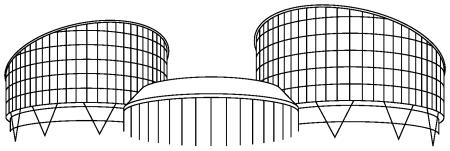

EUROPEAN COURT OF HUMAN RIGHTS
COUR EUROPÉENNE DES DROITS DE L'HOMME

FIRST SECTION

CASE OF GORDEYEV v. RUSSIA

(Application no. 40618/04)

JUDGMENT

STRASBOURG

5 February 2015

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

In the case of Gordeyev v. Russia,

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

Khanlar Hajiyev, *President,*
Erik Møse,
Dmitry Dedov, *judges,*
and André Wampach, *Deputy Section Registrar,*

Having deliberated in private on 13 January 2015,

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

PROCEDURE

1. The case originated in an application (no. 40618/04) 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, Mr Nikolay Mikhaylovich Gordeyev ("the applicant"), on 14 July 2004.

2. The Russian Government ("the Government") were represented by their Agent, Mr G. Matyushkin, Representative of the Russian Federation at the European Court of Human Rights.

3. On 1 July 2010 the application was communicated to the Government.

THE FACTS

I. THE CIRCUMSTANCES OF THE CASE

4. The applicant was born in 1951 and lives in Khanty-Mansiysk.

A. Main proceedings

5. On 11 March 2002 the applicant lodged an action against his former employer, the Khanty-Mansiysk Institute of Northern Wildlife Management ("the institute", *Ханты-Мансийский «Институт природопользования Севера»*), which was affiliated to the State Agricultural Academy of Tyumen ("the Academy", *Тюменская государственная сельскохозяйственная академия*), a State-owned educational institution. The applicant sought reinstatement in a job and work-related benefits.

6. On 13 May 2002 the Khanty-Mansiysk Town Court of the Tyumen Region ("the Town Court") held in the applicant's favour.

7. On 26 June 2002 the Court of the Khanty-Mansy Autonomous Region ("the Regional Court"), acting on appeal, reversed the above judgment and remitted the case to the Town Court for a fresh examination.

8. On 22 July 2002 the case file was sent to the Town Court.

9. On 13 August 2002 the institute was liquidated.

10. On 10 November 2003 the judge invited the defendant to present its objections and the applicant to specify his claims.

11. On 29 December 2003 the Town Court replaced the institute by the Academy as the defendant following the applicant's request lodged on 10 November 2003.

12. On 19 January 2004 the Town Court joined two other persons as co-plaintiffs.

13. The hearing of 29 January 2004 was postponed to 2 March 2004 following the applicant's request for collection of certain documents.

14. The hearing of 2 March 2004 was postponed to 26 April 2004 due to the prosecutor's absence and the applicant's position according to which it was impossible to examine the case in his absence.

15. The hearing of 26 April 2004 was postponed to 7 June 2004 following the applicant's request to consult documents in the case file which had not been previously communicated to him.

16. On 7 June 2004 the applicant presented additional claims which required their communication to the respondent. The hearing was thus postponed to 2 July 2004.

17. The hearing of 2 July 2004 was postponed to 20 August 2004 following the applicant's request to summon a witness and to collect additional documents.

18. The hearing of 20 August 2004 was postponed to 8 October 2004 due to the applicant's health problems.

19. At the hearings of 8 October 2004 and 10 December 2004 the applicant amended his claims. Both hearings were adjourned to enable the respondent to study the amendments.

20. On 17 January 2005 the Town Court partly granted the applicant's action, ordering his immediate reinstatement at "the Khanty-Mansiysk academy's affiliate" as from 13 February 2002 and awarding him 474,587.05 and 20,000 Russian roubles (RUB) in arrears and non-pecuniary damage respectively.

21. On 27 January 2005 and on 2 February 2005 respectively the respondent and the applicant appealed.

22. On 21 March 2005 the prosecutor presented his objections on both appeals. On the same day the case was sent to the Regional Court.

23. On 5 April 2005 the Regional Court, acting on appeal, affirmed the above judgment as to the reinstatement and non-pecuniary damage, reversing and remanding it for a new trial as to the arrears.

24. On 17 May 2005 the sums due to the applicant under the judgment of 17 January 2005, as amended by the Regional Court on 5 April 2005, were transferred to his bank account.

B. Proceedings regarding arrears

25. In the meanwhile the Town Court was renamed the Khanty-Mansiysk District Court of the Khanty-Mansy Autonomous Region (“the District Court”). The applicant’s case was assigned thereto.

26. On 19 April 2005 an expert was appointed with a view to determining the applicant’s benefit entitlement. The next hearing was scheduled for 20 May 2005.

27. On 19 May 2005 the expert presented his calculations.

28. At the hearing of 20 May 2005 the applicant challenged the expert’s calculations. The applicant was invited to present his own calculations based on documentary evidence and examine a possibility to conclude a friendly settlement.

29. The hearing of 16 June 2005 was adjourned to 8 July 2005 on account of the inconsistency of the applicant’s calculations with the Labour Code. The parties were invited to establish new calculations.

30. The hearing of 8 July 2005 was adjourned pending the outcome of the supervisory-review appeal lodged by the respondent.

31. On 17 August 2005 the District Court awarded the applicant RUB 242,734.40 in arrears.

32. On 4 October 2005 the Regional Court upheld the above judgment on appeal.

33. On 5 April 2006 the sums due to the applicant under the judgment of 17 August 2005, as upheld on 4 October 2005, were transferred to his bank account.

C. Proceedings regarding the applicant’s reinstatement

34. On 10 January 2006 the applicant returned the writ of enforcement to the District Court on the ground that the name of the debtor institution was incorrectly indicated.

35. On an unspecified date the bailiff applied to the District Court seeking clarification of the judgments of 17 January 2005 and of 17 August 2005. The bailiff argued that both judgments were impossible to execute in view of the institute’s liquidation.

36. On 8 February 2006 the District Court examined his request in the presence of the Academy’s representative and the applicant.

37. In its first decision delivered on that date the District Court rectified the defendant’s name and held that the sums awarded to the applicant be paid by the Academy.

38. By its second decision, the District Court rejected the bailiff's request for clarification of the judgment of 17 January 2005 as regards the applicant's immediate reinstatement. The court held that the procedure of dismissal of an employee in case of liquidation of a structural subdivision of the employer was governed by the relevant provisions of the Labour Code.

39. These judgments were not appealed against and became final.

40. On 17 January 2005 the Academy lodged an application for supervisory-review with the Presidium of the Court of the Khanty-Mansy Autonomous Region ("the Presidium"). The Academy alleged that the lower courts had incorrectly applied the substantive law and consequently the judgments of 17 January and 5 April 2005 should be quashed in their entirety.

41. On 12 May 2006 the Presidium amended the judgments of 17 January and of 5 April 2005 as to the applicant's immediate reinstatement. The Presidium found that in accordance with Article 81 § 4 of the Labour Code in case of the liquidation of a branch of an organisation located in another territory the termination of contracts of its employees is governed by the rules applicable to the liquidation of organisations. In accordance with point 60 of the Ruling of the Plenum of the Supreme Court no. 2 of 17 March 2004, if it is not possible to reinstate an unlawfully dismissed employee because of the liquidation of the organisation, the court finds that the dismissal was unlawful and holds that he was dismissed in accordance with Article 81 § 1 of the Labour Code as a result of the liquidation of the organisation. In view of the above, the Presidium concluded that the lower courts incorrectly applied the substantive law and amended their judgments in the part concerning the applicant's immediate reinstatement by declaring that he should be considered as dismissed as a result of the liquidation of the employer organisation as from 17 January 2005 and that there was no need to send the matter to a new consideration. The Presidium rejected the remainder of the Academy's supervisory-review application.

II. RELEVANT DOMESTIC LAW AND PRACTICE

A. Reinstatement of an unlawfully dismissed employee in case of the liquidation of the organisation

42. Article 81 of the Labour Code of the Russian Federation adopted on 30 December 2001 lists situations in which a contract may be terminated by the employer. Article 81 § 1 (1) provides that a contract may be terminated by an employer in case of the liquidation of the organisation. Article 81 § 4 states that the termination of contracts with employees of the liquidated branch situated in another location is governed by the rules applicable to the liquidation of organisations.

43. In point 60 of Ruling no. 2 of 17 March 2004 on the application of the Labour Code of the Russian Federation by courts, the Plenum of the Supreme Court clarified the courts' approach when they find the dismissal to be unlawful but when the employee's reinstatement is no longer possible in view of the employer organisation's liquidation. Domestic courts should still declare the dismissal unlawful and hold that the liquidation commission or the organ which had taken the decision on the organisation's liquidation should pay him the average salary for the period of his forced absence from work. In the meantime, the domestic courts should rectify the motive of the employee's dismissal by holding that he was dismissed as a result of the liquidation of the organisation in accordance with Article 81 § 1 of the Labour Code.

B. Immediate enforcement of domestic judgments

44. Article 210 of the Code of Civil Procedure provides that judgments are enforced after they become final, except when the federal legislation provides for their immediate enforcement. In accordance with Article 211 of the Code of Civil Procedure, judgments ordering a person's reinstatement should be enforced immediately.

C. Participation of a prosecutor in certain proceedings concerning vulnerable claimants

45. Article 45 § 3 of the Code of Civil Procedure provides that a prosecutor enters a case and states his opinion in cases concerning eviction, reinstatement in a job, compensation of damage to life or health as well as in other cases provided by the present Code or other federal laws. His absence does not prevent the court from examining the case, provided that he had been given due notice of the time and the place of the hearing.

THE LAW

I. ALLEGED VIOLATION OF ARTICLE 6 § 1 OF THE CONVENTION ON ACCOUNT OF THE QUASHING OF THE PART OF THE JUDGMENT OF 17 JANUARY 2005

46. The applicant complained under Article 6 § 1 of the Convention that as a result of the quashing of the judgment of 17 January 2005 in the part concerning his immediate reinstatement he was deprived of the possibility to obtain additional compensation. He relied on Article 6 § 1 of the Convention which relevant part reads 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 ..."

47. The Government contested that argument. They indicated that the amendments brought to the judgment of 17 January 2005, as upheld on 5 April 2005, were motivated by the fact that otherwise it was impossible to execute this judgment and to restore the applicant's rights.

48. The applicant maintained his complaint. He argued that the bailiff should have taken measures to oblige the Academy to reinstate him, by either recreating the institute or by suggesting the Academy to dismiss him in accordance with the judgment of 8 February 2006 which referred to the relevant provisions of the Labour Code. In this respect, the applicant considered that his situation was governed by Article 81 § 4 of this Code. The applicant further considered that under this Article he was entitled to additional compensation and sums.

49. The Court notes that on 17 January 2005 the Town Court found that the applicant's dismissal was unlawful and ordered his immediate reinstatement (see paragraph 20 above). This judgment was confirmed by the Regional Court on 5 April 2005 as far as the applicant's immediate reinstatement was concerned (see paragraph 23 above). On 12 May 2006 the Presidium of the Regional Court amended the judgment of 17 January 2005, as upheld on 5 April 2005, in the part concerning the applicant's immediate reinstatement by holding that he should be considered as dismissed as from 17 January 2005 and as a result of his employer's liquidation (see paragraph 41 above).

50. The Court notes that both parties agree that the applicant's situation was governed by Article 81 § 4 of the Labour Code. The applicant relied on this provision in his observations (see paragraph 48 above) and the Presidium of the Regional Court expressly referred to it in its judgment of 12 May 2006 (see paragraph 41 above). The applicant however complains that the Presidium of the Regional Court incorrectly applied the aforementioned provision because otherwise he would have been entitled to additional compensation and sums.

51. The Court thus considers that the essence of the applicant's complaint does not concern the quashing as such of the part of the judgment of 17 January 2005, as upheld on 5 April 2005, but rather his disagreement with the application of the domestic law by the Presidium of the Regional Court. In that connection the Court reiterates that it is not its function to deal with errors of fact or law allegedly committed by a national court or to substitute its own assessment for that of the national courts or other national authorities unless and in so far as they may have infringed rights and freedoms protected by the Convention (see, for example, *García Ruiz v. Spain* [GC], no. 30544/96, §§ 28-29, ECHR 1999-I). In other words, the Court cannot question the assessment of the domestic authorities unless there is clear evidence of arbitrariness, which there is not in the instant case.

52. 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.

II. ALLEGED VIOLATIONS OF ARTICLE 6 § 1 OF THE CONVENTION ON ACCOUNT OF NON-ENFORCEMENT

53. The applicant further complained that the judgments of 17 January 2005, as amended on 5 April 2005, and of 17 August 2005, as upheld on 4 October 2005, had not been timeously enforced.

A. Admissibility

54. The Government contested that argument. They indicated that the judgment of 17 January 2005, as amended on 5 April 2005, was enforced on 17 May 2005. The delay in its execution was thus one month and twelve days. As regards the judgment of 17 August 2005, as upheld on 4 October 2005, it was enforced on 5 April 2006. The delay in its execution was then six months. Having regard to its case-law, the Court agrees with the Government that this complaint is manifestly ill-founded and must therefore be declared inadmissible.

55. The situation is however different as regards the delay in enforcement of the judgment of 17 January 2005 as regards the applicant's immediate reinstatement. The Court considers 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

56. The Court notes that on 17 January 2005 the Town Court found that the applicant's dismissal was unlawful and ordered his immediate reinstatement. This part of the judgment was subject to immediate enforcement notwithstanding the possibility of appeal. On 5 April 2005 the appeal court upheld this part of the judgment. However, the way in which this part of the judgment should be executed given the liquidation of the applicant's employer was only resolved on 12 May 2006 when the Presidium of the Regional Court amended it (see paragraph 41 above). Thus, the judgment of 17 January 2005 remained unenforced until 12 May 2006, that is for almost one year and four months.

57. The Court recalls that the reasonableness of the delay is to be determined having regard in particular to the complexity of the enforcement proceedings, the applicant's behaviour and that of the competent authorities, and what was at stake for the applicant in a given case (see *Raylyan v. Russia*, no. 22000/03, §§ 31-34, 15 February 2007, with further

references). As regards the last criterion, it has been the Court's constant approach that employment disputes require the authorities to act with particular expedition (see, *mutatis mutandis*, *Obermeier v. Austria*, judgment of 28 June 1990, Series A no. 179, § 72). The same approach is adopted by the domestic legislation which provides that such judgments are subject to immediate enforcement (see paragraph 44 above). Turning to the present case, the Court observes that the execution of the relevant part of the judgment of 17 January 2005 was not particularly complex, as the Plenum of the Supreme Court had issued specific guidelines in this respect (see paragraph 41 above). Despite that, it took the authorities almost one year and four months to resolve the applicant's employment situation, a period during which he remained in a particularly uncertain situation. Given what was at stake for the applicant and that the judgment of 17 January 2005 in this part was subject to immediate enforcement requiring special diligence, the Court finds that this delay was unreasonable (see, *mutatis mutandis*, *Kopnin and Others v. Russia*, no. 2746/05, § 33, 28 May 2014). It consequently finds a violation of Article 6 § 1 of the Convention.

III. ALLEGED VIOLATION OF ARTICLE 6 § 1 OF THE CONVENTION ON ACCOUNT OF EXCESSIVE LENGTH OF PROCEEDINGS

58. The applicant complained that the civil proceedings in his case were excessively lengthy. He relied on Article 6 § 1 of the Convention.

59. The Government contested that argument. They submitted that the applicant contributed to the length of the proceedings by frequently changing his claims, lodging motions for obtaining evidence and requesting adjournments.

60. The Court notes that the proceedings in the applicant's case lasted from 11 March 2002 to 12 May 2006 (see paragraphs 5 and 41 above). However, the interval between 4 October 2005 and 12 May 2006 should not be taken into account as to the length since during this period the case was examined by the supervisory review instance. The aggregate length of the proceedings thus amounts approximately to three years and seven months, during which the applicant's claims were examined three times by the first-instance court, three times by the appeal court and once by the supervisory-review court.

61. The Court reiterates that the reasonableness of the length of proceedings must be assessed in the light of the circumstances of the case and with reference to the following criteria: the complexity of the case, the conduct of the applicant and the relevant authorities and what was at stake for the applicant in the dispute (see, among many other authorities, *Frydlender v. France* [GC], no. 30979/96, § 43, ECHR 2000-VII).

62. The Court observes that the domestic courts did not display any procrastination in the examination of the applicant's claims, except during the period between 26 June 2002, when the case was remitted for new consideration by the Regional Court to the Town Court, and 17 January 2005 when the latter examined it on the merits (see paragraphs 7-20 above). Thus, the case had been pending before the first-instance court for over two years and six months.

63. The Court first notes that out of this period fourteen months elapsed after the case-file was sent to the Town Court and before it resumed consideration of the applicant's case. The Government provided no explanation for this delay. Consequently, it should be attributed to the authorities.

64. The Court however notes that from 29 January 2004 to 17 January 2005 eight hearings were adjourned because the applicant amended his claims, motioned for obtainment of certain evidence and asked for postponements due to his illness and the prosecutor's unavailability. Consequently, the delay of almost a year should be attributable to the applicant.

65. Having regard to the overall length of the proceedings and the levels of jurisdiction involved, as well as the applicant's own responsibility for the delays, the Court concludes that the length of the proceedings taken as a whole did not exceed the "reasonable time" requirement set out in Article 6 § 1 of the Convention (see *Meshcheryakov v. Russia*, no. 24564/04, § 45, 3 February 2011). It follows that this part of the application is manifestly ill-founded within the meaning of Article 35 § 3 of the Convention and must be rejected in accordance with Article 35 § 4 of the Convention.

IV. OTHER ALLEGED VIOLATIONS OF THE CONVENTION

66. The applicant also complained about the outcome of the second round of the proceedings that ended in an appeal decision of 4 October 2005.

67. Recalling its task under the Convention (see paragraph 51 above), the Court considers that this complaint should be rejected in accordance with Article 35 §§ 3 and 4 of the Convention, in the absence of any clear evidence of arbitrariness.

V. APPLICATION OF ARTICLE 41 OF THE CONVENTION

68. 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

69. The applicant claimed approximately 75,000 euros (EUR) in respect of pecuniary damage for the delay in execution of the judgment of 17 January 2005 corresponding to the salary arrears and compensation in case of his dismissal would the Labour Code have been properly applied by the Russian courts. He also claimed different amounts arguing that the domestic courts miscalculated different sums due to him by the Academy. Finally, he claimed approximately EUR 5,000 in respect of non-pecuniary damage.

70. The Government considered that these claims were excessive and unsubstantiated.

71. The Court does not discern any causal link between the violation found and the pecuniary damage alleged; it therefore rejects this claim. On the other hand, it accepts that the applicant has suffered distress and frustration because for almost one year and four months he remained in a state of uncertainty as regards his employment situation. The Court consequently awards him EUR 2,000 in respect of non-pecuniary damage.

B. Default interest

72. The Court considers it appropriate that the default interest rate 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 concerning the delay in enforcement of the judgment of 17 January 2005 in the part concerning the applicant's immediate reinstatement admissible and the remainder of the application inadmissible;

2. *Holds* that there has been a violation of Article 6 § 1 of the Convention;

3. *Holds*

(a) that the respondent State is to pay the applicant, within three months, EUR 2,000 (two thousand euros), plus any tax that may be chargeable, in respect of non-pecuniary damage, to be converted into the currency of the respondent State 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 amount at a rate equal to the marginal lending rate of the European Central Bank during the default period plus three percentage points;

4. *Dismisses* the remainder of the applicant's claim for just satisfaction.

Done in English, and notified in writing on 5 February 2015, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

André Wampach
Deputy Registrar

Khanlar Hajiyev
President