



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

FIRST SECTION

CASE OF SHIRYKALOVA v. RUSSIA

(Application no. 26307/02)

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 Shirykalova 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. 26307/02) 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 Rimma Vasilyevna Shirykalova (“the applicant”), on 11 June 2002.

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 judgments of 23 December 1999 and 18 June 2003 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

4. The applicant was born in 1940 and lives in the Sverdlovsk Region.

5. In 1987 she took part in emergency operations at the site of the Chernobyl nuclear plant disaster. As a result she suffered from extensive exposure to radioactive emissions.

6. In 1996 the applicant underwent medical examinations which established the link between her poor health and the involvement in the

Chernobyl events. She was awarded a monthly allowance, to be increased on a regular basis in line with the minimum subsistence amount.

7. In 1999 the applicant sued the local social security authority (*Управление социальной защиты населения г. Заречного* – “the defendant”) requesting to increase her monthly allowance and backdate the increase. The applicant considered that the amount of the allowance had been determined incorrectly.

A. First judgment in the applicant’s favour

8. On 23 December 1999 the Beloyarsk District Court of the Sverdlovsk Region granted the applicant’s claim and ruled that her monthly allowance had been wrongly calculated. The court did not specify the exact amount of the monthly allowance to be paid to the applicant from then on. However, it ordered the defendant to recalculate the allowance due to the applicant and gave instructions on the recalculation. The judgment was not appealed against and became final on 3 January 2000. The enforcement proceedings commenced.

9. On an unspecified date in the beginning of 2000 the defendant recalculated the applicant’s allowance and backdated the increase. According to the defendant’s calculations, the monthly allowance due to the applicant pursuant to the judgment of 23 December 1999 amounted to 4,175 Russian roubles (RUB) and the underpayments of the allowance for the period of July 1996-February 2000 amounted to RUB 149,173.25.

10. In March-August 2000 the applicant was receiving RUB 4,175 per month. However, starting from September the monthly allowance paid to the applicant was reduced to RUB 2,500.

11. On 10 July 2000 the bailiff notified the defendant that the judgment of 23 December 1999 was not enforced in full since the applicant had not yet received RUB 149,173.25 (the underpayments). In their reply of 25 July 2000 to the bailiff the defendant referred to the lack of funding.

12. According to the Government, in August 2002 RUB 202,611.27 were transferred to the local social security authority to make the payments to the Chernobyl victims. In September 2002 the applicant received RUB 6,731.51 from the defendant.

B. Second judgment in the applicant’s favour

13. In 2003 the applicant brought proceedings against the defendant complaining that the monthly allowance paid to her after September 2000 was lower than stipulated in the judgment of 23 December 1999. She also sought to increase the allowance in line with the minimum subsistence amount and to recover the arrears due to her.

14. On 18 June 2003 the Zarechniy District Court of the Sverdlovsk Region awarded the applicant RUB 302,655.77 as underpayments for the period of July 1996-May 2003. It also held that the allowance payable to the applicant starting from June 2003 should amount to RUB 13,144.56. On 30 September 2003 the judgment was upheld on appeal.

15. On 23 December 2004 the applicant received RUB 60,644.56 on account of the enforcement of the judgment of 18 June 2003. In June 2005 she started receiving monthly allowance in the amount indicated in the judgment. On 6 July 2005 the applicant received RUB 473,341.53. That amount covered the rest of the judgment debt and the underpayments of the allowance which was in January 2004-June 2005 lower than established in the judgement.

THE LAW

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

16. The applicant complained about the prolonged non-enforcement of the judgments of 23 December 1999 and 18 June 2003. 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

17. The Government informed the Court that the authorities of the Sverdlovsk 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, to the acknowledgment of the violation by the authorities and to the fact that, in any event, the judgments in the applicant's favour had been finally enforced, the Government asserted that the applicant was no longer a victim of the alleged violations. Accordingly, they invited the Court to strike the application out of the list of cases.

18. The applicant disagreed with the Government's arguments and maintained her complaints.

19. 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 and 24, ECHR 2001-VI).

20. As regards the Government's argument that the judgments in question have already been enforced, the Court considers that the mere fact that the authorities complied with the judgments 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).

21. In the light of the above considerations, the Court rejects the Government's request to strike the application out under Article 37 of the Convention.

22. 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

23. The Government in their observations alleged that the judgment of 23 December 1999 was enforced in full on 29 August 2002. They produced a document stating that on that date RUB 202,611.27 were transferred to the local social security authority to make the payments to the Chernobyl victims. However, they acknowledged that lengthy non-enforcement of the above judgment violated the applicant's right to fair trial and to peaceful enjoyment of her possessions. On the other hand, while commenting on the applicant's just satisfaction claims, the Government contended that the judgment of 23 December 1999 did not contain any reference to pecuniary award to be made to the applicant, but simply ordered the recalculation of her monthly allowance. As regards the judgment of 18 June 2003, the Government submitted that it was enforced.

24. The applicant disagreed with the Government's arguments. She claimed that following the transfer of 29 August 2002 she had received RUB 6,731.51 which had not been enough to cover the debt of the judgment of 23 December 1999 as recalculated by the local social security authority (see paragraph 9 above). She further contended that both judgments in her favour were enforced in full on 6 July 2005. She submitted copies of banking receipts as evidence in this respect.

25. As regards the judgment of 23 December 1999, the Court observes that it did not specify a particular amount or amounts to be paid to the applicant. However, the defendant, and subsequently the court in the judgment of 18 June 2003 acknowledged that the applicant was entitled to receive RUB 149,173.25 in arrears under the judgment of 23 December 1999. The Court further notes that the payment of August 2002 was destined to a number of Chernobyl victims, and the applicant received only a part of it. The full amount of judgment debt was paid to the applicant only on 6 July 2005. Therefore, the judgment of 23 December 1999 was not fully executed for over five years and six months.

26. As to the judgment of 18 June 2003, as upheld on appeal on 30 September 2003, the Court notes that it was also fully enforced on 6 July 2005. The delay thus amounted to one year, nine months and six days.

27. The Court recalls that it 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).

28. 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 judgments in the applicant's favour the domestic authorities prevented her from receiving the money she could reasonably have expected to receive.

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

II. ALLEGED VIOLATION OF ARTICLE 13 OF THE CONVENTION

30. The applicant also complained that the lengthy non-enforcement of the judgments in her favour violated her rights to effective domestic remedies under Article 13 of the Convention.

31. The Court considers that this complaint is linked to the above issues 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 29 above), the Court considers that it is not necessary to examine whether, in this case, there has been a violation of Article 13.

III. APPLICATION OF ARTICLE 41 OF THE CONVENTION

32. 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

33. The applicant claimed 5,000 euros (EUR) in respect of non-pecuniary damage.

34. The Government argued that the applicant was no longer a victim of the violations alleged and thus should not be awarded compensation. They suggested that would the Court find a violation of the applicant's rights, such finding would by itself constitute sufficient just satisfaction.

35. The Court accepts that the applicant suffered distress because of the State authorities' failure to enforce the judgments in time. However, the amount claimed in respect of non-pecuniary damage appears excessive. The Court takes into account the nature and the amount of the awards, the delays

before the enforcement and other relevant aspects. Making its assessment on an equitable basis, it awards EUR 3,900 to the applicant in respect of non-pecuniary damage, plus any tax that may be chargeable on that amount.

B. Costs and expenses

36. The applicant also claimed 33,343.68 Russian roubles (RUB) for the costs and expenses incurred before the Court, of which RUB 23,000 was for lawyer's fees and the rest was for the expenses related to translation of the correspondence with the Court. The Government did not submit any comments on the applicant's claim of costs and expenses.

37. According to the Court's case-law, the applicant is entitled to reimbursement of her 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 930 for the proceedings before the Court plus any tax that may be chargeable on that amount.

C. Default interest

38. 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 § 1 of the Convention and Article 1 of Protocol No. 1 to the Convention;
3. *Holds* that there is no need to examine the complaint under Article 13 of the Convention;

4. *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 3,900 (three thousand nine hundred euros) in respect of non-pecuniary damage and EUR 930 (nine hundred and thirty euros) for costs and expenses, to be converted into Russian roubles at the rate applicable at the date of settlement, plus any tax that may be chargeable to the applicant;

(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;

5. *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