



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

FIRST SECTION

CASE OF VASILCHENKO v. RUSSIA

(Application no. 34784/02)

JUDGMENT

STRASBOURG

23 September 2010

FINAL

23/12/2010

This judgment has become final under Article 44 § 2 of the Convention. It may be subject to editorial revision.

In the case of Vasilchenko v. Russia,

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

Christos Rozakis, *President*,

Nina Vajić,

Anatoly Kovler,

Khanlar Hajiyeu,

Dean Spielmann,

Giorgio Malinverni,

George Nicolaou, *judges*,

and Søren Nielsen, *Section Registrar*,

Having deliberated in private on 2 September 2010,

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

PROCEDURE

1. The case originated in an application (no. 34784/02) 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 Petr Ivanovich Vasilchenko (“the applicant”), on 6 September 2002.

2. The Russian Government (“the Government”) were initially represented by Mr P. Laptev, Representative of the Russian Federation at the European Court of Human Rights, and then by their Representative Ms V. Milinchuk.

3. On 14 November 2006 the President of the First Section decided to give notice of the application to the Government. It was also decided to examine the merits of the application at the same time as its admissibility (Article 29 § 1).

THE FACTS

I. THE CIRCUMSTANCES OF THE CASE

4. The applicant was born in 1959 and lives in Rostov-on-Don.

A. Court proceedings concerning reinstatement

5. The applicant is a Russian Army colonel.

6. In September 1998 he was removed from his post.

7. On 2 October 1998 the applicant brought proceedings against his commanding officer claiming reinstatement, payment of salary and service-related benefits, and compensation of non-pecuniary damage sustained as a result of his removal.

8. On 26 October 1998 the Military Court of Rostov Garrison ("the Garrison Court") dismissed his claims; the judgment was upheld on appeal.

9. In January 1999 a military disciplinary commission issued an appraisal report in respect of the applicant. The commission found that the applicant's performance was unsatisfactory. On this basis in March 1999 he was transferred from active military service to the reserve.

10. On 20 April 1999 the applicant challenged the transfer in court, but to no avail. On 10 November 1999 the Garrison Court dismissed his claim; the judgment was upheld on appeal.

11. On 27 April 2001 president of the Military Chamber of the Supreme Court of Russia granted the applicant's application for supervisory review and brought an extraordinary appeal against the above court decisions.

12. On 22 May 2001 the Military Chamber of the Supreme Court quashed the impugned decisions and remitted the cases for fresh examination.

13. On an unspecified date the Garrison Court joined the above cases.

B. Judgments ordering reinstatement and payment of damages

14. On 21 January 2002 the Garrison Court granted the applicant's claims in part. It quashed the respective decisions of the applicant's superior officers and the appraisal report, reinstated him in his former post and awarded him non-pecuniary damages in the amount of 1,000 Russian roubles (RUB), to be recovered from the Ministry of Defence, and RUB 500 to be recovered from the Chief of the Headquarters of the North-Caucasus Military Command. The claims for pecuniary damages were rejected.

15. On 8 May 2002 the appeal court set aside the judgment in the part concerning rejection of the claims for pecuniary damages and required a new hearing. The remainder of the judgment was upheld.

16. On 27 September 2002 the Garrison Court issued a writ of execution in respect of the part of the judgment that had entered into force and forwarded it to the bailiff service of the Oktyabrskiy District of Rostov-on-Don.

17. On 30 January 2003 the applicant was reinstated in his post. The damages in the amount of RUB 1,500 awarded by the judgment of 21 January 2002 remained unpaid.

18. On 19 June 2003 the Garrison Court granted the applicant's claims in part, awarding him RUB 650,510. However, on 11 February 2004 the

appeal court overturned this judgment on procedural grounds and ordered the case for re-examination.

19. On 8 April 2004 the Garrison Court granted most of the applicant's claims. The court awarded him RUB 776,247 covering his salary, legal expenses and various service-related benefits due for the period of his necessary absence from work, in particular, compensation for clothing, food ration, sanatoria treatment and a lump-sum premium for 1997.

20. The court also found that the applicant's reinstatement ordered by the judgment of 21 January 2002 had been carried out with a significant delay, and that the applicant had not received RUB 1,500 awarded by the court in compensation of non-pecuniary damage. The applicant was awarded RUB 5,000 as compensation for the delayed enforcement.

21. This judgment was upheld on appeal by the Military Court of North Caucasus Command on 4 August 2004.

C. Execution of the judgments

22. On 9 April 2004 the applicant received RUB 1,000 due to him under the decision of 21 January 2002. The award of RUB 500 remained unpaid.

23. On 30 August and 1 November 2004 the applicant received the amounts awarded to him by the court judgment of 8 April 2004.

24. The applicant brought proceedings claiming index-linking of the amounts paid to him with a delay.

25. On 28 January 2005 the Garrison Court granted his claims in part, awarding him RUB 2,750 as inflation losses resulted from the delay in the enforcement of the judgments of 21 January 2002 and 8 April 2004. However, without giving any specific reasons the court rejected the applicant's claim in the part concerning the failure to pay him RUB 500.

26. On 25 May 2005 the Military Court of North Caucasus Command upheld the judgment on appeal.

27. On 19 July 2005 the applicant received the amount awarded to him by the judgment of 28 January 2005. It appears that the applicant has not received the award of RUB 500 to date.

II. RELEVANT DOMESTIC LAW

28. Federal Law № 68-ФЗ of 30 April 2010 (in force as of 4 May 2010) provides that in case of a violation of the right to trial within a reasonable time or of the right to enforcement of a final judgment, the Russian citizens are entitled to seek compensation of the non-pecuniary damage. Federal Law № 69-ФЗ adopted on the same day introduced the pertinent changes in the Russian legislation.

29. Section 6.2 of the Federal Law № 68-ФЗ provides that everyone who has a pending application before the European Court of Human Rights

concerning a complaint of the nature described in the law has six months to bring the complaint to the domestic courts.

THE LAW

I. ALLEGED VIOLATION OF ARTICLE 6 § 1 OF THE CONVENTION ON ACCOUNT OF EXCESSIVELY LONG PROCEEDINGS

30. The applicant complained that the courts had taken too long to examine his case and thus breached the “reasonable time” requirement as provided in Article 6 § 1 of the Convention. The relevant part of the provision reads as follows:

“In the determination of his civil rights and obligations ... everyone is entitled to a ... hearing within a reasonable time by [a] ... tribunal ...”

A. Admissibility

31. The Government argued that Article 6 did not apply to the present case referring to the Court's previous findings in *Pellegrin v. France* ([GC], no. 28541/95, §§ 65-67, ECHR 1999-VIII). In particular, they noted that the applicant had been a public servant and his case had concerned a dispute between the administrative authorities and an employee who had occupied a post involving participation in the exercise of powers conferred by public law.

32. The applicant contested that argument.

33. The Court notes firstly that until 30 January 2003, when the applicant *de facto* returned to his job, he was not an active military officer and his dispute concerned reinstatement in the job and various damages.

34. The Court further observes that indeed until a certain point in its practice employment disputes between the State and its military personnel were not, as a rule, regarded as “civil” within the meaning of Article 6 § 1 of the Convention, and thus fell outside of the Court's competence *ratione materiae* (see *Pellegrin v. France*, cited above; see also *Kanayev v. Russia*, no. 43726/02, § 16, 27 July 2006).

35. However, in its later judgment *Vilho Eskelinen and Others v. Finland* ([GC], no. 63235/00, § 62, ECHR 2007-IV) the Grand Chamber developed the existing case-law applying new criteria of applicability of Article 6 to such disputes. In particular, it decided that Article 6 under its “civil” head should be applicable to all disputes involving civil servants, unless the national law expressly excludes access to a court for the post of

category of staff in question, and this exclusion is justified on objective grounds in the State's interest.

36. Turning to the present case, the Court notes that the applicant's claims were accepted, examined, and partially granted by the domestic courts following ordinary rules of civil procedure. It is true that his case was examined by military courts, i.e. the courts composed of military personnel and attached not to a particular administrative territorial unit but to a garrison. However, nothing suggests that the military courts are not "tribunals" within the meaning of Article 6. Therefore, the applicant was not excluded by the domestic law from the "access to a court" within the meaning of Article 6 (see *Pridatchenko and Others v. Russia*, nos. 2191/03, 3104/03, 16094/03 and 24486/03, § 47, 21 June 2007).

37. Having regard to the above, the Court considers Article 6 to be applicable to the present case. It further notes that the complaint is not inadmissible on any other grounds. It must therefore be declared admissible.

B. Merits

38. The Government objected to the applicant's complaint. In particular, they stated that his case had been rather legally complex and involved examination of numerous documents and witnesses. Furthermore, the applicant had contributed greatly to the length by lodging ill-founded motions and challenges. In addition, they suggested that the length of the court's examination of the applicant's case be calculated from 2 October 1998, when the applicant had lodged his first claim to the courts, to 1 November 2004, when the applicant had received the last payment under the court's judgments.

39. The applicant maintained his complaint. He further argued that the length of the court's examination of his case should be calculated from 2 October 1998 to the present time as the award of RUB 500 in compensation of non-pecuniary damage remained unenforced.

40. The Court recalls that the applicant's claims that were decided in a judgment of 26 October 1998 and those that were decided in a judgment of 10 November 1999 were unrelated to each other. The two sets of claims were joined by the Garrison Court after supervisory review of the previous court decisions (see para. 13 above). In view of this situation the Court considers it necessary to calculate the total length separately for each set of claims. Accordingly, the Court observes that the first set of proceedings lasted from 2 October 1998 to 4 August 2004, with exception of the period from 7 December 1998 to 22 May 2001 when the case was subject to supervisory examination and not pending. Thus, the total length of examination of this case approximately amounts to three years and four months. The second set of proceedings lasted from 20 April 1999 to 4 August 2004, with exception of the period from 20 January 2000 to

22 May 2001. The total length for this case amounts approximately to three years and eleven months. In both cases the claims were examined four times at two levels of jurisdiction.

41. 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).

42. Turning to the present case, the Court notes that the issues decided by the courts did not seem particularly complex and that this being a labour dispute, it required a particular diligence and expedition on the part of the authorities. It further observes that the parties have provided minimal information as to their behaviour in the proceedings. Thus, the information provided does not allow the Court to detect any substantial periods of the courts' inactivity.

43. Regard being had to the overall diligence displayed by the authorities and the levels of jurisdiction involved, the Court considers that the “reasonable time” requirement was not breached in the present case.

II. ALLEGED VIOLATION OF ARTICLE 6 § 1 AND ARTICLE 1 OF PROTOCOL No. 1 OF THE CONVENTION ON ACCOUNT OF NON-ENFORCEMENT

44. The applicant also complained that the continuing failure to enforce the judgment of 21 January 2002 in the part concerning payment of RUB 500 and the delayed enforcement of the remainder of the judgment of the same date and the judgment of 8 April 2004 breached his rights guaranteed by Article 6 § 1 and Article 1 of Protocol No. 1 of the Convention. The relevant provisions read as follows:

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

“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.”

Admissibility

45. The Government raised the argument concerning inapplicability of Article 6 to the present case taken as a whole that has been dealt with above (see para. 36 above). The Court therefore rejects this argument.

46. In respect of the applicant's complaint of the delayed enforcement of the part of the judgment of 21 January 2002, the Court recalls that the applicant was reinstated in his job on 30 January 2003 and received RUB 1,000 in compensation of non-pecuniary damage on 9 April 2004. The Court further recalls that the applicant received lump-sum compensation for the delayed enforcement of the judgment in the amount of RUB 5,000 on 8 April 2004 and in the amount of RUB 2,750 on 28 January 2005.

47. With regard to the above, the Court finds that the part of the judgment concerning reinstatement in the job was enforced within a reasonable time. Thus, this part of the applicant's complaint should be rejected as being manifestly ill-founded in accordance with Article 35 §§ 3 and 4 of the Convention (see *Presnyakov v. Russia* (dec.), no. 41145/02, 10 November 2005). It further considers that the authorities acknowledged and appropriately redressed the delayed payment of RUB 1,000. The Court is therefore of the opinion that the applicant has lost his victim status as to this part of his complaint, which should be rejected in accordance with Article 34 of the Convention.

48. Regarding the applicant's complaint of delayed enforcement of the judgment of 8 April 2004, the Court recalls that the applicant received the due amounts in two instalments on 30 August and 1 November 2004. The Court considers that the delay in the enforcement of the award did not breach the standards laid down in its case-law (*ibidem*). The complaint therefore should be rejected as being manifestly ill-founded in accordance with Article 35 §§ 3 and 4 of the Convention.

49. Turning to the complaint concerning the continuing failure to enforce the award of RUB 500, the Court observes that the applicant received lump-sum compensation in the amount of RUB 5,000 for the delayed enforcement of the award of 21 January 2002. Considering the total amount of compensation received at the domestic level and the minor nature of the award roughly equal to 12 euros, the Court arrives at the conclusion that the applicant did not suffer significant disadvantage as a result of the authorities' failure to enforce the award. The Court further observes that the systemic problem of non-enforcement in Russia has been addressed on numerous occasions both in its own judgments and in the decisions of the Committee of Ministers and concludes that respect for human rights, as defined in the Convention and the Protocols thereto, does not require examination of the present complaint on its merits. Finally, it observes that the applicant's case was duly considered by a domestic tribunal in the meaning of Article 35 § 3 (b) as evidenced in the judgments of 8 April 2004

and 28 January 2005. In view of the foregoing, this complaint should be rejected as inadmissible in accordance with Article 35 § 3 (b), as amended by Protocol 14 (see *Korolev v. Russia* (dec), no. 25551/05, 1 July 2010).

50. Accordingly, the Court rejects all the complaints under this head as inadmissible.

III. ALLEGED VIOLATION OF ARTICLE 13 OF THE CONVENTION ON ACCOUNT OF UNREASONABLE LENGTH OF PROCEEDINGS AND NON-ENFORCEMENT

51. The applicant further complained that he had not had an effective remedy against the allegedly unreasonable length of the proceedings in his case and non-enforcement of the judgments in his favour. He relied on Article 13 of the Convention, which reads as follows:

“Everyone whose rights and freedoms as set forth in [the] Convention are violated shall have an effective remedy before a national authority notwithstanding that the violation has been committed by persons acting in an official capacity.”

A. Admissibility

52. The Government submitted that the complaint was manifestly ill-founded and requested to reject it in accordance with Article 35 §§ 3 and 4 of the Convention.

53. 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.

B. Merits

54. The Court notes firstly that the complaint under Article 13 in respect of non-enforcement cannot be considered as arguable in absence of an arguable claim under the substantive provision (see para. 49 above). On the contrary, it considers the complaint under Article 13 in respect of the length of the proceedings arguable, even though it did not discern a violation of the applicant's right to a trial within reasonable time above.

55. The Court takes cognisance of the existence of a new remedy introduced by the federal laws № 68-Φ3 and № 69-Φ3 in the wake of the pilot judgment adopted in the case of *Burdov v. Russia* (no. 2) (no. 33509/04, ECHR 2009-...). These statutes, which entered into force on 4 May 2010, set up a new remedy which enables those concerned to seek compensation for the damage sustained as a result of unreasonable length of the proceedings (see para. 28 above).

56. The Court observes that in the present case the parties' observations in respect of Article 13 arrived before 4 May 2010 and did not contain any references to the new legislative development. However, it accepts that as of 4 May 2010 the applicant has had a right to use the new remedy (see paragraph 29 above).

57. The Court recalls that in the pilot judgment cited above it stated that it would be unfair to request the applicants, whose cases had already been pending for many years in the domestic system and who have come to seek relief at the Court, to bring again their claims before domestic tribunals (*Burdov (no. 2)*, cited above, § 144). In line with this principle, the Court decided to examine the present application on its merits and found no violation of the substantive provision of the Convention.

58. However, the fact of examination of the present case on its merits should in no way be interpreted as prejudging the Court's assessment on the quality of the new remedy. It will examine this question in other cases more suitable for this analysis. It does not consider the present case as such, particularly in view of the fact that the parties' observations were made with account of the situation that had existed before the introduction of the new remedy.

59. Having regard to these special circumstances, the Court does not consider it necessary to continue a separate examination of the complaint under Article 13 in the present case.

IV. OTHER ALLEGED VIOLATIONS OF THE CONVENTION

60. Referring to Articles 1, 6, 13, 14 and 17 of the Convention the applicant further complained about the outcome of the proceedings in his case and certain irregularities that had allegedly occurred during the examination of the case.

61. Having regard to all the materials in its possession, and in so far as these complaints fall within its competence, the Court finds that there is no appearance of a violation of the rights and freedoms set out in these provisions in that respect. It follows that this part of the application must be rejected as being manifestly ill-founded, pursuant to Article 35 §§ 1, 3 and 4 of the Convention.

FOR THESE REASONS, THE COURT UNANIMOUSLY

1. *Declares* the complaint concerning unreasonable length of proceedings and the lack of an effective remedy admissible and the remainder of the application inadmissible;

2. *Holds* that there has been no violation of Article 6 § 1 of the Convention on account of the unreasonable length of the proceedings;
3. *Holds* that there is no need for separate examination of the complaint under Article 13 of the Convention.

Done in English, and notified in writing on 23 September 2010,
pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Søren Nielsen
Registrar

Christos Rozakis
President