CONSEIL DE L'EUROPE

COUNCIL OF EUROPE

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

FIRST SECTION

DECISION

Application no. 26091/02
by Lyubov Anatolyevna PODBOLOTOVA
against Russia

The European Court of Human Rights (First Section), sitting on 24 November 2005 as a Chamber composed of:

Mr C.L. ROZAKIS, *President*,
Mr L. LOUCAIDES,
Mrs F. TULKENS,
Mr P. LORENZEN,
Mrs N. VAJIĆ,
Mrs S. BOTOUCHAROVA,
Mr A. KOVLER, *judges*,
and Mr S. NIELSEN, *Section Registrar*,

Having regard to the above application lodged on 28 May 2002,

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 formal declarations accepting a friendly settlement of the case,

Having deliberated, decides as follows:

THE FACTS

The applicant, Mrs Lyubov Anatolyevna Podbolotova, is a Russian national who was born in 1961 and lives in Voronezh. The respondent Government are represented by Mr P. Laptev, 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.

The applicant receives welfare payments for her child. In 2000 she brought civil proceedings against a local welfare authority, claiming arrears in those payments for 1996 – 1999.

On 16 February and 22 September 2000 the Levoberezhny District Court of Voronezh awarded the applicant the arrears in the amount of 5,992 and 2,788.89 Russian roubles (RUR) respectively. The judgments entered into force on 25 February and 2 October 2000 and enforcement proceedings were commenced accordingly.

On 20 December 2001 the bailiffs discontinued the enforcement proceedings in respect of the above judgments and returned writs of execution to the applicant, as the debtor had insufficient funds.

In 2001 the applicant brought civil proceedings against a private bank of Voronezh in which the defendant authority had its accounts, claiming the recovery of the awarded amount.

By judgment of 4 June 2001 the Leninskiy District Court of Voronezh dismissed the applicant's claim as unfounded. This judgment was upheld on appeal by the Voronezh Regional Court on 6 December 2001.

In June 2004 the applicant was paid the amount due pursuant to the writs of execution.

COMPLAINTS

The applicant complained under Articles 6 and 13 of the Convention and Article 1 of Protocol No. 1 to the Convention about the delayed enforcement of the judgments in her favour and the unsuccessful outcome of the proceedings against the bank.

THE LAW

By letter of 2 December 2004 the Government informed the Court that the applicant had accepted an offer in settlement of her application, namely payment of her judgment debt and compensation in respect of non-pecuniary damage and legal costs, and invited the Court to strike the case out of its list of cases under Article 37 § 1 (b) of the Convention. They enclosed a copy of a friendly settlement agreement dated 5 November 2004 and signed by an official representing the Government and the applicant. Its relevant part, as translated from Russian, provided as follows:

> "The authorities of the Russian Federation represented by Mr Vladimir Grigoryevich Kulakov, the head of the administration of the Voronezh Region, and

Ms Lyubov Anatolyevna Podbolotova, the applicant, reached an agreement ... on the following terms:

(a) Under the present agreement the authorities of the Russian Federation shall pay the applicant:

- RUR 7,335.82 in respect of her judgment debt;

...

- RUR 8,780.89 in respect of non-pecuniary damage sustained as a result of a violation of her rights as well as in respect of costs and expenses incurred before the European Court [of Human Rights].

In total RUR 16,116.21.

The indicated amount shall be transferred to the applicant's bank account and paid in Russian currency within 15 days from the date on which the friendly settlement agreement is signed. The said payment will constitute the final settlement of the case.

(b) Ms Lyubov Anatolyevna Podbolotova declares that she has no more claims against the Russian Federation on the facts submitted in her application in the European Court, provided that the provisions of paragraph (a) are satisfied.

Once the provisions of paragraph (a) are satisfied, the Russian Federation and the applicant undertake to inform the European Court thereof.

The present agreement constitutes the final settlement of the dispute."

The Government also submitted that the respective amount had been transferred to the applicant's account on 9 November 2004.

On 16 December 2004 the Court transmitted a copy of the above agreement to the applicant and invited her to affirm formally that she had accepted the settlement in question and would not further pursue her application.

On 14 January 2005 the applicant submitted her reply, in which she confirmed the payment to her of the sum due under the friendly settlement agreement. The applicant then informed the Court that on 21 December 2004 she had obtained a writ of execution in respect of a new judgment in her favour against the State delivered on 7 December 2004, and that the bailiffs had allegedly refused to enforce that judgment in view of the lack of funds. By reference to this refusal, the applicant disagreed to regard her case settled and insisted on the examination of her application.

In their letter of 31 January 2005 the Government objected to further processing the present application, emphasizing that the applicant had conceded that the dispute at the origin of the present case had been resolved, having signed the respective agreement, and that the Government, on their part, had fully complied with the provisions of that agreement.

By letter of 31 March 2005 the Government further informed the Court that the judgment of 7 December 2004 had been fully paid on 3 March 2005.

The Court recalls Article 37 of the Convention which, in so far as relevant, provides as follows:

> "The Court may at any stage of the proceedings decide to strike an application out of its list of cases where the circumstances lead to the conclusion that
>
> (a) the applicant does not intend to pursue his application; or
>
> (b) the matter has been resolved; or
>
> (c) for any other reason established by the Court, it is no longer justified to continue the examination of the application.
>
> However, the Court shall continue the examination of the application if respect for human rights as defined in the Convention and the Protocols thereto so requires."

Since the applicant gave a clear indication that she intended to pursue her application, sub-paragraph (a) of Article 37 § 1 is not applicable. That does not, however, rule out the possibility of applying sub-paragraphs (b) and (c), the applicant's consent not being a prerequisite for their application (see *Pisano v. Italy* [GC] (striking out), no. 36732/97, § 41, 24 October 2002, and *Ohlen v. Denmark* (striking out), no. 63214/00, § 25, 24 February 2005).

The Court takes note of the friendly settlement reached between the parties, the authenticity of the respective agreement submitted by the Government on 2 December 2004 having not been contested by the applicant. As regards the applicant's request of 14 January 2005, the Court notes that it refers essentially to a new set of civil proceedings brought by the applicant against the welfare authority and has no bearing on the fact that the present case has been settled.

Against this background, the Court is satisfied that the settlement in the present case is based on respect for human rights as defined in the Convention and its Protocols and finds no reasons of a general character, as defined in Article 37 § 1 *in fine*, which would require the examination of the application by virtue of that Article.

Accordingly, Article 29 § 3 of the Convention should no longer apply to the case and it should be struck out of the list.

For these reasons, the Court unanimously

Decides to discontinue the application of Article 29 § 3 of the Convention and to strike the application out of its list of cases.

Søren NIELSEN
Registrar

Christos ROZAKIS
President