



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

FIRST SECTION

CASE OF SOMCHENKO v. RUSSIA

(Application no. 33986/02)

JUDGMENT

STRASBOURG

31 July 2007

FINAL

31/10/2007

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 Somchenko v. Russia,

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

Mr C.L. ROZAKIS, *President*,

Mr L. LOUCAIDES,

Mrs N. VAJIĆ,

Mr A. KOVLER,

Mrs E. STEINER,

Mr K. HAJIYEV,

Mr D. SPIELMANN, *judges*

and Mr S. NIELSEN, *Section Registrar*,

Having deliberated in private on 10 July 2007,

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

PROCEDURE

1. The case originated in an application (no. 33986/02) 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, Mrs Marina Vasilyevna Somchenko (“the applicant”), on 10 August 2002.

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

3. The applicant complained under Article 1 of Protocol No. 1 about the belated enforcement of several judgments in her favour.

4. On 4 November 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

THE CIRCUMSTANCES OF THE CASE

5. The applicant was born in 1960 and lives in the town of Volgograd, the Volgograd Region.

1. Judgments in the applicant's favour between 1999 and 2001

6. The applicant brought court proceedings claiming an increase in the monthly disability allowance she was entitled to receive. On 24 May 1999 the Kirovskiy District Court of Volgograd awarded the applicant 21,245.46 Russian roubles (RUR) in arrears and increased the allowance to RUR 1,214 as of 1 May 1999.

7. On 15 June 2000 the District Court awarded the applicant RUR 91,039.35 as compensation for late payment of the allowance. On 1 September 2000 the Presidium of the Volgograd Regional Court reduced that amount to RUR 1,500. On 29 January 2001 the District Court awarded the applicant RUR 1,790.17 as compensation for the depreciation of the award under the judgment of 24 May 1999 due to inflation.

8. On 13 June 2001 the District Court increased the monthly allowance to RUR 4,070.89 as of 10 January 2001 and awarded the applicant RUR 20,538.16 in allowance arrears for the period from 1 July 2000 to 31 May 2001, and RUR 2,000 as compensation for late payment of that increased allowance.

9. The above-mentioned judgments were enforced on 25 December 2002.

2. Other judgments

10. On 20 February 2002 the District Court adjusted the allowance amount due to the applicant and awarded her RUR 10,162.80.

11. On 16 July 2003 the District Court awarded the applicant RUR 11,104 in arrears for the period from 15 February 2002 to 30 June 2003 and increased the monthly allowance to RUR 3,175 effective as of 1 July 2003. On 27 August 2003 the Volgograd Regional Court upheld the judgment. On 2 September 2005 the Presidium of the Volgograd Regional Court quashed those judgments.

12. The awards under the judgment of 20 February 2002 and that of 16 July 2003 were paid to the applicant on 22 November and 15 December 2005, respectively.

13. The applicant brought civil proceedings claiming compensation for depreciation of the awards under the judgments of 13 June 2001 and 20 February 2002. On 7 December 2005 the District Court dismissed her claims. On 9 February 2006 the Volgograd Regional Court quashed the judgment and ordered a re-examination of the case. Apparently, the proceedings are pending.

THE LAW

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

14. The applicant complained under Article 1 of Protocol No. 1 that the judgments of 24 May 1999, 15 June 2000, 29 January and 13 June 2001, 20 February 2002 and 16 July 2003 had not been enforced in good time. The Court considers that this complaint is 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

15. The Government invited the Court to strike out the application in accordance with Article 37 of the Convention, referring to the applicant's refusal to accept a friendly settlement and to the fact that the judgments in the her favour had been enforced. The Government also claimed that the applicant was no longer a “victim” of the alleged violation for the same reasons.

16. 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). The Court does not find any reason to depart from that finding in the present case and rejects the Government's request to strike the application out under Article 37 of the Convention.

17. As to the Government's argument that the judgments in question had already been enforced, the Court considers that the mere fact that the authorities complied with the judgments after substantial delays cannot be viewed in this case as automatically depriving the applicant of her status as

a “victim” under the Convention (see, among others, *Petrushko v. Russia*, no. 36494/02, § 16, 24 February 2005). The Court observes that after the authorities' failure to comply with the judgment of 24 May 1999, the applicant brought new successful proceedings seeking damages (see paragraph 7 above). Those decisions, had they been duly enforced, could arguably have constituted a remedy against the State's previous failure to comply with the judgment (see *Petrushko v. Russia*, cited above, §§ 15-16; compare *Derkach v. Russia* (dec.), no. 3352/05, 3 May 2007). However, the new judgments remained without enforcement for long periods of time. Accordingly, the Court dismisses the Government's argument that the applicant is no longer a “victim” of the alleged violation.

18. 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.

B. Merits

19. The Government acknowledged a violation of the applicant's rights under the Convention due to the delayed enforcement of the judgments in her favour.

20. The applicant maintained her complaint.

21. The Court observes that between 1999 and 2003 the applicant obtained six judgments in her favour by which she was to receive certain sums of money from the State. However, the debts were paid with delays varying from one year and five months to three years and nine months.

22. 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, § 35, ECHR 2002-III.; *Wasserman v. Russia*, no. 15021/02, § 35 et seq., 18 November 2004; and *Gerasimova v. Russia*, no. 24669/02, § 17 et seq., 13 October 2005).

23. 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, the Court finds that by failing, for extended periods 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 could reasonably have expected to receive.

24. 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

25. 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

26. The applicant claimed 10,000 euros (EUR) in respect of non-pecuniary damage.

27. The Government contended that the Court could examine that claim only after the final determination by the Russian courts of the applicant's claims for compensation due to the depreciation of the awards under the judgments of 13 June 2001 and 20 February 2002. In any event, they considered that the amount claimed by the applicant was excessive and unsubstantiated.

28. The Court observes that the proceedings referred to by the Government have been pending since 2005 and no information about their eventual outcome was presented to the Court. Besides, the Government did not explain how the pecuniary claims at stake in those proceedings were relevant to the applicant's claim for compensation of non-pecuniary loss submitted to the Court. Consequently, the Government's argument is dismissed. The Court accepts that the applicant suffered distress because of the State authorities' failure to enforce in good time several judgments in her favour. However, the amount claimed in respect of non-pecuniary damage appears excessive. Having regard to the number of the judgments and the length of the respective enforcement proceedings, and deciding on an equitable basis, the Court awards the applicant EUR 3,000 in respect of non-pecuniary damage, plus any tax that may be chargeable on this amount.

B. Costs and expenses

29. In her letter of 20 December 2005 the applicant claimed reimbursement of costs and expenses incurred in relation to the lodging and maintaining her application before the Court.

30. The Court reiterates that under Rule 60 of the Rules of Court a claim for just satisfaction shall be specific, itemised and be submitted within the time-limit fixed for the submission of the applicant's observations on the merits unless the President of the Chamber directs otherwise. If the applicant fails to comply with those requirements, the Court may reject the claims in whole or in part.

31. The Court observes that the Government submitted their observations on the present application on 6 February 2006. By letter of 10 February 2006 the applicant was invited to submit by 14 April 2006 her observations in reply together with her claims for just satisfaction. She was also informed that those claims had to be submitted in compliance with Rule 60, even if the applicant had already indicated her wishes concerning just satisfaction at an earlier stage of the proceedings. Nevertheless, the applicant did not specify within the above time-limit any claims for reimbursement of costs and expenses. Accordingly, the Court does not make any award under this head.

C. Default interest

32. 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, EUR 3,000 (three thousand euros) in respect of non-pecuniary damage, to be converted into Russian roubles at the rate applicable at the date of settlement, plus any tax that may be chargeable;
 - (b) that from the expiry of the above-mentioned three months until settlement simple interest shall be payable on the above amount 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 claims for just satisfaction.

Done in English, and notified in writing on 31 July 2007, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Søren NIELSEN
Registrar

Christos ROZAKIS
President