



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

FIRST SECTION

CASE OF DMITRIYEVA v. RUSSIA

(Application no. 27101/04)

JUDGMENT

STRASBOURG

3 April 2008

FINAL

29/09/2008

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 Dmitriyeva v. Russia,

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

Christos Rozakis, *President*,

Nina Vajić,

Anatoly Kovler,

Elisabeth Steiner,

Khanlar Hajiyeu,

Dean Spielmann,

Sverre Erik Jebens, *judges*,

and Søren Nielsen, *Section Registrar*,

Having deliberated in private on 13 March 2008,

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

PROCEDURE

1. The case originated in an application (no. 27101/04) 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 Tatyana Petrovna Dmitriyeva (“the applicant”), on 20 June 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. The applicant complained about non-enforcement of a judgment in her favour and its quashing by way of supervisory review.

4. On 22 February 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.

5. On 4 April 2006 the Court put additional questions to the parties.

THE FACTS

6. The applicant was born in 1946 and lives in the village of Chulman in the Sakha (Yakutiya) Republic of the Russian Federation.

7. The applicant brought an action against the Government, seeking to enforce State promissory notes for purchasing of a Russian-made car or to recover the monetary value thereof.

8. On 15 November 2002 the Neryungri Town Court of the Sakha (Yakutiya) Republic found for the applicant and awarded her RUB 138,967 against the Treasury. On 20 January 2003 the Supreme Court of the Sakha

(Yakutiya) Republic (hereinafter the “Supreme Court”) upheld the judgment on appeal.

9. On 26 February 2003 the applicant submitted a writ of execution to the Government of the Russian Federation. On 4 March 2003 the writ was forwarded to the Ministry of Finance of the Russian Federation.

10. According to the Government, in October 2003 the Supreme Court stayed proceedings on all claims concerning State promissory notes until such time as the Constitutional Court had decided on the reference for a preliminary ruling submitted by the Presidium of the Supreme Court. The reference concerned compatibility of the law governing redemption of State promissory notes with the Russian Constitution.

11. On 21 December 2004 the Ministry of Finance asked the court for an extension of the time-limit for filing an application for supervisory review of the judgment in the applicant’s favour.

12. On 28 March 2005 a judge of the Neryungri Town Court granted the Ministry’s request, finding as follows:

“Pursuant to Article 376 of the Code of Civil Procedure, final court judgments may be appealed against before the supervisory-review instance within one year after they became final. In the present case ... this procedural time-limit expired on 20 January 2004. However, as the court has established, on 23 October 2003 the Supreme Court of the Sakha (Yakutiya) Republic did indeed suspend proceedings on the claims lodged by owners of State promissory notes for purchasing of cars against the Government of Russian Federation (the Ministry of Finance of the Russian Federation) in connection with the reference for a preliminary ruling..., which fact is confirmed by the Supreme Court’s letter of 5 November 2003.

Having regard to the above, pursuant to Article 112 § 1 of the Code of Civil Procedure, a court may only extend a time-limit if the party can show valid reasons for having missed it. The court finds that the above reasons exposed by the [Ministry of Finance] were valid.”

13. On 7 July 2005 the Presidium of the Supreme Court of the Sakha (Yakutiya) Republic, by way of supervisory-review proceedings, quashed the judgment of 15 November 2002, as upheld on 20 January 2003, and dismissed the applicant’s claims. According to the applicant, she was not informed of the hearing. The Government produced a copy of summons addressed to several persons, including the applicant. In quashing the judgment, the Presidium noted that the lower courts had not taken into account certain provisions relating to reimbursement of State promissory notes and thereby committed a breach of substantive law.

THE LAW

I. ALLEGED VIOLATION OF ARTICLE 6 § 1 OF THE CONVENTION AND ARTICLE 1 OF PROTOCOL NO. 1 ON ACCOUNT OF QUASHING OF THE JUDGMENT IN THE APPLICANT'S FAVOUR

14. Without invoking specific Convention provisions, the applicant complained that the Presidium of the Supreme Court of the Sakha (Yakutiya) Republic had incorrectly interpreted and applied the domestic law, had wrongly quashed the judgment of 15 November 2002 and dismissed her action in full. The Court considers that the question before it is to determine whether the act of quashing violated the applicant's "right to a court" under Article 6 § 1 of the Convention and her right to the peaceful enjoyment of possessions under Article 1 of Protocol No. 1. The relevant parts of these provisions read as follows:

Article 6 § 1

"In the determination of his civil rights and obligations ..., everyone is entitled to a fair ... hearing within a reasonable time... 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..."

A. Admissibility

15. The Court considers 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

1. Alleged violation of Article 6 of the Convention

16. The Government submitted that the Presidium of the Supreme Court of the Sakha (Yakutiya) Republic had had lawful grounds to quash the judgment in the applicant's favour because her claims had been granted erroneously. Accordingly, there had been no violation of the applicant's "right to a court" under Article 6 § 1 of the Convention.

17. The applicant maintained that, by quashing the judgment in her favour, the State had unlawfully relieved itself of the obligation to enforce the promissory notes.

18. The Court reiterates that Article 6 § 1 secures to everyone the right to have any claim relating to his civil rights and obligations brought before a court or tribunal. In this way it embodies the “right to a court”, of which the right of access, that is the right to institute proceedings before courts in civil matters, constitutes one aspect. However, that right would be illusory if a Contracting State’s domestic legal system allowed a final and binding judicial decision to be quashed by a higher court on an application made by a State official whose power to lodge such an application is not subject to any time-limit, with the result that the judgments were liable to challenge indefinitely (see *Ryabykh v. Russia*, no. 52854/99, §§ 54-56, ECHR 2003-IX).

19. In the present case the judgment of 15 November 2002, as upheld on appeal on 20 January 2003, was set aside by way of supervisory review on the ground that the courts had erred in application of the substantive law. The Court has to assess whether the power to conduct a supervisory review was exercised by the authorities so as to strike, to the maximum extent possible, a fair balance between the interests of the individual and the need to ensure the proper administration of justice (see, *mutatis mutandis*, *Nikitin v. Russia*, no. 50178/99, §§ 57 and 59, ECHR 2004-...).

20. The Court takes note, firstly, of an exceptionally long period of time – more than two years – that lapsed from the date the judgment in the applicant’s favour had become legally binding to the date the supervisory-review proceedings were conducted. It observes that the Code of Civil Procedure (“CCP”) set a time-limit of one year for lodging an application for supervisory review, the starting point being the date on which the judicial decision became legally binding (Article 376 § 2 of the CCP). In the present case this time-limit was extended on the ground that the proceedings on other similar claims had been suspended pending the Constitutional Court’s decision. The reason invoked for granting an extension does not appear convincing to the Court. Firstly, by the time the Supreme Court decided to adjourn proceedings on similar claims in October 2003, the proceedings on the applicant’s claim had already ended with the final appeal judgment of 20 January 2003. It is not clear how the decision on adjournment of pending proceedings could have effect on the proceedings that had already been finished more than eight months ago. Secondly, in so far as the decision on adjournment was invoked as the sole reason for granting an extension, the Court observes that at the time it was issued in October 2003 the statutory one-year time-limit for lodging an application for supervisory review against the appeal judgment of 20 January 2003 had not yet expired. It is hardly conceivable that the Ministry of Finance would not be aware of the adjournment decision immediately, taking into account that it acted as the defendant in all similar cases. The Government did not

point to any exceptional circumstances which could have prevented the Ministry of Finance from filing the supervisory-review application between October 2003 and January 2004, that is within the statutory time-limit. The Court finds that by accepting a belated application for supervisory review without valid grounds the domestic courts breached the principle of legal certainty.

21. In addition to the laxity of the time-limits which the Court has noted above, it reiterates its constant approach that in the absence of a fundamental defect in the previous proceedings a party's disagreement with the assessment made by the first-instance and appeal courts is not a circumstance of a substantial and compelling character warranting the quashing of a binding and enforceable judgment and re-opening of the proceedings on the applicant's claim (see *Dovguchits v. Russia*, no. 2999/03, § 30, 7 June 2007; and *Kot v. Russia*, no. 20887/03, § 29, 18 January 2007). The Government did not claim that the previous proceedings before the first-instance and appeal courts had been tarnished by a fundamental defect. In fact, the judgment in the applicant's favour was quashed because of incorrect application of substantive law. That ground was not a fundamental defect within the meaning of the Court's case-law and could not justify a departure from the principle of legal certainty.

22. The Court has already found a violation of an applicant's "right to a court" guaranteed by Article 6 § 1 of the Convention in the cases in which a judicial decision that had become final and binding, was subsequently quashed after a substantial delay for the sole purpose of re-arguing the case (see the *Dovguchits*, *Kot* and *Ryabykh* judgments, cited above). The Government did not put forward any arguments which would enable the Court to reach a different conclusion in the present case. The Court therefore finds that the quashing of the judgment of 15 November 2002, as upheld on appeal on 20 January 2003, by way of supervisory review, infringed the principle of legal certainty and the applicant's "right to a court". There has been, accordingly, a violation of Article 6 § 1 of the Convention.

2. Alleged violation of Article 1 of Protocol No. 1

23. The Court reiterates that the existence of a debt confirmed by a binding and enforceable judgment furnishes the judgment beneficiary with a "legitimate expectation" that the debt would be paid and constitutes the beneficiary's "possessions" within the meaning of Article 1 of Protocol No. 1. Quashing of such a judgment amounts to an interference with his or her right to peaceful enjoyment of possessions (see, among other authorities, *Androssov v. Russia*, no. 63973/00, § 69, 6 October 2005).

24. The Government denied that there had been an interference with the applicant's rights under Article 1 of Protocol No. 1 because she could still apply for redemption of the promissory note.

25. The Court observes that the applicant obtained a binding and enforceable judgment in her favour, by the terms of which the Ministry of Finance was to pay her a substantial sum of money. She was prevented from receiving the award through no fault of hers. The quashing of the enforceable judgment frustrated the applicant's reliance on the binding judicial decision and deprived her of an opportunity to receive the money she had legitimately expected to receive. In these circumstances, even assuming that the interference was lawful and pursued a legitimate aim, the Court considers that the quashing of the enforceable judgment in the applicant's favour by way of supervisory review placed an excessive burden on her and was incompatible with Article 1 of the Protocol No. 1. There has therefore been a violation of that Article.

II. ALLEGED VIOLATION OF ARTICLE 6 § 1 OF THE CONVENTION AND ARTICLE 1 OF PROTOCOL NO. 1 ON ACCOUNT OF NON-ENFORCEMENT OF THE JUDGMENT

26. The applicant complained that non-enforcement of the judgment of 15 November 2002, as upheld on appeal on 20 January 2003, had violated her rights under Article 6 § 1 of the Convention and Article 1 of Protocol No. 1, cited above.

A. Admissibility

27. The Court considers 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

28. The Government claimed that the complaint was premature because the supervisory review proceedings had been instituted. The applicant disagreed.

29. The Court observes that the issue to be examined is whether the judgment in the applicant's favour was enforced within a "reasonable time". Accordingly, it is necessary to ascertain that the judgment was "enforceable". In the instant case, after the Supreme Court had dismissed an appeal against the judgment of 25 November 2002, in accordance with the Code of Civil Procedure the judgment became legally binding and enforceable. From that moment on, it was incumbent on the debtor, a State ministry, to comply with it. The launching of the supervisory-review procedure could not, in itself, extinguish the debtor's obligation to comply with the enforceable judgment which obligation existed until 7 July 2005 when the Presidium of the Supreme Court quashed that judgment. In any

event, the Court reiterates that the quashing of a judgment in a manner which has been found to have been incompatible with the principle of legal certainty and the applicant's "right to a court" cannot be accepted as justification for the failure to enforce that judgment (see *Sukhobokov v. Russia*, no. 75470/01, § 26, 13 April 2006).

30. It follows that from 20 January 2003 to 7 July 2005 the judgment in the applicant's favour was "enforceable" and it was incumbent on the State agency to execute it. As it appears, no steps were taken for enforcement of the judgment.

31. 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, more recently, *Poznakhirina v. Russia*, no. 25964/02, 24 February 2005; *Wasserman v. Russia (no. 1)*, no. 15021/02, 18 November 2004).

32. 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. They did not advance any justification for the delay in enforcement. Having regard to its case-law on the subject, the Court finds that by failing for a substantial period to comply with the enforceable judgment in the applicant's favour the domestic authorities violated her right to a court and prevented her from receiving the money she legitimately expected to receive. Accordingly, there has been a violation of Article 6 § 1 of the Convention and Article 1 of Protocol No. 1 on account of non-enforcement of the judgment of 15 November 2002, as upheld on appeal on 20 January 2003.

III. APPLICATION OF ARTICLE 41 OF THE CONVENTION

33. 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

34. The applicant claimed 25,000 euros (EUR) in respect of non-pecuniary damage and EUR 15,000 in respect of pecuniary damage, representing the present-day value of a Russian-made passenger car, plus EUR 5,000 in respect of the interest accrued on the promissory note.

35. The Government submitted that the claim was excessive and ill-founded. They insisted that there was no causal link between the non-enforcement of the judgment and the claim for the car value. In any event, the price of such a car did not exceed 6,500 US dollars.

36. The Court recalls that in the instant case it found a violation of Article 6 § 1 of the Convention and Article 1 of Protocol No. 1, in that the judgment in the applicant's favour had remained unenforced for a long period of time and had been subsequently quashed. The applicant was thereby prevented from receiving the money she had legitimately expected to receive. There has been therefore a causal link between the violations found and the applicant's claim for the pecuniary damage in so far as it concerned the original award (compare *Prisyazhnikova and Dolgopolov v. Russia*, no. 24247/04, § 45, 28 September 2006). The applicant's right to receive any additional amount was not upheld in the domestic proceedings. The Court further notes that the applicant did not explain her method of calculation of the interest or produce any documents showing the evolution of the interest rate she had used for calculations. Accordingly, the Court awards the applicant EUR 4,100 in respect of the pecuniary damage, plus any tax that may be chargeable on that amount, and dismisses the remainder of her claim for the pecuniary damage.

37. The Court further considers that the applicant suffered distress and frustration because of the State authorities' failure to enforce the judgment in her favour and their subsequent decision to quash it. The particular amount claimed is, however, excessive. The Court takes into account the amount and nature of the award in the instant case and the period of the authorities' inactivity. Making its assessment on an equitable basis, it awards the applicant EUR 3,500, plus any tax that may be chargeable on it.

B. Costs and expenses

38. The applicant also claimed EUR 5,000 for the costs and expenses incurred before the domestic courts and the Court. She submitted a few postal receipts and train tickets.

39. The Government pointed out that the documents produced by the applicant did not cover the entire amount claimed. The relevance of these documents to the domestic proceedings was also not apparent.

40. According to the Court's case-law, an applicant is entitled to the reimbursement of 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 accordance with Rule 60 §§ 2 and 3 of the Rules of Court, the Court makes no award in respect of costs and expenses because the applicant did not submit itemised particulars of her claim.

C. Default interest

41. 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 on account of the quashing of the judgment of 15 November 2002, as upheld on appeal on 20 January 2003, by way of supervisory review;
3. *Holds* that there has been a violation of Article 6 of the Convention and Article 1 of Protocol No. 1 on account of prolonged non-enforcement of the judgment of 15 November 2002, as upheld on appeal on 20 January 2003;
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, the following amounts, to be converted into Russian roubles at the rate applicable at the date of settlement:
 - (i) EUR 4,100 (four thousand one hundred euros) in respect of pecuniary damage;
 - (ii) EUR 3,500 (three thousand five hundred euros) in respect of non-pecuniary damage;
 - (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;
5. *Dismisses* the remainder of the applicant's claim for just satisfaction.

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

Søren Nielsen
Registrar

Christos Rozakis
President