



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

FIRST SECTION

**CASE OF ZAKOMLISTOVA v. RUSSIA**

*(Application no. 24277/03)*

JUDGMENT

STRASBOURG

14 February 2008

**FINAL**

*14/05/2008*

*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 Zakomlistova v. Russia,**

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

Christos Rozakis, *President*,

Anatoli Kovler,

Elisabeth Steiner,

Khanlar Hajiyeu,

Dean Spielmann,

Sverre Erik Jebens,

Giorgio Malinverni, *judges*,

and Søren Nielsen, *Section Registrar*,

Having deliberated in private on 24 January 2008,

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

## PROCEDURE

1. The case originated in an application (no. 24277/03) 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 Fedorovna Zakomlistova (“the applicant”), on 11 June 2003.

2. 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.

3. On 12 December 2005 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

### I. THE CIRCUMSTANCES OF THE CASE

4. The applicant was born in 1961 and lives in Novosibirsk.

5. She is entitled to welfare payments for her child (child benefits). In 2000 the applicant brought proceedings against the regional welfare authority, claiming arrears in those payments with indexation.

6. On 19 July 2000 the Dzerzhinskiy District Court of Novosibirsk awarded the applicant 1,520.77 Russian roubles (RUB) in arrears. It appears from the parties' submissions that by the same judgment the District Court

also awarded the applicant RUB 1,055 on account of indexation. The judgment was not appealed against and entered in force on 30 July 2000. The enforcement proceedings were commenced accordingly.

7. On 23 August 2002 the applicant received RUB 351.98. On 31 March 2003 the bailiff discontinued the enforcement proceedings referring to the lack of funds at the defendant's disposal.

8. On 14 January, 8 April, 2 June 2005 and 9 February 2006 the applicant received several payments from the authorities which, taken together with the previous payments, amounted to RUB 1,812.98.

## THE LAW

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

9. The applicant complained about the non-enforcement of the judgment in her favour. The Court will examine this complaint under Article 6 § 1 of the Convention and Article 1 of Protocol No. 1 to the Convention. These Articles, 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**

10. The parties advanced no arguments as to the admissibility of the present application. The Court notes that this complaint 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**

11. The applicant maintained her complaints. She argued that the judgment of 19 July 2000 was not enforced in full, as she has not received the amount of indexation ordered by the court.

12. The Government acknowledged that the delay in the enforcement of the judgment in the applicant's favour violated her rights under the Convention. They explained that the amount received by the applicant (RUB 1,812.98) represented the arrears, awarded by the judgment, and the allowance due to the applicant after the date on which the judgment was delivered. As regards the amount of indexation, ordered by the judgment, the Government acknowledged that it has not been paid to the applicant.

13. The Court notes that the judgment in the applicant's favour of 19 July 2000, was not fully enforced to date, i.e. for the period of more than seven years.

14. 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, among other authorities, *Burdov v. Russia*, no. 59498/00, ECHR 2002-III; and, more recently, *Petrushko v. Russia*, no. 36494/02, 24 February 2005, or *Poznakhirina v. Russia*, no. 25964/02, 24 February 2005).

15. Having examined the material submitted to it, the Court notes that the Government did not put forward any fact or argument capable of persuading it to reach a different conclusion in the present case. 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 prevented her from receiving the money which she was entitled to receive under the final and binding judgment.

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

## **II. APPLICATION OF ARTICLE 41 OF THE CONVENTION**

17. 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

18. The applicant asked the Court to order the Government to enforce the judgment in full. She also claimed non-pecuniary damage, the amount of which she left to the determination of the Court.

19. The Government submitted that they are taking measures to enforce the judgment. As regards non-pecuniary damage they suggested that finding of a violation would by itself constitute sufficient just satisfaction.

20. The Court notes that the State's obligation to enforce the judgment in the applicant's favour is not in dispute. The Court recalls that the most appropriate form of redress in respect of a violation of Article 6 is to ensure that the applicant as far as possible is put in the position he would have been had the requirements of Article 6 not been disregarded (see *Piersack v. Belgium* (Article 50), judgment of 26 October 1984, Series A no. 85, p. 16, § 12, and, *mutatis mutandis*, *Gençel v. Turkey*, no. 53431/99, § 27, 23 October 2003). The Court finds that in the present case this principle applies as well, having regard to the violations found (see *Poznakhirina v. Russia*, no. 25964/02, § 33, 24 February 2005). It therefore considers that the Government shall secure, by appropriate means, the enforcement of the award made by the domestic court in the applicant's favour.

21. In so far as the compensation of non-pecuniary damage is concerned, the Court would not exclude that the applicant might have suffered distress and frustration resulting from the State authorities' failure to enforce the judgment in her favour. In these circumstances, having in mind the delay in the enforcement, the nature of the judgment debt, as well as other relevant factors, and making its assessment on an equitable basis, the Court awards the applicant 1,000 euros (EUR) for non-pecuniary damage sustained by her.

### B. Costs and expenses

22. The applicant claimed 1,365 Russian roubles (RUB) for the costs and expenses incurred before the Court, of which RUB 1,000 represented translation expenses, RUB 330 postal expenses and RUB 35 banking expenses. The applicant submitted the receipts as proof of the postal and the banking expenses. She explained that she could not provide the Court with documents from the translator, as she did not have any.

23. The Government recalled that in order for the Court to award the applicant costs and expenses it must be established that they have been actually and necessarily incurred. They did not make any particular comments on the amounts claimed by the applicant.

24. According to the Court's case-law, an applicant is entitled to reimbursement of his 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 applicant EUR 40, plus any tax that may be chargeable on that amount.

### **C. Default interest**

25. 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;
3. *Holds* that there has been a violation of Article 1 of Protocol No. 1 to the Convention;
4. *Holds*
  - (a) that the respondent State, within three months from the date on which the judgment becomes final according to Article 44 § 2 of the Convention, shall secure, by appropriate means, the enforcement of the domestic court's judgment of 19 July 2000;
  - (b) 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:
    - (i) EUR 1,000 (one thousand euros) in respect of non-pecuniary damage sustained by the applicant, to be converted into Russian roubles at the rate applicable at the date of settlement;
    - (ii) EUR 40 (forty euros) in respect of costs and expenses, to be converted into Russian roubles at the rate applicable at the date of settlement;
    - (iii) 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.

Done in English, and notified in writing on 14 February 2008, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Søren Nielsen  
Registrar

Christos Rozakis  
President