CONSEIL DE L'EUROPE

COUNCIL OF EUROPE

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

FIRST SECTION

DECISION

AS TO THE ADMISSIBILITY OF

Application no. 75907/01
by Lyudmila GRISHCHENKO
against Russia

The European Court of Human Rights (First Section), sitting on 8 July 2004 as a Chamber composed of:

Mr C.L. ROZAKIS, *President*,
Mr P. LORENZEN,
Mr G. BONELLO,
Mr A. KOVLER,
Mr V. ZAGREBELSKY,
Mrs E. STEINER,
Mr K. HAJIYEV, *judges*,
and Mr S. QUESADA, *Deputy Section Registrar*,

Having regard to the above application lodged on 24 January 2001,

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, Ms Lyudmila Leonidovna Grishchenko, is a Russian national, who was born in 1959 and lives in Cherkessk in the Karachayevo-Cherkessia Republic. She is represented before the Court by Mr R. Sarkitov, a lawyer practising in Cherkessk. The respondent Government are represented by Mr P. Laptev, Representative of the Russian Federation at the European Court of Human Rights.

A. The circumstances of the case

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

On 29 June 1992 the applicant obtained a special-purpose settlement order (*целевой расчетный чек*). By its terms the Government undertook to give her a Russian-made VAZ passenger car within four months.

As no cars were available, the applicant was placed on the waiting list under no. 177. She renewed her request on several occasions, but it could not be granted for want of cars.

On 5 May 1998 the Convention entered into force in respect of Russia.

In January 1999 the applicant was offered a Moskvich car or compensation of RUR 60,500. She turned the offer down because a Moskvich was cheaper than a VAZ and the compensation was inadequate.

On 8 February 2000 the applicant brought a civil action against the Russian Government. She sought to be granted a VAZ car or to recover the market value thereof.

On 26 February 2001 the Cherkesskiy District Court (*Черкесский районный суд КЧР*) allowed the applicant's claim and awarded her RUR 77,206 (EUR 2,700) for the value of the car and RUR 3,000 (EUR 115) in court fees.

Unhappy about the amount of the award, the applicant appealed against the judgment. She submitted, in particular, that the court assessed the value of the car on the basis of the amount agreed between the car manufacturer and the federal government, whereas the car price at her local dealership was at least RUR 20,000 higher.

On 3 April 2001 the Supreme Court of the Karachayevo-Cherkessia Republic upheld the judgment of 26 February 2001.

On 24 April 2001 the applicant obtained a writ of execution and forwarded it to the Ministry of Finance of the Russian Federation. According to the Government, on an unspecified date the writ was returned to the applicant as the debtor's name was indicated incorrectly.

On 27 February 2002 the applicant resubmitted the writ, together with copies of the necessary documents. On 28 March 2002 its receipt was acknowledged.

On 23 May 2002 the Russian Treasury enforced the judgment and credited RUR 80,206 to the applicant's bank account.

B. Relevant domestic law

Redemption of State commodity bonds

The Federal Law "On State commodity bonds" (no. 86-FZ of 1 June 1995, *ФЗ «О государственных долговых товарных*

обязательствах») provided that the State commodity bonds, including special-purpose settlement orders, were to be recognised as the State internal debt (section 1). They were to be enforced in accordance with the general principles of the Russian Civil Code (section 2). The relevant parts of section 3 read as follows:

> "The Government of the Russian Federation shall draft the State Programme for the redemption of the State internal debt... The Programme shall provide for the terms of redemption of State commodity bonds that would be convenient for citizens, including, of their choice: provision of goods indicated in... special-purpose bonds for the purchase of passenger cars...; redemption of State commodity bonds at consumer prices prevailing at the moment of the redemption..."

On 2 June 2000, section 3 of the law was amended to read, in the relevant parts, as follows:

> "To establish that the repayment of the State internal debt of the Russian Federation under State commodity bonds... is carried out in 2001-2004 in accordance with the State Programme...
>
> To set, in the above-mentioned Programme, the following sequence and terms of redemption of State commodity bonds, depending on the type of the bond:
>
> ...in respect of bearers of special-purpose settlement orders that gave the right to purchase passenger cars in 1991 and 1992 – payment of monetary compensation equal to the value of the car described in the order, as determined in co-ordination with car manufacturers at the moment of redemption. The redemption period runs from 1 January 2001 to 31 December 2002."

According to the Protocol on co-ordination of market sale prices for VAZ cars signed by the Deputy Ministers of Industry, Finance and Economic Development and the executive director of the AvtoVAZ car plant, the price of a VAZ-2107 car was 77,206 Russian roubles during the period between 1 January and 31 March 2001.

On 27 December 2000 the Government approved, by Resolution no. 1006, the State Programme for the redemption of the State internal debt of the Russian Federation arising from State commodity bonds in the period of 2001-2004. Paragraph 2 of the Programme set out that the State commodity bonds were to be redeemed by way of payment of pecuniary compensation.

COMPLAINTS

The applicant complained under Article 6 of the Convention and Article 1 of Protocol No. 1 to the Convention about the insufficiency of the award made by the domestic courts and non-enforcement of the judgment of 26 February 2001.

THE LAW

1. The applicant complained under Article 6 of the Convention and Article 1 of Protocol No. 1 that the domestic courts had failed to award her the VAZ passenger car in kind and that the amount of the award had been lower than the real market value of the car to which she was entitled under the State commodity bond.

The relevant parts of Article 6 provide as follows:

> "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 reads 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.
>
> 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) To the extent that the applicant complained about allegedly incorrect findings of the domestic courts about the value of the car, the Court recalls that it is not called upon to examine the alleged errors of facts and law committed by the domestic judicial authorities, insofar as no unfairness of the proceedings can be detected and the decisions reached cannot be considered arbitrary. On the basis of the materials submitted by the applicant, the Court observes that in the present case the domestic courts at two levels of jurisdiction carefully examined the materials in their possession and reached reasoned conclusions as to the merits of the applicant's claim. Throughout the proceedings the applicant was fully able to state her case and contest the evidence. She was assisted by a lawyer of her own choosing. The applicant has therefore not substantiated her allegations of unfairness.

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.

(b) Insofar as the applicant complained that the outcome of the proceedings impaired her property rights, the Court observes at the outset that the applicant was a bearer of a State commodity bond. The distinctive feature of the bond (and the reason why it was called "special-purpose" or "commodity" bond) was that it certified, in addition to having a certain monetary denomination, the bearer's entitlement to receive a Russian-made VAZ car without any additional payments (see, by way of contrast with special-purpose savings accounts for the purchase of a car, *l'Association et*

la Ligue pour la protection des acheteurs d'automobiles, Abîd and 646 Others v. Romania (dec.), no. 34746/97, 10 July 2001). The shortages that plagued the Russian economy in the early 1990s had made enforcement of the bond impossible within the original time frame and its maturity date was subsequently put off on several occasions. The Court notes, in this connection, that it has no competence *ratione temporis* to examine the alleged violations of the applicant's property rights before 5 May 1998, i.e. the date when the Convention entered in force in respect of the respondent State.

The Court further observes that in the immediate post-ratification period the applicant's property rights arising from the commodity bond were regulated by the 1995 framework law. It recognised, as a matter of principle, that the State owed a debt to the applicant under the bond and that the debt could be settled by either granting a car or paying a sum of money, at the applicant's choice. However, the actual scope of the State's obligations and, more importantly, the manner of their discharge were not fixed. Implementation was delegated to the Government that was mandated to fix the terms and conditions of the redemption in a special State programme. As regards the period following the ratification of the Convention and until the Government adopted the implementation programme for the law, the Court considers that the then effective provisions of the legislation merely furnished the applicant with the hope that the obligations under the bond would be honoured. However, the terms of redemption were not defined and the claim under the bond was therefore not sufficiently established to be enforceable. Accordingly, that claim did not constitute a "possession" within the meaning of Article 1 of Protocol No. 1 (cf. *Stran Greek Refineries and Stratis Andreadis v. Greece*, judgment of 9 December 1994, Series A no. 301-B, p. 84, § 59).

In 2000 the implementation programme was adopted and the law was amended accordingly. It provided, in particular, that bearers of commodity bonds were no longer entitled to receive cars in kind and that they were instead reimbursed at standard car prices agreed upon by the Government and car manufacturers. As a result of the proceedings before the domestic courts, they awarded the applicant the amount determined under the implementation programme as the standard price of the car in her bond. The Court observes that the applicant was able to take advantage of the redemption procedure. It is not disputed that, as a result of successful litigation, she obtained the full amount fixed in the relevant legislation, without any deduction or discount. Insofar as the applicant's complaint can be understood as a complaint about the alleged reduction in the scope of guarantees offered by the State, the Court recalls that neither the amended text of the 1995 law nor its implementation programme provided for a possibility to receive a car in kind. In any event, Article 1 of Protocol No. 1 does not encompass the right to acquire property (see *l'Association et la*

Ligue... v. Romania, cited above; *Rudzińska v. Poland* (dec.), no. 45223/99, ECHR 1999-VI). Therefore the Court finds that there was no interference with the applicant's rights under Article 1 of Protocol No. 1.

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

2. The applicant complained under the same Convention provisions that the judgment of 26 February 2001 had not been enforced.

The Government submit that the first writ of execution which the applicant sent to the Ministry of Finance on 24 April 2001 could not be enforced because it contained a discrepancy as to the debtor's name. That writ was therefore returned to the applicant. After a corrected writ was received on 28 March 2002, the judgment was executed on 23 May 2002. The Government invite the Court to dismiss the applicant's complaint as manifestly ill-founded.

The applicant submits that, pursuant to the domestic law, a judgment must be executed within two months. She submitted a writ of execution in April 2001. On 19 November 2001 she received a letter from a deputy minister of finance that did not mention any errors in the writ. It was not until much later that the writ was returned because of discrepancies. She does not dispute that the judgment of 26 February 2001 was executed, but she considers that the length of the enforcement proceedings was excessive.

(a) The Court notes, and it is not contested by the parties, that the judgment of 26 February 2001 was executed in full. Admittedly, a delay in the execution of a judgment may be justified in particular circumstances (see *Burdov v. Russia*, no. 59498/00, § 35, ECHR 2002-III). It remains therefore to be determined whether the delay was such as to amount to a breach of the applicant's right to benefit from the judgment debt (see *Timofeyev v. Russia*, no. 58263/00, § 37, 23 October 2003). In other words, the Court has to examine whether the length of the enforcement stage of the civil proceedings, to which the applicant had been a party, exceeded the "reasonable time" requirement in Article 6 § 1 (see, *mutatis mutandis*, the *Di Pede v. Italy* and *Zappia v. Italy* judgments of 26 September 1996, *Reports of Judgments and Decisions* 1996-IV, §§ 20-24 and 16-20, respectively). The Court recalls in this connection that the reasonableness of the length of the proceedings is to be assessed in the light of the particular circumstances of the case, regard being had to the criteria laid down in the Court's case-law, in particular the complexity of the case, the conduct of the applicant and that of the authorities dealing with the case (see, as a recent authority, *Kormacheva v. Russia*, no. 53084/99, § 51, 29 January 2004).

The period to be taken into consideration began on 3 April 2001 when the judgment became final and enforceable and ended on 23 May 2002 when the judgment debt was credited to the applicant's account. It thus lasted one year, one month and 20 days.

The Court notes that the applicant was awarded a sum of money. Hence, the judgment was not particularly difficult to execute.

As regards the conduct of the parties, the Court notes that the first writ of execution was returned to the applicant on an unspecified date, but, in any event, not earlier than 19 November 2001. Even assuming that the documents were submitted incorrectly through the applicant's fault, the Court finds that formal defects could have been identified by the competent authorities in a more diligent manner and the ensuing delay of seven months is therefore attributable, at least in part, to the Government. The applicant did not resubmit the required documents until February 2002, thus causing a certain delay the length of which cannot be indicated precisely. Upon receipt of the new set of documents the judgment was executed in less than two months.

Regard being had to the above considerations and to a relatively short overall duration of the enforcement stage (see, by contrast, *Timofeyev v. Russia*, cited above, where the enforcement lasted more than three years; *Burdov v. Russia*, cited above (up to four years); *Metaxas v. Greece*, no. 8415/02, § 26, 27 May 2004 (more than three years); *Karahalios v. Greece*, no. 62503/00, § 30, 11 December 2003 (over six years)), the lack of diligence on the part of the domestic authorities in processing the first set of documents does not warrant the conclusion that the length of the enforcement proceedings was excessive. The Court accordingly finds that the judgment was enforced within the "reasonable time".

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

(b) The Court reiterates that the judgment debt constitutes a "possession" within the meaning of Article 1 of Protocol No. 1 (see *Burdov v. Russia*, cited above, § 40, with further references). It further notes that the judgment debt has been paid to the applicant. It is true that the payment did not take place immediately after the judgment had been delivered. However, the Court observes that, once the full set of documents was received from the applicant in March 2002, the domestic authorities executed the judgment within two months, i.e. within the time-limit set in the domestic law (see, by contrast, *Timofeyev v. Russia*, cited above, § 46). The authorities have complied with the judgment and the applicant was not therefore prevented from receiving the money she had expected to receive (see, by contrast, *loc. cit.*, § 47). The Court finds that there was no interference with the applicant's property rights.

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

For these reasons, the Court unanimously

Declares the application inadmissible.

Santiago QUESADA
Deputy Registrar

Christos ROZAKIS
President