



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

FIRST SECTION

CASE OF TSAREVA v. RUSSIA

(Application no. 43327/02)

JUDGMENT

STRASBOURG

1 April 2010

FINAL

01/07/2010

This judgment has become final under Article 44 § 2 of the Convention. It may be subject to editorial revision.

In the case of Tsareva 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 11 March 2010,

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

PROCEDURE

1. The case originated in an application (no. 43327/02) 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 Margarita Nikolayevna Tsareva (“the applicant”), on 4 December 2002.

2. The Russian Government (“the Government”) were represented by Mr P. Laptev and subsequently by Ms V. Milinchuk, both former representatives of the Russian Federation at the European Court of Human Rights.

3. On 11 May 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

THE CIRCUMSTANCES OF THE CASE

A. Initial award and its quashing

4. The applicant was born in 1964 and lives in Magadan, the Magadan Region.

5. The applicant sued the Magadan Regional Hospital and the Magadan Town Children Hospital for medical negligence in respect of her minor son.

6. On 28 November 2001 the Magadan Town Court of the Magadan Region awarded the applicant 150,000 Russian roubles (RUB) of non-pecuniary damages and RUB 8 for the court fee against the Magadan Regional Hospital and dismissed the claims against the Magadan Town Children Hospital as unfounded.

7. On 22 January 2002 the Magadan Regional Court upheld the judgment on appeal. The award remained unenforced.

8. On 13 June 2002, upon the Magadan Regional Hospital's request, the Presidium of the Magadan Regional Court quashed by way of supervisory review the judgment of 28 November 2001, as upheld on 22 January 2002, in the part related to the award made in favour of the applicant, because the lower courts incorrectly assessed the facts of the case. The court remitted the case in that part for a fresh examination in the first instance and upheld the remainder of the lower courts' findings.

B. Applicant's request for annulment of the judgment in part and subsequent proceedings

9. On 13 January 2002 the applicant lodged a request for annulment of the judgment of 28 November 2001 in the part concerning the Magadan Town Children Hospital's liability on account of discovery of the new circumstances, i.e. evidence of the Town Hospital's liability.

10. On 17 December 2003 the Magadan Town Court allowed her request, annulled the judgment of 28 November 2001 as amended by the ruling of 13 June 2002 in the part concerning the rejection of the applicant's claims against the Magadan Town Children Hospital and reopened the case.

11. On the same date the Town Court partially granted the applicant's claims against both defendants and awarded her RUB 80,000 to be paid by the Magadan Regional Hospital and RUB 80,000 to be paid by the Magadan Town Children Hospital in non-pecuniary damages.

12. On 3 February 2004 the Magadan Regional Court upheld the judgment on appeal and it acquired legal force.

13. On 24 May 2004 the Magadan Regional Hospital and on 26 October and 2 November 2004 December 2004 the Magadan Town Children Hospital each paid the non-pecuniary damages to the applicant in the amounts specified by the domestic court.

14. The judgment debt in the amount of RUB 8 awarded for the court fee on 28 November 2001, has not been enforced. According to the Government, since 2006 the authorities have made numerous attempts to contact the applicant and pay the awarded sum, but the applicant has not provided her banking details.

THE LAW

I. THE GOVERNMENT'S OBJECTION AS TO ABUSE OF PETITION

15. The Government submitted that the applicant had not informed the Court of the execution of the judgment in December 2004. Such failure amounted to an abuse of the right of application within the meaning of Article 35 § 3 of the Convention which, insofar as relevant, reads as follows:

“The Court shall declare inadmissible any individual application submitted under Article 34 which it considers incompatible with the provisions of the Convention or the Protocols thereto, manifestly ill-founded, or an abuse of the right of application”.

16. The Court reiterates that, except in extraordinary cases, an application may only be rejected as abusive if it was knowingly based on untrue facts (see *Akdivar and Others v. Turkey*, 16 September 1996, *Reports of Judgments and Decisions* 1996-IV, §§ 53-54; *I.S. v. Bulgaria* (dec.), no. 32438/96, 6 April 2000; *Varbanov v. Bulgaria*, no. 31365/96, § 36, ECHR 2000-X). The Court further reiterates that applicants should keep it informed of all circumstances relevant to the application.

17. The Court notes that the applicant has indeed failed to inform it without undue delay of developments in her case. However, in the circumstances of the present case, it does not consider this failure, although regrettable, to amount to an abuse of the right of petition (see *Plekhova v Russia*, no. 42752/04, § 19, 31 January 2008). The Court therefore rejects the Government's objection.

II. ALLEGED VIOLATION OF ARTICLE 6 OF THE CONVENTION ON ACCOUNT OF THE QUASHING OF THE JUDGMENT OF 28 NOVEMBER 2001

18. The applicant complained that the quashing of the final judgment in her favour violated her right to a court as provided in Article 6 of the Convention. Article 6 in its relevant part reads as follows:

Article 6

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

19. The Government argued that the supervisory review had been justified because the lower courts incorrectly assessed the evidence before them. Annulment of the binding judgment had been legitimate in a democratic society and had been exercised so as to strike a fair balance between the interests of the applicant and the need to ensure the

effectiveness of the system of justice. In any event, the applicant's claims had been granted in the subsequent proceedings and she had received a bigger sum than awarded by the judgment of 28 November 2001.

20. The applicant maintained her claims.

A. Admissibility

21. 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

22. The Court reiterates its constant case-law to the effect that the quashing by way of supervisory review of a judicial decision which has become final and binding may render the litigant's right to a court illusory and infringe the principle of legal certainty (see, among many other authorities, *Brumărescu v. Romania* [GC], no. 28342/95, § 62, ECHR 1999-VII; *Ryabykh v. Russia*, no. 52854/99, §§ 56-58, 24 July 2003). Departures from that principle are justified only when made necessary by circumstances of a substantial and compelling character (see, *mutatis mutandis*, *Ryabykh*, cited above, § 52).

23. Turning to the present case, the Court observes that the judgment of 28 November 2001 in the part awarding the applicant damages was set aside by way of a supervisory review solely on the ground that the lower court had incorrectly assessed the circumstances of the case. The Court reiterates its constant approach that in the absence of a fundamental defect in the previous proceedings a party's disagreement with the assessment made by the first instance court is not a circumstance of a substantial and compelling character warranting the quashing of a binding and enforceable judgment and re-opening of the proceedings on the applicant's claim (see *Dovguchits v. Russia*, no. 2999/03, § 30, 7 June 2007; and *Kot v. Russia*, no. 20887/03, § 29, 18 January 2007). The Government did not put forward any arguments which would enable the Court to reach a different conclusion in the present two cases.

24. The Court further notes that as a result of the proceedings following the quashing, the applicant's claim was partially granted on 17 December 2003 by the Magadan Town Court. The Court considers, however, that this fact did not by itself efface the effects of legal uncertainty the applicant had to endure after the judgment of 28 November 2001 had been quashed (see *Zasurtsev v. Russia*, no. 67051/01, § 51, 27 April 2006).

25. There has been, accordingly, a violation of Article 6 § 1 of the Convention on account of the partial quashing of the judgment of 28 November 2001, as upheld on appeal on 22 January 2002.

III. ALLEGED VIOLATION OF ARTICLE 6 OF THE CONVENTION
AND ARTICLE 1 OF PROTOCOL No. 1 ON ACCOUNT OF
DELAYED ENFORCEMENT OF THE JUDGMENT OF
17 DECEMBER 2003

26. The applicant complained under Article 6 of the Convention and Article 1 of Protocol No. 1 to the Convention about the prolonged failure to execute the judgment of 17 December 2003 in her favour. Article 6, in its relevant part, is cited above. Article 1 of Protocol No. 1, in so far as relevant, provides as follows:

“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...”

27. The Government submitted that the delay of execution did not exceed nine months and was reasonable. The applicant maintained her claim.

28. The Court observes that the judgment of 17 December 2003 was executed within 8 months and 22 days from the date of its entry into force. Such a delay does not appear excessive and is compatible with the Convention requirements (see *Presnyakov v. Russia* (dec.), no. 41145/02, 10 November 2005, *Portnova v. Russia*, no. 34428/04, § 15, 29 April 2008, and *Fedorov and Others* (dec.), no. 33382/04, 17 January 2008).

29. 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. ALLEGED VIOLATION OF ARTICLE 6 OF THE CONVENTION
AND ARTICLE 1 OF PROTOCOL No. 1 ON ACCOUNT OF
NON-ENFORCEMENT OF THE JUDGMENT OF 28 NOVEMBER
2001

30. The applicant further complained under Articles 6 of the Convention and Article 1 of Protocol No. 1, both cited above, about non-enforcement of the judgment of 28 November 2001.

A. Admissibility

31. 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

32. The Court notes that in the present case the judgment of 28 November 2001 awarding the applicant with the enforceable claim was quashed in part on supervisory review and upheld by the supervisory instance as to the remainder. Thus, as regards the part of the award in the amount of RUB 150,000 which was annulled on 13 June 2002, the final binding judgment in respect of that sum had ceased to exist on the latter date. The remainder of the award in the amount of RUB 8.40 had been upheld by the supervisory instance and had not been modified in the subsequent proceedings. Therefore, the judgment of 28 November 2001 in that part has remained binding till present. Accordingly, the Court will examine separately the applicant's complaints in respect of the two parts of the judgment debt.

1. The part of the award quashed on 13 June 2002

33. As regards the award of RUB 150,000, it has remained unenforced for 4 months and 20 days until 13 June 2002, the date of its annulment.

34. The Court observes that the principles that a final judicial decision must not be called into question and should be enforced represent two aspects of the same general concept, namely the “right to a court” (see *Ryabykh*, cited above, §§ 55-57; *Burdov v. Russia*, no. 59498/00, § 34, ECHR 2002-III). In the present case the non-enforcement was due, to a large extent, to the fact that the judgment to be enforced was quashed in course of the supervisory review proceedings. Having regard to this consideration, as well as to the finding above concerning violation of the applicant's rights under Article 6 §1 on account of the quashing of the judgment in her favour, the Court does not consider it necessary, in the circumstances, to examine the applicant's complaint concerning the non-enforcement of that judgment separately (see, *mutatis mutandis*, *Sobelin and Others v. Russia*, nos. 30672/03 et seq., §§ 67-68, 3 May 2007).

2. *The remainder of the award*

35. As regards the amount of RUB 8.40 (approximately 0.3 euros (EUR)), it appears that the judgment debt in this part has not been enforced to date.

36. The Court reiterates that, to decide if the delay was reasonable, it 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). While it is undisputed that the delay of execution was rather long, the Court has particular regard to the relative modesty of the unpaid sum. As regards the conduct of the applicant and the authorities, the Court notes the Government's argument that since 2006 the applicant refused to provide her banking details to the respondent authority. According to the Court's established case-law, it is not unreasonable that the authorities request the applicant to produce additional documents, such as bank details, to allow or speed up the execution of a judgment (see, *mutatis mutandis*, *Akashev v. Russia*, no. 30616/05, § 22, 12 June 2008).

37. In these particular circumstances, and having particular regard to the amount of the award at stake, the Court does not consider it necessary to examine the applicant's complaint concerning the non-enforcement of this part of the award separately.

V. 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 5,000 euros (EUR) of pecuniary damage caused by the delayed enforcement of the judgments in her favour and EUR 300,000 in respect of non-pecuniary damage. The Government contested the claims as manifestly unreasonable and excessive.

40. As regards the claims for pecuniary damage, the Court considers that there is no causal link between the amount claimed and the violation found and therefore rejects her claims under this head. At the same time, the Court considers that the applicant suffered distress and frustration because of the supervisory review of the judgment. Making its assessment on an equitable basis, it awards the applicant EUR 3,000 in respect of non-pecuniary

damage, plus any tax that may be chargeable, and dismisses the remainder of her claims for just satisfaction.

B. Costs and expenses

41. The applicant did not claim costs or expenses and there is accordingly no call to make an 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 under Article 6 of the Convention concerning the non-enforcement and the quashing of the judgment of 28 November 2001 on supervisory review admissible and the remainder of the application inadmissible;
2. *Holds* that there has been a violation of Article 6 of the Convention on account of the quashing of the judgment in the applicant's favour by way of the supervisory review;
3. *Holds* that there is no need to examine the complaint under Article 6 of the Convention and Article 1 of Protocol No. 1 about non-enforcement of the judgment of 28 November 2001;
4. *Decides*
 - (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 3,000 (three thousand euros) in respect of non-pecuniary damage, plus any tax that may be chargeable to the applicant, 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;
5. *Dismisses* the remainder of the applicant's claim for just satisfaction.

Done in English, and notified in writing on 1 April 2010, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

André Wampach
Deputy Registrar

Christos Rozakis
President