



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

FIRST SECTION

CASE OF TULSKAYA v. RUSSIA

(Application no. 43715/05)

JUDGMENT

STRASBOURG

23 October 2008

FINAL

23/01/2009

This judgment may be subject to editorial revision.

In the case of Tulskeya v. Russia,

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

Nina Vajić, *President*,
Anatoly Kovler,
Elisabeth Steiner,
Khanlar Hajiyeu,
Dean Spielmann,
Sverre Erik Jebens,
Giorgio Malinverni, *judges*,

and André Wampach, *Deputy Section Registrar*,

Having deliberated in private on 2 October 2008,

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

PROCEDURE

1. The case originated in an application (no. 43715/05) 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 Yelena Aleksandrovna Tulskeya (“the applicant”), on 27 October 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 16 January 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 1965 and lives in Borisoglebsk, a town in the Voronezh Region.

5. On 8 December 1999 the Borisoglebsk District Court awarded the applicant 1,563.08 Russian roubles (RUB) in arrears of child benefits against the Regional Authority. This judgment became binding on 18 December 1999 but was not enforced immediately.

6. On 25 November 2005 bailiffs credited the judgment debt to the applicant's account. Unaware of this, on 19 March 2007 the Regional Authority mistakenly paid to the applicant another RUB 3,126 (the judgment debt adjusted for the cost of living).

II. RELEVANT DOMESTIC LAW

7. 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

8. The applicant complained under Article 13 of the Convention about the delayed enforcement of the judgment. The Court will consider 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

9. The Government admitted that there had been a violation of Article 6 § 1 of the Convention and Article 1 of Protocol No. 1. Nevertheless, they

argued that the application was abusive, because the applicant had failed to tell the Court that the judgment had been enforced. They also asked to strike the case out of the Court's list of cases, because the applicant had refused to settle. They considered that the applicant had lost her status as a victim.

10. The applicant maintained her complaint.

11. As to abuse of the right of application, the Court reiterates that an application may be rejected as abusive if, among other things, it was knowingly based on untrue facts (see *Varbanov v Bulgaria*, no. 31365/96, § 36, ECHR 2000-X). However, in the circumstances of the present case, the Court cannot discern any deceit on the applicant's part.

12. As to striking out, the Court has earlier refused to strike out cases where applicants refused settlement. The Court will do so in this case too (see, with further references, *Svitich v. Russia*, no. 39013/05, § 21, 31 July 2007).

13. As to victim status, the Court reiterates that to deprive an applicant of this status, the State must acknowledge a breach of her rights and afford adequate redress (see *Amuur v. France*, judgment of 25 June 1995, *Reports of Judgments and Decisions* 1996-III, § 36). In the case at hand, the Government did acknowledge a breach of the rights, but provided no redress. The payment of 19 March 2007 cannot be considered as redress, because it was unintentional.

14. 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

15. The Government have admitted that there had been a violation of Article 6 § 1 of the Convention and Article 1 of Protocol No. 1.

16. In the circumstances of the previous case, the Court finds no reason to hold otherwise. There has, accordingly, been a violation of these Articles.

II. APPLICATION OF ARTICLE 41 OF THE CONVENTION

17. 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

18. In respect of pecuniary damage, the applicant claimed 1,500 euros (EUR). This amount included EUR 1,000 of allegedly underpaid child benefits and EUR 500 of default interest.

19. The Government objected to this claim, because the applicant had received the judicial award twice. They also argued that no default interest could have been awarded, because the authorities had not retained the applicant's money deliberately, and because in any event domestic courts had been better placed to determine the amount to be awarded.

20. The Court rejects this claim. The applicant has received the judgment debt. In addition, on 19 March 2007 she received a sum equivalent to two judgment debts. Even though the last payment was inadvertent, the Court estimates that it has covered the applicant's pecuniary loss.

21. In respect of non-pecuniary damage, the applicant claimed EUR 5,000.

22. The Government argued that this claim was excessive and unsubstantiated.

23. The Court accepts that the applicant must have been distressed by the delayed enforcement of the judgment. Making its assessment on an equitable basis, the Court awards EUR 3,000 under this head.

B. Costs and expenses

24. The applicant also claimed EUR 1,000 for the costs and expenses incurred before the domestic courts and the Court.

25. The Government argued that this claim was excessive and mostly unsubstantiated.

26. 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 7 covering costs under all heads.

C. Default interest

27. 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 3,000 (three thousand euros), plus any tax that may be chargeable, in respect of non-pecuniary damage;
 - (ii) EUR 7 (seven euros), plus any tax that may be chargeable to the applicant, in respect of costs and expenses;
 - (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 23 October 2008, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

André Wampach
Deputy Registrar

Nina Vajić
President