



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

FIRST SECTION

CASE OF BEREZKINA v. RUSSIA

(Application no. 3509/06)

JUDGMENT

STRASBOURG

29 November 2007

FINAL

29/02/2008

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 Berezkina v. Russia,

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

Mr L. LOUCAIDES, *President*,

Mrs N. VAJIĆ,

Mr A. KOVLER,

Mrs E. STEINER,

Mr K. HAJIYEV,

Mr S.E. JEBENS,

Mr G. MALINVERNI, *judges*,

and Mr A. WAMPACH, *Deputy Section Registrar*,

Having deliberated in private on 8 November 2007,

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

PROCEDURE

1. The case originated in an application (no. 3509/06) 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 Vasilyevna Berezkina (“the applicant”), on 19 November 2005.

2. The applicant was represented by Mr I. Sivoldayev, a lawyer practising in Voronezh. 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 Representative, Mrs V. Milinchuk.

3. On 25 September 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

4. The applicant was born in 1936 and lives in Voronezh.

5. From June 1998 to April 1999 she received her old-age pension several months in arrears.

6. The applicant lodged an action against the Levoberezhniy District Social Security Authority of Voronezh for index-linking of her delayed pension payments in line with inflation.

7. On 24 November 2000 the Levoberezhniy District Court of Voronezh granted the applicant's claim and awarded her 1,101.02 Russian roubles. The judgment came into force on 5 December 2000.

8. The applicant's requests for execution of the judgment were to no avail on the ground that the defendant did not have funds.

9. The judgment was enforced on 2 December 2005.

THE LAW

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

10. The applicant complained about the long non-enforcement of the final judgment in her favour. She relied on Article 6 § 1 of the Convention and Article 1 of Protocol No. 1, which, in so far as relevant, provide 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

11. The Government did not make any submissions as to the law.

12. The applicant maintained her complaint.

13. 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

14. The Court first notes that the judgment in the applicant's favour, which came into force on 5 December 2000, remained without enforcement until 2 December 2005, that is for almost five years.

15. The Court has found violations of Article 6 § 1 of the Convention and Article 1 of Protocol No. 1 in many cases raising issues similar to the ones in the present case (see *Burdov v. Russia*, no. 59498/00, ECHR 2002-III; and, more recently, *Kazartsev v. Russia*, no. 26410/02, 2 November 2006).

16. In view of its case-law on the subject, the Court finds that by failing for such a substantial period 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 which she was entitled to receive.

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

II. APPLICATION OF ARTICLE 41 OF THE CONVENTION

18. 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

19. The applicant claimed 3,900 euros (EUR) in respect of non-pecuniary damage.

20. The Government made no comment.

21. The Court considers that the applicant must have suffered certain distress and frustration as a result of the violations at issue. It takes into account the relevant aspects, in particular, the length of the enforcement and the fact that the nature of the award in the present case was connected to the applicant's livelihood. Making its assessment on equitable basis, it grants the applicant's claim and awards her EUR 3,900 in respect of non-pecuniary damage, plus any tax that may be chargeable on that amount.

B. Costs and expenses

22. The applicant did not seek reimbursement of her costs and expenses incurred before the domestic authorities and the Court. Accordingly, the Court does not make any award under this head.

C. Default interest

23. 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 § 1 of the Convention and Article 1 of Protocol No. 1 to the Convention;
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 3,900 (three thousand nine hundred euros) in respect of non-pecuniary damage, to be converted into the national currency of the respondent State 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 amounts 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 29 November 2007, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

André WAMPACH
Deputy Registrar

Loukis LOUCAIDES
President