



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

FIRST SECTION

DECISION

AS TO THE ADMISSIBILITY OF

Application no. 38712/03
by Nikolay Ivanovich SIROTIN
against Russia

The European Court of Human Rights (First Section), sitting on 14 September 2006 as a Chamber composed of:

Mr C.L. ROZAKIS, *President*,

Mrs N. VAJIĆ,

Mr A. KOVLER,

Mrs E. STEINER,

Mr K. HAJIYEV,

Mr D. SPIELMANN,

Mr S.E. JEBENS, *judges*,

and Mr S. NIELSEN, *Section Registrar*,

Having regard to the above application lodged on 24 October 2003,

Having regard to the decision to apply Article 29 § 3 of the Convention and examine the admissibility and merits of the case together.

Having regard to the observations submitted by the respondent Government and the observations in reply submitted by the applicant,

Having deliberated, decides as follows:

THE FACTS

The applicant, Mr Nikolay Ivanovich Sirotin, is a Russian national, who was born in 1951 and lives in the village of Donskoy of the Zernogradskiy District of the Rostov-on-Don Region. The respondent Government are represented by Mr P. Laptev, the Representative of the Russian Federation at the European Court of Human Rights.

The facts of the case, as submitted by the parties, may be summarised as follows.

In 2003 the applicant lodged a civil action against the Zernogradskiy District Social Security Service (hereafter – the Service), seeking payment of pension arrears and increase of his monthly pension.

On 2 June 2003 the Zernogradskiy District Court of the Rostov Region awarded the applicant 14,687.50 Russian roubles (RUR, approximately 409 euros) in pension arrears, and monthly payments of 3,937.50 RUR (approximately 110 euros). The court also held that the applicant's monthly pension was to be adjusted in line with the minimum monthly wage.

On 16 July 2003 the Rostov-on-Don Regional Court upheld the judgment.

Enforcement proceedings were instituted on 4 August 2003. However, the Service continued to underpay the applicant monthly pension.

At the time the application was communicated, the applicant claimed that the judgment of 2 June 2003 remained unenforced.

According to the Government, on 11 December 2003 the Zernogradskiy District Social Security Service credited RUR 24,750 to the applicant's account. Since January 2004 the applicant has received monthly pension of RUR 3,937.50.

COMPLAINTS

1. The applicant complained under Article 6 of the Convention about non-enforcement of the judgment of the Zernogradskiy District Court of 2 June 2003.

2. The applicant complained under Articles 6, 13, 14, 17 and 34 of the Convention that the domestic courts erred in interpretation and application of the domestic and international law, including the European Convention of Human Rights, that they incorrectly calculated his monthly pension and arrears and that they awarded more significant amounts to other plaintiffs in the cases similar to his.

THE LAW

1. The applicant complained under Article 6 of the Convention about the authorities' failure to enforce the judgment of 2 June 2003, as upheld on appeal on 16 July 2003. The relevant parts of this provision read 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...”

The Government submitted that the judgment had been fully enforced in December 2003 when the applicant had received a lump sum in pension arrears. He was paid a monthly pension in the amount established by the judgment of 2 June 2003. Moreover, the applicant had refused to accept a friendly settlement proposed by the Government and thus can no longer claim to be a victim of the alleged violation. The Government invited the Court to strike the application out of its list of cases.

The applicant responded that the judgment of 2 June 2003 remained unenforced because his monthly pension had not been adjusted in line with the minimum monthly wage. He submitted that in 2004 the minimum monthly wage in the Rostov Region increased by 1.16 times.

The Court finds that it is not necessary to examine the Government's argument concerning the applicant's refusal to conclude a friendly settlement as the complaint about non-enforcement of the judgment of 2 June 2003 is in any event inadmissible for the following reasons.

The Court observes that on 2 June 2003 the applicant obtained a judgment by which the Service, a State body, was to pay him a lump sum in pension arrears and monthly pension in a particular amount. The Service was also to adjust the monthly pension. The judgment became enforceable on 16 July 2003. On 11 December 2003 the applicant was paid a lump sum in pension arrears and a sum representing the difference between the amount of monthly pension awarded by the judgment of 2 June 2003 and the pension actually paid to the applicant from June 2003 to January 2004. Since January 2004 the applicant has regularly received the monthly pension in the amount awarded by the judgment of 2 June 2003.

The Court notes the applicant's argument that the judgment remained unenforced because the monthly pension had not been increased. The Government submitted that the applicant's monthly pension was paid to him in the amount established by the judgment of 2 June 2003. The Court's role in this matter is essentially subsidiary to that of the domestic authorities who are better placed and equipped for assessment and application of a method of calculation of the applicant's monthly pension, including its adjustment to the minimum monthly wage. Institution by the applicant of the domestic court proceedings with a view to determining an amount of the increased monthly pension would have offered more prospect of establishing the facts and throwing light on the conduct reasonably to be expected from the Service in executing the judgment of 2 June 2003. However, the applicant did not apply to the domestic courts for recalculation of his monthly pension with the view to adjusting it in line with the increase in the minimum monthly wage. In absence of a domestic court finding on the matter, the Court is not persuaded on the materials available before it that the applicant's allegations are correct and it lends credence to the Government's submissions.

Thus, the Court considers that the judgment of 2 June 2003, as upheld on appeal on 16 July 2003, was fully enforced on 11 December 2003 when the applicant, for the first time, received the monthly pension in the amount set by that judgment. It thus remained unenforced for approximately five months.

Having regard to its case-law on the subject (see, e.g., *Burdov v. Russia*, no. 59498/00, §§ 33-42, ECHR 2002-III; *Grishchenko v. Russia* (dec.), no. 75907/01, 8 July 2004; *Denisov v. Ukraine* (dec.), no. 18512/02, 1 February 2005; *Presnyakov v. Russia* (dec.), no. 41145/02, 10 November 2005), the Court considers that the delay in the enforcement of the judgment in the circumstances of the present case cannot be said to have impaired the essence of the applicant's right to a court.

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

2. Invoking Articles 6, 13, 14, 17 and 34 of the Convention, the applicant further complained about incorrect interpretation and application of the domestic and international law and unfair outcome of the proceedings.

However, having regard to all the materials in its possession, and in so far as these complaints fall within its competence *ratione materiae*, 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. 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.

For these reasons, the Court unanimously

Decides to discontinue the application of Article 29 § 3 of the Convention and *declares* the application inadmissible.

Søren NIELSEN
Registrar

Christos ROZAKIS
President