



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

FIRST SECTION

CASE OF KOSHELEVA AND OTHERS v. RUSSIA

(Application no. 9046/07)

JUDGMENT

STRASBOURG

17 January 2012

FINAL

17/04/2012

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

In the case of Kosheleva and Others v. Russia,

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

Nina Vajić, *President*,
Anatoly Kovler,
Peer Lorenzen,
Elisabeth Steiner,
Khanlar Hajiyev,
Linos-Alexandre Sicilianos,
Erik Møse, *judges*,

and Søren Nielsen, *Section Registrar*,

Having deliberated in private on 13 December 2011,

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

PROCEDURE

1. The case originated in an application (no. 9046/07) 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 fifty-three Russian nationals (“the applicants”), on 2 December 2003.

2. The applicants were represented by Mr D.Y. Kozyrev, a lawyer practising in Velikiye Luki, Pskov Region. The Russian Government (“the Government”) were represented by Mr G. Matyushkin, Representative of the Russian Federation at the European Court of Human Rights.

3. On 17 September 2007 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

THE CIRCUMSTANCES OF THE CASE

4. The applicants’ names and dates of birth are listed in the annex to the present judgment. They live in Velikie Luki, Pskov Region.

5. The applicants are former and current teachers at the boarding school for orphans and children deprived of parental care in Velikiye Luki, Pskov Region («Великолукская средняя школа-интернат для детей-сирот и детей, оставшихся без попечения родителей»). By virtue of a provision in the national law they were entitled to a monthly allowance for purchase

of books and magazines (*компенсация за книгоиздательскую продукцию и периодические издания*) which had not been paid to them for a few years.

6. The applicants applied to a court seeking recovery of the unpaid allowance.

7. On 28 March 2003 the Justice of Peace of Court Circuit no. 34 of Velikiye Luki in the Pskov Region granted the applicants' claim for the unpaid allowance and held that the Education Directorate of the Velikiye Luki Town Council should reimburse them various amounts.

8. On 3 June 2003 the Velikiye Luki Town Court of the Pskov Region upheld that judgment on appeal.

9. Following an unspecified period during which the judgment remained unenforced, the applicants allegedly applied to a court for index-linking of the awards due to the inflation but had their claims rejected. They did not however submit any documents to support this claim, nor did they indicate the date of the judicial decision or the court adopting it.

10. The Government submitted copies of payroll records according to which the awards had been paid to the applicants in April and May 2004.

11. On 16 January 2008 the Court received letters from thirty-six applicants stating that they no longer had interest in pursuing the application due to the timely enforcement of the judgment in their favour. The applicants who sent the letters were nos. 3, 4, 5, 7, 8, 9, 11, 12, 13, 14, 15, 16, 17, 19, 21, 25, 26, 27, 30, 31, 33, 34, 35, 36, 37, 38, 39, 41, 42, 43, 44, 45, 47, 50, 51 and 53 of the Annex.

12. In their observations received by the Court on 26 May 2008 the remaining seventeen applicants submitted that the town prosecutor's office had summoned them for interviews, during which the authorities had apprised them of their right not to incriminate themselves and discussed their application.

13. The letter by the deputy prosecutor of Velikiye Luki of 28 December 2007 confirmed that in October 2007 the town prosecutor's office had held interviews with the applicants concerning alleged breaches of their 'Convention right to timely payment of the allowance for purchase of books and magazines'. The letter mentioned that the interviews had been conducted following an inquiry by the Government's representative at the Court to the Prosecutor General of Russia.

THE LAW

I. PROCEEDINGS CONCERNING THE APPLICANTS WHO LOST INTEREST

14. In view of the circumstances detailed above and in respect of the applicants who expressed loss of interest, the Court considers that they may be regarded as no longer wishing to pursue the application, within the meaning of Article 37 § 1 (a) of the Convention. Furthermore, in accordance with Article 37 § 1 *in fine*, it finds no special circumstances regarding respect for human rights as defined in the Convention and its Protocols which require the continued examination of the case.

15. In view of the above, it is appropriate to strike the case in respect of these applicants referred to as nos. 3, 4, 5, 7, 8, 9, 11, 12, 13, 14, 15, 16, 17, 19, 21, 25, 26, 27, 30, 31, 33, 34, 35, 36, 37, 38, 39, 41, 42, 43, 44, 45, 47, 50, 51 and 53 in the Annex out of the list.

II. ALLEGED VIOLATION OF ARTICLE 6 § 1 AND ARTICLE 1 OF PROTOCOL No. 1 ON ACCOUNT OF NON-ENFORCEMENT IN RESPECT OF OTHER APPLICANTS

16. The remaining applicants complained that the delayed enforcement of the judgment of 28 March 2003, as upheld on 3 June 2003, had breached their rights guaranteed by Article 6 § 1 and Article 1 of Protocol No. 1 of the Convention. The relevant provisions read as follows:

Article 6 § 1

“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.

Article 1 of Protocol No. 1

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.”

17. The Government argued that the judgment in the applicants’ favour had been enforced in due time and requested that the application in this part be struck out of the Court’s list of cases or declared inadmissible.

18. The applicants maintained their complaints, contending that the period of non-enforcement had started to run from the moment they had been due to receive the impugned payment in accordance with the relevant regulations.

19. The Court recalls that, according to the documents presented by the Government and not contested by the applicants, the judgment of 28 March 2003, as upheld on 3 June 2003, was enforced in April and May 2004, that is within ten and eleven months. The Court considers the period of the enforcement to be reasonable and well within the standards set in its established case-law (see *Belkin and Others v. Russia*, nos. 14330/07 et al, 5 February 2009). Therefore, this complaint should be rejected as being manifestly ill-founded in accordance with Article 35 §§ 3 (a) and 4 of the Convention.

III. ALLEGATION OF HINDRANCE TO THE RIGHT OF INDIVIDUAL PETITION UNDER ARTICLE 34 OF THE CONVENTION

20. The remaining applicants submitted that they had been intimidated by the interviews conducted by the authorities in respect of their applications at Strasbourg and had specifically perceived the notice concerning their right not to incriminate themselves as a threat of criminal prosecution. They argued that these actions had been in breach of Article 34 of the Convention, which reads as follows:

“The Court may receive applications from any person, non-governmental organisation or group of individuals claiming to be the victim of a violation by one of the High Contracting Parties of the rights set forth in the Convention or the Protocols thereto. The High Contracting Parties undertake not to hinder in any way the effective exercise of this right.”

21. The Government did not comment on the actions of the prosecutor’s office but acknowledged in their additional observations that the administration of the school had discussed with the applicants their complaints before the Court in order to find out their position. They refused the contention that the applicants had been influenced in any manner in connection with their application.

22. The Court observes at the outset that a complaint under Article 34 of the Convention is of a procedural nature and therefore does not give rise to any issue of admissibility under the Convention (see *Cooke v. Austria*, no. 25878/94, § 46, 8 February 2000, and *Ergi v. Turkey*, 28 July 1998, § 105, *Reports* 1998-IV).

23. The Court reiterates that the right of individual petition under Article 34 of the Convention will operate effectively only if an applicant can interact with the Court freely, without any pressure from the authorities. In this context, “pressure” includes not only direct coercion and flagrant acts of intimidation but also other improper indirect acts or contacts designed to

dissuade or discourage applicants from pursuing a Convention remedy (see *Kurt v. Turkey*, 25 May 1998, § 160, *Reports* 1998-III, and *Tanrıkuş v. Turkey* [GC], no. 23763/94, § 130, ECHR 1999-IV, with further references).

24. In the instant case the Government did not dispute that following an inquiry by the Government's representative at the Court, the prosecutor's office of Velikiye Luki had summoned the applicants for interviews in connection with their complaints to the Court and had recited during the interviews the applicants' right not to incriminate themselves.

25. The Court has acknowledged before that not every inquiry by the authorities on an application pending before the Court can be regarded as "intimidation" and that Article 34 does not prevent the State from taking measures in order to improve the applicant's situation or even from solving the problem which is at the heart of the Strasbourg proceedings (see *Vladimir Sokolov v. Russia*, no. 31242/05, § 81, 29 March 2011).

26. However, the Court agrees with the applicants that their convocation by the prosecutor appeared in itself questionable in connection with their case before the Court, which was of a purely civil nature and concerned a straightforward issue, namely the State's failure to pay some modest judicial awards. Indeed, the authorities were fully aware of all the facts and complaints in the applicants' case before the Court and thus had an opportunity to solve the problem at the root of the complaints without involving the applicants in their inquiries. In these circumstances the Court can hardly understand the purpose of the interviews to which the applicants were summoned by the prosecutor. The Government has not elucidated this point in their submissions.

27. Furthermore, the Court is concerned by the way in which the prosecutor's office conducted those interviews. Like the applicants, it is particularly struck by the recital during the interviews of the right not to incriminate themselves, which is normally done in the context of criminal proceedings. The prosecutor's statement referring to the criminal procedure might well have been perceived by the applicants, who had no special legal training, as highly intimidating.

28. Regard being had to the above, and in particular the Government's tacit acknowledgment that the facts as described by the applicants indeed took place, the Court considers that the way in which the applicants were interviewed by the prosecutor in connection with their applications to the Court amounted to a form of unacceptable intimidation and, therefore, to hindrance of their right of individual petition.

29. Accordingly, the Court concludes that the respondent State has failed to comply with its obligations under Article 34 of the Convention in the instant case.

IV. OTHER ALLEGED VIOLATIONS OF THE CONVENTION

30. The remaining applicants also complained under Article 1 of Protocol No. 1 of the Convention that the courts had refused to index-link the awards due to them but not paid in good time.

31. However, there is nothing in the material of the case to suggest that the applicants sought such compensation at the domestic level. Accordingly, it should be rejected for failure to exhaust the available domestic remedies in accordance with Article 35 §§ 1 and 4 of the Convention.

V. APPLICATION OF ARTICLE 41 OF THE CONVENTION

32. 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

33. The applicants who maintained the application submitted claims for pecuniary damage ranging from 1,250 to 13,700 Russian roubles (RUB). Their claims for non-pecuniary damage ranged from 290 to 1,820 euros (EUR).

34. The Government did not comment on those claims.

35. The Court notes that it did not find a violation of the Convention on account of the alleged delay in enforcement of the judgment in the applicants' favour. It therefore rejects their claims for pecuniary damage. On the other hand, it accepts that the applicants suffered distress and frustration as a result of the breach by the authorities of Article 34 of the Convention. Deciding on an equitable basis, it awards each of them EUR 500 in respect of non-pecuniary damage.

B. Costs and expenses

36. The applicants did not claim any costs and expenses. The Court will therefore not make any award under this head.

C. Default interest

37. 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. *Decides* to strike the application out of its list of cases in respect of thirty-six applicants referred to as nos. 3, 4, 5, 7, 8, 9, 11, 12, 13, 14, 15, 16, 17, 19, 21, 25, 26, 27, 30, 31, 33, 34, 35, 36, 37, 38, 39, 41, 42, 43, 44, 45, 47, 50, 51 and 53 in the Annex;
2. *Declares* the remainder of the application inadmissible;
3. *Holds* that the respondent State has failed to comply with its obligations under Article 34 of the Convention in respect of the remaining applicants referred to as nos. 1, 2, 6, 10, 18, 20, 22, 23, 24, 28, 29, 32, 40, 46, 48, 49 and 52 in the Annex;
4. *Holds*
 - (a) that the respondent State is to pay each of those applicants, within three months from the date on which the judgment becomes final in accordance with Article 44 § 2 of the Convention, EUR 500 (five hundred euros), plus any tax that may be chargeable, to be converted into Russian roubles 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;
5. *Dismisses* the remainder of the applicants' claim for just satisfaction.

Done in English, and notified in writing on 17 January 2012, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Søren Nielsen
Registrar

Nina Vajić
President

ANNEX

Num.	Last Name	First Name	Birth date
1.	KOSHELEVA	Yevgeniya Grigoryevna	03/02/1956
2.	AFANASYEVA	Lyubov Aleksandrovna	26/05/1948
3.	AKIMOVA	Alla Vasilyevna	20/07/1945
4.	ALEKSEYENKOVA	Yelena Leonidovna	06/05/1972
5.	ANDREYEVA	Galina Aleksandrovna	07/06/1946
6.	ANDRIYANOVA	Lyudmila Viktorovna	02/04/1972
7.	BLINOVA	Yelena Nikolayevna	14/08/1974
8.	CHUVAKHINA	Valentina Vasilyevna	30/04/1942
9.	DENISENKO	Galina Antonovna	17/07/1943
10.	DOLGANOVA	Oksana Valeryevna	30/04/1971
11.	GASHIMOVA	Irina Gennadyevna	04/12/1972
12.	GAVRILOVA	Nina Vladimirovna	17/07/1960
13.	IVANOVA	Larisa Konstantinovna	03/08/1947
14.	IVANOVA	Lenna Georgiyevna	17/02/1932
15.	IVANOVA	Lyudmila Anatolyevna	24/04/1962
16.	IVANOVA	Tatyana Aleksandrovna	14/07/1957
17.	IVANOVA	Natalya Ivanovna	07/03/1970
18.	KHOLOPOVA	Valentina Vasilyevna	20/10/1952
19.	KORBAT	Olga Anatolyevna	16/09/1970
20.	KOSENKOVA	Olga Borisovna	03/06/1955
21.	KOZLOVA	Svetlana Vladimirovna	20/11/1963
22.	KURTSMAN	Svetlana Georgiyevna	25/05/1940
23.	LUKINA	Mariya Ivanovna	18/02/1941
24.	MARCHENKOVA	Lyudmila Vladimirovna	03/11/1955
25.	MASLAKOVA	Zoya Anatolyevna	24/09/1955
26.	MIKHAYLOVA	Yelena Nikolayevna	01/07/1967
27.	MIKHAYLOVA	Tatyana Nikolayevna	01/07/1967
28.	MISHANOVA	Yelena Vladimirovna	21/06/1969
29.	MYAKISHEVA	Olga Stepanovna	04/06/1928
30.	OREKHOVA	Yelena Gennadyevna	10/03/1972
31.	PAVLOVA	Nina Yevgenyevna	05/11/1967

32.	PLAKSINA	Lidiya Nikolayevna	28/08/1928
33.	RUTSKO	Lyudmila Kazimirovna	11/04/1937
34.	SALTYKOVA	Nina Yefremovna	10/03/1942
35.	SAMODELKINA	Natalya Vasilyevna	30/04/1954
36.	SAVELYEVA	Tatyana Ivanovna	11/05/1958
37.	SEMEENOVA	Tamara Alekseyevna	15/11/1936
38.	SERGEYEVA	Vera Aleksandrovna	17/03/1941
39.	SHAMANOVA	Yelena Aleksandrovna	08/05/1970
40.	SHREYTUL	Yelena Vasilyevna	01/03/1972
41.	SIDORENKO	Tatyana Vladislavovna	17/12/1967
42.	SILAYEVA	Irina Nikolayevna	09/07/1966
43.	SIRYACHENKO	Galina Vasilyevna	27/03/1959
44.	SMIRNOVA	Yelena Anatolyevna	05/09/1974
45.	SMORYAKOVA	Elvira Sergeyevna	11/06/1942
46.	STOVARNOVA	Yuliya Mikhaylovna	02/07/1972
47.	TROFIMOVA	Svetlana Andreyevna	12/09/1950
48.	UDALOVA	Natalya Fedorovna	30/10/1962
49.	USTINOVA	Natalya Yevgenyevna	11/10/1970
50.	VERSHINSKAYA	Galina Mikhaylovna	09/07/1946
51.	VERSHINSKIY	Yevgeniy Igorevich	17/03/1946
52.	YEGOROVA	Yelena Anatolyevna	13/07/1967
53.	YEREMINA	Tatyana Nikolayevna	12/10/1973