



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

FIRST SECTION

**CASE OF ALEKSANDROVA v. RUSSIA**

*(Application no. 28965/02)*

JUDGMENT

STRASBOURG

6 December 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 Aleksandrova 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 G. MALINVERNI, *judges*,

and Mr S. NIELSEN, *Section Registrar*,

Having deliberated in private on 15 November 2007,

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

## PROCEDURE

1. The case originated in an application (no. 28965/02) 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, Ms Lyudmila Terentyevna Aleksandrova (“the applicant”), on 18 June 2001.

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. On 4 January 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

### I. THE CIRCUMSTANCES OF THE CASE

4. The applicant was born in 1952 and lives in Kemerovo. She was employed by a State enterprise FGUP PO «Progress» (*Федеральное государственное унитарное предприятие ПО “Прогресс”*). In 1970 she sustained a work-related injury resulting in the loss of her right hand, and became disabled. She became entitled to a disability allowance payable by the employer. As no payments ensued, the applicant brought proceedings for arrears.

5. On 13 February, 5 August 1998 and 9 February 1999 the Kirovskiy District Court of Kemerovo awarded the applicant 26,510; 7,193 and 13,696 Russian roubles (RUB), respectively. It appears that partial payments in execution of those judgments were made between 1998 and 2002. The respective enforcement proceedings were terminated on 31 January, 24 May 2001 and 21 February 2002.

6. By judgment of 15 November 2000, the District Court awarded the applicant RUB 20,279. The Kemerovo Regional Court upheld the judgment on 19 December 2000.

7. On 11 September 2001 the District Court awarded the applicant RUB 20,000. The Regional Court upheld the judgment on 30 October 2001.

8. In June 2004 the applicant was informed that the judgment debts would be paid to her after the claims of the priority creditors had been met.

9. It appears that partial payments in execution of the judgments of 15 November 2000 and 11 September 2001 were made in 2002 and 2005. The respective enforcement proceedings were terminated on 26 August 2005.

## II. RELEVANT DOMESTIC LAW

10. The Civil Code defines State and municipal unitary enterprises as a special form of legal entities that do not exercise the right of ownership in respect of the property allocated to them by the property owner (Article 113 § 1). The State or municipal authority retains ownership of the property but the enterprise may exercise in respect of that property the right of economic control or operative management (Article 113 § 2).

11. The manager of a unitary enterprise is appointed by, and reports to, the owner (Article 113 § 4). The owner has the right to re-organise or liquidate the enterprise. The owner's consent is required for any transaction that may lead to encumbrance or alienation of the property.

12. The owner of an enterprise having the right of economic control is not liable for the enterprise's debts unless the owner has caused insolvency of the enterprise or violated the procedure for its liquidation (Article 114 § 7). Such enterprise may be declared insolvent in accordance with the insolvency procedure applicable to private companies.

13. The owner of an enterprise having the right of operative management is liable for the enterprise's debts in case of insufficiency of their funds (Article 115). Such enterprise may not be declared insolvent (Article 65).

## THE LAW

### I. ALLEGED VIOLATION OF ARTICLE 6 § 1 AND ARTICLE 1 OF PROTOCOL No. 1

14. Referring to Articles 13, 14 and 17 of the Convention, the applicant complained that the judgments of 13 February, 5 August 1998, 9 February 1999, 15 November 2000 and 11 September 2001 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 argued that in Russian law the State is not liable for unpaid debts of a federal enterprise unless the owner caused the enterprise's insolvency. There were no legal grounds for engaging such liability in the present case.

16. The applicant contended that as the owner of the enterprise the State should have ensured the proper enforcement of the judgments in her favour.

17. The Court notes that under Russian law the owner of a unitary enterprise retains ownership of the property of that enterprise, approves all transactions with that property, controls the management of the enterprise and decides whether the enterprise should continue its activity or be liquidated (see paragraphs 10-13 above). The Government have not demonstrated that the enterprise enjoyed sufficient institutional and operational independence from the State to absolve the latter from responsibility under the Convention for its acts and omissions (see *Shlepkov v. Russia*, no. 3046/03, § 24, 1 February 2007, and *Grigoryev and Kakaurova v. Russia*, no. 13820/04, § 35, 12 April 2007; see also

*Cooperativa Agricola Slobozia-Hanesei v. Moldova*, no. 39745/02, § 19, 3 April 2007).

18. Thus, the Court considers that the State was liable for enforcement of the judgments in the applicant's favour.

19. 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**

20. The Government submitted that the judgments in the applicant's favour had been enforced in full. Delays in their enforcement were due to the enterprise's inability to honour many of its debts. Public authorities took reasonable measures to enforce the judgments, in particular by seizing the debtor's property and disposing of it to satisfy the creditors' claims.

21. The applicant maintained her complaint.

22. The Court observes, and it is not contested by the parties, that the judgments in the applicant's favour were enforced in full in 2001, 2002 and 2005. Hence, the delays in their enforcement varied from two years and eight months to four years and eight months.

23. The Court reiterates that it is not open to a State authority to cite the lack of funds as an excuse for not honouring a court award. Likewise, the applicant should not have been prevented from benefiting from the judgments given in her favour, which was of major importance to her, on the ground of the enterprise's alleged financial difficulties (see *Romashov v. Ukraine*, no. 67534/01, § 43, 27 July 2004; *Dubenko v. Ukraine*, no. 74221/01, § 45, 11 January 2005).

24. 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 *Gizzatova v. Russia*, no. 5124/03, 13 January 2005, §§ 18-29; *Gerasimova v. Russia*, no. 24669/02, §§ 14-22, 13 October 2005; *Yavorivskaya v. Russia*, no. 34687/02, §§ 24-29, 21 July 2005; *Raylyan v. Russia*, no. 22000/03, §§ 27-37, 15 February 2007; *Shlepkina*, cited above, §§ 24-28, and *Grigoryev and Kakaurova*, cited above, §§ 37-40).

25. 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. It finds that by failing, for years, 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 had legitimately expected to receive.

26. 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

27. 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

28. The applicant claimed compensation in respect of non-pecuniary damage, leaving the determination of the amount to be awarded to the Court's discretion.

29. The Government submitted that a finding of a violation would constitute a sufficient just satisfaction and that, in any event, the award should not exceed 1,500 euros (EUR).

30. Taking into account the length of the enforcement proceedings, the nature of the domestic awards and their number, and making its assessment on an equitable basis, the Court awards the applicant EUR 3,500 in respect of non-pecuniary damage, plus any tax that may be chargeable on that amount.

### B. Costs and expenses

31. 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

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 3,500 (three thousand five hundred euros) in respect of non-pecuniary damage, to be converted into Russian roubles at the rate applicable on 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 6 December 2007, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Søren NIELSEN  
Registrar

Christos ROZAKIS  
President