



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

1959 · 50 · 2009

FIRST SECTION

CASE OF MAKAROVA v. RUSSIA

(Application no. 23554/03)

JUDGMENT

STRASBOURG

1 October 2009

FINAL

01/01/2010

This judgment may be subject to editorial revision.

In the case of Makarova 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 André Wampach, *Deputy Section Registrar*,

Having deliberated in private on 10 September 2009,

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

PROCEDURE

1. The case originated in an application (no. 23554/03) 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 Yekaterina Georgiyevna Makarova (“the applicant”), on 27 June 2003.

2. The Russian Government (“the Government”) were represented by Ms V. Milinchuk, the then Representative of the Russian Federation at the European Court of Human Rights.

3. On 28 November 2006 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 the town of Pechora, Komi Republic.

A. The applicant's civil case

5. On 27 March 1997 the applicant was dismissed from her post of accountant in a private company TOO SIAP ("the company"). She sued the company claiming reinstatement in her post, non-pecuniary damages, salary arrears and unpaid allowances (child allowance, annual leave allowance and maternity allowance). According to the applicant, she lodged her statement of claim (apparently concerning pecuniary claims) with the Oktyabrskiy District Court of Ryazan on 22 September 1995. The Government claimed that the proceedings started on an unspecified date in 1997. In October 1997 she moved to another town. According to her, she informed the court of her new address.

6. On 24 November 1997 the District Court decided to process her pecuniary claims separately. By a judgment of 25 November 1997, the District Court ordered the applicant's reinstatement in her post and awarded her 500,000 Russian roubles (RUB)¹ in respect of non-pecuniary damage. The applicant was not present at the hearing. The judgment was not appealed against and became final on 5 December 1997. A copy of the judgment was sent to the applicant on 22 December 1997, apparently to her previous address. Another copy was sent on 28 May 1998 to her new address. The applicant received it in June 1998. It appears that neither copy was accompanied by a writ of execution.

7. In November 1998 and then in June 2001 the applicant enquired about the state of proceedings regarding the pecuniary claims. It appears that these requests remained unanswered.

8. Apparently in April 2002 the applicant learnt that the case file regarding her pecuniary claims had been lost by the court registry. On 30 November 2002 she asked the district court to restore the file, which was done on 14 February 2003. On 28 October 2003 the judge decided to process separately the applicant's claims for maternity allowance, annual leave allowance and salary arrears. By a judgment of the same date, the court granted her claims for child allowance arrears.

9. On 19 January 2004 the District Court granted in part the applicant's claims for salary arrears, maternity allowance and annual leave allowance. No appeal was lodged and the judgment became final.

10. Upon the applicant's request, on 28 September 2004 the Presidium of the Ryazan Regional Court quashed the judgment on supervisory review and ordered a re-examination of the claims.

11. In the resumed proceedings, on 14 June 2005 the District Court granted the applicant's claims. On 22 July 2005 the judge rectified technical errors in this judgment. The applicant was awarded RUB 557,483 in unpaid salary; RUB 48,960 in annual leave allowance; and RUB 76,163 in

¹ RUB 500 after currency denomination in 1998

maternity allowance. It appears that the judgment of 14 June 2005 and the decision of 22 July 2005 were not appealed against and became final.

12. It appears that on an unspecified date the applicant instituted a separate set of civil proceedings against the company. The applicant submitted that by a judgment of 18 December 2006 the District Court granted her claims against the company. The applicant did not substantiate the existence of these proceedings by any documentary evidence.

B. Enforcement proceedings

13. It appears that in October 1998 the applicant learnt that the company director refused to reinstate her and to pay her compensation in accordance with the judgment of 25 November 1997 (see paragraph 6 above). Thus, in November 1998 she wrote to the President of the District Court asking for enforcement of the judgment in her favour. She renewed her request in May 2001. Apparently, she received no replies to the above letters from the District Court.

14. However, by a letter of 12 October 2001 the regional bailiffs' office informed the applicant that there was no record of any enforcement proceedings against the defendant company. In December 2001 the applicant complained about the situation to the Supreme Court of Russia, which re-directed the matter to the Ryazan Regional Court. In February 2002 the Regional Court informed the applicant that no writ of execution had been issued with the judgment of 25 November 1997 because the applicant had not requested such a writ or sought to enforce the judgment.

15. Upon the applicant's request, on 4 April 2002 the District Court issued a duplicate of the writ of execution. The court established that in 1997 no writ of execution had been issued due to a mistake by the court registry, which had not complied with the RSFSR Code of Civil Procedure (see paragraph 24 below).

16. Enforcement proceedings were then opened on 19 June 2002. Having established that the defendant company had changed its address, in October 2002 the bailiff identified its new location and owners. Having received no information about the progress in the enforcement proceedings, on 18 February 2003 the applicant again complained to the President of the District Court. Upon her complaint, on 31 March 2003 the District Court established that the bailiff had failed (i) to seek judicial authorisation to change the defendant company in the enforcement proceedings to its successor, OOO SIAP, and (ii) to inform the applicant of the progress of the proceedings.

17. On 22 December 2003 the bailiff service informed the applicant that they had not been able to identify any property or assets belonging to the debtor; although it was registered with the tax authority, the company had

not been present at the address given to the bailiff service. On 5 March 2004 the District Court changed the defendant company to OOO SIAP.

18. On an unspecified date, the Russian authorities opened criminal proceedings against the company's director Mr L for failure to enforce the judgments in the applicant's favour. In May 2004 he was questioned by the bailiff and stated that his company had ceased its business activity in 2001 and that he could not liquidate it because he was no longer in possession of the company seal and the articles of incorporation. On 9 June 2004 criminal proceedings against Mr L were discontinued. According to the Government, on an unspecified date Mr L was fined in relation to the non-enforcement of the judgment of 25 November 1997.

19. It appears that on an unspecified date the bailiffs' office joined the enforcement files in respect of the judgment of 25 November 1997 and a new judgment dated 28 October 2003 in the applicant's favour (see paragraph 8 above).

20. In February and April 2004 the bailiff invited the applicant to advance costs for organising a search for the assets of the debtor that could be used to fulfil the obligation stemming from the above judgments. The applicant refused. In May 2004 the bailiff wrote to the applicant stating that no search was needed as the debtor carried out no business activity and had no bank accounts or property.

21. It appears that on an unspecified date, the bailiffs' office joined the enforcement files in respect of the above two judgments and a new judgment of 14 June 2005 in the applicant's favour (see paragraph 11 above).

22. In June 2005 the applicant was informed that the debtor had no funds or assets which could be seized for enforcement purposes.

23. On 16 March 2007 the debtor was removed from the register of legal entities due to its liquidation. On 14 May 2007 the District Court granted the bailiff's request and discontinued the enforcement proceedings in respect of the judgment of 25 November 1997.

II. RELEVANT DOMESTIC LAW

A. RSFSR Code of Civil Procedure

24. Article 210 § 4 of the RSFSR Code of Civil Procedure provided that judgments reinstating an employee who had been unlawfully dismissed or transferred were subject to immediate execution. The court was required to issue a writ of execution after the judgment had become operative, except for cases of immediate enforcement when the writ was to be issued immediately following delivery of the judgment (Article 340 § 1 of the Code). The writ could be handed over to the judgment creditor or, if he or

she so wished, be dispatched by the court for enforcement (Article 340 § 2). The court was required to issue, on its own initiative, a writ of execution in respect of judicial monetary awards in cases of unlawful dismissal; the judgment creditor had to be informed (Article 340 § 3).

25. If the writ had been lost, the court could issue a duplicate upon a party's request (Article 343 of the Code). A court decision, in which a citizen was a party, could be submitted for enforcement within three years from the date when it became final (Article 345 of the Code).

B. Enforcement Proceedings Act (Federal Law no. 119-FZ of 21 July 1997)

26. Pursuant to section 9 of the Act, a bailiff had, at the relevant time, the obligation to accept a writ of execution from the court or a judgment creditor and to open enforcement proceedings. The bailiff was required to issue within three days a decision to open the proceedings and set a time-limit inviting the judgment debtor to voluntarily comply with the judgment. A copy of that decision had to be sent to the relevant court, the judgment creditor and the debtor. If requested by the creditor, the bailiff had to issue a charging order in respect of the debtor's property.

27. The enforcement had to be completed within two months of receipt of the writ by the bailiff (section 13). Writs concerning alimony or salary, reinstatement in a post or other urgent claims had to be enforced without delay.

28. Concerning enforcement of "obligation-to-do" writs, the bailiff set a time-limit for the debtor's voluntary compliance (section 73(1)). A writ for reinstatement in a post had to be enforced immediately and was deemed to have been enforced when the employee resumed work (section 73(2)). Failure to comply with the aforementioned requirements without a valid excuse rendered the debtor liable to a fine or other measure (section 73(3)).

29. If the writ for reinstatement in the post was not enforced, the bailiff had to apply to a court with a claim for the judgment creditor's unpaid salary for the period of non-enforcement (section 74).

THE LAW

I. ALLEGED VIOLATION OF ARTICLE 6 OF THE CONVENTION ON ACCOUNT OF THE LENGTH OF COURT PROCEEDINGS

30. The applicant complained that the court proceedings had exceeded a “reasonable time” in breach of Article 6 § 1 of the Convention, which, in the relevant part, reads as follows:

“In the determination of his civil rights and obligations ... everyone is entitled to a fair... hearing within a reasonable time by [a] ... tribunal ...”

31. The Government indicated that the applicant had lodged her claims in 1997 and that part of them had been determined in the judgment of 25 November 1997 and then in the judgment of 28 October 2003.

32. The applicant maintained her complaint. She contended that the proceedings had remained pending from 22 September 1995 to 18 December 2006.

A. Admissibility

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

B. Merits

1. *Period to be taken into account*

34. The Court first observes that neither party provided documentary proof of the date on which, according to them, the civil proceedings had been initiated. The Court does not find it necessary to determine this matter since it only has competence *ratione temporis* in respect of the proceedings pending since 5 May 1998, the date on which the Convention entered into force in respect of Russia.

35. The Court further observes that the proceedings, which ended with the judgments of 25 November 1997, 28 October 2003 and 14 June 2005, as amended, should be considered as a whole. It is noted that the applicant’s initial statement concerned both pecuniary and non-pecuniary claims (see paragraph 5 above). Irrespective of whether or not the subsequent disjoinder of the claims on two occasions was opportune, the applicant was entitled to have all her initial claims determined by a court within a “reasonable time”. This conclusion is not affected by the fact that the applicant amended her

claims in the course of the proceedings since her situation evolved over time, in particular on account of the company's alleged failure to enforce the judgment of 25 November 1997. Having said that, the Court observes that the parties did not submit a copy of the judgment dated 18 December 2006 which concerned the applicant's new claims, and that it should therefore not be taken into account.

36. In view of the above considerations, the Court finds that the period to be taken into consideration ended on 22 July 2005. As no court proceedings were pending between 19 January and 28 September 2004, this period should not be taken into account.

37. Thus, the court proceedings lasted for approximately six years and six months within the Court's competence *ratione temporis* at one level of jurisdiction.

2. Reasonableness of the period

38. The Court reiterates that the reasonableness of the length of proceedings must be assessed in the light of the circumstances of the case and with reference to the following criteria: the complexity of the case, the conduct of the applicant and the conduct of the relevant authorities (see, among many other authorities, *Frydlender v. France* [GC], no. 30979/96, § 43, ECHR 2000-VII).

39. The Court notes that the case was not particularly complex, although it concerned a number of intertwined claims.

40. The Government did not allege that the applicant significantly contributed to the length of the proceedings. The Court sees no reason to hold otherwise.

41. As regards the conduct of the judicial authorities, the Court observes that from November 1997 to April 2002 there was no judicial decision determining the merits of the applicant's outstanding claims or discontinuing the proceedings regarding them (see *Dubinskaya v. Russia*, no. 4856/03, § 30, 13 July 2006, and *Kabkov v. Russia*, no. 12377/03, § 39, 17 July 2008). As acknowledged by the national court, the loss of the case file was imputable to the authorities. It is uncontested that the applicant learnt about this fact only in April 2002. Before that date she had enquired about the state of the proceedings, but apparently received no replies (see paragraph 7 above).

42. After the case file had been restored in February 2003, the national court granted part of the applicant's claims and decided to sever the remainder for a separate decision. The Court reiterates that it is incumbent on respondent States to organise their legal systems in such a way that their courts can meet the requirements of Article 6 of the Convention, including the obligation to hear cases within a reasonable time (see *Sürmeli v. Germany* [GC], no. 75529/01, § 129, 8 June 2006). Thus, although the Court accepts that in certain circumstances it may be acceptable to sever

various claims in order to process them separately such decision does not absolve the national court from its obligation to comply with the “reasonable time” requirement.

43. Having examined the materials in the case file, the Court concludes that the authorities’ conduct resulted in substantial delays, especially on account of losing the case file and the decision to split the different claims made by the applicant.

44. Having regard to the above circumstances and the Court’s case-law on the matter, the Court considers that the length of the proceedings did not satisfy the “reasonable-time” requirement. Accordingly, there has been a breach of Article 6 § 1 of the Convention.

II. ALLEGED VIOLATION OF ARTICLE 6 OF THE CONVENTION ON ACCOUNT OF THE ENFORCEMENT PROCEEDINGS IN RESPECT OF THE JUDGMENT OF 25 NOVEMBER 1997

45. The applicant complained under Article 6 of the Convention that the authorities’ failure to assist her in obtaining enforcement of the judgment of 25 November 1997 prevented her from being reinstated in her post in the private company and receiving the monetary award made by the court.

A. Submissions by the parties

46. The Government submitted that the applicant’s complaint was incompatible *ratione temporis* since the judgment of 25 November 1997 had been issued before 5 May 1998, the date on which the Convention entered into force in respect of Russia. According to the applicable legislation at the time, the applicant should have applied for a writ of execution, which she did only in 2002. The bailiff service had taken measures to enforce the judgment. Mr L was fined and a criminal case was opened against him. No enforcement was possible because the debtor had ceased its activity in or around 2001. In any event, the debtor was a private company and the State could not be held responsible for its failure to honour the company’s obligations under a court judgment.

47. The applicant maintained her complaint.

B. The Court’s assessment

1. Admissibility (*compatibility ratione temporis*)

48. The Court first observes that the judgment of 25 November 1997 had been issued before 5 May 1998, the date on which the Convention entered into force in respect of Russia. However, the above fact is not determinative

since the main thrust of the applicant's grievance was that the authorities failed to assist her in obtaining its enforcement between late 1997 and 2007.

49. Second, the Court observes, and it is uncontested between the parties, that no writ of execution was submitted in late November or early December 1997. However, what is more important for the assessment of the admissibility of the applicant's complaint is that having learnt in October 1998 about the company's refusal to comply with the above judgment, the applicant complained to the District Court about non-enforcement of the judgment in her favour but apparently received no reply (see paragraph 6 above). It is only after renewed requests for information that she first learnt from the authorities in 2001 that there was no record of enforcement proceedings against the defendant company.

50. The Court reiterates that the applicant's complaint concerns the authorities' alleged failures resulting in the impossibility to enforce the final judgment in her favour. In the Court's opinion, this complaint calls for the global assessment of the efforts made by the authorities during the relevant period of time, and thus is not incompatible *ratione temporis*.

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

2. Merits

52. The Court reiterates that execution of a court judgment is regarded as an integral part of the "trial" under Article 6 of the Convention (see *Hornsby v. Greece*, 19 March 1997, § 40, *Reports of Judgments and Decisions* 1997-II). However, the right of "access to court" does not impose an obligation on a State to execute every judgment of civil character without having regard to particular circumstances of a case (see *Sanglier v. France*, no. 50342/99, § 39, 27 May 2003). The State has a positive obligation to organise a system for enforcement of judgments that is effective both in law and in practice and ensures their enforcement without undue delay (see *Fuklev v. Ukraine*, no. 71186/01, § 84, 7 June 2005). When the authorities are obliged to act in order to enforce a judgment and they fail to do so, their inactivity can engage the State's responsibility on the ground of Article 6 § 1 of the Convention (see *Scollo v. Italy*, judgment of 28 September 1995, § 44, Series A no. 315-C). It is for each State to equip itself with legal instruments which are adequate and sufficient to ensure the fulfilment of positive obligations imposed upon the State (see *Ruianu v. Romania*, no. 34647/97, § 66, 17 June 2003). The Court's only task is to examine whether measures applied by the national authorities in a given case were adequate and sufficient. In the cases, which necessitate actions of a debtor who is a private person, the State – as the possessor of the public force – has to act diligently in order to assist a creditor in execution of a judgment (see

Fociac v. Romania, no. 2577/02, § 70, 3 February 2005, and *Kesyan v. Russia*, no. 36496/02, §§ 64 and 65, 19 October 2006).

53. Having examined the relevant provisions of the Russian legislation (see paragraphs 24 and 26 above), the Court is satisfied that it was the Russian authorities' responsibility to start *ex officio* enforcement proceedings in respect of the judgment of 25 November 1997. This reading of the legislation is comforted by the District Court's decision of 4 April 2002 establishing that in 1997 no writ of execution had been issued due to a mistake by the court registry (see paragraph 15 above).

54. However, in the Court's view, the above considerations are not determinative since even after the applicant had informed the authorities that the debtor refused in 1998 to honour his obligation under the judgment, the authorities took no measures to assist the applicant in obtaining enforcement of the judgment in her favour.

55. As regards the period after the institution of enforcement proceedings in 2002, the Court observes that the debtor had ceased its activity in 2001 and it was therefore not practicable to reinstate the applicant in the post of accountant. As of 2002 the debtor had no property or assets which could be seized in order to enforce the judicial award in respect of non-pecuniary damage. Thus, the authorities' attempts to secure the enforcement of the judgment in the applicant's favour would fail at that stage of the proceedings.

56. In light of the above considerations, the Court concludes that the Russian authorities failed to comply with their obligation to provide the applicant with assistance in the enforcement of the judgment of 25 November 1997 (see *Ciocan and Others v. Romania*, no. 6580/03, §§ 30-38, 9 December 2008; see, by contrast, *Shestakov v. Russia* (dec.), no. 48757/99, 18 June 2002; *Špaček v. the Czech Republic* (dec.), no. 4371/03, 15 January 2008; *Perevozchikova v. Russia* (dec.), no. 7105/02, 3 June 2008; *Lyudmila Smirnova v. Russia*, no. 8910/04, § 15, 3 July 2008; and *Pokutnaya v. Russia* (dec.), no. 26856/04, 3 July 2008).

57. There has therefore been a violation of Article 6 § 1 of the Convention.

III. OTHER ALLEGED VIOLATIONS OF THE CONVENTION

58. Lastly, the applicant complained about non-enforcement of the judgments of 28 October 2003 and 14 June 2005, as amended.

59. With due regard to the findings in paragraph 55 above, the Court considers that it was impracticable to enforce the above judgments. Thus the Court is satisfied that the national authorities complied with their obligation to assist the applicant in their enforcement.

60. 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.

IV. APPLICATION OF ARTICLE 41 OF THE CONVENTION

61. 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

62. The applicant claimed RUB 1,244,623, of which RUB 997,000 represented the sums awarded by national courts (admittedly, in 2003 and 2005). She also claimed 30,000 euros (EUR) in respect of non-pecuniary damage.

63. The Government indicated that the applicant’s pecuniary claim was unrelated to her complaint about non-enforcement of the judgment of 25 November 1997 and was in any event unsubstantiated.

64. The Court observes that the applicant’s pecuniary claim as presented by her does not appear to relate to the Court’s findings made in respect of the judgment of 25 November 1997 or the length of the civil proceedings. In any event, the question of whether the applicant would have been able to obtain the full enforcement of the above judgment, had the national authorities properly assisted her in this task, is a matter of speculation in the circumstances of the case (cf. *Ciocan and Others*, cited above, § 48). The Court therefore rejects the pecuniary claim.

65. On the other hand, making its assessment on an equitable basis and having regard to the nature of the violations found, the Court awards the applicant EUR 5,800 in respect of non-pecuniary damage, plus any tax that may be chargeable.

B. Costs and expenses

66. The applicant also claimed RUB 4,995 for unspecified costs and expenses incurred at the national level.

67. The Government submitted that the claim was unsubstantiated.

68. 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.

C. Default interest

69. 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 length of civil proceedings and the alleged State's failure to assist the applicant in securing enforcement of the judgment of 25 November 1997 admissible and the remainder of the application inadmissible;
2. *Holds* that there has been a violation of Article 6 § 1 of the Convention on account of the length of the civil proceedings;
3. *Holds* that there has been a violation of Article 6 § 1 of the Convention on account of the State's failure to assist the applicant in securing enforcement of the judgment of 25 November 1997;
4. *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 5,800 (five thousand eight 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;
5. *Dismisses* the remainder of the applicant's claim for just satisfaction.

Done in English, and notified in writing on 1 October 2009, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

André Wampach
Deputy Registrar

Christos Rozakis
President