



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

FIRST SECTION

CASE OF MOZHAYEVA v. RUSSIA

(Application no. 26759/03)

JUDGMENT

STRASBOURG

4 December 2008

FINAL

04/03/2009

This judgment may be subject to editorial revision.

In the case of Mozhayeva 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. 26759/03) 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 Galina Yuryevna Mozhayeva (“the applicant”), on 28 May 2003.

2. 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 16 March 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 1953 and lives in Donetsk of the Rostov Region.

5. The applicant sued the Donetsk Social Welfare Office («Управление социальной защиты населения г. Донецка») for arrears in child benefits and for compensation of non-pecuniary damage.

6. On 27 December 2000 the Donetsk Town Court of the Rostov Region, composed of a professional judge Mr P. and two lay judges, partly allowed her claims. The judgment became enforceable on 7 January 2001.

7. On 25 July 2002 the Presidium of the Rostov Regional Court quashed the judgment and remitted the case.

8. On 2 October 2002 the Donetsk Town Court, composed of the judge Mr P. and two lay judges, ordered that the Donetsk Social Welfare Office pay the applicant 1,506.27 Russian roubles (RUB, approximately EUR 49) in respect of child benefits adjusted for inflation and legal costs and expenses. The award was payable from the Rostov regional budget. The court rejected the applicant's claim for non-pecuniary damage.

9. On 4 December 2002 the Rostov Regional Court upheld the judgment on appeal and it became enforceable.

10. On 3 February 2003 the applicant received copies of the judgments of 2 October and 4 December 2002.

11. On 3 March 2003 she submitted the writ of execution to the respondent authority.

12. On 15 March 2003 the amount of RUB 292.20 was transferred to the applicant's bank account pursuant to the judgment in her favour.

13. On 29 October 2003 the applicant received RUB 467.52 on her bank account.

14. On 25 November 2003 RUB 651.55 were paid to the applicant pursuant to the judgment of 2 October 2002.

15. On 27 December 2004 the respondent authority paid her the outstanding balance of RUB 95 (approximately EUR 3) - the sum awarded in respect of legal costs and expenses - thus completing full execution of the judgment.

II. RELEVANT DOMESTIC LAW

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

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

THE LAW

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

18. The applicant complained about delayed enforcement of the judgment of 2 October 2002. The Court will examine this complaint under Article 6 of the Convention and Article 1 of Protocol No. 1. As far as relevant, these Articles 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.”

A. Admissibility

19. The Government argued that the applicant's complaint was inadmissible, since she had not exhausted the domestic remedies available to her. She had not raised the non-enforcement issue before the domestic courts and had not requested an enforcement of the award by the bailiffs' service, although she had had such a right under the domestic law. They also noted that the judgment in her favour had been enforced long before her application had been communicated to the Government by the Court.

20. The applicant maintained her claims.

21. 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 and 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). As regards the applicant's alleged failure to complain about delayed enforcement to a domestic court, the Court observes that the Government did not specify what kind of a court action she could have brought, nor did they advance any reasons as to the effectiveness of such remedy and its availability in theory and in practice. The Court finds that the Government have failed to substantiate their

contention that the remedy at issue was an effective one. As regards the argument that the applicant did not ask for the bailiffs' assistance, it is undisputed that the Donetsk Social Welfare Office was competent to make payments pursuant the judgment. The Court had already found, in a similar context, that after a competent State agency was served with a judgment, the recourse by the applicant to another State agency should not in principle have been necessary to secure its enforcement (see, *mutatis mutandis*, *Koltsov v. Russia*, no. 41304/02, § 16, 24 February 2005). Nor can a person be required to resort to enforcement proceedings, in order to ensure the enforcement of a final and binding judgment delivered against the State. There is nothing in the present case to depart from this conclusion. The Court considers that in the present case the recourse to the bailiff service could not be said to have constituted an effective remedy against non-enforcement. The argument of the Government must accordingly be dismissed.

22. Insofar as the Government may be understood as arguing that the applicant had not complied with the six-month rule laid down in Article 35 § 1 of the Convention, the Court reiterates that, as applied to non-enforcement, this rule would mean that 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 applicant had lodged her complaint with the Court on 28 May 2003, and the judgment in her favour had not yet been fully enforced by that date. Accordingly, the application was introduced in time.

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

B. Merits

1. The parties' submissions

24. The Government argued that a certain delay in enforcement of the judgment was attributable to the applicant, since she had only submitted the writ of execution to the competent authority on 3 March 2003. They submitted that the length of non-enforcement should be calculated from that latter date. The Government further argued that the most important part of the award (RUB 1411) had been paid to the applicant in 2003. Only the remaining sum of RUB 95 (less than 3 euro) of costs and expenses had been transferred to her account in December 2004. Thus, the judgment, with a minor exception of RUB 95 paid in 2004, had been enforced during the period from 3 March 2003 to 25 November 2003, that is within less than nine months. With reference to cases of *Grishchenko* (see *Grishchenko*

v. Russia (dec.), no. 75907/01, 8 July 2004) *Presnyakov* (see *Presnyakov v. Russia* (dec.), no. 41145/02, 10 November 2005) and *Inozemtsev* (see *Inozemtsev v. Russia* (dec.), no. 874/03, 31 August 2006) the Government argued that such delay in enforcement was reasonable.

25. The applicant disagreed. She submitted that she had only received a copy of the judgment in her favour in February 2003 and submitted the writ of execution to the respondent authority on 3 March 2003, that is within less than one month from the date of receipt of the judgment. In any event, since 3 March 2003 the judgment had remained unexecuted until 27 December 2004, that is for one year and nine months from the date of her sending the writs of execution to the respondent authority. Accordingly, she could not be blamed for the delay of the enforcement.

2. The Court's assessment

26. As regards the delay of execution of the award, the Court observes that the judgment of 2 October 2002 in the applicant's favour became enforceable on 4 December 2002. The Court reiterates that as soon as the judgment in the applicant's favour becomes enforceable, it is incumbent on the State to comply with it (see *Reynbakh v. Russia*, no. 23405/03, § 24, 29 September 2005). Therefore, the delay of execution should be calculated from 4 December 2002. The Court further notes the Government's submission that the major part of the award was paid to the applicant in 2003. However, the Court observes, and it is not disputed by the parties, that the last payment pursuant the judgment, notwithstanding its amount, was made on 27 December 2004. Accordingly, the Court considers that the award was executed in full on the latter date. The delay of enforcement therefore totalled 2 years and 24 days.

27. As regards the Government's argument that the delay of enforcement was to a certain extent justified by the applicant's failure to submit the writ of execution to the respondent authority until March 2003, 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 *Koltsov v. Russia*, no. 41304/02, § 16, 24 February 2005; *Petrushko v. Russia*, no. 36494/02, § 18, 24 February 2005; and *Metaxas v. Greece*, no. 8415/02, § 19, 27 May 2004). Where a judgment is against the State, the defendant State authority must be duly notified thereof and is thus well placed to take all necessary initiatives to comply with it or to transmit it to another competent State authority responsible for compliance. In the Court's view, the requirement of the creditor's cooperation with the authorities 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.

28. Turning to the present case, the Court considers that the State authorities were aware of the applicant's claims, and, as soon as the judgment in the applicant's favour became enforceable on 4 December 2002, they were in a position to ensure compliance with their obligations under the judgment. Yet the judgment was executed in full in December 2004, that is two years and 24 days after it became final and enforceable, and one year and nine months after the applicant had submitted the writ of execution to the respondent authority. The Government provided no justification for such important delay in execution of the judgment. The Court accordingly rejects the argument by the Government that the delay of execution of the judgment of 2 October 2002 was justified in the particular circumstances of the present case.

29. 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, among other authorities, *Burdov v. Russia*, no. 59498/00, ECHR 2002-III; and *Poznakhirina v. Russia* no. 25964/02, 24 February 2005).

30. Having examined the material submitted to it, the Court notes that the Government did not put forward any fact or argument capable of persuading it to reach a different conclusion in the present case. Having regard to its case-law on the subject, the Court finds that by failing for two years and twenty four days to comply with the enforceable judgment in the applicant's favour the domestic authorities prevented her from receiving the money she could reasonably have expected to receive.

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

II. OTHER ALLEGED VIOLATIONS OF THE CONVENTION

32. The applicant complained under Article 6 of the Convention that by the final judgment of 4 December 2002 the domestic court incorrectly resolved her case and rejected her claim for non-pecuniary damage. She further complained that the courts had ordered that the award of the arrears should have been paid from the regional budget. Finally, she alleged that the first instance court had been biased because judge P. had examined her case twice.

33. The Court has examined these complaints as submitted by the applicant. However, having regard to all the material in its possession, it finds that these complaints do not disclose any appearance of a violation of the rights and freedoms set out in the Convention or its Protocols. It follows that this part of the application must be rejected as being manifestly ill-founded, pursuant to Article 35 §§ 3 and 4 of the Convention.

III. APPLICATION OF ARTICLE 41 OF THE CONVENTION

34. 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

35. The applicant claimed EUR 45,000 in respect of non-pecuniary damage. Besides, she submitted in broad terms that the respondent authority should have index-linked the award in line with inflation for the period of non-enforcement. The Government submitted that, as regards the claim for index-linking of the judgment debt, the applicant was able to lodge a separate court action to obtain upgrading of the award, but had not availed herself of this remedy. As regards the claims for non-pecuniary damage, the Government considered them unreasonable and excessive. They noted that the award did not constitute an essential asset for the applicant.

36. As regards the claim for index-linking of the judgment debt, the Court points out that under Rule 60 of the Rules of Court any claim for just satisfaction must be itemised and submitted in writing together with the relevant supporting documents or vouchers, “failing which the Chamber may reject the claim in whole or in part”. The Court notes that the applicant did not specify an exact amount of pecuniary damage allegedly incurred as a result of depreciation of the judgment debt due to inflation. She did not submit a calculation of the loss allegedly incurred or indicated any particular method to be applied for calculation of such loss. She also did not provide any supporting documents in respect of the claim. Accordingly, her claim under this head must be rejected.

37. At the same time, the Court accepts that the applicant may have been distressed by the delayed enforcement of the final binding judgment in her favour. Making its assessment on an equitable basis, the Court awards EUR 100 in respect of non-pecuniary damage and dismisses the remainder of her claim under this head.

B. Costs and expenses

38. The applicant did not make any claim in respect of the costs and expenses incurred before the domestic courts and before the Court within the time-limits set by the Court. Accordingly, the Court considers that there is no call to award her any sum on that account.

C. Default interest

39. 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

1. *Declares* the complaint concerning delayed enforcement of the judgment of 2 October 2002 admissible and the remainder of the application inadmissible unanimously;
2. *Holds* unanimously that there has been a violation of Article 6 of the Convention and Article 1 of Protocol No.1 to the Convention;
3. *Holds* by six votes to one
 - (a) that the respondent State, within three months from the date on which the judgment becomes final according to Article 44 § 2 of the Convention, shall pay the applicant EUR 100 (one 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* unanimously the remainder of the applicant's claim for just satisfaction.

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