubles (RUR, approximately 2,110 euros) in compensation for a special-purpose settlement order by the terms of which the Government was to provide her with a car in exchange for payments extracted from the applicant's salary and benefits related to her employment in the Far-Northern Region of Russia. The judgment was upheld on appeal on 25 August 2003 by the Supreme Court of the Sakha (Yakutiya) Republic.

6. The Neryungri Town Court issued the applicant with a writ of execution which she submitted to the Ministry of Finance in November 2003.

7. At the time the application was lodged with the Court the judgment of 11 July 2003, as upheld on appeal on 25 August 2003, remained unenforced.

8. According to the Government, on 31 March 2006 the Federal Treasury of the Sakha (Yakutiya) Republic successfully initiated a supervisory review of the judgment of 11 July 2003.

9. On 24 August 2006 the Presidium of the Supreme Court of the Sakha (Yakutiya) Republic reviewed the judgment of 11 July 2003, as upheld on appeal on 25 August 2003, and ordered that the Ministry of Finance should pay the applicant RUR 33,201.49 (approximately 980 euros) .

10. Enforcement proceedings were instituted in respect of the judgment of 24 August 2006. The applicant did not submit any information concerning the outcome of those proceedings.

THE LAW

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

11. The applicant complained about the non-enforcement of the judgment of 11 July 2003, as upheld on appeal on 25 August 2003. 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

12. In their observations submitted to the Court on 12 July 2006, the Government argued that the judgment of 11 July 2003, as upheld on 25 August 2003, could not be enforced because the domestic courts had incorrectly assessed the facts of the applicant's case and misapplied the law. Thus, on 31 March 2006 the Federal Treasury of the Sakha (Yakutiya) Republic, on behalf of the Ministry of Finance, made recourse to the supervisory-review procedure. The Government further submitted that in 2005 and 2006 Russian courts had reviewed the final judgments taken in 2002 and 2003 “in accordance with the position of the Russian Federation Ministry of Finance”.

13. The applicant maintained her complaints.

B. The Court's assessment

1. Admissibility

14. 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.

2. Merits

15. Turning to the facts of the present case, the Court observes that on 11 July 2003 the applicant obtained a judgment by which the Government was to pay her a certain sum of money. The judgment of 11 July 2003 was upheld on appeal on 25 August 2003 and became enforceable on that date. From that moment on, it was incumbent on the debtor, a State body, to comply with it. The Town Court issued the applicant with a writ of execution and it was submitted to the debtor in November 2003. However, no attempts were made to execute the judgment. On 24 August 2006 the Presidium of the Supreme Court of the Sakha (Yakutiya) Republic reviewed the judgments of 11 July and 25 August 2003 and awarded the applicant a reduced sum of money to be paid by the Ministry of Finance.

16. It follows that at least from 25 August 2003 to 24 August 2006 the judgment of 11 July 2003 was enforceable and it was incumbent on the State to abide by its terms (cf. *Velskaya v. Russia*, no. 21769/03, § 18, 5 October 2006).

17. The Government cited the initiation of the supervisory-review proceedings in respect of the judgment of 11 July 2003 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, and *Velskaya*, cited above, §§ 19-21).

18. 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 11 July 2003, as upheld on appeal on 25 August 2003. 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 11 July 2003 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.

19. 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 11 July 2003, as upheld on appeal 25 August 2003.

II. APPLICATION OF ARTICLE 41 OF THE CONVENTION

20. 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

21. The applicant claimed RUR 72.967 in respect of pecuniary damage, representing the sum of the judgment award made in her favour on 11 July 2003. She further claimed EUR 50,000 in respect of non-pecuniary damage.

22. The Government argued that the applicant's claims were excessive, unreasonable and unsubstantiated. In any event, the finding of a violation will constitute in itself sufficient just satisfaction.

23. The Court recalls that in the instant case it found a violation of Article 6 § 1 of the Convention and Article 1 of Protocol No. 1, in that the judicial decision in the applicant's favour was not enforced. The Court notes

that the most appropriate form of redress in respect of a violation of Article 6 is to ensure that the applicant as far as possible is put in the position he would have been had the requirements of Article 6 not been disregarded (see *Piersack v. Belgium* (Article 50), judgment of 26 October 1984, Series A no. 85, p. 16, § 12, and, *mutatis mutandis*, *Gençel v. Turkey*, no. 53431/99, § 27, 23 October 2003). The Court finds that in the present case this principle applies as well, having regard to the violations found (cf. *Poznakhirina v. Russia*, no. 25964/02, § 33, 24 February 2005, and *Sukhobokov*, cited above, § 34). The applicant was prevented from receiving money she had legitimately expected to receive under the judgment of 11 July 2003. Deducting the sum which the applicant was awarded under the final judgment of 24 August 2006, the Court, accordingly, awards the applicant RUR 39,766 in respect of pecuniary damage, plus any tax that may be chargeable on that amount.

24. The Court further considers that the applicant must have suffered distress and frustration resulting from the State authorities' failure to enforce the judgment in her favour. Making its assessment on an equitable basis, the Court awards the applicant EUR 2,700 in respect of non-pecuniary damage, plus any tax that may be chargeable on the above amount.

B. Costs and expenses

25. The applicant did not make any claims for the costs and expenses incurred before the domestic courts and the Court.

26. Accordingly, the Court does not award anything under this head.

C. Default interest

27. 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, the following amounts:

(i) RUR 39,766 (thirty-nine thousand seven hundred and sixty-six Russian roubles) in respect of pecuniary damage;

(ii) EUR 2,700 (two thousand and seven hundred euros) in respect of non-pecuniary damage, to be converted into Russian roubles at the rate applicable at the date of the settlement

(iii) 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