



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

FIRST SECTION

CASE OF AGAPONOVA AND OTHERS v. RUSSIA

(Application no. 34439/04)

JUDGMENT

STRASBOURG

7 February 2008

FINAL

07/05/2008

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 Agaponova and Others 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 17 January 2008,

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

PROCEDURE

1. The case originated in an application (no. 34439/04) 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 three Russian nationals, Ms Valentina Sergeyevna Agaponova (“the first applicant”), Ms Tatyana Matveyevna Kanshina (“the second applicant”) and Mr Aleksey Ivanovich Leonov (“the third applicant”), on 16 July 2004.

2. The applicants were represented by Ms S. Poznakhirina, an NGO expert practising in Novovoronezh.

3. The Russian Government (“the Government”) were represented by Mr P. Laptev, the former Representative of the Russian Federation at the European Court of Human Rights.

4. On 31 May 2006 the Court decided to communicate 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 applicants were born in 1941, 1952 and in 1951 respectively. They live in the town of Novovoronezh in the Voronezh Region.

6. The applicants are Chernobyl pensioners. They brought court actions against the Welfare Office of Novovoronezh seeking to recover the unpaid allowances.

A. Judgments in favour of the first applicant

7. On 16 June 2003 the Novovoronezh Town Court of the Voronezh Region ("the Town Court") awarded the first applicant 26,623.96 Russian roubles (RUB). On 11 September 2003 the Voronezh Regional Court ("the Regional Court") upheld the judgment. It was fully enforced on 7 June 2005.

8. On 17 February 2004 the Town Court awarded the first applicant RUB 23,109.10 in arrears relating to a disability allowance and rejected her claims for an increase of the disability allowance. On 1 April 2004 the Regional Court quashed the judgment of 17 February 2004 in so far as it had rejected the first applicant's claim for an increase of the allowance and held that as of 1 January 2004 she was entitled to a monthly disability allowance of RUB 9,267.76, to be index-linked in future. The Regional Court upheld the remaining part of the judgment of 17 February 2004 concerning the arrears. The judgment of 17 February 2004, as modified on 1 April 2004, was enforced in full on 4 August 2005.

9. On 16 March 2004 the Town Court recovered in the first applicant's favour RUB 4,329.72 in arrears relating to a food allowance and RUB 643.85 in arrears relating to an annual disability allowance. The judgment acquired legal force on 26 March 2004. It has not been enforced to date.

B. Judgments in favour of the second applicant

10. On 7 December 2000 the Town Court awarded the second applicant RUB 6,744.70 in arrears relating to a disability allowance. On 27 November 2002 the judgment was enforced in full. On 17 February 2003 the Presidium of the Voronezh Regional Court quashed the judgment of 7 December 2000, by way of supervisory review, and remitted the case for a fresh examination to the first instance court. On 9 April 2003, after a fresh examination, the Town Court ordered the second applicant to return the sum awarded to her by the judgment of 7 December 2000. The court furthermore decided that she was entitled to a food allowance in the amount of RUB 860.18. The parties did not appeal against the judgment and it entered into force on 19 April 2003. It has not been enforced to date.

11. On 9 June 2003 the Town Court awarded the second applicant RUB 24,197.28. On 10 July 2003 the Regional Court upheld the judgment. It was fully enforced on 17 December 2004.

12. On 17 February 2004 the Town Court allowed the second applicant's claim for recovery of RUB 21,002.82 in arrears relating to a disability allowance and dismissed her claim for an adjustment of the allowance. On 6 April 2004 the Regional Court upheld the judgment of 17 February 2004 in so far as it concerned the arrears but quashed the judgment in so far as it had rejected the claim for an adjustment of the allowance and held that as of 1 January 2004 the second applicant was entitled to a monthly disability allowance in the amount of RUB 6,532.34. The judgment of 17 February 2004, as modified on 6 April 2004, was fully enforced on 25 August 2005.

13. On 15 March 2004 the Town Court awarded the second applicant RUB 4,329.72 in arrears relating to her food allowance and RUB 643.85 in arrears relating to her annual disability allowance. The judgment entered into force on 25 March 2004. It has not been enforced to date.

14. On 17 May 2004 the Town Court awarded the second applicant RUB 11,894.20 in arrears relating to her disability allowance. The court furthermore held that as of 1 April 2004 she was entitled to a monthly disability allowance in the amount of RUB 7,096.60, to be index-linked in future. The judgment entered into force on 27 May 2004. It was fully enforced on 23 November 2005.

C. Judgments in favour of the third applicant

15. On 17 June 2003 the Town Court awarded the third applicant RUB 19,315.50. On 14 August 2003 the Regional Court upheld the judgment. It was fully enforced on 17 December 2004.

16. On 16 March 2004 the Town Court awarded the third applicant RUB 4,329 in arrears relating to his food allowance and RUB 643.85 in arrears relating to his annual disability allowance. The judgment acquired legal force on 26 March 2004. It has not been enforced to date.

17. On 24 March 2004 the Town Court recovered in the third applicant's favour RUB 16,765.50 in arrears relating to his disability allowance. The judgment entered into force on 5 April 2004. It was fully enforced on 3 August 2005.

18. On 6 May 2004 the Town Court awarded the third applicant RUB 9,494.52 in arrears relating to his disability allowance. The court furthermore held that as of 1 April 2004 he was entitled to a monthly disability allowance in the amount of RUB 5,664.84, to be index-linked in future. The judgment acquired legal force on 17 May 2004. It was enforced in full on 11 November 2005.

THE LAW

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

19. The applicants 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 their 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

20. The Court notes that this 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

21. As regards the first applicant, the Government submitted that the judgments of 16 June 2003 and 17 February 2004 had been fully enforced; the judgment of 16 March 2004 had not been enforced. The Government further submitted that the judgments of 9 June 2003, 17 February and 17 May 2004, in favour of the second applicant, had been fully enforced; the judgments of 9 April 2003 and of 15 March 2004 had not been enforced. As regards the third applicant, the Government submitted that the judgments of 17 June 2003, 24 March and 6 May 2004 had been fully enforced; the

judgment of 16 March 2004 had not been enforced. The Government acknowledged that the lengthy non-enforcement of the final judgments infringed the applicants' rights guaranteed by Article 6 of the Convention and Article 1 of Protocol No. 1.

22. The applicants did not contest the Government's submissions as regards the enforcement of the judgments in their favour. However, they stressed that some judgments had not been enforced.

23. The Court observes that in 2003 and 2004 the applicants obtained several judgments by which the Welfare Office of Novovoronezh, a state body, was to pay them substantial amounts in social benefits. Some of those judgments were enforced in full with substantial delays varying from one year and four months to one year and eight months. The judgment of 16 March 2004 in favour of the first applicant, the judgments of 9 April 2003 and 15 March 2004 in favour of the second applicant and the judgment of 16 March 2004 in favour of the third applicant have not been enforced.

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 *Burdov v. Russia*, no. 59498/00, ECHR 2002-III, and *Baygayev v. Russia*, no. 36398/04, 5 July 2007).

25. 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 applicants' favour. It finds that by failing, for long periods of time, to comply with the enforceable judgments in the applicants' favour the domestic authorities impaired the essence of their right to a court and prevented them from receiving the money they 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. OTHER ALLEGED VIOLATIONS OF THE CONVENTION

27. The second applicant complained that the judgment of 7 December 2000 had been quashed by way of supervisory review and that as a result of a fresh examination of the case on 9 April 2003 she had to return the sum initially awarded to her.

28. As regards the quashing of the judgment of 7 December 2000, the Court recalls that the quashing of a final judgment is an instantaneous act, which does not create a continuing situation, even if it entails a reopening of the proceedings as in the present case (see *Sardin v. Russia* (dec.), no. 69582/01, 12 February 2004, and *Khanyan v. Armenia* (dec.), no. 19065/05, 5 July 2007). The Court further recalls that, in accordance with Article 35 § 1 of the Convention, it may only examine complaints in respect of which domestic remedies have been exhausted and which have been submitted within six months from the date of the "final" domestic

decision. If there is no adequate remedy against a particular act, which is alleged to be in breach of the Convention, the date when that act takes place is taken to be “final” for the purposes of the six months' rule (see, for example, *Valašinas v. Lithuania* (dec.), no. 44558/98, 14 March 2000).

29. The Court notes that at the material time the Russian law of civil procedure did not provide for any ordinary appeal against a ruling adopted by way of supervisory review by the Presidium of a regional court or the Presidium of the Supreme Court of the Russian Federation. In absence of an effective remedy the Court concludes that it was the very act of quashing of the judgment of 7 December 2000 that triggered the start of six-month time limit for lodging this part of the application to the Court. In the present case the final judgment was quashed by the Presidium of the Voronezh Regional Court on 17 February 2003 and the second applicant lodged her application on 16 July 2004. Nothing in the second applicant's submissions indicates that she was not immediately aware of the ruling. It follows that this complaint is introduced out of time and must be rejected in accordance with Article 35 §§ 1 and 4 of the Convention.

30. In so far as the second applicant complains about the results of the re-examination of the case on 9 April 2003, the Court notes that she did not appeal against the judgment of 9 April 2003. It follows that this complaint must be rejected under Article 35 §§ 1 and 4 of the Convention for non-exhaustion of domestic remedies.

III. 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 applicants claimed 6,000 euros (EUR) to be paid to each of them in respect of non-pecuniary damage.

33. The Government submitted that having regard to the nature of the awards in the present case, the amount of compensation for non-pecuniary damage should be determined in accordance with the Court's practice in similar cases.

34. The Court firstly notes that the State's obligation to enforce the judgments, which have not been enforced in full, is not in dispute in the present case. The Court therefore considers that the Government shall secure, by appropriate means, the enforcement of the awards made by the domestic court (see paragraph 23 above).

35. The Court further considers that the applicants must have suffered certain distress and frustration resulting from the authorities' failure to enforce the final judgments in their favour. However, the amounts claimed appear to be excessive. Taking into account the length of the enforcement proceedings, the number of the awards in favour of each applicant and their nature and making its assessment on an equitable basis, the Court awards the followings amounts in respect of non-pecuniary damage, plus any tax that may be chargeable on those amounts: EUR 2,700 to the first applicant, EUR 3,500 to the second applicant and EUR 2,700 to the third applicant.

B. Costs and expenses

36. The applicants 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

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 complaints concerning the non-enforcement of the final judgments admissible and the remainder of the application inadmissible;
2. *Holds* that there has been a violation of Article 6 of the Convention and Article 1 of Protocol No. 1 on account of the lengthy non-enforcement of the judgments in the applicants' favour;

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 judgment of 16 March 2004 in favour of Ms Agaponova, the judgments of 9 April 2003 and 15 March 2004 in favour of Ms Kanshina and the judgment of 16 March 2004 in favour of Mr Leonov;

(b) that the respondent State, within the same period, is to pay the following amounts in respect of non-pecuniary damage, to be converted into Russian roubles at the rate applicable at the date of settlement:

(i) EUR 2,700 (two thousand seven hundred euros) to Ms Agaponova;

(ii) EUR 3,500 (three thousand five hundred euros) to Ms Kanshina;

(iii) EUR 2,700 (two thousand seven hundred euros) to Mr Leonov;

(iv) any tax that may be chargeable on the above amounts;

(c) 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 applicants' claims for just satisfaction.

Done in English, and notified in writing on 7 February 2008, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Søren Nielsen
Registrar

Christos Rozakis
President