



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

FIRST SECTION

CASE OF KOROTKIKH v. RUSSIA

(Application no. 4543/02)

JUDGMENT

STRASBOURG

27 March 2008

FINAL

27/06/2008

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 Korotkikh v. Russia,

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

Christos Rozakis, *President*,

Anatoly Kovler,

Elisabeth Steiner,

Dean Spielmann,

Sverre Erik Jebens,

Giorgio Malinverni,

George Nicolaou, *judges*,

and Søren Nielsen, *Section Registrar*,

Having deliberated in private on 6 March 2008,

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

PROCEDURE

1. The case originated in an application (no. 4543/02) 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, Mrs Valentina Pavlovna Korotkikh (“the applicant”), on 21 December 2001.

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 28 April 2005 the Court decided to communicate the complaint about the alleged non-execution of the final judgment in the applicant’s favour 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 1949 lives in Voronezh.

5. She is entitled to welfare payments for her child. In 1999 the applicant brought proceedings against the regional welfare authority, claiming arrears in those payments.

6. On 14 February 2000 the Kominternovskiy District Court of Voronezh awarded the applicant 8,736.32 Russian roubles (RUB). The

judgment was not appealed against and entered into force on 25 February 2000. The enforcement proceedings commenced.

7. On 26 July 2001 the bailiff discontinued the enforcement proceedings referring to the lack of funds at the defendant's disposal.

8. On 29 July 2005 the applicant received the amount due to her pursuant to the judgment.

THE LAW

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

9. The applicant complained about the prolonged 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, 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

10. The Government informed the Court that the authorities of the Voronezh Region had attempted to secure a friendly settlement of the case and that the applicant had refused to accept the friendly settlement on the terms proposed by the authorities. By reference to this refusal and to the fact that, in any event, the judgment in the applicant's favour has been enforced, the Government asserted that the applicant was no longer a victim of the

violations alleged. The Government invited the Court to reject the application as manifestly ill-founded, in accordance with Article 35 § 4.

11. The applicant disagreed with the Government and maintained her complaints. As regards the friendly settlement proposal, the applicant claimed that the calculations presented by the authorities of the Voronezh Region had been incorrect since they had contained no adjustment to the inflation rate.

12. The Court firstly observes that the parties were unable to agree on the terms of a friendly settlement of the case. The Court recalls that under certain circumstances an application may indeed be struck out of its list of cases under Article 37 § 1 (c) of the Convention on the basis of a unilateral declaration by the respondent Government even if the applicant wishes the examination of the case to be continued (see *Tahsin Acar v. Turkey* [GC], no. 26307/95, § 76, ECHR 2004-III). The Court notes, however, that this procedure is an exceptional one and is not, as such, intended to circumvent the applicant's opposition to a friendly settlement. Furthermore, the Court observes that a distinction must be drawn between, on the one hand, declarations made in the context of strictly confidential friendly-settlement proceedings (Article 38 § 2 of the Convention and Rule 62 § 2 of the Rules of Court) and, on the other hand, unilateral declarations made by a respondent Government in public and adversarial proceedings before the Court (see *Androsov v. Russia*, no. 63973/00, § 45, 6 October 2005). On the facts, the Court observes that the Government failed to submit with the Court any formal statement capable of falling into the latter category and offering a sufficient basis for finding that respect for human rights as defined in the Convention does not require the Court to continue its examination of the case (see, by contrast, *Akman v. Turkey* (striking out), no. 37453/97, §§ 23-24, ECHR 2001-VI).

13. As regards the Government's argument that the applicant is no longer a victim of the violations alleged, the Court considers that the mere fact that the authorities complied with the judgment after a substantial delay cannot be viewed in this case as automatically depriving the applicant of her victim status under the Convention. (see, for example, *Petrushko v. Russia*, no. 36494/02, § 16, 24 February 2005).

14. The Court considers, in the light of the parties' submissions, that the complaints under Article 6 of the Convention and Article 1 of Protocol No. 1 to the Convention about the delay in the enforcement of the court judgment in the applicant's favour raise serious issues of fact and law under the Convention, the determination of which requires an examination of the merits. The Court concludes therefore that these complaints are not manifestly ill-founded within the meaning of Article 35 § 3 of the Convention. No other ground for declaring them inadmissible has been established.

B. Merits

15. The Court notes that the Government acknowledged that the delay in the enforcement of the judgment in the applicant's favour violated her rights under the Convention. The Court further observes that the judgment of 14 February 2000, which entered into force on 25 February 2000, remained inoperative until 29 July 2005, i.e. for five years, five months and four days.

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

17. 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. Having regard to its case-law on the subject, the Court finds that by failing for years to comply with the enforceable judgment in the applicant's favour the domestic authorities prevented her from receiving the money she could reasonably have expected to receive.

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

II. OTHER ALLEGED VIOLATIONS OF THE CONVENTION

19. The applicant also complained that the lengthy non-enforcement of the judgments in her favour violated her rights under Articles 13 and 17 of the Convention.

20. As regards the complaint under Article 17, having regard to all the material in its possession, and in so far as this complaint falls within its competence, the Court finds that it does not disclose any appearance of a violation of Article 17 of the Convention. It follows that this part of the application is manifestly ill-founded and must be rejected in accordance with Article 35 §§ 3 and 4 of the Convention.

21. As to the complaint under Article 13 of the Convention, the Court considers that it is linked to the issue of non-enforcement to such an extent that it should be declared admissible as well. However, having regard to the finding relating to Article 6 § 1 (see paragraph 18 above), the Court considers that it is not necessary to examine whether, in this case, there has been a violation of Articles 13 (see, *mutatis mutandis*, *Korchagina and Others v. Russia*, no. 27295/03, §§ 26-27, 17 November 2005).

III. 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 sought to recover pecuniary damages which, in her assessment, should amount to the sum of judgment debt increased by fifteen. She also claimed 50,000 United States dollars as non-pecuniary damages.

24. The Government contested the applicants' claims as excessive and unjustified. They considered that should the Court find a violation in this case, that would in itself constitute sufficient just satisfaction.

25. As regards pecuniary damage the Court does not discern any causal link between the violation found and the damage alleged; furthermore, the applicant's method of calculation is arbitrary. The Court therefore rejects this claim.

26. At the same time the Court finds that the applicant suffered non-pecuniary damage, which would not be adequately compensated by the finding of a violation alone. However, the amount claimed by the applicant appears to be excessive. The Court takes into account the nature and the amounts of the awards, the delays before the enforcement and other relevant aspects. Making its assessment on an equitable basis, the Court awards the applicant 3,000 euros (EUR), plus any tax that may be chargeable on that amount.

B. Costs and expenses

27. The applicant also claimed 10,000 Russian roubles for the costs and expenses incurred before the Court, which represented translator's fees, postal and other expenses.

28. The Government contested the applicants' claims as unjustified. They noted that the applicant did not submit documents indicating that she had incurred any costs.

29. 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 the sum of EUR 20 in respect of costs and expenses, plus any

tax that may be chargeable (see *Kazartseva and Others v. Russia*, no. 13995/02, § 49, 17 November 2005, and *Korchagina and Others v. Russia*, no. 27295/03, § 35, 17 November 2005).

C. Default interest

30. 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 under Articles 6 and 13 of the Convention and Article 1 of Protocol No. 1 to the Convention admissible;
2. *Declares* the complaint under Article 17 of the Convention inadmissible;
3. *Holds* that there has been a violation of Article 6 § 1 of the Convention and Article 1 of Protocol No. 1 to the Convention;
4. *Holds* that there is no need to examine the complaints under Article 13 of the Convention;
5. *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 3,000 (three thousand euros) for non-pecuniary damage and EUR 20 (twenty euros) for costs and expenses, 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 amounts at a rate equal to the marginal lending rate of the European Central Bank during the default period plus three percentage points;
6. *Dismisses* the remainder of the applicant's claim for just satisfaction.

Done in English, and notified in writing on 27 March 2008, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Søren Nielsen
Registrar

Christos Rozakis
President