



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

FIRST SECTION

CASE OF ALEKSEYEVA v. RUSSIA

(Application no. 36153/03)

JUDGMENT

STRASBOURG

11 December 2008

FINAL

06/07/2009

This judgment may be subject to editorial revision.

In the case of Alekseyeva v. Russia,

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

Christos Rozakis, *President*,

Nina Vajić,

Anatoly Kovler,

Dean Spielmann,

Sverre Erik Jebens,

Giorgio Malinverni,

George Nicolaou, *judges*,

and Søren Nielsen, *Section Registrar*,

Having deliberated in private on 20 November 2008,

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

PROCEDURE

1. The case originated in an application (no. 36153/03) 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, Ms Svetlana Fedorovna Alekseyeva (“the applicant”), on 10 October 2003.

2. The applicant was represented by Mr A. Brykin, a lawyer practising in Novosibirsk. The Russian Government (“the Government”) were represented by Mr P. Laptev, former Representative of the Russian Federation at the European Court of Human Rights.

3. On 9 February 2004 and 14 June 2005 the Court decided to communicate the complaints concerning non-enforcement and supervisory review of a binding judgment to the Government. Under the provisions of Article 29 § 3 of the Convention, it decided to examine the merits of the application at the same time as its admissibility.

THE FACTS

I. THE CIRCUMSTANCES OF THE CASE

4. The applicant was born in 1959 and lives in Novosibirsk, a town in the Altay Region.

5. In 2003 the applicant sued the Government and the Ministry of Finance for liquidation of Soviet bonds issued in 1982.

6. On 30 June 2003 the Novoaltaysk Town Court of the Altay Region awarded the applicant 6,635,348.50 Russian roubles (RUB). This judgment became binding on 18 July 2003 but was not enforced immediately.

7. The Ministry of Finance lodged a supervisory-review appeal, and on 10 February 2004 the Presidium of the Altay Regional Court quashed the judgment. The Presidium found that the District Court had misinterpreted material law and, in particular, had ignored the rule saying that the Soviet bonds could have been liquidated only after their ulterior conversion into Russian special-purpose debentures. The Presidium concluded that since until then no such conversion had been made, and since the yearly budget had had no allocations for the liquidation of the bonds, the District Court had effectively replaced itself for the body competent to make the conversion and thus overstepped its authority.

8. In 2003–04 the applicant also instituted a number of proceedings against high ranking State officials. These proceedings were refused or stayed because of the applicant's failure to comply with procedural requirements.

II. RELEVANT DOMESTIC LAW

9. 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 ARTICLE 1 OF PROTOCOL No. 1 ON ACCOUNT OF SUPERVISORY REVIEW

10. The applicant complained under Article 6 § 1 of the Convention and Article 1 of Protocol No. 1 about the quashing of the judgment on supervisory review. 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

11. The Government argued that the supervisory review had been meant to protect the treasury and that the applicant had not entirely lost the prospect of having her bonds liquidated, because the State had merely adjourned the liquidation pending the full-scale implementation of the liquidation scheme.

12. The applicant contested this statement.

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 has earlier found that where, like in the present case, a supervisory review of a binding judgment is meant to correct an alleged misapplication of material law, it constitutes an appeal in disguise and violates the Convention (see, for example, *Kot v. Russia*, no. 20887/03, § 29, 18 January 2007).

15. The Court finds no reason to depart from this finding in the present case. There has accordingly been a violation of Article 6 of the Convention and of Article 1 of Protocol No. 1.

II. ALLEGED VIOLATION OF ARTICLE 6 § 1 OF THE CONVENTION AND OF ARTICLE 1 OF PROTOCOL No. 1 ON ACCOUNT OF NON-ENFORCEMENT

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

A. Admissibility

17. The Government argued that this complaint was manifestly ill-founded. The enforcement of the judgment had been adjourned pending

supervisory review, and the judgment had been quashed shortly afterwards because it had contradicted fundamental laws.

18. The applicant argued that this complaint was admissible. She decried the authorities' failure to liquidate the bonds.

19. 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

20. 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).

21. Given the above finding that the supervisory review of the judgment was incompatible with the Convention, the Court considers that the period to be taken into account should be extended beyond the date of the supervisory review (see *Sukhobokov v. Russia*, no. 75470/01, §§ 25–26, 13 April 2006). Accordingly, to date the enforcement of the judgment has lasted over five years.

22. This period is incompatible with the provisions of the Convention. The intervention of the supervisory-review authorities did not justify this delay (see *Timofeyev v. Russia*, no. 58263/00, § 42, 23 October 2003; *Sukhobokov*, cited above, § 26).

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

III. OTHER ALLEGED VIOLATIONS OF THE CONVENTION

24. Lastly, the applicant complained under Articles 1, 6, 13, 14, 17, and 18 of the Convention about the way the authorities had handled her complaints against the high ranking officials.

25. However, in the light of all the material in its possession, and in so far as the matters complained of are within its competence, the Court finds that they do not disclose any appearance of a violation of the rights and freedoms set out in the Convention or its Protocols.

26. It follows that this part of the application is manifestly ill-founded and must be rejected in accordance with Article 35 §§ 3 and 4 of the Convention.

IV. APPLICATION OF ARTICLE 41 OF THE CONVENTION

27. 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

28. The applicant claimed RUB 7,448,315 in respect of pecuniary damage and 10,000 euros (EUR) in respect of non-pecuniary damage.

29. The Government argued that these claims were unfounded and excessive.

30. With regard to pecuniary damage, the Court considers that the violation found is best redressed by putting the applicant in the position she would have been if the Convention had been respected. It is therefore appropriate to award the applicant the equivalent in euros of the sum that she would have received if the judgment of 30 June 2003 had not been quashed (see *Bolyukh v. Russia*, no. 19134/05, § 39, 31 July 2007). The Court awards EUR 194,817 under this head.

31. With regard to non-pecuniary damage, the Court accepts that the applicant must have been distressed by the supervisory review and non-enforcement of the judgment. Making its assessment on an equitable basis, the Court awards EUR 4,000 under this head.

B. Costs and expenses

32. The applicant also claimed RUB 759,197.25 for the costs and expenses incurred before the domestic courts and the Court.

33. The Government argued that this claim was unjustified and excessive.

34. 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 rejects the claim for costs and expenses in the domestic proceedings and considers it reasonable to award the sum of EUR 300 for the proceedings before the Court.

C. Default interest

35. 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 complaints concerning the non-enforcement and supervisory review admissible and the remainder of the application inadmissible;
2. *Holds* that there has been a violation of Article 6 § 1 of the Convention and Article 1 of Protocol No. 1 on account of the supervisory review;
3. *Holds* that there has been a violation of Article 6 § 1 of the Convention and Article 1 of Protocol No. 1 on account of the non-enforcement;
4. *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 194,817 (one hundred ninety-four thousand eight hundred seventeen euros), plus any tax that may be chargeable, in respect of pecuniary damage;
 - (ii) EUR 4,000 (four thousand euros), plus any tax that may be chargeable, in respect of non-pecuniary damage;
 - (iii) EUR 300 (three hundred 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 amount at a rate equal to the marginal lending rate of the European Central Bank during the default period plus three percentage points;
5. *Dismisses* the remainder of the applicant's claim for just satisfaction.

Done in English, and notified in writing on 11 December 2008, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Søren Nielsen
Registrar

Christos Rozakis
President