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

FIRST SECTION

CASE OF DENISENKOV v. RUSSIA

(Application no. 40642/02)

JUDGMENT

STRASBOURG

22 September 2005

FINAL

15/02/2006

This judgment will become final in the circumstances set out in Article 44 § 2 of the Convention. It may be subject to editorial revision.

In the case of Denisenkov v. Russia,

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

Mr C.L. ROZAKIS, *President*,
Mrs F. TULKENS,
Mrs S. BOTOUCHAROVA,
Mr A. KOVLER,
Mr K. HAJIYEV,
Mr D. SPIELMANN,
Mr S.E. JEBENS, *judges,*
and Mr S. NIELSEN, *Section Registrar*,

Having deliberated in private on 30 August 2005,

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

PROCEDURE

1. The case originated in an application (no. 40642/02) 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 Vladimir Nikolayevich Denisenkov (“the applicant”), on 28 October 2002.

2. The applicant was represented by Mr K. Krakovskiy, a lawyer practising in Rostov-on-Don. The Russian Government (“the Government”) were represented by Mr P. Laptev, Representative of the Russian Federation at the European Court of Human Rights.

3. On 4 February 2002 the Court decided to communicate the complaint about the alleged non-execution of the judgment of 18 October 1999 and decision of 22 October 2001 to the Government. Under the provisions of Article 29 § 3 of the Convention, it decided to examine the merits of the application at the same time as its admissibility.

THE FACTS

I. THE CIRCUMSTANCES OF THE CASE

4. The applicant was born in 1953 and lives in Rostov-on-Don.

5. In 1987 he took part in emergency operations at the site of the Chernobyl nuclear plant disaster. As a result the applicant suffered from extensive exposure to radioactive emissions.

6. On an unspecified date the applicant underwent medical examinations which established the link between the applicant's poor health and his involvement in the Chernobyl events. In 1994 the applicant was awarded compensation, to be paid monthly.

1. First set of proceedings

7. In 1999 the applicant sued a local pension authority (*Муниципальное учреждение социальной защиты населения Первомайского района г. Ростова-на-Дону* - "the defendant") requesting to increase his monthly compensation, backdate the increase and recover the unpaid amount. The applicant considered that the amount of compensation had been determined incorrectly.

8. On 18 October 1999 the Pervomayskiy District Court of Rostov-on-Don ("the District Court") granted the applicant's claim and ruled that since 1 January 1999 his monthly compensation had been wrongly calculated. The court awarded the applicant the arrears of RUR 15,829.25 for the period between 1 January and 1 November 1999 and decided that as of 1 November 1999 the applicant was entitled to a monthly compensation of RUR 2,440.70, to be index-linked in line with changes of the minimum monthly wage.

9. The judgment of 18 October 1999 was not appealed against by the parties and came into force on 29 October 1999.

2. Enforcement proceedings in respect of the judgment of 18 October 1999

10. On 6 December 1999 the bailiffs instituted enforcement proceedings in respect of the judgment of 18 October 1999.

11. Some time later the enforcement proceedings were terminated by reference to the lack of funding. On 22 March 2001 the bailiffs returned the writ and documents to the applicant. They referred to Decree No. 143 dated 22 February 2001 (see the relevant domestic law section below) and invited him to submit the documents to a local department of the Ministry of Finance (*ОФК по Первомайскому району г. Ростова-на-Дону*).

12. The applicant followed this invitation and on the same day applied to the local department of the Ministry which four days later rejected the application. It appears that the applicant was invited to fetch a renewed writ of execution from the District Court.

13. Having received the renewed writ from the court, the applicant re-submitted the documents to the Ministry which on 11 April 2001 rejected them, this time by reference to the absence of the defendant's account at the Ministry.

14. On 30 May and 1 July 2002 respectively the authorities transferred a total amount of RUR 38.661,22 in the applicant's favour and informed him that the enforcement of the judgment of 18 October 1999 was thus finalised.

15. It appears that the applicant disagreed. He informed the authority that they had failed to index-link his monthly compensation in line with the minimum monthly wage, as it was ordered by the judgment of 18 October 1999, and used a less favourable scheme of indexation.

16. On unspecified date the authority requested the District Court to interpret the judgment of 18 October 1999 and uphold its scheme of indexation.

17. By a decision of 6 March 2003 the District Court examined and granted the authority's request. The decision was upheld on appeal by the Regional Court on 16 April 2003.

18. On 3 June 2003 the bailiffs ruled that the defendant authority had duly enforced the judgment of 18 October 1999 and terminated the enforcement proceedings accordingly.

19. Thereafter the applicant challenged both decisions by way of supervisory review.

20. On 3 June 2004 the Regional Court, acting as a supervisory review instance, quashed the decision of 6 March 2003 as unlawful and remitted the request for interpretation for a fresh examination at the first instance. The court noted, in particular, that by accepting the authority's interpretation of the judgment of 18 October 1999 the District Court had in fact varied its content and thus had acted unlawfully.

21. On 5 July 2004 the District Court rejected the authority's request for interpretation as unfounded.

22. By first instance decision of 2 September 2004 which was upheld on appeal on 13 October 2004 the applicant was issued with a renewed writ of execution.

23. On 28 November 2004 the bailiffs re-instituted enforcement proceedings in respect of the judgment of 18 October 1999 and requested the authority to enforce it insofar as the judgment had ordered indexation of the applicant's monthly compensation.

3. Second set of proceedings

24. On an unspecified date the applicant brought proceedings against the pension authority claiming indexation for the delay of execution of the judgment of 18 October 1999.

25. On 11 May 2001 the Justice of the Peace of the Pervomayskiy District examined and granted his claim. It ordered the authority to pay the applicant RUR 3,562.13 in damages for the period between 1 November 1999 and 1 February 2001 and the arrears of RUR 18,556.24.

26. The judgment of 11 May 2001 was varied on appeal by the District Court on 22 October 2001. In particular, the court ordered the authority to

pay the applicant RUR 6,341.73 in damages for the period between 1 November 1999 and 1 September 2001 as well as the arrears for the period from 1 November 1999 and 1 September 2001 of RUR 8,505.47. The decision of 22 October 2001 came into force on the same day.

4. Enforcement proceedings in respect of the decision of 22 October 2001

27. On 11 November 2001 the bailiffs instituted enforcement proceedings in relation to the decision of 22 October 2001. It appears that the defendant refused to comply with it by reference to the lack of funds and its disagreement with the amount of award.

28. The decision of 22 October 2001 was enforced by the authorities by a bank transfer of 1 July 2002.

5. Third set of proceedings

29. On an unspecified date the applicant brought a fresh claim against the pension authority for an increase of his monthly compensation.

30. By judgment of 25 December 2002 the District Court rejected the claim as unsubstantiated. On 26 March 2003 the judgment was upheld on appeal by the Rostov Regional Court.

6. Fourth set of proceedings

31. On an unspecified date the applicant brought a fresh claim against the authority in which he requested additional damages for non-enforcement of the judgment of 18 October 1999 and the decision of 22 October 2001. The applicant also referred to the authority's failure to index-link the award of 18 October 1999 in line with changes of the minimum monthly wage and requested compensation in this respect as well.

32. By decision of 25 April 2003 the District Court granted the application in part. By reference to the decision of 6 March 2003 (see § 17 above) the court rejected his claim for an increase of the award of 18 October 1999 in line with changes of the minimum monthly wage. In respect of the delay in enforcement of the judgment of 18 October 1999, the court ordered the authority to pay the applicant RUR 3,065.95 in damages for the period between September 2001 and 1 June 2002. As regards the decision of 22 October 2002, the court ordered RUR 2,722.88 in damages in the applicant's favour for the period from November 2001 to July 2002.

33. On 23 July 2003 the Regional Court upheld the decision of 25 April 2003 on appeal.

34. It appears that the decision of 25 April 2003 was enforced in full on 26 April 2004.

7. *Fifth set of proceedings*

35. On an unspecified date the applicant applied to a court referring to the authority's failure to abide by the judgment of 18 October 1999 insofar as the latter had ordered to index-link the applicant's compensation in line with the minimum monthly wage.

36. Having adopted a different scheme of indexation from the one suggested by the applicant and set out in the judgment of 18 October 1999, on 18 December 2003 the District Court partly granted his claim and ordered the authority to pay the arrears of RUR 28,947.24.

37. The judgment of 18 December 2003 was upheld on appeal in full on 10 March 2004. The amount due to the applicant in this connection was paid on 13 September 2004.

II. RELEVANT DOMESTIC LAW

38. Section 9 of the Federal Law on Enforcement Proceedings of 21 July 1997 provides that a bailiff's order on the institution of enforcement proceedings must fix a time-limit for the defendant's voluntary compliance with a writ of execution. The time-limit may not exceed five days. The bailiff must also warn the defendant that coercive action will follow, should the defendant fail to comply with the time-limit.

39. Under Section 13 of the Law, the enforcement proceedings should be completed within two months of the receipt of the writ of enforcement by the bailiff.

40. Under special rules governing enforcement of execution writs against the recipients of allocations from the federal budget, adopted by the Federal Government on 22 February 2001 (Decree No. 143, as in force at the relevant time), a creditor is to apply to a relevant branch of the Federal Treasury holding debtor's accounts (Sections 1 to 4).

41. Within the next five days the branch examines the application and notifies the debtor of the writ, compelling the latter to abide by the respective court decisions (Sections 7 to 12). In case of the debtor's failure to comply within two months, the branch may temporarily freeze the debtor's accounts (Section 13).

THE LAW

I. ALLEGED VIOLATION OF ARTICLE 6 § 1 OF THE CONVENTION AND ARTICLE 1 OF PROTOCOL NO. 1 TO THE CONVENTION

42. The applicant complained that the prolonged non-enforcement of the judgment of 18 October 1999 and the decision of 22 October 2001 violated his "right to a court" under Article 6 § 1 of the Convention and his right to the peaceful enjoyment of possessions as guaranteed in Article 1 of Protocol No. 1 to the Convention. These Articles in so far as relevant provide as follows:

Article 6 § 1

> "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

> "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. Admissibility

43. The Government submitted that the decisions in question had been enforced. They asserted that the applicant was no longer a victim of the violations alleged as he had been afforded redress at the national level and that his application should be declared inadmissible.

44. The applicant disagreed with the Government's arguments and maintained his complaints. As regards the loss of the victim status, he submitted that the judgment of 18 October 1999 remained non-enforced in part relating to indexation of the applicant's monthly compensation in line with the minimum monthly wage.

45. The Court, firstly, reiterates that "a decision or measure favourable to the applicant 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 *Amuur v. France*, judgment of 25 June 1996, *Reports of Judgments and Decisions* 1996-III, p. 846, § 36, *Dalban v. Romania* [GC], no. 28114/95, § 44, ECHR 1999-VI, and *Rotaru v. Romania* [GC], no. 28341/95, § 35, ECHR 2000-V). Only when these conditions are satisfied does the subsidiary nature of the protective mechanism of the Convention preclude examination of an application (see, for example, *Jensen and Rasmussen v. Denmark* (dec.), no. 52620/99, 20 March 2003).

46. In the instant case, after a few years of the authorities' failure to make regular payments the applicant brought two new successful sets of proceedings seeking a retrospective increase of the arrears. Had the judgment of 18 October 1999 been duly and fully enforced, these decisions, dated 22 October 2001 and 25 April 2003 respectively, could arguably have deprived the applicant of his victim status in respect of the State's previous failure to comply with the judgment.

47. However, as it follows from the information available to the Court on the developments of the case the enforcement proceedings in respect of the judgment of 18 October 1999 in part relating to indexation of the applicant's monthly compensation with the minimum monthly wage were still pending on 28 November 2004 and it remains unclear whether until now the authorities have fully complied with the judgment.

48. Having regard to the fact that the judgment of 18 October 1999 remained in part non-enforced for at least another year and a half after the latest decision on compensation for the delay had been taken and to the fact that it is still unclear whether it has been executed, the Court is unable to conclude that the Government or other domestic authorities have acknowledged the violations alleged by the applicant and provided redress for them and thus deprived him of the victim status.

49. The Court observes 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

50. The Government submitted that in view of the fact that the decisions in question had been enforced there has been no violation of the applicant's Convention rights.

51. The applicant maintained his complaints.

1. *Article 6 § 1 of the Convention*

52. 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 it embodies the "right to a court", of which the right of access, that is the right to institute proceedings before courts in civil

matters, constitutes one aspect. However, that right would be illusory if a Contracting State's domestic legal system allowed a final, binding judicial decision to remain inoperative to the detriment of one party. It would be inconceivable that Article 6 § 1 should describe in detail the procedural guarantees afforded to litigants – proceedings that are fair, public and expeditious – without protecting the implementation of judicial decisions; to construe Article 6 as being concerned exclusively with access to a court and the conduct of proceedings would be likely to lead to situations incompatible with the principle of the rule of law which the Contracting States undertook to respect when they ratified the Convention. Execution of a judgment given by any court must therefore be regarded as an integral part of the "trial" for the purposes of Article 6 (see *Burdov v. Russia*, no. 59498/00, § 34, ECHR 2002-III, and *Hornsby v. Greece*, judgment of 19 March 1997, *Reports* 1997-II, p. 510, § 40).

53. The Court further observes that a delay in the execution of a judgment may be justified in particular circumstances, but the delay may not be such as to impair the essence of the right protected under Article 6 § 1. The applicant should not be prevented from benefiting from the success of the litigation on the ground of alleged financial difficulties experienced by the State (see *Burdov v. Russia*, cited above, § 35).

54. Turning to the instant case, the Court notes that in its larger part the judgment of 18 October 1999 remained inoperative for about two years and seven months, including more than eight months after the decision of 22 October 2001 had been pronounced to redress the non-enforcement of the first one. In part relating to the applicant's claim to index-link his monthly compensation in line with inflation, the judgment of 18 October 1999 remained inoperative at least until 28 November 2004. No justification was advanced by the Government for these delays. By failing for such substantial periods of time to take the necessary measures to comply with the final judicial decisions in the present case, the Russian authorities deprived the provisions of Article 6 § 1 of their useful effect.

55. There has accordingly been a violation of Article 6 § 1 of the Convention.

2. Article 1 of Protocol No. 1 to the Convention

56. The Court reiterates that a "claim" can constitute a "possession" within the meaning of Article 1 of Protocol No. 1 if it is sufficiently established to be enforceable (see *Burdov v. Russia*, cited above, § 40, and *Stran Greek Refineries and Stratis Andreadis v. Greece*, judgment of 9 December 1994, Series A no. 301-B, p. 84, § 59). The judgment of 18 October 1999 and the decision of 22 October 2001 provided the applicant with an enforceable claim and not simply a general right to receive support from the State. The judgments had become final as no ordinary appeal was made against them, and enforcement proceedings had been

instituted. It follows that the impossibility for the applicant to have either decision enforced for a substantial period of time constituted an interference with his right to peaceful enjoyment of his possessions, as set forth in the first sentence of the first paragraph of Article 1 of Protocol No. 1.

57. In the absence of any justification for such an interference (see paragraph 54 above), the Court concludes that there has been a violation of Article 1 of Protocol No. 1 to the Convention.

II. OTHER ALLEGED VIOLATIONS OF THE CONVENTION

58. Insofar as the applicant is dissatisfied with the amount of the court award in the third set of proceedings, the Court recalls that, in principle, it is not called upon to examine the alleged errors of law and fact committed by the domestic judicial authorities, insofar as no unfairness of the proceedings can be detected (see, e.g., *Daktaras v. Lithuania* (dec.), no. 42095/98, 11.01.2000). In the proceedings at issue the domestic courts at two levels of jurisdiction carefully examined the materials in their possession and reached reasoned conclusions as to the merits of the applicant's claim. Throughout the proceedings the applicant was fully able to state his case and contest the evidence that he considered false. Moreover, the Court observes that, in principle, it cannot substitute itself for the national authorities in assessing or reviewing the level of financial benefits available under a social assistance scheme (see *Pancenko v. Latvia* (dec.), no. 40772/98, 28.10.1999 and *Larioshina v. Russia* (dec.), no. 56869/00, 23.04.2002).

59. It follows that this part of the application is manifestly ill-founded within the meaning of Article 35 § 3 of the Convention. Accordingly, it must be rejected pursuant to Article 35 § 4 of the Convention.

III. APPLICATION OF ARTICLE 41 OF THE CONVENTION

60. 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

61. The applicant claimed one time payment of EUR 12,770 and monthly payments of RUR 17,538 with further indexation as of 1 April 2004 in respect of pecuniary and EUR 13,750 in respect of non-pecuniary damage.

62. The Government considered these claims as wholly excessive and unreasonable. They submitted that a finding of a violation alone would constitute a sufficient just satisfaction.

63. The Court does not discern any causal link between the violations found and the amounts of the pecuniary damage alleged and also considers that the applicant's claims are not substantiated by any documentary evidence. Accordingly, it rejects this part of the claim. On the other hand, the Court accepts that the applicant suffered distress because of the State authorities' failure timely to enforce the decisions in question. However, the amounts claimed in respect of non-pecuniary damage appear excessive. The Court takes into account the award made in the *Burdov v. Russia* case (cited above, § 47), such factors as the applicant's age, personal income, the nature of the awards in the present case, i.e. arrears in respect of the increase of monthly compensation for participation in rescue operations at the site of the Chernobyl nuclear disaster, the length of the enforcement proceedings, and other relevant aspects. Making its assessment on an equitable basis, it awards the applicant EUR 3,000 in respect of non-pecuniary damage, plus any tax that may be chargeable on these amounts.

B. Costs and expenses

64. The applicant sought reimbursement of his costs and expenses incurred before the domestic authorities and the Court. However, he has neither quantified the amount nor submitted any receipts or other vouchers on the basis of which such amount could be established. Accordingly, the Court does not make any award under this head.

C. Default interest

65. The Court considers it appropriate that the default interest 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 delays in execution of the judgment of 18 October 1999 and the decision of 22 October 2001 in the applicant's favour 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;

3. *Holds*
   (a) that the respondent State is to pay the applicant, within three months from the date on which the judgment becomes final according to Article 44 § 2 of the Convention, EUR 3,000 (three thousand euros), to be converted into Russian roubles at a rate applicable at the date of settlement, in respect of non-pecuniary damage and any tax that may be chargeable on the above amount.
   (b) that from the expiry of the above-mentioned three months until settlement simple interest shall be payable on the above amounts 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 22 September 2005, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Søren NIELSEN	Christos ROZAKIS
Registrar	President