



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

FIRST SECTION

CASE OF SMORODINOVA v. RUSSIA

(Application no. 37647/04)

JUDGMENT

STRASBOURG

17 January 2008

FINAL

17/04/2008

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 Smorodinova v. Russia,

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

Christos Rozakis, *President*,

Loukis Loucaides,

Nina Vajić,

Anatoli Kovler,

Elisabeth Steiner,

Sverre Erik Jebens,

Giorgio Malinverni, *judges*,

and Søren Nielsen, *Section Registrar*,

Having deliberated in private on 11 December 2007,

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

PROCEDURE

1. The case originated in an application (no. 37647/04) 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 Olga Nikolayevna Smorodinova (“the applicant”), on 30 August 2004.

2. The applicant was represented by Mrs S. Poznakhirina, an NGO expert practising in Novovoronezh.

3. 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.

4. On 29 May 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

5. The applicant was born in 1958 and lives in the town of Novovoronezh in the Voronezh Region.

6. The applicant is a Chernobyl pensioner. She sued the Welfare Office for the unpaid allowances.

7. On 15 July 2003 the Novovoronezhskyy Town Court of the Voronezh Region ("the Town Court") awarded her the unpaid disability allowance over the period between 1 July 2002 and 31 July 2003 in the amount of 22,109.75 Russian roubles (RUB). The judgment entered into force on 25 July 2003. It was enforced in full on 9 June 2005.

8. By a judgment of 15 March 2004 the Town Court awarded the applicant the unpaid food and disability allowances over the period between 1 July 2002 and 31 December 2003 in the amount of RUB 4,329.72 and RUB 643.85 respectively. The judgment acquired legal force on 25 March 2004. It appears that it has not been enforced to date.

9. On 15 March 2004 the Town Court recovered in the applicant's favour the unpaid disability allowance over the period between 1 August 2003 and 31 December 2003 in the amount of RUB 13,971.50. The judgment became final on 25 March 2004. It was fully enforced on 3 August 2005.

10. By a judgment of 6 May 2004 the Town Court awarded the applicant the unpaid disability allowance over the period between 1 January 2004 and 31 March 2004 in the amount of RUB 9,494.54. The court also increased the monthly disability allowance to RUB 5,664.85 as of 1 April 2004 and held that it had to be index-linked in accordance with legislation. On 17 May 2004 the judgment acquired legal force. On 10 June 2004 the Welfare Office ordered to increase the applicant's monthly disability allowance to RUB 5,664.85. On 11 November 2005 the applicant received RUB 9,949.54.

11. On 9 September 2004 the Town Court recovered in the applicant's favour the unpaid food allowance over the period between 1 January 2004 and 31 March 2004 in the amount of RUB 1,139.34 and the unpaid annual disability allowance for 2004 in the amount of RUB 1,132.96. The court also increased the applicant's monthly food allowance to RUB 679.78 as of 1 April 2004 and ordered to index-link it in accordance with legislation. The court further held that as of 2005 the Welfare Office was to pay the applicant an annual disability allowance and to index-link it in accordance with legislation. The judgment entered into force on 20 September 2004. It appears that it has not been enforced to date.

12. On 29 September 2004 the Town Court awarded the applicant RUB 12,659.40 for the unpaid disability allowance over the period between 1 April 2004 and 31 July 2004. On 11 October 2004 the judgment acquired legal force. It was fully enforced on 11 November 2005.

THE LAW

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

13. The applicant complained under Article 6 of the Convention and Article 1 of Protocol No. 1 to the Convention about the lengthy non-enforcement of the final judgments in her favour. 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

14. 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

15. The Government submitted that the judgment of 15 July 2003, the judgment of 15 March 2004 awarding the applicant arrears in respect of a disability allowance, the judgments of 6 May and 29 September 2004 had been fully enforced. They did not give any justification for the delays in the enforcement of the above judgments.

16. The Government further submitted that the judgment of 15 March 2004, by which the applicant had been awarded arrears in respect of food and disability allowances, and the judgment of 9 September 2004 had not

been enforced because the Ministry of Finance had not allocated necessary funds to the local department of the federal treasury. The Government acknowledged that the non-enforcement of those judgments infringed the applicant's rights guaranteed by Article 6 of the Convention and Article 1 of Protocol No. 1. Subsequently the Government submitted that the applicant had received monthly and annual allowances for the period up to 1 July 2006.

17. The applicant did not dispute that the judgments of 15 July 2003, 15 March, 6 May and 29 September 2004 had been fully enforced. She submitted that the judgment of 15 March 2004, by which she was awarded the unpaid food and disability allowances, and the judgment of 9 September 2004 had not been enforced.

18. The Court observes that in 2003 and 2004 the applicant obtained six judgments, by which the Welfare Office of Novovoronezh, a state body, was to pay her substantial amounts in social benefits. Four of those judgments were enforced in full with substantial delays varying from 13 to 22 months. The Court further observes that the Government submitted no proof that the judgments of 15 March and 9 September 2004 had been enforced in full. Having regard to the materials in its possession, the Court concludes that those judgments remain without enforcement.

19. 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 *Wasserman v. Russia*, no. 15021/02, 18 November 2004).

20. 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 lengthy non-enforcement of the judgments in the applicant's favour. It finds that by failing, for long 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 had legitimately expected to receive.

21. 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

22. 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

23. The applicant claimed 6,000 euros (EUR) in respect of non-pecuniary damage and EUR 703 in respect of pecuniary damage, representing the outstanding debt due to her under the judgments of 15 March and 9 September 2004.

24. The Government submitted that the applicant's claim for pecuniary damage was unsubstantiated. They further considered that the award for non-pecuniary damage should be similar to the one made in the case of *Gorokhov and Rusyaev v. Russia* (no. 38305/02, 17 March 2005).

25. As to the pecuniary claim, the Court notes that the State's outstanding obligation to enforce the judgments in the applicant's favour is not in dispute. It therefore considers that the Government shall secure, by appropriate means, the enforcement of the domestic awards which remain without enforcement (see paragraph 18 above).

26. The Court further considers that the applicant must have suffered certain distress and frustration resulting from the authorities' failure to enforce the final judgments in her favour in good time. However, the amount claimed appears to be excessive. Taking into account the length of the enforcement proceedings, the number of the awards and their nature and making its assessment on an equitable basis, the Court awards the applicant EUR 2,700 in respect of non-pecuniary damage, plus any tax that may be chargeable on that amount.

B. Costs and expenses

27. The applicant did not make any claim for costs and expenses incurred before the domestic courts and before the Court. Accordingly, the Court makes no award under this head.

C. Default interest

28. 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, within three months from the date on which the judgment becomes final in accordance with Article 44 § 2 of the Convention, shall secure, by appropriate means, the enforcement of the awards made by the domestic court, and in addition pay the applicant EUR 2,700 (two thousand seven hundred 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 claim for just satisfaction.

Done in English, and notified in writing on 17 January 2008, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Søren Nielsen
Registrar

Christos Rozakis
President