



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

FIRST SECTION

CASE OF ABDULMANOVA v. RUSSIA

(Application no. 41564/05)

JUDGMENT

STRASBOURG

16 October 2008

FINAL

16/01/2009

This judgment may be subject to editorial revision.

In the case of Abdulmanova 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,

Giorgio Malinverni,

George Nicolaou, *judges*,

and André Wampach, *Deputy Section Registrar*,

Having deliberated in private on 25 September 2008,

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

PROCEDURE

1. The case originated in an application (no. 41564/05) 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 Gyulzhiyan Mantayevna Abdulmanova (“the applicant”), on 16 July 2005.

2. The Russian Government (“the Government”) were represented by Ms V. Milinchuk, former Representative of the Russian Federation at the European Court of Human Rights.

3. On 9 May 2007 the President of the First Section decided to give notice of the application to the Government. It was also decided to examine the merits of the application at the same time as its admissibility (Article 29 § 3).

THE FACTS

I. THE CIRCUMSTANCES OF THE CASE

4. The applicant was born in 1945 and lives in Aykhal, a town in Yakutia.

5. In 1990 the applicant subscribed to a State savings scheme for buying a car. The State failed to provide the car, and the applicant sued the Ministry of Finance.

6. On 19 August 2003 the Mirninskiy District Court awarded the applicant 138,967 Russian roubles (RUB). This judgment became binding on 6 October 2003, but was not enforced immediately.

7. On 23 October 2003 the District Court mailed enforcement papers to bailiffs. On 27 November 2003 the bailiffs returned the papers because of formal defects and advised the District Court that the judgment had to be enforced by the Ministry directly. On 15 June 2004 the enforcement papers reached the Ministry.

8. On the Ministry's request, on 4 March 2005 the Presidium of the Supreme Court of Yakutia quashed the judgment on supervisory review, having found that the District Court had ignored a key material law.

9. On 4 February 2006 the Ministry paid to the applicant RUB 40,648.27 under the State program of redemption of in-kind debentures.

II. RELEVANT DOMESTIC LAW

10. 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

11. The applicant complained under Articles 6 and 13 of the Convention, and Article 1 of Protocol No. 1 about the non-enforcement and supervisory review of the judgment. The Court will examine this complaint under Article 6 § 1 of the Convention and Article 1 of Protocol No. 1. Insofar as relevant, these Articles 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

12. The Government argued that the complaint was inadmissible.

As to non-enforcement, the applicant had failed to exhaust domestic remedies, because she had not sued the Ministry for negligence. She had missed six months because she had applied to the Court two years and one month after the judgment had become binding. The applicant had been responsible for the delay preceding 15 June 2004, the day when the enforcement papers had reached the Ministry. The papers had had formal defects and, in any event, should not have been mailed to the bailiffs. In the end the applicant did receive compensation.

As to supervisory review, it had been carried out in strict compliance with domestic law. The supervisory review had been initiated by a party to the proceedings within 11 months of the judgment and had been meant to correct a misinterpretation of material law, which had constituted a judicial error. For example, the German procedure for revision of judgments had been earlier found to be in compliance with the Convention. Besides, the Committee of Ministers of the Council of Europe had been satisfied that Russia’s supervisory-review procedure had been improved (ResDH(2006)1, 8 February 2006; CM/Inf/DH(2005)20, 23 March 2005).

13. The applicant insisted on her complaint. She had not delayed the proceedings and had not been responsible for the formal defects in the enforcement papers issued by the District Court. The authorities had taken no steps to enforce the judgment. The compensation the applicant had received in the end had been smaller than the award. The supervisory review had deprived her of this award and had been unfair.

14. The Court rejects the Government’s argument concerning domestic remedies, because an appeal against the Ministry’s negligence would yield a declaratory judgment that would reiterate what was in any event evident from the original judgment: the State was to honour its debt. This new judgment would not bring the applicant closer to her desired goal, that is the actual payment of the judicial award (see *Jasiūnienė v. Lithuania* (dec.), no. 41510/98, 24 October 2000; *Plotnikovy v. Russia*, no. 43883/02, § 16, 24 February 2005).

15. The Court also rejects the Government’s argument concerning six months. Where there is no effective remedy, the six-month period runs from the date of the omission complained of, or from the date when the applicant learned about the omission (see *Hilton v. United Kingdom*, no. 12015/86, Commission decision of 6 July 1988, DR 57, p. 108). Applied to the case at

hand, this rule would mean that six months run from the date of the supervisory review, because it was on this date that it became evident that the judgment would not be enforced. Less than six months had passed from 4 March 2005 (the date of supervisory review) to 16 July 2005 (the date of introduction).

16. 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

17. The Court reiterates that Article 6 of the Convention includes the “right to a court” (see *Golder v. the United Kingdom*, judgment of 21 February 1975, Series A no. 18, § 36). To honour this right, the State must obey a binding judgment (see *Burdov v. Russia*, no. 59498/00, ECHR 2002-III) and avoid quashing it, save in circumstances where the principle of legal certainty would not be breached (see *Protsenko v. Russia*, no. 13151/04, §§ 25–34, 31 July 2008). Besides, an enforceable judgment constitutes a “possession” within the meaning of Article 1 of Protocol No. 1.

18. The Court considers that in the case at hand the State has breached the applicant’s “right to a court” and prevented her from peacefully enjoying her possessions in two ways.

19. First, the State avoided paying the judgment debt for one year and four months, which is a considerable period of time. The Government put the blame for a part of this period on the applicant, but in the circumstances of the present case the applicant cannot be held responsible for defects of enforcement papers issued by a court or for the uncertainty as to which authority had to pay.

20. Second, the State quashed the judgment because it had been based on an alleged misinterpretation of material law. However, this ground does not justify supervisory review (see *Kot v. Russia*, no. 20887/03, § 29, 18 January 2007).

21. The foregoing considerations are sufficient to enable the Court to conclude that there has been a violation of Article 6 § 1 of the Convention and Article 1 of Protocol No. 1.

II. 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. In respect of pecuniary damage, the applicant claimed RUB 6,781,000. This amount represented her estimate of the capital she would have had today if the car had been provided in time and if she had invested the car’s price in real estate, of the car’s current price, and of default interest.

24. The Government objected to this claim, since in February 2006 the applicant had received compensation.

25. The Court reiterates that the best redress of a violation of Article 6 is to put the applicant as far as possible in the position she would have been if Article 6 had been respected (see *Piersack v. Belgium* (Article 50), judgment of 26 October 1984, Series A no. 85, § 12). Applied to the case at hand, this principle would mean that the State must pay to the applicant the equivalent in euros (EUR) of RUB 138,967 that she should have received under the judgment of 19 August 2003 less RUB 40,648.27 that she received in November 2006. Making its estimate on the information at its disposal, the Court awards EUR 2,700 under this head.

26. In respect of non-pecuniary damage, the applicant claimed EUR 10,000.

27. The Government argued that this claim was unreasonable, unsubstantiated, and detached from the facts of the case.

28. The Court accepts that the applicant must have been distressed by the non-enforcement and supervisory review of the judgment. Making its assessment on an equitable basis the Court awards EUR 3,700 under this head.

B. Costs and expenses

29. The applicant made no claim under this head. Accordingly, the Court makes no award.

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 application admissible;
2. *Holds* that there has been a violation of Article 6 § 1 of the Convention and 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 according to 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 2,700 (two thousand seven hundred euros), plus any tax that may be chargeable, in respect of pecuniary damage;
 - (ii) EUR 3,700 (three thousand seven hundred euros), plus any tax that may be chargeable, in respect of non-pecuniary damage;
 - (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 16 October 2008, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

André Wampach
Deputy Registrar

Christos Rozakis
President