



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

FIRST SECTION

CASE OF ZAKHAROVA v. RUSSIA

(Application no. 17030/04)

JUDGMENT

STRASBOURG

24 October 2013

This judgment is final but it may be subject to editorial revision.

In the case of Zakharova v. Russia,

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

Elisabeth Steiner, *President*,

Mirjana Lazarova Trajkovska,

Ksenija Turković, *judges*,

and André Wampach, *Deputy Section Registrar*,

Having deliberated in private on 1 October 2013,

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

PROCEDURE

1. The case originated in an application (no. 17030/04) 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 Nina Ivanovna Zakharova (“the applicant”), on 22 April 2004.

2. The Russian Government (“the Government”) were represented by Mrs V. Milinchuk, former Representative of the Russian Federation at the European Court of Human Rights, and subsequently by their Representative Mr G. Matyushkin.

3. On 15 January 2008 the application was communicated to the Government. It was also decided to rule on the admissibility and merits of the application at the same time (Article 29 § 1).

THE FACTS**I. THE CIRCUMSTANCES OF THE CASE**

4. The applicant, Ms Nina Ivanovna Zakharova, is a Russian national who was born in 1957 and lives in Voronezh.

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

A. Housing dispute

6. The applicant’s employer allocated her a flat. However, the flat was unlawfully occupied by other persons. In 1994 civil proceedings were initiated to evict these persons.

7. On 16 November 2000 the Kominternovskiy District Court upheld the applicant's right to the flat and ordered eviction of unlawful residents.

8. On 17 April 2001 the judgment was enforced and the applicant moved into the flat which was, however, in a state of disrepair.

9. By judgment of 13 May 2002, the Kominternovskiy District Court ordered the housing maintenance service to carry out repairs in the flat. On 3 October 2002 the judgment was upheld on appeal and became enforceable.

10. On 23 October 2003 enforcement proceedings were instituted but the judgment was not enforced. The applicant bought the necessary materials and equipment at her own expense and sued the housing service for compensation. By judgment of 26 April 2004, the Kominternovskiy District Court granted her claim in part and made an award against the housing maintenance service with regard to the costs of the applicant relating to the acquisition of materials for repairs. The court also held that the argument of the housing maintenance service according to which the applicant had hindered the enforcement procedure should be rejected. According to the applicant, the payment was effected without undue delay but it covered only a portion of the actual costs.

B. Claims in connection with an excessive length of proceedings

1. Before the Moscow courts

11. On 15 December 2003 the applicant lodged a claim against the Ministry of Finance before the Basmanniy District Court of Moscow. She sought to recover compensation for pecuniary and non-pecuniary damage incurred through the excessive length of proceedings in the housing dispute.

12. On 21 January 2004 the Basmanniy District Court disallowed the applicant's claim. Referring to the Constitutional Court's Ruling of 25 January 2001, the District Court noted that the Parliament had not yet adopted a law determining jurisdiction over claims concerning State liability for the damage caused by a court's or judge's failure to adjudicate a case within a reasonable time. For that reason the District Court held, relying on Article 134 § 1 (1) of the Code of Civil Procedure, that the applicant's claim could not be examined in civil proceedings.

13. On 2 June 2004 the Moscow City Court upheld the decision to disallow the applicant's claim.

2. Before the Voronezh courts

14. On 22 December 2003 the applicant lodged a claim against the Voronezh Department of the Ministry of Finance and the Voronezh Regional Court before the Leninskiy District Court of Voronezh. She sought

to recover compensation for pecuniary and non-pecuniary damage incurred through the excessive length of proceedings in the housing dispute.

15. On 15 January 2004 the Leninskiy District Court of Voronezh disallowed the applicant's claim on the ground that the legislator had not yet determined which courts would be competent to examine claims for compensation by the State of the damage incurred through unlawful judicial actions.

16. On 7 June 2004 the Lipetsk Regional Court upheld the District Court's decision in the part concerning the rejection of her claim against the Voronezh Regional Court, but remitted the remainder for a new consideration.

17. On 21 June 2004 the Leninskiy District Court returned the statement of claim to the applicant. The applicant did not appeal.

C. Salary dispute

18. On 17 December 1998 the applicant sued her employer for an increase of her salary and payment of arrears.

19. On 11 June 2002 the Tsentralniy District Court of Voronezh rejected her claims.

D. Employment dispute

20. In 1999 the applicant was dismissed and challenged her dismissal before the courts which rejected her claim by a final judgment of 26 April 2001.

II. RELEVANT DOMESTIC LAW AND PRACTICE

21. For relevant provisions of the Russian law relating to non-enforcement see *Burdov v. Russia* (no. 59498/00, §§ 24-25, ECHR 2002-III).

22. For relevant provisions of the Russian law relating to the access to a court see *Chernichkin v. Russia* (no. 39874/03, §§ 14-16, 16 September 2010).

THE LAW

I. ALLEGED VIOLATION OF ARTICLE 6 OF THE CONVENTION AND ARTICLE 1 OF PROTOCOL No. 1 AS TO NON-ENFORCEMENT OF JUDGMENT OF 13 MAY 2002

23. The applicant complained that the non-enforcement of the judgment of 13 May 2002 in her favour had breached Article 6 § 1 of the Convention and Article 1 of Protocol No. 1. Article 6 provides 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. Submissions by the parties

24. The Government argued that the applicant had abused of her right to individual application as she had filed the application with the Court though the enforcement proceedings had been pending.

25. Moreover the Government asserted that the applicant could not claim to be a victim as she had been awarded compensation in the amount of 35,945.30 Russian roubles (RUB) (including non-pecuniary damage in the amount of RUB 500) on 26 April 2004.

26. The Government also stated that the applicant had hindered the enforcement of judgment. Namely, she had not permitted the representatives of the authorities to enter the flat; she had been absent when the authorities' representatives tried to execute the judgment.

27. The applicant maintained her complaint.

B. The Court's assessment

1. Admissibility

(a) Abuse of rights

28. The Court reiterates that any conduct of an applicant that is manifestly contrary to the purpose of the right of individual application as provided for in the Convention and impedes the proper functioning of the Court or the proper conduct of the proceedings before it constitutes an abuse of the right of application (see *Miroļubovs and Others v. Latvia*, no. 798/05, § 65, 15 September 2009). In the present case however there is nothing to suggest that the applicant had any malicious intention when filing her application with the Court. Her application was introduced after several years of authorities' inaction. This inaction was established by the domestic courts in final instance on 26 April 2004. Accordingly, the Court rejects the Government's objection.

(b) Victim status

29. The Court reiterates that a decision or measure favourable to the applicant, such as the enforcement of a judgment after substantial delay, is not in principle sufficient to deprive him of his status as a "victim", unless the national authorities have acknowledged, either expressly or in substance, and then afforded redress for, the breach of the Convention (see *Petrushko v. Russia*, no. 36494/02, §§ 14-16, 24 February 2005). Redress so afforded must be appropriate and sufficient, failing which a party can continue to claim to be a victim of the violation (see *Burdov v. Russia (no. 2)*, no. 33509/04, § 56, ECHR 2009; *Scordino v. Italy (no. 1)* [GC], no. 36813/97, § 181, ECHR 2006-V; and *Cocchiarella v. Italy* [GC], no. 64886/01, § 72, ECHR 2006-V).

30. In the case at hand the domestic courts established the authorities' failure to repair the applicant's flat.

31. The authorities did not secure the enforcement of the judgment of 13 May 2002 in applicant's favour in full as the awarded sum covered only the price of materials for repairs which had not been made. Therefore the Government's objection must be dismissed.

32. The Court further notes that this complaint is not manifestly ill-founded within the meaning of Article 35 § 3 (a) of the Convention. It further notes that it is not inadmissible on any other grounds. It must therefore be declared admissible.

2. Merits

33. The Court has previously held that a creditor's failure to enforce a judgment in his or her favour in full and within a reasonable time constitutes a violation of the "right to a court" under Article 6 of the Convention as well as of the right to the peaceful enjoyment of possessions guaranteed by Article 1 of Protocol No. 1 (see *Burdov v. Russia*, cited above, §§ 33-42, and *Shvedov v. Russia*, no. 69306/01, §§ 31-40, 20 October 2005).

34. The Court reiterates that the burden of ensuring compliance with a judgment against the State lies primarily with the State authorities, starting from the date on which the judgment becomes binding and enforceable (see *Burdov* (no. 2), cited above, § 69).

35. At the same time, the Court has accepted that a successful litigant may be required to undertake certain procedural steps in order to recover the judgment debt (see *Shvedov v. Russia*, cited above, § 32). It should be recalled, however, that the requirement of the creditor's cooperation must not go beyond what is strictly necessary and, in any event, does not relieve the authorities of their obligation under the Convention to take timely action of their own motion, on the basis of the information available to them, with a view to honouring the judgment against the State (see *Akashev v. Russia*, no. 30616/05, § 22, 12 June 2008, and *Burdov* (no. 2), cited above, § 69).

36. Turning to the present case, the Court notes that the judgment in favour of the applicant remains unenforced for more than 10 years. The Court is not convinced by the Government's argument that the applicant hindered the enforcement of the judgment in question. She addressed several queries to the authorities trying to find out the reasons of inaction. Moreover the applicant initiated civil proceedings against the debtor and the courts rejected the housing maintenance service's objection that the applicant had hindered the enforcement of the judgment. The domestic courts established the authorities' fault in non-enforcement.

37. The foregoing considerations are sufficient to enable the Court to conclude that the authorities' failure to ensure the enforcement of the judgment of 13 May 2002 amounts to a violation of Article 6 § 1 of the Convention and Article 1 of Protocol No. 1.

II. ALLEGED VIOLATION OF ARTICLE 6 OF THE CONVENTION AS TO THE LACK OF ACCESS TO A COURT

38. The applicant complained under Article 6 § 1 of the Convention that she had been denied access to a court because the domestic courts had refused to examine her claim against the Ministry of Finance and the Voronezh Regional Court. Article 6 in the relevant part provides as follows:

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

A. Submissions by the parties

39. The Government submitted that the applicant had missed the six months period for filing an application with the Court. She had not exhausted all domestic remedies and namely a request by way of supervisory review. She did not try to initiate criminal proceedings against the judge. She had not asked any judicial authorities to evaluate the length of proceedings. Finally, even if there was a legal framework for civil action against the Ministry of Finance, the applicant's complaint would be in any case rejected because she missed the prescription period.

40. In the Government's view, there was no violation of the applicant's right to a court. The domestic courts examined and dismissed the applicant's statement of claim because it contained defects and fell short of the requirements of substantive and procedural law.

41. The applicant maintained her complaint.

B. The Court's assessment

1. Admissibility

42. The Government asserted that the applicant had not complied with the six months rule. However the six months period in the present case starts from the date on which the final decision was taken, namely, from 2 June 2004 and from 7 June 2004 as to the applicant's claim against the Voronezh Regional Court. The complaint was first raised on 14 October 2004. Therefore the complaint was introduced within the six months period.

43. The Government pleaded non-exhaustion of domestic remedies. The Court reiterates firstly that supervisory review in civil proceedings under Russian law is not an effective remedy to be exhausted (see *Tumilovich v. Russia* (dec.), no. 47033/99, 22 June 1999, and *Denisov v. Russia* (dec.), no. 33408/03, 6 May 2004). Secondly, it observes that there was no allegation of criminally reprehensible conduct on the part of the judges who had examined the applicant's claim in housing dispute and that the institution of criminal proceedings was not a condition precedent for the examination of the applicant's claim for damages caused by the allegedly excessive length of civil proceedings. Moreover the Court notes that the existence and extent of any such damages were precisely the issues to be determined in the proceedings which the applicant had unsuccessfully sought to institute. The Court rejects consequently this objection.

44. The Court is not convinced by the Government's argument that the applicant's claims in any event could have been rejected by the domestic courts as she had missed the limitation period. Indeed, taking into account

the Government's failure to provide the relevant legal framework, it is impossible to speculate on the results of proceedings which could have never taken place.

45. 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.

2. *Merits*

46. The Court reiterates that Article 6 § 1 secures to everyone the right to have any claim relating to his civil rights and obligations brought before a court or tribunal. In this way, that provision embodies the "right to a court", of which the right of access, that is, the right to institute proceedings before a court in civil matters, constitutes one aspect only; however, it is an aspect that makes it in fact possible to benefit from the further guarantees laid down in paragraph 1 of Article 6 (see *Sergey Smirnov v. Russia*, no. 14085/04, § 25, 22 December 2009).

47. The Court reiterates that the "right to a court" is not absolute, but may be subject to limitations. The Court must be satisfied that the limitations applied do not restrict or reduce the access afforded to the individual in such a way or to such an extent that the very essence of that right is impaired (see *Kreuz v. Poland*, 19 June 2001, no. 28249/95, §§ 54 and 55, ECHR 2001-VI, and *Jedamski and Jedamska v. Poland*, no. 73547/01, § 58, 26 July 2005).

48. The Court has previously found a violation of Article 6 § 1 of the Convention on account of the State's prolonged and unexplained failure to provide a legislative framework, which deprived the applicant of a procedural opportunity to bring a similar claim for compensation, and to obtain its examination on the merits (see *Chernichkin v. Russia*, cited above, §§ 28-30; *Ryabikina v. Russia*, no. 44150/04, §§ 28-30, 7 June 2011; and *Chelikidi v. Russia*, no. 35368/04, §§ 26-34, 10 May 2012).

49. The Court sees no reason to depart from the above mentioned conclusions in the instant case. The Government did not offer any justification for the lack of legislation governing the procedure for examination of such claims at the material time.

50. Having regard to its case-law on the subject, and the material submitted by the parties, the Court notes that the Government have not put forward any fact or argument capable of persuading it to reach a different conclusion in the present case.

51. Accordingly, the Court finds that the applicant was denied the right of access to a court and that there has been a violation of Article 6 § 1 of the Convention in that regard.

III. OTHER ALLEGED VIOLATIONS OF THE CONVENTION

52. The applicant also complained under Articles 6 and 13 of the Convention and Article 1 of Protocol No. 1.

53. Having regard to all the material in its possession, and insofar as these complaints come within the Court's competence, it finds that these complaints 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.

IV. APPLICATION OF ARTICLE 41 OF THE CONVENTION

54. 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.”

55. The applicant did not submit a claim for just satisfaction. Accordingly, the Court considers that there is no call to award her any sum on that account.

FOR THESE REASONS, THE COURT, UNANIMOUSLY,

1. *Declares* the complaint under Article 6 of the Convention and Article 1 of Protocol No. 1 concerning non-enforcement of the judgment of 13 May 2002 and under Article 6 concerning the lack of access to a court regarding the case against the Ministry of Finance admissible and the remainder of the application inadmissible;
2. *Holds* that there has been a violation of Article 6 of the Convention and Article 1 of Protocol No. 1 as to non-enforcement of the judgment of 13 May 2002;
3. *Holds* that there has been a violation of Article 6 of the Convention as to the lack of access to a court.

Done in English, and notified in writing on 24 October 2013, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

André Wampach
Deputy Registrar

Elisabeth Steiner
President