



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

FIRST SECTION

CASE OF PLEKHOVA v. RUSSIA

(Application no. 42752/04)

JUDGMENT

STRASBOURG

31 January 2008

FINAL

30/04/2008

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 Plekhova 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 A. Wampach, *Deputy Section Registrar*,

Having deliberated in private on 10 January 2008,

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

PROCEDURE

1. The case originated in an application (no. 42752/04) 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, Ms Lyudmila Leonidovna Plekhova (“the applicant”), on 18 October 2004.

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 30 September 2005 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 1957 and lives in Teykovo, Ivanovo Region.

5. The applicant is entitled to welfare payments for her children. In 2001 she brought civil proceedings against a local welfare authority, claiming arrears in those payments for 1998 – 2000.

6. By default judgment of 21 November 2001 the Teykovo Town Court of the Ivanovo Region awarded 11,151.90 Russian roubles (RUB) in her favour. Ten days later the judgment became final and a writ of execution was issued and sent to the bailiffs.

7. In June 2002 the welfare authority paid a part of the applicant's court award in the amount of RUB 1,928.63.

8. In 2003 the applicant brought a fresh claim, seeking to have her court award linked to the rate of inflation.

9. On 24 March 2003 the Teykovo Town Court awarded her RUB 1,854.39. The judgment became final ten days later and enforcement proceedings were commenced accordingly.

10. In 2004 the applicant lodged a court complaint against the bailiffs concerning their failure to enforce the judgments of 21 November 2001 and 24 March 2003 in time.

11. On 30 March 2004 the Frunzenskiy District Court of Ivanovo rejected the applicant's claims as groundless, having found that the delays in the enforcement proceedings had not been imputable to the bailiffs.

12. On 12 May 2004 the Ivanovo Regional Court upheld the first-instance judgment on appeal.

13. Thereafter the applicant unsuccessfully applied for a supervisory review of the judgment of 30 March 2004 and the decision of 12 May 2004.

14. On 4 June 2004 the welfare authority paid the applicant another part of the judgment debt in the amount of RUB 4,207.92.

15. On 21 December 2004 the welfare authority paid the applicant the remaining part of the judgment debt in the amount of RUB 6,869.74.

THE LAW

I. ALLEGED ABUSE OF THE RIGHT OF APPLICATION

16. The Government submitted that although the judgments in the applicant's favour had been fully executed in December 2004, the applicant had not informed the Court accordingly. In the Government's view, such failure amounted to an abuse of the right of application within the meaning of Article 35 § 3 of the Convention.

Article 35 § 3, in so far as relevant, reads as follows:

“The Court shall declare inadmissible any individual application submitted under Article 34 which it considers ... an abuse of the right of application.”

17. The applicant submitted that because of the small size of her pension she could not afford to incur additional expense in order to provide further information to the Court.

18. The Court reiterates that, except in extraordinary cases, an application may only be rejected as abusive if it was knowingly based on untrue facts (see *Akdivar and Others v. Turkey*, judgment of 16 September 1996, *Reports of Judgments and Decisions* 1996-IV, §§ 53-54; *I.S.*

v. Bulgaria (dec.), no. 32438/96, 6 April 2000; *Varbanov v. Bulgaria*, no. 31365/96, § 36, ECHR 2000-X). The Court observes that on 18 October 2004, when the application was submitted, the judgments in question had not been fully executed.

19. The Court further reiterates that applicants should keep it informed of all circumstances relevant to the application. It notes that the applicant has indeed failed to inform it without undue delay of developments in her case. However, in the circumstances of the present case, it does not consider this failure, although regrettable, to amount to an abuse of the right of petition.

20. Accordingly the Government's objection is dismissed.

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

21. The applicant complained under Article 6 of the Convention and Article 1 of Protocol No. 1 to the Convention of the prolonged failure to execute the two judgments in her favour. Article 6, in so far as relevant, provides as follows:

“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 reads as follows:

“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.”

22. The Government conceded that the judgments in the applicant's favour had been executed with delay due to insufficient financial provision of the Ivanovo District Main Financial Department.

23. The applicant maintained her complaint.

A. Admissibility

24. 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

25. The Court notes that the delay in executing the judgment of the Teykovo Town Court of 21 November 2001 constituted approximately three years and the delay in executing the judgment of the same court of 24 March 2003 constituted over a year and a half. 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 those in the present case (see, among other authorities, *Burdov v. Russia*, no. 59498/00, ECHR 2002-III; *Androsov v. Russia*, no. 63973/00, 6 October 2005; and *Gorokhov and Rusyayev v. Russia*, no. 38305/02, 17 March 2005).

26. 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. Having regard to its case-law on the subject, the Court finds that by failing for years to execute the final judicial decisions in the applicant's favour the domestic authorities deprived the provisions of Article 6 § 1 of all useful effect and prevented her from receiving the money she could reasonably have expected to receive.

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

III. APPLICATION OF ARTICLE 41 OF THE CONVENTION

28. 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

29. The applicant claimed 9,000 euros (EUR) in respect of non-pecuniary damage suffered as a result of the violation.

30. The Government accepted that the applicant might have suffered distress as a result of the State authorities' failure to enforce the judgments

in her favour during several years. However, they asserted that, should the Court find a violation, that would in itself constitute sufficient just satisfaction (*Bobrova v. Russia*, no. 24654/03, 17 November 2005).

31. The Court considers that the applicant must have suffered distress and frustration resulting from the State authorities' failure to execute a final judicial decision in her favour, and that this cannot be sufficiently compensated for by the finding of a violation. The Court has taken into account the award it made in the case of *Burdov* (cited above), the nature of the decision whose non-execution was at issue in the present case, the delay in the execution proceedings and other relevant considerations. Making its assessment on an equitable basis, it awards the applicant EUR 2,300 in respect of non-pecuniary damage, plus any tax that may be chargeable on that amount.

B. Costs and expenses

32. The applicant also claimed RUB 2,317.60 for costs and expenses incurred before the Court. She enclosed postal receipts for the amount claimed.

33. The Government submitted that the award for costs and expenses should not exceed RUB 2,200.

34. According to the Court's case-law, an applicant is entitled to reimbursement of the costs and expenses only in so far as it has been shown that these have been actually and necessarily incurred and were reasonable as to quantum. In the present case, regard being had to the information in its possession and the above criteria, the Court considers it reasonable to award the sum of EUR 70 for the proceedings before the Court.

C. Default interest

35. 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, the following amounts, to be converted into Russian roubles at the date of settlement:

(i) EUR 2,300 (two thousand three hundred euros) in respect of non-pecuniary damage;

(ii) EUR 70 (seventy euros) in respect of costs and expenses;

(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;

4. *Dismisses* the remainder of the applicant's claim for just satisfaction.

Done in English, and notified in writing on 31 January 2008, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

André Wampach
Deputy Registrar

Christos Rozakis
President