



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

FIRST SECTION

CASE OF GALIKHANOVA v. RUSSIA

(Application no. 15407/05)

JUDGMENT

STRASBOURG

14 November 2008

FINAL

14/02/2009

This judgment may be subject to editorial revision.

In the case of Galikhanova 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 Søren Nielsen, *Section Registrar*,

Having deliberated in private on 21 October 2008,

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

PROCEDURE

1. The case originated in an application (no. 15407/05) 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 Galina Sergeyevna Galikhanova (“the applicant”), on 15 March 2005.

2. The applicant was represented by Mr S. Galikhanov, a lawyer practising in Izhevsk. 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 19 June 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 Government objected to the joint examination of the admissibility and merits, but the Court rejected this objection.

THE FACTS

I. THE CIRCUMSTANCES OF THE CASE

4. The applicant was born in 1944 and lives in Izhevsk, a town in Udmurtia.

5. The applicant is a judge of the Supreme Court of Udmurtia. In 1999 the Minister of the Interior of Udmurtia accused her of having ties with

organised crime. She brought defamation proceedings against the Ministry of the Interior, its Minister, and the Treasury.

6. On 3 April 2000 the Oktyabrskiy District Court of Izhevsk held for the applicant and made three awards: an order to retract, non-pecuniary damages, and costs.

The order to retract was issued against the Ministry of the Interior and its Minister, who were to write two clearly typewritten letters of retraction to the President of the Supreme Court of Udmurtia and the local legislature within ten days of the judgment's entry into force. The non-pecuniary damages were awarded in the amount of 15,000 Russian roubles (RUB) against the Ministry of Finance. The costs were awarded in the amount of RUB 3,010 against the Ministry of the Interior and the Ministry of Finance.

7. On 1 June 2000 the judgment entered into force and was enforced as follows. According to the Government, the order to retract was enforced on 15 May 2001. According to the applicant, it was never enforced. The costs were paid on 15 May 2001. The non-pecuniary damages were paid on 9 February 2007.

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 (as in force from 1 January 2006), 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 under Article 6 of the Convention and Article 1 of Protocol No. 1 about the delayed enforcement of the judgment. 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

10. The Government argued that this complaint was inadmissible. The applicant had missed the six-month time-limit laid down in Article 35 § 1 of the Convention, because the final decision had been given on 1 June 2000. The applicant had failed to exhaust domestic remedies, because she could have complained about the negligence of bailiffs and the Ministry of Finance. She also could have requested that the award be adjusted for the cost of living, and could have claimed non-pecuniary damages.

The complaint was manifestly ill-founded in respect of two thirds of the award, because this part had been enforced quickly. As to the non-pecuniary damages, their payment had been delayed for a period incompatible with the Convention. The Ministry of Finance had lacked a clear procedure of enforcement. It had not been until 1 January 2006 that such a procedure had become available.

11. The applicant maintained her complaint. She had complained to courts about the negligence of the bailiffs and the Ministry of Finance, but it had been only after her complaint to the Court that she had received the judgment debt in full. The defamation had still not been retracted.

12. The Court reiterates that the six-month rule does not apply to the present case because on the date of introduction the judgment was outstanding (see *Nazarchuk v. Ukraine*, no. 9670/02, § 20, 19 April 2005).

A negligence claim against the bailiffs and the Ministry of Finance would be ineffective, because it 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 enforcement (see *Jasiūnienė v. Lithuania* (dec.), no. 41510/98, 24 October 2000; *Plotnikovy v. Russia*, no. 43883/02, § 16, 24 February 2005). An adjustment for the cost of living would be equally inadequate because it would not compensate non-pecuniary damage. A claim for non-pecuniary damages has not been

shown to be sufficiently certain in practice so as to offer the applicant reasonable prospects of success as required by the Convention.

13. The Court notes 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

14. The Court reiterates that 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 (see *Raylyan v. Russia*, no. 22000/03, § 31, 15 February 2007).

15. In the case at hand the full enforcement of the judgment lasted six years and eight months. Even though a part of the award was enforced relatively quickly (in 11 months), the Court's task is to oversee the enforcement process as a whole, i.e. until the full settlement. The Government have admitted that the payment of the non-pecuniary damages was overly delayed. In the circumstances of the present case, the Court sees no reason to find otherwise.

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

III. 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. The applicant claimed 3,000,000 euros (EUR) in respect of non-pecuniary damage alone.

19. The Government argued that this claim was unfounded, and in any event a mere finding of a violation would be sufficient.

20. 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 1,500.

B. Costs and expenses

21. The applicant made no claim for costs and expenses. Accordingly, the Court makes no award under this head.

C. Default interest

22. 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 in accordance with Article 44 § 2 of the Convention, EUR 1,500 (one thousand five hundred euros), plus any tax that may be chargeable, in respect of non-pecuniary damage, 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 amount 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 14 November 2008, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Søren Nielsen
Registrar

Christos Rozakis
President