



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

FIRST SECTION

CASE OF ALMAYEVA v. RUSSIA

(Application no. 966/03)

JUDGMENT

STRASBOURG

25 October 2007

FINAL

25/01/2008

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 Almayeva 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 4 October 2007,

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

PROCEDURE

1. The case originated in an application (no. 966/03) 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 Lyubov Petrovna Almayeva (“the applicant”), on 14 December 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 about non-enforcement of two judgments in her favour and their subsequent quashing on supervisory review.

4. On 10 November 2005 the Court decided to communicate 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

5. The applicant was born in 1966 and lives in Samara.

6. The applicant was engaged in emergency operations at the site of the Chernobyl nuclear plant disaster. She was issued with a certificate confirming her participation in the emergency operations. As a holder of the certificate she was entitled to certain monthly payments.

1. Proceedings concerning monthly payments from November 1999 to March 2000

7. In February and March 2000 the Social Security Department of the Oktyabrskiy District of Orsk (*Управление социальной защиты населения*

Октябрьского района г. Орска, hereinafter “the social security service”) paid to the applicant the arrears for the period from November 1999 to March 2000.

8. On 13 April 2000 the Oktyabrskiy District Court of Orsk held that the social security service had unlawfully defaulted on the monthly payments from November 1999 to February 2000. The judgment was not appealed against and became final on 24 April 2000.

2. Proceedings concerning monthly payments after April 2000

9. In April 2000 the social security service discontinued the payments. The applicant sued the social security service.

10. On 20 August 2001 the Oktyabrskiy District Court of Orsk held that the social security service had unlawfully refused to pay. The applicant held a certificate confirming her participation in the emergency operations in Chernobyl and was entitled to receive the payments. On 25 September 2001 the Orenburg Regional Court upheld the judgment on appeal and it became enforceable.

11. On 14 December 2001 the applicant submitted the writ of execution to the bailiffs.

12. On 17 December 2001 the bailiffs opened enforcement proceedings.

13. On 27 February 2002 the applicant received 11,762 Russian roubles (RUB).

14. On 11 July 2002 the bailiffs directed that the social security service pay the judgment debt by 20 August 2002. The social security service did not comply.

15. The judgment remains unenforced in part. According to the Government, the debt amounts to RUB 13,002.20.

3. Supervisory-review proceedings

16. On 22 June 2002 Judge R., the President of the Orenburg Regional Court, lodged an application for supervisory review of the judgments of 13 April 2000 and 20 August 2001, as upheld on 25 September 2001.

17. On 30 September 2002 the Presidium of the Orenburg Regional Court chaired by Judge R. quashed the judgments of 13 April 2000 and 20 August 2001, as upheld on 25 September 2001, and remitted the cases for a fresh examination before the District Court. It found that the District Court had erred in the assessment of the facts and application of domestic law. In particular, it had not verified whether the certificate confirming the applicant's participation in emergency operations at the site of the Chernobyl nuclear plant disaster was valid.

18. On 29 November 2002 the Oktyabrskiy District Court held that the discontinuation of the monthly payments had been lawful and dismissed the applicant's claims. It found that the certificate confirming the applicant's participation in the emergency operations at the site of the Chernobyl

nuclear plant disaster had been issued by an unauthorised person and was void. Consequently the applicant was not entitled to monthly payments.

THE LAW

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

19. The applicant complained about non-enforcement of the judgments of 13 April 2000 and 20 August 2001, as upheld on 25 September 2001, and their subsequent quashing by way of supervisory review. She referred to Article 6 of the Convention and Article 1 of Protocol No. 1. 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 ... 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

1. Non-enforcement and subsequent quashing of the judgment of 13 April 2000

20. The Court reiterates that Article 6 § 1 extends only to a dispute (“contestation”) over a “civil right” which can be said, at least on arguable grounds, to be recognised under domestic law (see *Hamer v. France*, judgment of 7 August 1996, *Reports* 1996-III, pp. 1043-1044, § 73). The Court further reiterates that an applicant can allege a violation of Article 1 of Protocol No. 1 only in so far as the impugned decisions related to his or her “possessions” within the meaning of this provision. “Possessions” can be either “existing possessions” or “assets”, including claims, in respect of which the applicant can argue that he or she has at least a “legitimate

expectation” of obtaining effective enjoyment of a property right (see *Kopecký v. Slovakia* [GC], no. 44912/98, § 35, ECHR 2004-IX). A claim must be sufficiently established to attract the guarantees of Article 1 of Protocol No. 1.

21. The Court notes that the proceedings which ended with the judgment of 13 April 2000 did not determine the applicant's right to social payments. Her entitlement to receive the payments was not contested by the respondent who had paid the arrears in full by March 2000, that is before the judgment of 13 April 2000 was delivered. The judgment did not order payment of any specific amounts to the applicant. It was confined to the finding that the social security service had unlawfully defaulted on the monthly payments from November 1999 to February 2000. That finding was of a declaratory nature and did not establish a “legitimate expectation” to acquire any pecuniary asset.

22. The judgment of 13 April 2000 did not therefore determine the applicant's civil rights within the meaning of Article 6 § 1 and did not create any enforceable claim constituting a “possession” within the meaning of Article 1 of Protocol No. 1.

23. It follows that this part of the application is incompatible *ratione materiae* with the provisions of the Convention within the meaning of Article 35 § 3 and must be rejected in accordance with Article 35 § 4.

2. Non-enforcement and subsequent quashing of the judgment of 20 August 2001, as upheld on 25 September 2001

24. The Court notes that this part of 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

1. Quashing of the judgment of 20 August 2001 on supervisory review

25. The Government argued that that the Presidium of the Orenburg Regional Court quashed the judgment of 20 August 2001 with a view to correcting the judicial error committed by the District Court.

26. The applicant maintained her claims.

(a) Article 6 § 1 of the Convention

27. The Court observes that on 20 August 2001 the Oktyabrskiy District Court of Orsk accepted the applicant's action and found that the discontinuance in April 2000 of monthly payments had been unlawful. The applicant became entitled to receive the monthly-payments arrears. On 25 September 2001 the Orenburg Regional Court upheld the judgment on appeal and it became binding and enforceable. On 30 September 2002 that

judgment was quashed by way of supervisory review initiated by the President of the Orenburg Regional Court who was a State official but not a party to the proceedings (see paragraph 16 above).

28. The Court has found a violation of an applicant's "right to a court" guaranteed by Article 6 § 1 of the Convention in many cases in which a judicial decision that had become final and binding, was subsequently quashed by a higher court on an application by a State official whose power to intervene was not subject to any time-limit (see *Roseltrans v. Russia*, no. 60974/00, §§ 27-28, 21 July 2005; *Volkova v. Russia*, no. 48758/99, §§ 34-36, 5 April 2005; and *Ryabykh v. Russia*, no. 52854/99, §§ 51-56, ECHR 2003-IX).

29. Having examined the materials submitted to it, the Court observes that the Government have not put forward any fact or argument capable of persuading it to reach a different conclusion in the present case. Accordingly, the Court finds that there has been a violation of Article 6 § 1 of the Convention on account of the quashing of the judgment given in the applicant's case by way of supervisory-review proceedings.

(b) Article 1 of Protocol No. 1

30. The Court reiterates that the existence of a debt confirmed by a binding and enforceable judgment constitutes the judgment beneficiary's "possession" within the meaning of Article 1 of Protocol No. 1. Quashing of such a judgment amounts to an interference with his or her right to peaceful enjoyment of possessions (see, among other authorities, *Androsov v. Russia*, no. 63973/00, § 69, 6 October 2005).

31. The Court observes that the final and enforceable judgment of 20 August 2001, upheld on appeal on 25 September 2001, by which an entitlement to receive monthly-payments arrears had been conferred on the applicant was quashed on a supervisory review on 30 September 2002. The applicant's claims were sent for re-consideration, following which the District Court rejected them. Thus, the applicant was prevented from receiving the initial award through no fault of her own. The quashing of the enforceable judgment frustrated the applicant's reliance on the binding judicial decision and deprived her of an opportunity to receive the money she had legitimately expected to receive. In these circumstances, the Court considers that the quashing of the enforceable judgment of 20 August 2001 by way of supervisory review placed an excessive burden on the applicant and was incompatible with Article 1 of Protocol No. 1. There has therefore been a violation of that Article.

2. Non-enforcement of the judgment of 20 August 2001

32. The Government submitted that the judgment debt had been paid in part. The remainder of the judgment had not been enforced because the judgment had been quashed on supervisory review.

33. The applicant maintained her claims.

34. The Court observes that on 20 August 2001 the applicant obtained a judgment by which the discontinuation of monthly payments was declared unlawful. The applicant became entitled to receive the monthly-payments arrears. The judgment was upheld on appeal on 25 September 2001 and became enforceable on that date. From that moment on, it was incumbent on the debtor, a State body, to comply with it. Enforcement proceedings were instituted and in February 2002 the debtor paid the arrears in part. On 30 September 2002 the Presidium of the Orenburg Regional Court quashed the judgment of 20 August 2001.

35. It follows that at least from 25 September 2001 to 30 September 2002 the judgment of 20 August 2001 was enforceable and it was incumbent on the State to abide by its terms (compare *Velskaya v. Russia*, no. 21769/03, § 18, 5 October 2006).

36. The Government cited the institution of supervisory-review proceedings in respect of the judgment of 20 August 2001 as the sole reason for the non-enforcement. In this respect, the Court reiterates that it has 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).

37. Having examined the material submitted to it and taking into account its findings in paragraphs 29 and 31 above, 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 20 August 2001, as upheld on appeal on 25 September 2001. Having regard to its case-law on the subject (see *Reynbakh v. Russia*, no. 23405/03, §§ 23 et seq., 29 September 2005; *Gizatova v. Russia*, no. 5124/03, §§ 19 et seq., 13 January 2005; *Petrushko v. Russia*, no. 36494/02, §§ 23 et seq., 24 February 2005; *Wasserman v. Russia*, no. 15021/02, §§ 35 et seq., 18 November 2004; *Burdov v. Russia*, no. 59498/00, §§ 34 et seq., ECHR 2002-III), the Court finds that by failing to comply with the judgment of 20 August 2001, as upheld on 25 September 2001, the domestic authorities violated the applicant's right to a court and prevented her from receiving the money which she was entitled to receive.

38. 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 the non-enforcement of the judgment of 20 August 2001, as upheld on appeal 25 September 2001.

II. APPLICATION OF ARTICLE 41 OF THE CONVENTION

39. 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

40. The applicant claimed 246,000 euros (EUR) in respect of pecuniary and non-pecuniary damage.

41. The Government conceded that the debt under the judgment of 20 August 2001 amounted to RUB 13,002.20. There was no causal link between the alleged violations and the remainder of the pecuniary damage claimed by the applicant. The claims in respect of non-pecuniary damage were excessive.

42. 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 award in the applicant's favour was not paid to her in full as a result of the quashing of the final judgment by way of the supervisory review. 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 she 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 the money she had legitimately expected to receive under the judgment of 20 August 2001. Deducting the sum which the social security service has already paid to the applicant in February 2002, the Court considers that the Government shall pay the remainder of the judgment award, that is RUB 13,002.20, which was equivalent to approximately 380 euros on the date on which the applicant submitted her claims.

43. The Court does not discern any causal link between the violation found and the remainder of the pecuniary damage alleged; it therefore rejects this part of the claim.

44. The Court further considers that the applicant suffered distress and frustration resulting from the non-enforcement and the quashing of the judgment of 20 August 2001, as upheld on 25 September 2001. Making its assessment on an equitable basis, the Court awards the applicant EUR 2,800 in respect of non-pecuniary damage, plus any tax that may be chargeable on that amount.

B. Costs and expenses

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

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

C. Default interest

47. 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 complaints concerning non-enforcement and subsequent quashing of the judgment of 20 August 2001, as upheld on appeal on 25 September 2001, 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 on account of the quashing of the judgment of 20 August 2001, as upheld on appeal on 25 September 2001;
3. *Holds* that there has been a violation of Article 6 of the Convention and Article 1 of Protocol No. 1 on account of the non-enforcement of the judgment of 20 August 2001, as upheld on appeal on 25 September 2001;
4. *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, to be converted into Russian roubles at the rate applicable at the date of settlement:
 - (i) EUR 380 (three hundred eighty euros) in respect of the pecuniary damage;
 - (ii) EUR 2,800 (two thousand eight hundred euros) in respect of non-pecuniary damage;
 - (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;
5. *Dismisses* the remainder of the applicant's claim for just satisfaction.

Done in English, and notified in writing on 25 October 2007, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Søren NIELSEN
Registrar

Christos ROZAKIS
President