



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

FIRST SECTION

CASE OF SUBOCHEVA v. RUSSIA

(Application no. 2245/05)

JUDGMENT

STRASBOURG

15 November 2007

FINAL

02/06/2008

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 Subocheva v. Russia,

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

Mr L. LOUCAIDES, *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 23 October 2007,

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

PROCEDURE

1. The case originated in an application (no. 2245/05) 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 Mrs Olga Zakharovna Subocheva (“the applicant”), on 11 November 2004.

2. The Russian Government (“the Government”) were initially represented by Mr P. Laptev, the former Representative of the Russian Federation at the European Court of Human Rights, and subsequently by their new Representative, Mrs V. Milinchuk.

3. On 6 March 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**THE CIRCUMSTANCES OF THE CASE**

4. The applicant was born in 1929 and lives in the village of Nikolskoye, the Uglegorskiy District of the Sakhalin Region.

5. In August 2000 the applicant's housing was destroyed as a result of an earthquake. The Administration of the Uglegorskiy District of the Sakhalin Region ("the Administration") established a list of people who had lost housing in order to provide them with housing certificates. The applicant was not put on that list.

6. On 27 September 2002 the Uglegorskiy Town Court of the Sakhalin Region ("the Town Court") recognised the applicant's right to a housing certificate and ordered the Administration to put her on the list for housing certificates. The judgment was not appealed against and acquired legal force ten days later. On 20 January 2003 the applicant was put on the list for housing certificates, but she has never received one.

A. Judgment in the applicant's favour and ensuing enforcement proceedings

7. On 27 May 2003 the applicant brought a new court action against the Administration. She sought to receive a monetary compensation for the purchase of housing instead of a housing certificate.

8. By a judgment of 29 December 2003 the Town Court ordered the Administration to pay the applicant 389,600 Russian roubles. The court also held that since the applicant had been awarded money for the purchase of housing she lost her right to a housing certificate. The judgment was not appealed against and entered into force ten days later.

9. Enforcement proceedings initiated by the bailiffs' service of the Uglegorskiy District on 22 January 2004 were suspended by the Town Court on 28 October 2004 and 25 February 2005 on account that the Administration had applied for a supervisory review of the judgment of 29 December 2003.

10. On 29 June 2005 the Supreme Court of the Russian Federation rejected the application for supervisory review lodged by the Administration.

11. On 22 August 2005 the Town Court ordered the bailiff's service to reopen the enforcement proceedings.

12. The judgment of 29 December 2003 was fully enforced on 22 June 2006.

B. Domestic settlement

13. On 18 July 2006 the Government informed the Court that on 22 June 2006 the applicant and the Administration had concluded an agreement to settle the case. The Government submitted a copy of the agreement duly signed by the parties. It bore an official stamp of the Administration. Its relevant part, as translated from Russian, provides as follows:

“Subocheva Olga Zakharovna ... and the Administration of the Uglegorskiy District of the Sakhalin Region represented by its head, Mr Osipov Leonid Mikhaylovich, reached an agreement in respect of the judgment of 29 December 2003 on the following terms:

1. In view that the judgment of the Uglegorskiy Town Court of 29 December 2003, by which the Administration of the Uglegorskiy District was to pay Mrs Subocheva a monetary award in the amount of 389,600 roubles, had been enforced (payment order no. 1245 of 22 June 2006), Mrs Subocheva Olga Zakharovna withdraws her application from the European Court of Human Rights together with any claims for non-pecuniary damage sustained as a result of the non-enforcement of the judgment of the Uglegorskiy Town Court. Furthermore, Mrs Subocheva declares that she has no more claims against the Administration of the Uglegorskiy District in respect of the above application.

2. The present agreement is to be approved by the European Court of Human Rights in the framework of the proceedings no. 2245/05. ...”

14. On 26 December 2006 the applicant submitted that she intended to pursue her application before the Court. She claimed that on 19 June 2006 the Administration had invited her to sign an agreement. According to the applicant, the Administration forced her to sign the agreement by saying that if she did not sign it, she would not receive the amount awarded by the judgment of 29 December 2003. The applicant submitted to the Court a copy of the agreement of 19 June 2006 signed by her and the head of the Administration. Its relevant part, as translated from Russian, provides as follows:

“Subocheva Olga Zakharovna ... and the Administration of the Uglegorskiy District of the Sakhalin Region represented by its head, Mr Osipov Leonid Mikhaylovich, reached an agreement on the following terms:

1. The Administration of the Uglegorskiy District undertakes, under the judgment of 29 December 2003, to transfer the amount of 389,600 roubles to the applicant's account, out of the budget of the Sakhalin Region.

2. Mrs Subocheva Olga Zakharovna withdraws her application from the European Court of Human and declares that she would not claim the amount of 389,600 roubles or any other amounts. Furthermore, once the provisions of the first paragraph are satisfied, Mrs Subocheva declares that she has no more claims against the Administration of the Uglegorskiy District in respect of the above application.

3. The present agreement is to be approved by the European Court of Human Rights in the framework of the proceedings no. 2245/05.

...

4. The parties declare that they understand the consequences of the conclusion of the present agreement as indicated in Article 39 of the Convention for the Protection of Human Rights and Fundamental Freedoms.”

The applicant finally submitted that on 22 June 2006 the Administration informed her that the money had arrived to the bank account of the administration and that she had to sign a new agreement.

THE LAW

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

15. The applicant complained about the non-enforcement of the judgment of 29 December 2003. The Court will examine this complaint under Article 6 § 1 of the Convention and Article 1 of Protocol No. 1. 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

16. The Government submitted that the judgment of 29 December 2003 had been fully enforced on 22 June 2006 and that on the same date the applicant had concluded an agreement with the Administration of the Uglegorskiy District by which she agreed to withdraw her application from the Court and undertook not to claim any non-pecuniary damage for the lengthy non-enforcement of the judgment. The Government invited the Court to strike the application out of its list of cases under Article 37 of the Convention as the matter had been settled at the domestic level.

17. The applicant maintained her complaint and submitted that she had signed two different agreements, on 19 and 22 June 2006, under pressure by the Administration. She considered that she had been cheated by the authorities as they did not offer her compensation for non-pecuniary damage.

18. The Court recalls that under certain circumstances an application indeed may be struck out of its list of cases under Article 37 § 1 (c) of the Convention on the ground that the matter has been resolved at the domestic level. In the recent cases *Kharitonov v. Russia* ((dec.), no. 31065/04, 19 October 2006) and *Lipatova v. Russia* ((dec.), no. 14827/03, 19 October 2006) the Court made recourse to Article 37 § 1 (c) in the situations where the applicants first settled their cases at the domestic level but then disagreed to regard their case settled and insisted on the examination of their applications. However, the agreements concluded in these cases offered the applicants compensation for pecuniary and non-pecuniary damage sustained as a result of lengthy non-enforcement of final judgments in their favour, as well as costs and expenses incurred before the Court.

19. On the facts of the present case, the Court observes that the parties have concluded two different agreements, which differed in terms, but none of them offered a compensation for pecuniary or non-pecuniary damage sustained by the applicant. As it follows from these agreements, the authorities intended to settle the case by simply honouring the judgment debt.

20. Taking in account the above considerations, the Court concludes that the Government failed to submit to it any agreement offering a sufficient basis for finding that respect for human rights as defined in the Convention does not require the Court to continue its examination of the case (see, by contrast, *Akman v. Turkey* (striking out), no. 37453/97, §§ 23-32, ECHR 2001-VI).

21. As regards the Government's argument that the judgment in question has already been enforced, the Court considers that the mere fact that the authorities complied with the judgment after a substantial delay cannot be viewed in this case as automatically depriving the applicant of her victim status under the Convention (see, for example, *Petrushko v. Russia*, no. 36494/02, § 16, 24 February 2005).

22. In the light of the above considerations, the Court rejects the Government's request to strike the application out under Article 37 of the Convention.

23. The Court considers 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

24. The Government submitted that the judgment of 29 December 2003 had remained without enforcement for two years and a half due to a bad financial situation of the Uglegorskiy District of the Sakhalin Region.

25. The applicant maintained her complaints.

26. The Court observes that on 29 December 2003 the applicant obtained a judgment by which the Administration of the Uglegorskiy District of the Sakhalin Region, a State body, was to pay her a substantial amount of money. The judgment acquired legal force ten days later. It was enforced only on 22 June 2006. It follows that the judgment remained without enforcement for approximately two years and five months.

27. 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, ECHR 2002-III, and *Reynbakh v. Russia*, no. 23405/03, 29 September 2005).

28. Having examined the materials submitted to it, the Court notes that the Government have not put forward any fact or argument capable of justifying the delays in enforcement of the judgment of 29 December 2003. The Court notes that the judgment was enforced with a substantial delay because the debtor did not have sufficient funds. However, the Court reiterates that it is not open to a State authority to cite the lack of funds or other resources, as an excuse for not honouring a judgment debt (see *Plotnikov v. Russia*, no. 43883/02, § 23, 24 February 2005, and *Malinovskiy v. Russia*, no. 41302/02, § 35, 16 June 2005). Admittedly, a delay in the execution of a judgment may be justified in particular circumstances, but the delay may not be such as to impair the essence of the right protected under Article 6 § 1. The applicant should not be prevented from benefiting from the success of the litigation on the ground of alleged financial difficulties experienced by the State (see *Burdov*, cited above, § 35).

29. 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 legitimately expected to receive.

30. 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

31. 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

32. The applicant claimed compensation for non-pecuniary damage in the amount determined by the Court.

33. The Government submitted, with reference to Rule 60 of the Rules of the Court, that the applicant had failed to specify her claims under Article 41 of the Convention. Therefore, there was no call to award her any compensation.

34. The Court reiterates that there is no requirement that the applicant furnish any proof of the non-pecuniary damage she sustained. The Court accepts that the applicant has suffered distress and frustration because of the State authorities’ failure to enforce the judgment in her favour within a reasonable time. The Court takes into account the relevant aspects, such as the nature of the award at stake in the present case and the length of the enforcement proceedings. Making its assessment on an equitable basis, the Court awards the applicant 2,000 euros in respect of non-pecuniary damage, plus any tax that maybe be chargeable on that amount.

B. Costs and expenses

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

36. Accordingly, the Court does not make any award under this head.

C. Default interest

37. 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 2,000 (two 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.

Done in English, and notified in writing on 15 November 2007, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Søren NIELSEN
Registrar

Loukis LOUCAIDES
President