



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

FIRST SECTION

CASE OF SIVOLDAYEVA v. RUSSIA

(Application no. 3906/06)

JUDGMENT

STRASBOURG

28 June 2007

FINAL

28/09/2007

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 Sivoldayeva v. Russia,

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

Mr C.L. ROZAKIS, *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 7 June 2007,

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

PROCEDURE

1. The case originated in an application (no. 3906/06) 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 Lyudmila Nikolayevna Sivoldayeva ("the applicant"), on 25 December 2005.

2. The applicant was represented before the Court by Mr I. Sivoldayev, a lawyer practising in Voronezh. The Russian Government ("the Government") were represented by Mr P. Laptev, Representative of the Russian Federation at the European Court of Human Rights.

3. On 9 March 2006 the Court decided to communicate the complaint concerning the non-enforcement of a final judgment in the applicant's favour 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 1973 and lives in Kalach, the Voronezh Region.

5. In 1999 she brought a court action against the Welfare Office of the Kalacheyevskiy District of the Voronezh Region and the Finance department of the administration of the Voronezh Region for delays in

payment of child benefits. The court requested the applicant to pay a court fee of 99 Russian roubles (RUR).

6. By a judgment of 17 January 2000 the Kalacheyevskiy District Court of the Voronezh Region awarded the applicant RUR 2,148.20. No appeal was lodged against the judgment and it acquired legal force ten days later. On an unspecified date the Kalacheyevskiy District Court issued a writ of execution, but on 26 July 2001 the bailiffs' service of the Tsentralnyy District of Voronezh discontinued the enforcement proceedings because the debtor did not have sufficient funds.

7. On 25 July 2004 the applicant applied to the bailiffs' service for the reopening of the enforcement proceedings. On 20 December 2004 the bailiffs' service returned the writ of execution to the applicant without enforcement as the debtor did not have sufficient funds.

8. On 24 January 2005 the applicant brought a court action against the bailiffs' service for failure to execute the judgment of 17 January 2000. By a decision of 16 March 2005 the Tsentralnyy District Court of Voronezh dismissed her complaint. On 19 July 2005 the Voronezh Regional Court quashed the decision of 16 March 2005, upon the applicant's appeal, and referred the case back to the first instance court for fresh examination. By a decision of 5 October 2005 the Tsentralnyy District Court of Voronezh again dismissed the applicant's complaint against the bailiffs' service. On 12 December 2006 the Voronezh Regional Court upheld the decision of 5 October 2005.

9. In the meantime, in October 2005, the applicant received RUR 1,402.56 following the judgment of 17 January 2000.

10. On 12 May 2006 the applicant received the outstanding debt of RUR 745.64 due to her under the judgment of 17 January 2000.

THE LAW

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

11. The applicant complained under Article 6 of the Convention and Article 1 of Protocol No. 1 about the prolonged non-enforcement of the judgment of 17 January 2000. These Articles, in so far as relevant, 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

12. 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

13. The Government acknowledged that the judgment of 17 January 2000 was not enforced in good time. They further conceded that the applicant's rights set out in Article 6 of the Convention and Article 1 of Protocol No. 1 were violated as a result of the lengthy non-enforcement of the final judgment.

14. The applicant maintained her claims.

15. The Court observes that the judgment in the applicant's favour remained unenforced for several years. No justification was advanced by the Government who acknowledged a violation of the Convention.

16. The Court has frequently found violations of Article 6 § 1 of the Convention and Article 1 of Protocol No. 1 in cases raising similar issues to the ones in the present case (see, among other authorities, *Burdov v. Russia*, no. 59498/00, ECHR 2002-III).

17. Having examined the material submitted to it, the Court sees no reason for reaching a different conclusion in the present case. Having regard to its case-law on the subject, the Court finds that by failing for 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 had reasonably expected to receive.

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

II. OTHER ALLEGED VIOLATIONS OF THE CONVENTION

19. The applicant also complained under Article 6 about the imposition of a court fee of RUR 99 and about the length of proceedings against the bailiffs' service. However, having regard to all the material in its possession, and in so far as these complaints fall within its competence, 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

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 2, 596.65 Russian roubles (RUR) in respect of pecuniary damage, representing the penalty at the marginal interest rate of the Russian Central Bank on the sum of the judgment debt calculated from 17 January 2000 to 19 December 2006. She further claimed 2,000 euros (EUR) in respect of non-pecuniary damage.

22. The Government submitted that no compensation for pecuniary damage should be awarded to the applicant, because it was open to her to claim it before the domestic courts. If, however, the Court decides to accept the applicant's claims in respect of pecuniary damage, the compensation should only be awarded for the period of the non-enforcement of the judgment of 17 January 2000, i.e. between January 2000 and October 2005. The Government further contested the applicant's claims for compensation of non-pecuniary damage as excessive and unreasonable. They submitted that the judgment award was not the applicant's main source of income, but represented the arrears on additional allowance for child support. The Government referred to the Court's judgments in the cases of *Kazartsev v. Russia* (no. 26410/02, 2 November 2006) and *Poznakhirina v. Russia* (no. 25964/02, 24 February 2005). They considered that should the Court find a violation in this case that would in itself constitute sufficient just satisfaction for the non-pecuniary damage.

23. The Court reiterates, firstly, that applicants 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.

24. The Court further 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 award 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 the value of the award, such as an extended delay in enforcement (see *Gizzatova v. Russia*, no. 5124/03, § 28, 13 January 2005). The Court notes that the Government disagreed with the period for which the applicant claimed the pecuniary damage, but it did not contest the method of calculation applied by the applicant. The Court considers that the period to be taken into consideration started in January 2000 when the judgment in the applicant's favour acquired legal force and ended on 12 May 2006 when it was fully enforced. Having regard to the materials in its possession, the Court awards the applicant EUR 70 in respect of pecuniary damage, plus any tax that may be chargeable on that amount.

25. The Court further considers that the applicant must have suffered distress and frustration resulting from the State authorities' failure to enforce a judgment in her favour in good time. The Court takes into account the applicant's claim for non-pecuniary damage, the amount and nature of the award. Making its assessment on an equitable basis, it 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

26. The applicant claimed RUR 1,400 for the costs and expenses incurred before the domestic courts and the Court, of which RUR 158.40 and RUR 12.80 represented postal expenses, RUR 99.95 and RUR 50 represented the court fees. The rest of the amount represented the applicant's travelling expenses. The applicant submitted receipts only for postal expenses and for the court-fees.

27. The Government considered that only the applicant's claim for post services of RUR 158.40 was reasonable and relevant.

28. According to the Court's case-law, an applicant is entitled to reimbursement of her 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. In the present case, regard being had to the information in its possession and the above criteria, the Court considers it reasonable to award the sum of EUR 10 covering costs under all heads.

C. Default interest

29. 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 non-enforcement of the final judgment 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 in accordance with Article 44 § 2 of the Convention, EUR 70 (seventy euros) in respect of pecuniary damage, EUR 2,000 (two thousand euros) in respect of non-pecuniary damage and EUR 10 (ten euros) in respect of costs and expenses, to be converted into Russian roubles at the rate applicable at the date of settlement, plus any tax that may be chargeable on these 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 28 June 2007, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Søren NIELSEN
Registrar

Christos ROZAKIS
President