



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

FIRST SECTION

CASE OF GLUSHAKOVA v. RUSSIA (No. 2)

(Application no. 23287/05)

JUDGMENT

STRASBOURG

10 May 2007

FINAL

10/08/2007

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 (No. 2),

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

Mr C.L. ROZAKIS, *President*,

Mrs N. VAJIĆ,

Mr A. KOVLER,

Mrs E. STEINER,

Mr K. HAJIYEV,

Mr D. SPIELMANN,

Mr S.E. JEBENS, *judges*,

and Mr S. NIELSEN, *Section Registrar*,

Having deliberated in private on 10 April 2007,

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

PROCEDURE

1. The case originated in an application (no. 23287/05) 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 1 June 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. 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 1927 and lives in the town of Shakhty in the Rostov Region.

5. On 3 June 2004 the Shakhty Town Court ordered that the Ministry of Finance should pay the applicant 298,650 Russian roubles (RUR, approximately 8,420 euros), representing a subvention for buying a flat. On 11 October 2004 the Rostov Regional Court upheld the judgment.

6. Following the institution of enforcement proceedings by the Shakhty Town Division of Bailiffs' Service on 16 November 2004, the Ministry of Finance petitioned the Supreme Court of the Russian Federation for a revision of the judgment of 3 June 2004 and a stay in the enforcement proceedings. Those requests were dismissed on 25 April 2006.

7. On 21 February 2006 the bailiffs closed the enforcement proceedings because it was necessary to send the writ of execution to another division of the bailiffs' service. A copy of that decision and the writ were sent to the Head of the Main Department of the Federal Bailiffs' Service in Moscow. The applicant and the Ministry of Finance were notified of the decision.

8. According to the Government, the enforcement proceedings were closed because a new procedure for enforcement of court decisions against State bodies had been introduced on 1 January 2006. Under the new procedure the applicant was to submit a writ to the Ministry of Finance, however, she did not do it.

9. On 23 March 2006 a bailiff of the Second Division of the Tsentralniy District of the Main Department of the Federal Bailiffs' Service in Moscow instituted enforcement proceedings and ordered that the Ministry of Finance should execute the judgment of 3 June 2004 within five days. The bailiff also indicated that the failure to execute the judgment will lead to the imposition of a fine. A copy of that decision was sent to the Ministry of Finance.

10. On 20 June 2006 the enforcement proceedings were closed because it was "impossible to enforce" the judgment.

11. The judgment of 3 June 2004, as upheld on appeal on 11 October 2004, remains unenforced.

THE LAW

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

12. The applicant complained that the judgment 3 June 2004, as upheld on appeal on 11 October 2004, remained unenforced. 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

13. The Court notes that this 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

14. The Government argued that the non-enforcement of the judgment in the applicant's favour had resulted from her failure to submit the writ of execution to the Ministry of Finance in compliance with the new procedure.

15. The applicant averred that in November 2004 the bailiffs had instituted the enforcement proceedings and had notified the Ministry of Finance. However, the judgment had not been enforced. In February 2006 the bailiffs had closed the enforcement proceedings because it had been necessary to transfer the enforcement documents to the Moscow division of the bailiffs' service. The Ministry of Finance had been appraised of the re-opening, however, the judgment had not been enforced and the proceedings had been closed again. The Ministry of Finance had received the writ and its copies on several occasions and it had been well aware of the developments in the enforcement proceedings.

16. The Court observes that on 3 June 2004 the applicant obtained a judgment in her favour by which she was to be paid a certain sum of money by the Ministry of Finance. The judgment was upheld on appeal on 11 October 2004 and became final and enforceable. However, it has not been enforced yet. It follows that it has, so far, remained unenforced for approximately two and a half years.

17. The Court notes the Government's argument that a delay in the enforcement proceedings was caused by the applicant's failure to provide the Ministry of Finance with the writ of execution in compliance with the new procedure. However, the Court has already examined and dismissed the similar argument by the Russian Government. In particular, in the case of *Reynbakh v. Russia* the Court held as follows:

“The Court observes that... the applicant obtained a judgment in his favour against the federal treasury, which has not been enforced to date. A competent State agency, the bailiffs' service, was promptly served with the writ of execution... It is true that the

applicant did not resubmit the writ of execution to a different authority after the changes in the domestic law had been introduced... However, the Court considers that it is incumbent on the State to organise its legal system in such a way that ensures co-ordination between various enforcement agencies and secures honouring of the State's judgment debts in good time, irrespective of changes in the domestic law. It would impose an excessive burden on the applicant if he were to follow every such change and forward the writ of execution from one competent State agency to another.

In any event, 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 *Koltsov v. Russia*, no. 41304/02, § 16, 24 February 2005; *Petrushko v. Russia*, no. 36494/02, § 18, 24 February 2005; and *Metaxas v. Greece*, no. 8415/02, § 19, 27 May 2004). The State authorities were aware of the applicant's claims, and, as soon as the judgment in the applicant's favour became enforceable, it was incumbent on the State to comply with it." (*Reynbakh v. Russia*, no. 23405/03, §§ 23-24, 29 September 2005)

18. 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. Having regard to its case-law on the subject (see *Burdov v. Russia*, no. 59498/00, § 19 et seq., ECHR 2002-III; *Gizatova v. Russia*, no. 5124/03, § 19 et seq., 13 January 2005; *Gerasimova v. Russia*, no. 24669/02, § 17 et seq., 13 October 2005), the Court finds that by failing for several years to comply with the enforceable judgment 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 could reasonably have expected to receive.

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

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 563,798.25 in respect of pecuniary damage, of which RUR 298,650 represented the judgment award, RUR 80,348.25 represented interest on the judgment award at the marginal interest rate of the Russian Central Bank and RUR 184,800 amounted to the depreciation of the judgment award due to the inflation in the period of the non-enforcement. The applicant further claimed EUR 6,000 in respect of non-pecuniary damage.

22. The Government argued that no interest on the judgment award should be granted as the domestic courts had awarded the money for the sole purpose of buying a flat. The applicant could not use the award in any other way and thus she could not receive any profit and she could not lose interest on the awarded sum. As to the claim in respect of non-pecuniary damage, it was excessive, ill-founded and unreasonable.

23. The Court notes that on 3 June 2004 the Town Court awarded the applicant a sum of money for purchasing a flat. The applicant could not use that money for any other purpose. The Court observes that the applicant claimed RUR 80,348.25 representing interest on the judgment award which she allegedly could have acquired if the money had been duly paid and she had placed them on a deposit account. Having regard to the purpose of the judgment award, the Court agrees with the Government that the applicant had no right to profit from the award by investing it or depositing the money on a bank account. The Court therefore dismisses her claim under this head.

24. The Court, however, notes that the State's outstanding obligation to enforce the judgments in the applicant's favour is not in dispute. Accordingly, the applicant is still entitled to recover the principal amount of the judgment debt in the domestic proceedings. The Court recalls 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). It therefore considers that the Government shall secure, by appropriate means, the enforcement of the award made by the domestic courts in the applicant's favour.

25. The Court further notes that in the present case it found a violation of Article 6 § 1 of the Convention and Article 1 of Protocol No. 1 in that the award in the applicant's favour had not been paid to her. The Court further reiterates 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 the inflation losses, the Court accepts the applicant's claim under this head and awards her RUR 184,800, plus any tax that may be chargeable on that amount.

26. 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. The Court takes into account the relevant aspects, such as the length of the enforcement proceedings and the nature of the award, and making its assessment on an equitable basis, awards the applicant EUR 2,000 in respect of non-pecuniary damage, plus any tax that may be chargeable on that amount.

B. Costs and expenses

27. The applicant claimed EUR 100 and RUR 841.20 for the costs and expenses incurred before the Court, of which RUR 841.20 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.

28. The Government argued that the applicant's claim for RUR 841.20 was reasonable and supported by relevant documents. The claim for EUR 100 should be dismissed as she did not have a lawyer.

29. 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. Regard being had 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

30. 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, within three months from the date on which the judgment becomes final according to Article 44 § 2 of the Convention, shall secure, by appropriate means, the enforcement of the award made by the domestic courts in the applicant's favour and, in addition, pay the applicant the following amounts, to be converted, where appropriate, into Russian roubles at the rate applicable at the date of settlement:

- (i) RUR 184,800 (one hundred eighty-four thousand and eight hundred Russian roubles) in respect of pecuniary damage;
- (ii) EUR 2,000 (two thousand 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 10 May 2007, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Søren NIELSEN
Registrar

Christos ROZAKIS
President