



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

1959 · 50 · 2009

FIRST SECTION

CASE OF PROKHOROVA v. RUSSIA

(Application no. 13869/05)

JUDGMENT

STRASBOURG

8 October 2009

FINAL

08/01/2010

This judgment will become final in the circumstances set out in Article 44 § 2 of the Convention. It may be subject to editorial revision.

In the case of Prokhorova v. Russia,

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

Nina Vajić, *President*,

Anatoly Kovler,

Elisabeth Steiner,

Dean Spielmann,

Sverre Erik Jebens,

Giorgio Malinverni,

George Nicolaou, *judges*,

and André Wampach, *Deputy Section Registrar*,

Having deliberated in private on 17 September 2009,

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

PROCEDURE

1. The case originated in an application (no. 13869/05) 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 Irina Grigoryevna Prokhorova (“the applicant”), on 16 March 2005.

2. The Russian Government (“the Government”) were represented by their Agents, Mr P. Laptev and Ms V. Milinchuk, former Representatives of the Russian Federation at the European Court of Human Rights, and Mr Savenkov, former acting Representative of the Russian Federation at the European Court of Human Rights.

3. On 2 November 2005 the President of the First Section decided to communicate the complaint concerning non-enforcement to the respondent Government. As it appeared from the Government's observations that the judgments of 18 December 1997 and 12 February 1999 were quashed by way of supervisory review, and as the applicant lodged the additional relevant complaint, on 23 October 2007 the President of the First Section decided to communicate the complaint concerning the supervisory review proceedings, too. It was also decided to examine the merits of the application at the same time as its admissibility (Article 29 § 3).

THE FACTS

4. The applicant was born in 1960 and lives in Voronezh.

1. First set of proceedings

5. On 18 December 1997 the Kominternovskiy District Court of Voronezh awarded the applicant arrears in child benefits in the amount of 1,062 Russian roubles (RUB). The judgment was not appealed against and became final. It was not enforced.

6. On 13 December 2000 upon request of the authorities the Voronezh Regional Court quashed the judgment by way of supervisory review and remitted the case for fresh consideration. It based its decision on the ground that another defendant authority should have also been a party to the proceedings.

7. On 4 April 2001 the Kominternovskiy District Court of Voronezh in case no. 2-3638/01 awarded the applicant RUB 2,914.49 as arrears in child benefits. There was no appeal.

8. According to the Government, the applicant had been present at the hearing on 4 April 2001. They submitted a copy of the relevant record of proceedings. The record contains information that the applicant was present at the hearing and supported her claims. The record is signed by the judge who tried the case and by the clerk.

9. According to the applicant, she was not present at the hearings on that date. She provided the Court with a copy of a page from the case-file on which the parties put their signatures attesting the receipt of the court's judgments. The applicant submits that she was not present at the hearings as she did not receive the judgments of 4 April 2001.

10. The judgment of 4 April 2001 is not enforced to date.

2. Second set of proceedings

11. On 12 February 1999 the Kominternovskiy District Court awarded the applicant for arrears in child benefits RUB 3,607. The judgment was not enforced.

12. On 13 December 2000 upon request of the authorities the Voronezh Regional Court quashed the judgment by way of supervisory review and remitted the case for fresh consideration. It based its decision on the ground that the defendant was not present at the hearing and was not duly informed about it.

13. On 4 April 2001 the Kominternovskiy District Court of Voronezh in case no. 2-4195/01 awarded the applicant RUB 7,408.63 of arrears in child benefits. The judgment was not appealed against.

14. The Government, like in respect of the previous case, asserted that the applicant had been present at the hearing and submitted a copy of the record of proceedings signed by a judge and a clerk.

15. The applicant maintained that she had not been present.

16. The judgment 4 April 2001 was enforced on 13 December 2005.

3. Third set of proceedings

17. On 24 March 2000 the Tsentralnyy District Court of Voronezh awarded the applicant RUB 493.28 in child benefits. The judgment was not appealed against.

18. It was enforced only on 13 December 2005.

THE LAW

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

19. The applicant complained under Article 6 of the Convention and Article 1 of Protocol No. 1 that the judgments in her favour of 18 December 1997, 4 April 2001 (in the case no. 2-3638/01), 12 February 1999, 4 April 2001 (in the case no. 2-4195/01) and 24 March 2000 were not duly enforced.

20. 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. [...]”

21. The Government contested that argument. At the same time they acknowledged that the judgment of 4 April 2001 (case no. 2-3638/01) was not enforced (see para. 40 below).

A. Admissibility

22. 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

23. 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 was the nature of the award (see *Raylyan v. Russia*, no. 22000/03, § 31, 15 February 2007).

24. The judgments of 18 December 1997 and of 12 February 1999 were not enforced during approximately three years and a year and ten months respectively, before they were quashed by way of supervisory review on 13 December 2000. The judgment of 4 April 2001 (in the case no. 2-3638/01) is not enforced to date. The judgments of 24 March 2000 and of 4 April 2001 in the case no. 2-4195/01 were enforced only on 13 December 2005, i.e. they were not enforced during about five years and nine months, and four years and eight months respectively.

25. All the judgments were not difficult to enforce as they required only bank transfers. The applicant did not obstruct the enforcement.

26. The foregoing considerations are sufficient to enable the Court to conclude that there has been a violation of Article 6 § 1 of the Convention and Article 1 of Protocol No. 1 in respect of non-enforcement of the final judgments in the applicant's favour.

II. ALLEGED VIOLATION OF ARTICLE 6 § 1 OF THE CONVENTION AND OF ARTICLE 1 OF PROTOCOL No. 1 ON ACCOUNT OF SUPERVISORY REVIEW

27. The applicant complained under Article 6 of the Convention that the judgments of 18 December 1997 and 12 February 1999 had been quashed by way of supervisory review on 13 December 2000. She asserted that she had not been informed about the supervisory review proceedings, or present at the subsequent hearings of 4 April 2001, after the remittal of the cases for new consideration. She submitted that she had known about the quashing only after the present case had been communicated to the Government. The Court will examine this complaint under Article 6 § 1 of the Convention and Article 1 of Protocol No. 1 (cited above).

28. The Government contested the applicant's arguments. They argued, *inter alia*, that the applicant had known about the quashing at least on 4 April 2001, when she had participated at the hearings after the remittal of the cases. They submitted as evidence copies of the minutes of those hearings, signed by the judge and the clerk (see paras. 8 and 14). Therefore she had missed the six-month time-limit, as she had not lodged her complaint before the Court until 16 March 2005.

29. The Court firstly reiterates that judges are presumed to abide by their oaths and duties (*Kraska v. Switzerland*, 19 April 1993, §§ 32, 33, Series A no. 254-B). It secondly notes that, as a rule, it cannot establish an authority's fault when neither the applicant nor the Government have adduced any evidence in support of their assertions and there is no other information before the Court which would enable it to resolve the disputed issue of fact (*Goddi v. Italy*, 9 April 1984, § 29, Series A no. 76).

30. In the present case the Government have submitted the minutes of the hearings of 4 April 2001, signed by the judge, according to which the applicant was present.

31. The only document the applicant has provided as an evidence of her absence at the hearings was a copy of a page from the case-file on which the parties put their signatures acknowledging the receipt of the court judgments (see para. 9). However, it does not contain any information as to the attendance at the hearings. Absence of the applicant's signature attesting her receipt of the judgments of 4 April 2001 does not by itself mean she was absent at the hearings on that date.

32. Even assuming the difficulty for the applicant to prove her absence at the hearing, in view of the principles given above (see paragraph 29) the Court gives credit to the Government's submissions. The Court therefore cannot consider the applicant's assertions as sufficiently established and concludes that the complaint was lodged out of time.

33. It follows that this complaint must be rejected as inadmissible in accordance with Article 35 §§ 1 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 2,914.49 Russian roubles (RUB) awarded by the judgment of 4 April 2001 (case no. 2-3638/01) in respect of pecuniary damage and 6,200 euros (EUR) in respect of non-pecuniary damage.

36. The Government noted that no satisfaction should be awarded since there was no violation of the Convention. At the same time in the letter of 26 June 2008 they acknowledged that, as regards the applicant's claim for pecuniary damage in amount RUB 2,914.49, the judgment of 4 April 2001

(case no. 2-3638/01) was not enforced and they were taking steps to enforce it.

37. The Court recalls that in general the most appropriate form of redress in respect of violations found is to put the applicant as far as possible in the position he or she would have been in if the Convention requirements had not been disregarded (see, among many other authorities, *Dovguchits v. Russia*, no. 2999/03, § 48, 7 June 2007). This principle applies in this application, having regard to the violations found.

38. In the present case the applicant was prevented from receiving money she had a right to receive under the judgment of 4 April 2001 (case no. 2-3638/01).

39. Therefore the Court considers that the Government shall secure, by appropriate means, the enforcement of the judgment of 4 April 2001 in the case no. 2-3638/01 (see *Lesnova v. Russia*, no. 37645/04, § 25, 24 January 2008).

40. As to non-pecuniary damage, the Court considers that the applicant must have suffered distress and frustration resulting from the authorities' failure to duly enforce the judgments in her favour. However, the amount claimed appears excessive. Making its assessment on an equitable basis, the Court awards the applicant EUR 3,900 in respect of non-pecuniary damage, plus any tax that may be chargeable.

B. Costs and expenses

41. The applicant made no relevant claims. Accordingly, the Court will make no award under this head.

C. Default interest

42. 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 complaint concerning non-enforcement admissible and the complaint concerning supervisory review inadmissible;
2. *Holds* that there has been a violation of Articles 6 of the Convention and of Article 1 of Protocol No. 1 in respect of non-enforcement of the final judgments in the applicant's favour;

3. *Holds*

- (a) that the respondent State, within three months from the date on which the judgment becomes final in accordance with Article 44 § 2 of the Convention, shall secure, by appropriate means, the enforcement of the judgment of 4 April 2001 in the case no. 2-3638/01;
- (b) that the respondent State is to pay the applicant in respect of non-pecuniary damages, 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), to be converted into Russian roubles at the rate applicable at the date of settlement, plus any tax that may be chargeable;
- (c) 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;

4. *Dismisses* the remainder of the applicant's claim for just satisfaction.

Done in English, and notified in writing on 8 October 2009, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

André Wampach
Deputy Registrar

Nina Vajić
President