



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

FIRST SECTION

CASE OF YEVDOKIYA KUZNETSOVA v. RUSSIA

(Application no. 8355/07)

JUDGMENT

STRASBOURG

4 December 2008

FINAL

04/03/2009

This judgment may be subject to editorial revision.

In the case of Yevdokiya Kuznetsova 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 Søren Nielsen, *Section Registrar*,

Having deliberated in private on 13 November 2008,

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

PROCEDURE

1. The case originated in an application (no. 8355/07) 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 Yevdokiya Ivanovna Kuznetsova (“the applicant”), on 9 February 2007.

2. The applicant was represented by Mr I. Sivoldayev, a lawyer practising in Voronezh. The Russian Government (“the Government”) were represented by Ms V. Milinchuk, the former representative of the Russian Federation at the European Court of Human Rights.

3. On 7 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 1919 and lives in Voronezh of the Voronezh Region.

5. On 4 November 2000 the Talovskiy District Court of the Voronezh Region granted the applicant’s civil action against the Social Welfare Department of the Talovskiy District and awarded her 756.52 Russian roubles (RUB) in pension arrears.

6. The judgment was not appealed against and became enforceable on 15 November 2000. At some point the domestic court issued the applicant with the writ of execution in respect of the judgment.

7. At the end of November 2000 the bailiffs received the writ.

8. At some point in 2001 the bailiffs' service returned the writ to the applicant without execution, since the respondent authority did not have funds available for enforcement of the applicant's claim.

9. It appears that on 9 February 2006 the applicant resubmitted the writ of execution to the respondent authority.

10. On 1 March 2007 the award was paid to the applicant in full.

II. RELEVANT DOMESTIC LAW

11. 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.

12. Chapter 25 of the Code of Civil Procedure allows a person to appeal in court against an authority whose actions breach his rights (Article 254). If the appeal is well-founded, the court will order the authority to make good the breach (Article 258).

13. Article 208 of the Code of Civil Procedure empowers a court to upgrade the amount of a judgment debt, if a creditor so asks.

14. For a summary of the domestic law and practice concerning compensation of non-pecuniary damage caused by a breach of his property rights see *Wasserman v. Russia* (no. 2), no. 21071/05, §§ 25-28, 10 April 2008.

THE LAW

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

15. The applicant complained under Article 6 of the Convention and Article 1 of Protocol No. 1 about the non-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

16. The Government submitted that the application was inadmissible on several grounds listed below. The applicant maintained her claims.

1. Alleged failure to comply with the six-month rule

17. The Government claimed that the judgment in the applicant's favour had become final on 14 November 2000, and she had only lodged her application with the Court on 9 February 2007. Accordingly, her application must be rejected as introduced out of time.

18. The Court reiterates that in respect of non-enforcement complaints six months run from the date of enforcement of the judgment (see *Gorokhov and Rusyayev v. Russia*, no. 38305/02, § 27, 17 March 2005). The judgment in the applicant's favour was enforced on 1 March 2007, while the applicant had raised the non-enforcement grievance on 9 February 2007. Accordingly, the application was introduced in time.

2. Alleged failure to exhaust the domestic remedies

19. The Government submitted that the applicant had failed to exhaust the domestic remedies available to her. First, she could have lodged a court action claiming adjustment of the judgment debt for the cost of living. In certain earlier cases, the Court had found that the exhaustion of this remedy deprived the applicants of their victim status (see *Nemakina v. Russia* (dec.), no. 14217/04, 10 July 2007; *Derkach v. Russia* (dec.), no. 3352/05, 3 May 2007). Second, she could have complained to a court about the bailiffs' actions. Third, she could have claimed non-pecuniary damage. In the Government's view this remedy had proven its effectiveness in practice. For example, a family from Tatarstan had received 1,800 euros for late enforcement of a judgment in their favour (judgment of the Novo-Savinovskiy District Court of Kazan, no. 2-1962/2006, 23 October 2006). In another case a domestic court had awarded to the claimants a substantive amount in compensation of non-pecuniary damage for delayed enforcement. Finally, the Government noted that the applicant could have complained about non-enforcement to the respondent authority, but had never done so.

20. The Court reiterates that it is incumbent on the Government claiming non-exhaustion to satisfy the Court that the remedy was an effective one, available in theory and in practice at the relevant time, that is to say, that it was accessible, was one which was capable of providing redress in respect of the applicant's complaints and offered reasonable prospects of success (see *Selmouni v. France* [GC], no. 25803/94, § 76, ECHR 1999-V, and *Mifsud v. France* (dec.), no. 57220/00, § 15, ECHR 2002-VIII).

21. As regards the claim for non-pecuniary damages, in the recent case of *Wasserman (no. 2) v. Russia* the Court found that such remedy was not shown to be sufficiently certain in practice so as to offer the applicant reasonable prospects of success as required by the Convention (see *Wasserman v. Russia (no. 2)*, no. 21071/05, §§ 52-57, 10 April 2008). The Government did not advance any arguments allowing the Court to reach a different conclusion in the present case.

22. As concerns the adjustment for the cost of living, the Court had indeed noted in certain cases cited by the Government that the upgrading of

judicial awards had effectively compensated the applicants for inflation losses. The Court held in these cases that the payment without undue delay of such compensation together with the acknowledgement of the violations by the authorities had deprived the applicants of their victim status (*Derkach* and *Nemakhina*, cited above). However, these decisions do not establish a general principle that mere compensation for inflation losses is sufficient to afford redress required by the Convention for late enforcement of a judgment. In all aforementioned cases the Court reached its conclusions in the specific circumstances where the applicants' claims for compensation were limited to pecuniary losses resulting from the inflation or the applicants' position in the domestic proceedings was considered as an implicit waiver to claim compensation for further pecuniary or non-pecuniary damage. In the absence of such circumstances in the present case, the Court considers that mere upgrading of the judgment debt would not suffice to satisfy the Convention requirement of effectiveness as it would only compensate for possible inflation losses and not for further damages, either pecuniary or non-pecuniary. Finally, the Court does not lose sight of the fact that the main reason for non-enforcement in the present case was the lack of funds. In these circumstances, an action for upgrading of the judgment debt would only have produced repetitive results, namely a writ of execution which would not be enforceable because of insufficient funding (see *Pogulyayev v. Russia*, no. 34150/04, § 13, 3 April 2008). Such remedy cannot be said to be effective.

23. Insofar as the possibility to raise a complaint against bailiffs might be concerned, the Government put forward no reasons why an action against the bailiff service should be considered an effective remedy. Neither party suggested that it was any inefficiency of the bailiff service which prevented the enforcement of the judgment at issue; it was apparently the lack of funds. The Court therefore finds that an action against the bailiff office would not have enhanced the applicant's prospects of receiving her award. The Court considers that in the present case such complaint cannot be said to have constituted an effective remedy against non-enforcement (see *Plotnikovy v. Russia*, no. 43883/02, § 17, 24 February 2005, *Kazmina v. Russia*, no. 72374/01, § 23, 15 June 2006).

24. Finally, as to the purported possibility to complain to the respondent authority about its failure to enforce the judgment in good time, it is undisputed that the Social Welfare Department was perfectly aware of the award in the applicant's favour, as well as of its obligation to comply the judgment. However, the award remained without execution for a significant period of time. In these circumstances, it is unclear in which way a complaint to the respondent authority about its own failure to enforce the judgment would be capable of providing redress in respect of the applicant's complaints and would offer reasonable prospects of success.

25. In so far as the Government may be understood to argue that the applicant should have brought the court proceedings against the respondent authority, the Court notes that the Government did not explain how the lodging of such complaint could have put an end to the continued non-enforcement of the judgment or what kind of redress the applicant could have been provided with as a result of the action. In any event, if the applicant had obtained a judicial decision confirming that the non-

enforcement was unlawful in domestic terms, the proceedings would only result in a writ of execution requiring the respondent authority to proceed with the enforcement of the original judgment (compare, among many others, *Yavorivskaya v. Russia* (dec.), no. 34687/02, 13 May 2004), which cannot be said to constitute an adequate redress for the applicant.

26. It follows that the application cannot be rejected for non-exhaustion of the domestic remedies.

3. *The Government's request for striking out the application*

27. The Government informed the Court that the authorities of the Levoberezhnyy District of Voronezh had attempted to secure a friendly settlement which the applicant had refused to accept. Referring to that refusal and to the Court's decision in the case of *Aleksentseva and Others v. Russia* (nos. 75025/01 et seq., 4 September 2003), the Government invited the Court to strike the application out of its list of cases, in accordance with Article 37 of the Convention.

28. The Court observes that the parties' mere disagreement on the terms of a friendly settlement of the case is not a ground for declaring the respective grievances inadmissible. Whilst under certain circumstances an application may indeed be struck out under Article 37 § 1 (c) of the Convention on the basis of a unilateral declaration by the respondent Government even if the applicant wishes the examination of the case to be continued (see *Tahsin Acar v. Turkey* [GC], no. 26307/95, § 76, ECHR 2003-...), this procedure is not, as such, intended to circumvent the applicant's opposition to a friendly settlement.

29. Furthermore, the Court observes that a distinction must be drawn between, on the one hand, declarations made in the context of strictly confidential friendly-settlement proceedings (Article 38 § 2 of the Convention and Rule 62 § 2 of the Rules of Court) and, on the other hand, unilateral declarations made by a respondent Government in public and adversarial proceedings before the Court.

30. On the facts, the Court observes that the Government failed to submit with the Court any formal statement capable of falling into the latter category and offering a sufficient basis for finding that respect for human rights as defined in the Convention does not require the Court to continue its examination of the case (see, by contrast, *Aleksentseva and Others*, cited above and *Akman v. Turkey* (striking out), no. 37453/97, §§ 23-24, ECHR 2001-VI). The objection is accordingly dismissed.

4. *The Court's conclusion*

31. 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

32. The Court notes that the judgment in the applicant's favour, which became final on 15 November 2000, was enforced on 1 March 2007. The award remained unenforced during more than 6 years and 3 months.

33. The Government admitted the authorities' responsibility for the delay of 1 year and 1 month, until the moment when an unexecuted writ had been returned to the applicant. They contended that the subsequent period of non-enforcement from some point in 2001 to 2006 was attributable to the applicant, since she had failed to resubmit the writ of execution to the competent authority after it had been returned to her in 2001.

34. The applicant contested that argument. With reference to the cases of *Gorokhov and Rusyayev v. Russia* (no. 38305/02, 17 March 2005) and *Metaxas v. Greece* (no. 8415/02, 27 May 2004) she argued that the authorities had been fully aware of her claims and were under an obligation to comply with the judgment. She had not had to bring separate enforcement proceedings in order to obtain execution of the final binding judgment. In any event, her attempts to obtain enforcement of the judgment by way of recourse to different domestic authorities would have provided futile, since the major reason for the authorities' refusal to enforce the judgment had been the shortage of funds.

35. The Court notes the State authorities were perfectly aware of the applicant's claims, and, as soon as the judgment became final, it became incumbent on the State to execute it. As it transpires from the materials of the case, the only apparent reason for the non-enforcement of the judgment was the authorities' reluctance to make adequate budgetary appropriations (see § 8 above). Therefore, whether the bailiffs were involved in the enforcement proceedings or not did not change the situation (see *Gorokhov and Rusyayev v. Russia*, cited above, § 33). Moreover, the Court reiterates that a person who has obtained an enforceable judgment against the State as a result of successful litigation cannot be required to resort to enforcement proceedings in order to have it executed (see *Metaxas v. Greece*, no. 8415/02, § 19, 27 May 2004). Furthermore, the requirement of the creditor's cooperation must not go beyond what is strictly necessary and, in any event, does not relieve the authorities of their obligation under the Convention to take timely and *ex officio* action, on the basis of the information available to them, with a view to honouring the judgment against the State (see *Akashev v. Russia*, no. 30616/05, § 22, 12 June 2008). However, no initiative had been taken by the State authorities to enforce the judgment during more than six years.

36. 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 *Burdov v. Russia*, no. 59498/00, § 35,

ECHR 2002-III; and *Berezkina v. Russia*, no. 3509/06, § 15 et seq., 29 November 2007). Having regard to its case-law on the subject, the Court finds that by failing, for more than six years, to comply with the enforceable judgment 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.

37. 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

38. 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

39. The applicant claimed 3,900 euros (EUR) in respect of non-pecuniary damage.

40. The Government contested the claim as unreasonable and excessive. They contended that finding of a violation would constitute a sufficient just satisfaction.

41. The Court considers that the applicant must have suffered distress and frustration as a result of the violations at issue. It takes into account the relevant aspects, in particular, the length of the enforcement and the fact that the nature of the award in the present case was connected to the applicant's livelihood. Making its assessment on equitable basis, it grants the applicant's claim and awards her EUR 3,900 in respect of non-pecuniary damage, plus any tax that may be chargeable on that amount.

B. Costs and expenses

42. The applicant did not seek reimbursement of her costs and expenses incurred before the domestic authorities and the Court. Accordingly, the Court does not make any award under this head.

C. Default interest

43. 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 of the Convention and Article 1 of Protocol No.1 of the Convention;
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 3,900 (three thousand nine 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 amounts at a rate equal to the marginal lending rate of the European Central Bank during the default period plus three percentage points.

Done in English, and notified in writing on 4 December 2008, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Søren Nielsen
Registrar

Christos Rozakis
President