



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

FIRST SECTION

CASE OF PORTNOVA v. RUSSIA

(Application no. 34428/04)

JUDGMENT

STRASBOURG

29 April 2008

FINAL

29/07/2008

This judgment may be subject to editorial revision.

In the case of Portnova 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 Hajiyev,

Dean Spielmann,

Sverre Erik Jebens, *judges*,

and André Wampach, *Deputy Section Registrar*,

Having deliberated in private on 1 April 2008,

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

PROCEDURE

1. The case originated in an application (no. 34428/04) 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 Lidiya Ivanovna Portnova (“the applicant”), on 16 July 2004.

2. The applicant was represented by Ms S. Poznakhirina, an NGO expert practising in Novovoronezh. 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 29 May 2006 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.

THE FACTS

4. The applicant was born in 1952 and lives in the town of Novovoronezh in the Voronezh Region.

5. The applicant was entitled to a disability allowance and commodity benefits. She sued the local Social Security Committee for the unpaid allowance and benefits, and claimed their re-adjustment.

A. Case no. 1

6. By judgment of 16 July 2003, the Novovoronezh Town Court of the Voronezh Region awarded the applicant 22,109.75 Russian roubles (RUB) for the period from 1 July 2002 to 31 July 2003. On 14 October 2003 the Voronezh Regional Court upheld the judgment. The applicant received the money due to her on 7 June 2005. On 5 September 2005 the Town Court awarded the applicant RUB 5,552.02 as compensation for inflationary losses caused by the delay in the enforcement of the judgment of 16 July 2003, as upheld on 14 October 2003. It appears that the compensation award has not been paid to the applicant.

B. Cases nos. 2, 3 and 4

7. By judgment of 5 January 2004, the Town Court awarded the applicant RUB 13,971.25 for the period from 1 August to 31 December 2003. This judgment became final on 15 January 2004. It was enforced on 4 August 2005.

8. On 15 April 2004 the Town Court increased the applicant's monthly allowance to RUB 5,664.84 and awarded her RUB 9,494.52 in arrears for the period from 1 January to 31 March 2004. The judgment became final on 26 April 2004. It was enforced on 25 August 2005.

9. On 30 September 2004 the Town Court awarded the applicant RUB 9,494.52. On 11 October 2004 the judgment became final. The applicant received the money on 25 August 2005.

10. By judgment of 15 November 2005, the Town Court awarded RUB 5,700.35 as compensation for inflationary losses in respect of the sums awarded to the applicant on 5 January, 15 April and 30 September 2004. It appears that the compensation award has not been paid to the applicant.

C. Case no. 5

11. By judgment of 16 February 2004, the Town Court awarded the applicant RUB 4,973.57. The judgment became final on 26 February 2004. Apparently, it remains without enforcement.

D. Case no. 6

12. On 6 September 2004 the Town Court awarded RUB 2,272.30 to the applicant and increased her monthly commodity benefits to RUB 679.78. The judgment became final on 17 September 2004. It appears that on 16 July 2004 the applicant received RUB 500 in execution of that judgment.

THE LAW

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

13. The applicant complained under Article 6 of the Convention and Article 1 of Protocol No. 1 that the judgment of 16 July 2003, as upheld on 14 October 2003, and the judgments of 5 January, 16 February, 15 April, 6 and 30 September 2004 were not enforced in good time. 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

14. The Court observes, and it is not contested by the parties, that the applicant was awarded compensation for the delays in enforcement of the judgment of 16 July 2003, as upheld on 14 October 2003, and the judgments of 5 January, 15 April and 30 September 2004 (see paragraphs 6 and 10 above). The Court does not exclude that such compensation awards could constitute redress of the State’s previous failure to comply with the judgments in the applicant’s favour, provided that those awards have been paid in full and within a reasonable time. However, the Government did not adduce any evidence showing that those awards had been paid to the applicant at all. Accordingly, the Court considers that the applicant may still claim to be a “victim” in respect of her complaint about the delays in enforcement of the above-mentioned judgments.

15. As regards the judgment of 30 September 2004, the Court observes, and it is not in dispute between the parties, that it became final on 11 October 2004 and was enforced in full on 25 August 2005. The delay in its enforcement was thus slightly more than ten months, which, in the Court's view, does not appear excessive (see *Grishchenko v. Russia* (dec.), no. 75907/01, 8 July 2004; *Presnyakov v. Russia* (dec.), no. 41145/02, 10 November 2005; *Anokhin v. Russia* (dec.), no. 25867/02, 31 May 2007). Accordingly, this part of the application must be rejected pursuant to Article 35 § 4 of the Convention.

16. On the other hand, the Court concludes that the applicant's complaint about the delays in enforcement of the judgment of 16 July 2003, as upheld on 14 October 2003, and the judgments of 5 January, 16 February, 15 April and 6 September 2004 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. This part of the application must therefore be declared admissible.

B. Merits

17. The Government submitted that the judgment of 16 July 2003, as upheld on 14 October 2003, and the judgments of 5 January and 15 April 2004 had been enforced in full; the judgment of 6 September 2004 had been enforced in part, and the judgment of 16 February 2004 had not been enforced.

18. The applicant argued that RUB 17,063.87 had remained unpaid to her under the judgments of 16 February and 6 September 2004.

19. The Court observes, and it is not contested by the parties, that the judgment of 16 July 2003, as upheld on 14 October 2003, and the judgments of 5 January and 15 April 2004 were enforced in full in June and August 2005. Thus, the delays in their enforcement varied from approximately sixteen to twenty months.

20. Having regard to the material in its possession, the Court concludes that the judgments of 16 February and 6 September 2004 remain, in full or in part, without enforcement.

21. 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 others, *Burdov v. Russia*, no. 59498/00, §§ 33-38, ECHR 2002-III; *Wasserman v. Russia*, no. 15021/02, § 35 et seq., 18 November 2004, and *Glushakova v. Russia* (no. 1), no. 38719/03, §§ 33-37, 12 April 2007).

22. Having examined the material submitted to it, the Court notes that the Government have 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 long

periods of time, to comply with the enforceable judgments in the applicant's favour the domestic authorities impaired the essence of her right to a court and prevented her from receiving the money she could reasonably have expected to receive.

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

II. APPLICATION OF ARTICLE 41 OF THE CONVENTION

24. 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

25. The applicant claimed 56 euros (EUR) in respect of pecuniary damage in relation to the delay in enforcement of the judgments of 16 February and 6 September 2004, and the sums outstanding under the compensatory awards of 5 September and 15 November 2005. She also claimed EUR 6,000 in respect of non-pecuniary damage.

26. The Government submitted that the applicant should have raised her pecuniary claim before national courts.

27. The Court has previously examined and rejected the Government's argument to this effect (see, among others, *Gridin v. Russia*, no. 4171/04, § 43, 1 June 2006; *Pshevecherskiy v. Russia*, no. 28957/02, § 80, 24 May 2007). It sees no reason to reach a different conclusion in the present case. Having regard to the material in its possession and to the fact that the Government did not object to the applicant's method of calculation, the Court accepts the applicant's claim and awards her under this head EUR 56.

28. The Court also notes that the State's unfulfilled obligation to enforce the judgments, which have not been enforced in full, is not in dispute in the present case (see paragraph 20 above). The Court therefore considers that the Government shall secure, by appropriate means, the enforcement of the judgments of 16 February and 6 September 2004. As regards the judgments which have been enforced with substantial delays, the Court considers that the Government shall secure, by appropriate means, the enforcement of the compensatory awards of 5 September and 15 November 2005 (see paragraph 14 above).

29. Finally, the Court considers that the applicant must have suffered distress and frustration resulting from the authorities' failure to enforce in good time the judgments in her favour. Taking into account the length of the

enforcement proceedings, the number of the domestic awards and their nature, and making its assessment on an equitable basis, the Court awards the applicant EUR 3,100 in respect of non-pecuniary damage, plus any tax that may be chargeable on that amount.

B. Costs and expenses

30. The applicant did not submit any claims under this head and the Court accordingly makes no award in respect of costs and expenses.

C. Default interest

31. 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 complaint concerning the delays in enforcement of the judgment of 16 July 2003, as upheld on 14 October 2003, and the judgments of 5 January, 16 February, 15 April and 6 September 2004 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;
3. *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 awards made by the domestic court on 16 February, 6 September 2004, 5 September and 15 November 2005;
 - (b) that the respondent State shall 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 3,100 (three thousand one hundred euros) in respect of non-pecuniary damage, plus any tax that may be chargeable on that amount, and EUR 56 (fifty-six euros) in respect of pecuniary damage, both sums to be converted into Russian roubles at the rate applicable at the date of settlement;
 - (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 applicant's claim for just satisfaction.

Done in English, and notified in writing on 29 April 2008, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

André Wampach
Deputy Registrar

Christos Rozakis
President