



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

FIFTH SECTION

CASE OF MARTYNOVA v. RUSSIA

(Application no. 57807/00)

JUDGMENT

STRASBOURG

26 June 2008

FINAL

01/12/2008

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 Martynova v. Russia,

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

Peer Lorenzen, *President*,

Rait Maruste,

Karel Jungwiert,

Volodymyr Butkevych,

Anatoly Kovler,

Mirjana Lazarova Trajkovska,

Zdravka Kalaydjieva, *judges*,

and Claudia Westerdiek, *Section Registrar*,

Having deliberated in private on 3 June 2008,

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

PROCEDURE

1. The case originated in an application (no. 57807/00) 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 Yevgeniya Zakharovna Martynova (“the applicant”), on 12 April 2000.

2. The Russian Government (“the Government”) were represented by Mr P. Laptev and Mrs V. Milinchuk, the Representatives of the Russian Federation at the European Court of Human Rights.

3. On 17 May 2004 and 25 May 2007 the Court decided to give notice of the complaint concerning the non-enforcement of judgments 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 1948 and lives in Astrakhan. In 1998–2003 she sued three State clinics for botched dental work.

5. On 3 November 1998 the Sovetskiy District Court of Astrakhan awarded her 2,753 Russian roubles (RUB) against the Astrakhan Regional Dental Clinic. This judgment became binding on 26 January 1999. It was enforced on 22 April 1999.

6. On 5 March 2001 the Supreme Court awarded her RUB 78,720 against the Central Research Institute of Stomatology. This judgment became binding immediately. It was enforced on 28 September 2004.

7. On 3 October 2003 the Astrakhan Regional Court awarded her RUB 20,000 against the Moscow Medical Institute of Stomatology. This judgment became binding immediately. It was enforced on 24 September 2004.

II. RELEVANT DOMESTIC LAW

8. Under section 9 of the Federal Law on Enforcement Proceedings of 21 July 1997, a bailiff must enforce a judgment within two months. Under section 242.2.6 of the Budget Code of 31 July 1998, the Ministry of Finance must enforce a judgment within three months.

THE LAW

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

9. The applicant complained about the non-enforcement of the judgments. The Court examined this complaint under Article 6 § 1 of the Convention and Article 1 of Protocol No. 1, which, as far as relevant, read as follows:

Article 6

“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 argued that this complaint was inadmissible. In her application form the applicant had not complained about the non-enforcement; hence there had been no basis for this case. In any event, the State had been responsible for the clinics' debts. But the enforcement of the judgments had lasted a short time overall. The delay in the enforcement of the judgment of 5 March 2001 had been caused by a clerical error in the writ of enforcement, and the applicant had failed to have that error rectified quickly. The delay in the enforcement of the judgment of 3 October 2003 had been caused by incertitude as to which authority should have paid the debt.

11. The applicant insisted that her complaint was admissible. She specified that her complaint did not concern the judgment of 3 November 1998. As to the judgment of 5 March 2001, it had been the State, not herself, who should have rectified the error in the writ of enforcement. The applicant had done everything she could to bring about the enforcement. If in 2004 the State had been able to enforce the judgment without the applicant having followed a rigid procedure, it could have done this also in 2001. The judgments had not been enforced fully, because the sums received had not covered the applicant's attendant losses.

12. The Court notes that, even though the applicant did not expressly complain about the non-enforcement in the application form, she did complain about it in her additions thereto. The Court also notes that the applicant has now limited her complaint to the judgments of 5 March 2001 and 3 October 2003.

13. The Court finds that this complaint is not manifestly ill-founded within the meaning of Article 35 § 3 of the Convention. It further finds that it is not inadmissible on any other grounds. It must therefore be declared admissible.

B. Merits

14. The enforcement of the judgment of 5 March 2001 lasted three years and seven months. The enforcement of the judgment of 3 October 2003 lasted almost one year.

15. An unreasonably long delay in the enforcement of a binding judgment may breach the Convention (see *Burdov v. Russia*, no. 59498/00, ECHR 2002-III). To decide if the delay was reasonable, the Court will look at how complex the enforcement proceedings were, how the applicant and the authorities behaved, and what the nature of the award was (*Raylyan v. Russia*, no. 22000/03, § 31, 15 February 2007).

16. The Court notes that the judgments were easy to enforce, because they required only a transfer of money, and it was the State, not the

applicant, who had to take the initiative of enforcing them. Notwithstanding the clarity of the authorities' obligations, it took them three years and seven months and about one year respectively to comply therewith. These periods appear *prima facie* excessive.

17. As regards the justification provided by the Government, the applicant cannot be blamed for errors in court-issued writs of enforcement or for the incertitude as to which authority had to pay.

18. The above elements are sufficient to conclude, irrespective of the nature of the award, that the State has breached its obligations timeously to comply with the judgments. The Court accordingly finds that there has been a violation of Article 6 of the Convention and of Article 1 of Protocol No. 1.

III. ALLEGED VIOLATION OF OTHER ARTICLES OF THE CONVENTION

19. The applicant complained under many other Articles of the Convention about domestic authorities' findings in her disputes with the clinics.

20. However, in the light of all the material in its possession, and in so far as the matters complained of are within its competence, the Court finds that they do not disclose any appearance of a violation of the rights and freedoms set out in the Convention or its Protocols.

21. 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.

IV. 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 made no claim in respect of pecuniary and non-pecuniary damage.

24. The Court accordingly makes no award under this head.

B. Costs and expenses

25. The applicant also claimed RUB 417 for the costs and expenses incurred before the domestic courts and RUB 1,707 for those incurred before the Court.

26. The Government argued that the applicant had not justified the costs incurred before the domestic courts. As to the costs incurred before the Court, only RUB 944.31 had been justified.

27. 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 the present case, regard being had to the information in its possession and the above criteria, the Court considers it reasonable to award the sum of EUR 25 for the proceedings before the Court.

C. Default interest

28. 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 non-enforcement of domestic judgments admissible and the remainder of the application inadmissible;
2. *Holds* that there has been a violation of Article 6 § 1 of the Convention and of Article 1 of Protocol No. 1;
3. *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 25 (twenty five euros), plus any tax that may be chargeable to the applicant, in respect of costs and expenses, to be converted into Russian roubles at the rate applicable at the date of settlement,
 - (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;
4. *Dismisses* the remainder of the applicant's claim for just satisfaction.

Done in English, and notified in writing on 26 June 2008, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Claudia Westerdiek
Registrar

Peer Lorenzen
President