



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

FIRST SECTION

**CASE OF PARKHOMOV v. RUSSIA**

*(Application no. 19589/02)*

JUDGMENT

STRASBOURG

20 October 2005

**FINAL**

***20/01/2006***

*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 Parkhomov v. Russia,**

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

Mr C.L. ROZAKIS, *President*,

Mr P. LORENZEN,

Mrs N. VAJIĆ,

Mrs S. BOTOUCHAROVA,

Mr A. KOVLER,

Mrs E. STEINER,

Mr K. HAJIYEV, *judges*,

and Mr S. NIELSEN, *Section Registrar*,

Having deliberated in private on 29 September 2005,

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

## PROCEDURE

1. The case originated in an application (no. 19589/02) 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, Aleksandr Aleksandrovich Parkhomov (“the applicant”), on 16 April 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 December 2003 the Court decided to communicate the complaint concerning non-enforcement of court judgments dated 4 December 1998, 11 March 1999, 27 April 2000 and 29 November 2002 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 1959 and lives in the village of Sorgovyy in the Zernogradskiy District of the Rostov Region.

5. In 1988 the applicant took part in a rescue operation on the site of the Chernobyl nuclear disaster. Since late 1993 the applicant has been in receipt of social benefits in this connection.

*1. First set of proceedings*

6. On 4 December 1998 the Zernogradskyy District Court of the Rostov Region (“the District Court”) granted the applicant's claim against a local pension authority (“the authority”) and recovered RUR 40,361.07 of unpaid social benefits.

7. The judgment was upheld by the Rostov Regional Court (“the Regional Court”) and came into force on 20 January 1999.

8. On 25 February 1999 the bailiffs brought enforcement proceedings against the authority in this respect.

9. The money due pursuant to the judgment of 4 December 1998 was paid to the applicant in full on 11 May 2002 which is three years, three months and twenty two days later.

*2. Second set of proceedings*

10. By judgment of 11 March 1999 the District Court examined and granted the applicant's new claim against the authority for unpaid benefits. It ordered a one-time payment of RUR 2,360.44 and monthly payments of RUR 2,886.43 from 1 February 1999 onwards in the applicant's favour. The court also ordered the authority to index-link the future monthly payments.

11. The judgment was upheld by the Regional Court on 21 April 1999. On the same day it came into force.

12. According to the Government, the one-time payment of RUR 2,360.44 in the applicant's favour was made on 1 June 2002 which is three years, one month and ten days after the entry into force of the judgment of 11 March 1999. As regards the monthly payments which were due as of 1 February 1999, they were paid on 29 June 2002 by a single instalment of RUR 94,508.04 covering the period between 1 February 1999 and 1 July 2002. It appears that starting from 1 July 2002 the payments have been made fully and on time.

*3. Third set of proceedings*

13. On an unspecified date the applicant again sued the authority for unpaid social benefits. By judgment of 27 April 2000 the District Court granted the claim and recovered an outstanding debt of RUR 92,122.44 and monthly payments of RUR 4,881.61 from 1 November 1999. By the same judgment the court ordered the authority to index-link future payments in line with a minimum monthly wage.

14. The parties did not appeal against the judgment of 27 April 2000 and it came into force on 7 May 2000.

15. The one-time payment of RUR 92,122.44 in the applicant's favour was made on 11 May 2002 which is two years and four days after the entry into force of the judgment of 27 April 2000. The Government submitted that the authority had fully enforced the judgment of 27 April 2000.

*4. Fourth set of proceedings*

16. On 29 November 2002 the District Court awarded damages in the applicant's favour and recovered compensation of RUR 207,201.56 for the delays in execution of the judgments in the above three sets of proceedings.

17. This decision was upheld by the Regional Court on 25 December 2002 and enforced in full by a bank transfer of 22 April 2004 which is one year, four months and twenty-eight days after its entry into force.

*5. Fifth set of proceedings*

18. On an unspecified date the applicant brought a fresh set of court proceedings against the authority. He alleged that the remainder of the judgment of 27 April 2000 had not been enforced to date, that the minimum monthly wage in Russia had been increased five times, on 1 July 2000, 1 January and 1 July 2001, 1 May 2002 and 1 October 2003, that the amount of his monthly payments had been increased but once during the same period, that the coefficient used had been lower than it should have been and demanded damages in this connection.

19. According to the Government, by judgment of 3 September 2004 the District Court rejected the applicant's claim as unfounded.

20. The judgment was upheld on appeal by the Regional Court on 13 October 2004.

## II. RELEVANT DOMESTIC LAW

*Execution of a judgment*

21. 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.

22. 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.

## THE LAW

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

23. The applicant complained that the prolonged non-enforcement of the judgments taken on 4 December 1998, 11 March 1999, 27 April 2000 and 29 November 2002 respectively in his favour 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**

24. The Government submitted that the judgments 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.

25. 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 27 April 2000 remained non-enforced in part relating to indexation of the applicant's monthly compensation in line with the minimum monthly wage.

26. 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).

27. At the outset the Court observes in respect of the applicant's allegation that the judgment of 27 April 2000 has not been enforced to date that by judgment of 3 September 2004 and decision of 13 October 2004 the domestic courts examined this claim and rejected it as unsubstantiated. The Court further recalls that it falls, as a general rule, for the domestic authorities to interpret the domestic law and establish the facts. In the absence of any complaints by the applicant about the fairness of those proceedings and any indication to the contrary in the case-file, the Court concludes that the judgment of 27 April 2000 has been fully enforced.

28. The Court next observes that after a few years of the authorities' failure to make regular payments in respect of judgments dated 4 December 1998, 11 March 1999 and 27 April 2000 the applicant brought a new successful set of proceedings seeking damages for the delays. Had the judgment of 29 November 2002 taken in this latter set of proceedings been timeously enforced, it could arguably have deprived the applicant of his victim status in respect of the State's previous failure to comply with the judgments. However, the judgment of 29 November 2002 remained inoperative for another year, four months and twenty-eight days.

29. The Court notes that the mere fact that the authorities complied with the judgments after substantial delays cannot be viewed in this case as automatically depriving the applicant of his victim status under the Convention. Therefore it 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 (see, e.g., *Petrushko v. Russia*, no. 36494/02, § 16, 24 February 2005).

30. 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**

31. 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.

32. The applicant maintained his complaints.

33. The Court notes that the judgments of 4 December 1998, 11 March 1999, 27 April 2000 and 29 November 2002 remained inoperative for the periods ranging from one year, four months and twenty-eight days to three years, three months and twenty two days. No justification was advanced by the Government for these delays.

34. The Court has frequently found violations of Article 6 § 1 of the Convention and Article 1 of Protocol No. 1 in cases raising issues similar to the ones in the present case (see, among other authorities, *Burdov v. Russia*, no. 59498/00, ECHR 2002-III and, more recently, *Petrushko*, cited above, or *Poznakhirina v. Russia*, no. 25964/02, 24 February 2005).

35. Having examined the material submitted to it, the Court notes that the Government did not put forward any fact or argument capable of persuading it to reach a different conclusion in the present case. Having regard to its case-law on the subject, the Court finds that by failing for years to comply with the enforceable judgments in the applicant's favour the domestic authorities prevented him from receiving the money which he was entitled to receive under final and binding judgments.

36. There has accordingly been a violation of Article 6 § 1 of the Convention and Article 1 of Protocol No. 1.

## II. OTHER ALLEGED VIOLATIONS OF THE CONVENTION

37. Insofar as the applicant is dissatisfied with the amount of the court's 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 *Pancenکو v. Latvia* (dec.), no. 40772/98, 28.10.1999 and *Larioshina v. Russia* (dec.), no. 56869/00, 23.04.2002).

38. 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

39. 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**

40. The applicant claimed RUR 35,067.29 to be paid monthly as of 1 April 2004 with further indexation, compensation for pecuniary damage of EUR 19,362.84 and compensation for non-pecuniary damage of EUR 7,300.

41. The Government considered these claims excessive.

42. The Court does not discern any causal link between the violation found and the extensive amount of the pecuniary damage alleged; it therefore rejects this claim. On the other hand, the Court accepts that the applicant suffered distress because of the State authorities' failure timely and fully to enforce the judgments in question. However, the amounts claimed in respect of non-pecuniary damage appear excessive. Having regard to the award made in the *Burdov v. Russia* case (cited above, § 47) and such factors as the applicant's age, the length of the enforcement proceedings, and other relevant aspects, and deciding on an equitable basis, the Court awards the applicant EUR 5,000 in respect of non-pecuniary damage, plus any tax that may be chargeable on this amount.

**B. Costs and expenses**

43. The applicant did not seek reimbursement of his costs and expenses incurred before the domestic authorities and the Court. Accordingly, the Court does not make any award under this head.

**C. Default interest**

44. 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 judgments 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 5,000 (five thousand euros) to be converted into Russian roubles on the date of settlement in respect of non-pecuniary damage, plus any tax that may be chargeable on that amount;
  - (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 20 October 2005, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Søren NIELSEN  
Registrar

Christos ROZAKIS  
President