



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

FIRST SECTION

CASE OF SHESTOPALOVA AND OTHERS v. RUSSIA

(Application no. 39866/02)

JUDGMENT

STRASBOURG

17 November 2005

FINAL

12/04/2006

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 Shestopalova and Others v. Russia,

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

Mr C.L. ROZAKIS, *President*,

Mr L. LOUCAIDES,

Mr P. LORENZEN,

Mrs N. VAJIĆ,

Mrs S. BOTOUCHAROVA,

Mr A. KOVLER,

Mr K. HAJIYEV, *judges*

and Mr S. QUESADA, *Deputy Section Registrar*,

Having deliberated in private on 25 October 2005,

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

PROCEDURE

1. The case originated in an application (no. 27295/03) 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 thirty-eight Russian nationals listed in appendix 1 on 23 September 2002. The applicants were represented by Mr V. Tarnarutskiy, a lawyer practising in Voronezh.

2. 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 8 March 2004 the Court decided to communicate the complaint concerning the non-enforcement of the judgments in the applicants’ favour 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 applicants are residents of Voronezh.

5. They are in receipt of welfare payments for their children. In 1999 – 2002 the applicants brought separate sets of civil proceedings against a local welfare authority, claiming arrears in those payments.

6. On the dates set out in appendix 1 the domestic courts granted the applicants' claims and ordered the welfare authority to pay them the respective amounts. The enforcement proceedings were commenced accordingly.

7. Subsequently the bailiffs discontinued the enforcement proceedings in respect of the judgments in the applicants' favour and returned the writs of execution to them referring to the lack of the debtor's funds.

8. In 2001 – 2002 the applicants brought several sets of civil proceedings against private banks in Voronezh in which the defendant authority had its accounts, claiming the recovery of the awarded amounts. The domestic courts rejected those claims as unfounded.

9. In June 2004 the applicants were paid the amounts due pursuant to the writs of execution.

II. RELEVANT DOMESTIC LAW

10. 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.

11. 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 PROTOCL No. 1 TO THE CONVENTION

12. The applicants complained that the prolonged non-enforcement of the judgments in their favour violated their "right to court" under Article 6 § 1 and their right to the peaceful enjoyment of possessions as guaranteed by Article 1 of Protocol No. 1 to the Convention. These Articles, in so far as relevant, 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 ..."

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

13. The Government informed the Court that the authorities of the Voronezh Region had attempted to secure a friendly settlement of the case and that the applicants had refused to accept the friendly settlement on the terms proposed by the authorities. By reference to this refusal and to the fact that, in any event, the judgments in the applicants’ favour had been enforced, the Government invited the Court to strike out the application, in accordance with Article 37 of the Convention.

14. The applicants disagreed with the Government’s arguments and maintained their complaints. As regards the friendly settlement proposal, the applicants claimed that the offer which the authorities of the Voronezh Region had made to them had been unacceptable and that the authorities had refused to reach the friendly settlement on the applicants’ terms.

15. The Court firstly observes that the parties were unable to agree on the terms of a friendly settlement of the case. The Court recalls that under certain circumstances an application may indeed be struck out of its list of cases under Article 37 § 1 (c) of the Convention on the basis of a unilateral declaration by the respondent Government even if the applicant wishes the examination of the case to be continued (see *Tahsin Acar v. Turkey* [GC], no. 26307/95, § 76, ECHR 2003-...).

16. On the facts, the Court observes that the Government failed to submit with the Court any formal statement capable of falling into that category and offering a sufficient basis for finding that respect for human rights as defined in the Convention does not require the Court to continue its examination of the case (see, by contrast, to *Akman v. Turkey* (striking out), no. 37453/97, §§ 23-24, ECHR 2001-VI).

17. As regards the Government’s argument that the judgments in question have already been enforced, the Court considers that the mere fact that the authorities complied with the judgments after a substantial delay cannot be viewed in this case as automatically depriving the applicants of their victim status under the Convention. (see, e.g., *Petrushko v. Russia*, no. 36494/02, § 16, 24 February 2005).

18. In the light of the above considerations, the Court rejects the Government's request to strike the application out under Article 37 of the Convention.

19. 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

20. The Government advanced no arguments on the merits of the application.

21. The applicants maintained their complaint.

22. The Court observes that the judgments in the applicants' favour remained inoperative for several years. No justification was advanced by the Government for the respective delays.

23. 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).

24. 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 applicants' favour the domestic authorities prevented them from receiving the money they could reasonably have expected to receive.

25. 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

26. The applicants also complained that they were denied effective remedies under Article 13 of the Convention in that the domestic courts dismissed their property claims against the private banks of Voronezh. This Article provides 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.”

27. The Court observes that the applicants complained in essence about the unsuccessful outcome of the court proceedings against the banks. It recalls in this connection that the effectiveness of a remedy for the purposes

of Article 13 of the Convention does not depend on the certainty of a favourable outcome for the applicant (see *Swedish Engine Drivers' Union v. Sweden*, judgment of 6 February 1976, Series A no. 20, p. 18, § 50). On the basis of the materials submitted by the applicants, the Court notes that they were able to avail themselves of a remedy under national law, namely instituted the civil proceedings against the banks. Moreover, the applicants were able to present their arguments as they wished, and the judicial authorities gave those arguments due consideration. The fact that the applicants' claims were rejected does not indicate that the remedy in question was ineffective in the circumstances of the present case.

28. 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 §§ 3 and 4 of the Convention

III. APPLICATION OF ARTICLE 41 OF THE CONVENTION

29. 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

30. The applicants did not specify the amounts they sought to obtain for pecuniary damage, but requested the Court to adjust their judgment debts by the inflation coefficient of 136 %. They submitted a certificate of the Department of Statistics of the Voronezh Region which represented the inflation rate in the period between January 1995 and June 2004. The applicants also claimed each 12,000 euros (EUR) as compensation for non-pecuniary damage.

31. The Government contested the applicants' claims as excessive and unjustified. The Government considered that should the Court find a violation in this case that would in itself constitute sufficient just satisfaction.

32. The Court finds that some pecuniary loss must have been occasioned by reason of the period that elapsed from the time between the entry into force of the judgments in question and their subsequent enforcement (see, e.g., *Poznakhirina*, cited above, § 34 and *Makarova and others v. Russia*, no. 7023/03, 24 February 2005, § 38). Having regard to the calculations presented by the applicants, the inflation rates in Russia during the relevant period and given that that the Government did not dispute, as such, the method of calculation employed by the applicants, the Court accepts the

applicants' claims in respect of pecuniary damage and awards them the respective amounts as indicated in appendix 2.

33. As regards the compensation for non-pecuniary damage, the Court would not exclude that the applicants might have suffered distress and frustration resulting from the State authorities' failure to enforce the judgments in their favour. However, having regard to the nature of the breach in this case and making its assessment on an equitable basis, the Court considers that the finding of a violation constitutes in itself sufficient just satisfaction for any non-pecuniary damage sustained by the applicants (see, in a similar context, *Poznakhirina*, cited above, § 35).

B. Costs and expenses

34. The applicants also claimed each 10% of their judgment debts for the costs and expenses incurred before the Court, and notably in respect of legal fees paid to Mr Tarnarutskiy. The latter submitted a certificate in which he confirmed that the applicants incurred the costs alleged.

35. The Government considered that the documents submitted by the applicants did not indicate that the applicants had incurred any costs.

36. According to the Court's case-law, an applicant is entitled to reimbursement of his costs and expenses only in so far as it has been shown that these have been actually and necessarily incurred and were reasonable as to quantum. In the present case, regard being had to the information in its possession and the above criteria, the Court considers it reasonable to award the applicants a total sum of EUR 500 covering costs in the domestic proceedings and for the proceedings before the Court, plus any tax that may be chargeable on that amount.

C. Default interest

37. 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 non-enforcement of the judgments in the applicants' 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 to the Convention

3. *Holds*

(a) that the respondent State is to pay the applicants, within three months from the date on which the judgment becomes final in accordance with Article 44 § 2 of the Convention:

(i) the respective amounts set out in appendix 2 in respect of pecuniary damage;

(ii) a total sum of EUR 500 (five hundred euros) in respect of costs and expenses, to be converted into the national currency of the respondent State at the rate applicable at the date of settlement;

(iii) any tax that may be chargeable on the above amounts;

(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. *Holds* that the finding of a violation constitutes in itself sufficient just satisfaction for any non-pecuniary damage sustained by the applicants;

5. *Dismisses* the remainder of the applicants' claim for just satisfaction.

Done in English, and notified in writing on 17 November 2005, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Santiago QUESADA
Deputy Registrar

Christos ROZAKIS
President

APPENDIX 1

NAME OF APPLICANT	FINAL JUDGMENT TO BE ENFORCED Date/Decision body	AWARDED AMOUNT (RUR)
1. Nina Alekseyevna Shestopalova	29 May 2000 / the Levoberezhny District Court of Voronezh	2,028.92
2. Anastasiya Petrovna Barkova	30 November 2000 / the Levoberezhny District Court of Voronezh	2,353.19
3. Aleksandra Ivanovna Basova	28 March 2000 / the Kominternovskiy District Court of Voronezh	4,540.70
4. Valentina Mikhaylovna Bokova	29 September 2000 / the Levoberezhny District Court of Voronezh	2,218.76
5. Lyudmila Vasilyevna Borisova	3 December 1999 / the Levoberezhny District Court of Voronezh	3,397.14
6. Valentina Aleksandrovna Bykovskaya	4 January 2000 / the Tsentralny District Court of Voronezh	3,324.50
7. Nelya Vasilyevna Voroshilina	13 October 2000 / the Sovetskiy District Court of Voronezh	2,160.7
8. Olga Ivanovna Vysotskaya	8 February 2000 / the Zheleznodorozhny District Court of Voronezh; 25 May 2000 / the Levoberezhny District Court of Voronezh	4,089.03
9. Zinaida Petrovna Goncharova	20 December 1999 / the Tsentralny District Court of Voronezh	9,774.52
10. Svetlana Mikhaylovna Zagorskaya	2 December 1999 / the Levoberezhny District Court of Voronezh	3,927.84
11. Valentina Vasilyevna Klepikova	28 February 2001 / the Leninskiy District Court of Voronezh	4,761.12
12. Nina Timofeyevna Kozyavkina	21 July 2000 / the Levoberezhny District Court of Voronezh	1,999.07
13. Tatyana Alekseyevna Kolyukayeva	21 January 2000 / the Levoberezhny District Court of Voronezh	8,467.52
14. Tatyana Ivanovna Ksenz	18 February 1999/ the Zheleznodorozhny District Court of Voronezh; 24 November 2000 / the Levoberezhny District Court of Voronezh	3,959.26
15. Nina Semenovna Kuimova	14 April 2000 / the Zheleznodorozhny District Court of Voronezh	1,533.54
16. Lyudmila Ivanovna Kudryavtseva	19 January 2000 / the Levoberezhny District Court of Voronezh	8,337.08
17. Irina Nikolayevna Lavrentyeva	11 October 2000 / the Levoberezhny District Court of Voronezh	2,311.36
18. Valentina Mikhaylovna Lipovtseva	25 February and 13 October 2000 / the Zheleznodorozhny District Court of Voronezh	4,220.19
19. Mariya Fedorovna Minakova	29 June 2000 / the Levoberezhny District Court of Voronezh	2,061.08

20. Yelena Tikhonovna Moshurova	19 January 2000 / the Levoberezhny District Court of Voronezh	8,663.29
21. Vera Konstantinovna Myasoyedova	19 January 2000 / the Levoberezhny District Court of Voronezh	8,337.08
22. Lyubov Mikhaylovna Nebolsina	6 December 1999 / the Levoberezhny District Court of Voronezh	10,289.10
23. Marina Leonidovna Panina	20 April 2000 / the Tsentralny District Court of Voronezh	9,257
24. Valentina Ivanovna Popova	26 July 2002 / the Justice of Peace of the Tsentralny District of Voronezh	5,906.2
25. Nina Ivanovna Ryabova	29 December 1999 and 22 February 2000 / the Levoberezhny District Court of Voronezh	2,667.89
26. Valentina Yegorovna Sinelnikova	28 January 2000 / the Levoberezhny District Court of Voronezh	1,994.96
27. Lyubov Germanovna Skopintseva	20 December 1999 / the Tsentralny District Court of Voronezh	11,887.26
28. Valentina Mikhaylovna Slepokurova	7 March 2000 / the Kominternovskiy District Court of Voronezh	2,163.17
29. Natalya Aleksandrovna Spakhova	18 February 1999 / the Zheleznodorozhny District Court of Voronezh	1,597.05
30. Yevgeniya Aleksandrovna Starykh	7 March 2000 and 26 June 2001 / the Sovetskiy District Court of Voronezh	5,973.36
31. Valentina Alekseyevna Stolpovskaya	9 October 2000 / the Zheleznodorozhny District Court of Voronezh	4,417.48
32. Tatyana Pavlovna Tomilina	20 December 1999 / the Tsentralny District Court of Voronezh	7,154.54
33. Yelena Viktorovna Trofimova	22 February 2000 / the Levoberezhny District Court of Voronezh	3,944.5
34. Valentina Nikolayevna Urazova	19 January and 30 March 2001 / the Zheleznodorozhny District Court of Voronezh	3,910.05
35. Irina Viktorovna Tsunenkov	19 January 2000 / the Levoberezhny District Court of Voronezh	8,663.29
36. Galina Ivanovna Shamayeva	15 March 2000 / the Tsentralny District Court of Voronezh	1,985.18
37. Tatyana Mitrofanovna Sheremetyeva	22 December 1999 / the Sovetskiy District Court of Voronezh	1,830.65
38. Nina Vasilyevna Yarkina	13 November 2000 / the Sovetskiy District Court of Voronezh	4,464.52

APPENDIX 2

NAME OF APPLICANT	AMOUNT TO BE PAID FOR PECUNIARY DAMAGE (RUR)
1. Nina Alekseyevna Shestopalova	2,739.3
2. Anastasiya Petrovna Barkova	3,200.3
3. Aleksandra Ivanovna Basova	6,175.4
4. Valentina Mikhaylovna Bokova	3,017.5
5. Lyudmila Vasilyevna Borisova	4,620.1
6. Valentina Aleksandrovna Bykovskaya	4,521.3
7. Nelya Vasilyevna Voroshilina	2,938.6
8. Olga Ivanovna Vysotskaya	5,561.08
9. Zinaida Petrovna Goncharova	13,293.3
10. Svetlana Mikhaylovna Zagorskaya	5,341.9
11. Valentina Vasilyevna Klepikova	6,475.1
12. Nina Timofeyevna Kozyavkina	2,718.7
13. Tatyana Alekseyevna Kolyukayeva	11,515.8
14. Tatyana Ivanovna Ksenz	5,384.6
15. Nina Semenovna Kuimova	2,085.6
16. Lyudmila Ivanovna Kudryavtseva	11,338.4
17. Irina Nikolayevna Lavrentyeva	3,143.4
18. Valentina Mikhaylovna Lipovtseva	5,739.5
19. Mariya Fedorovna Minakova	2,803.06
20. Yelena Tikhonovna Moshurova	11,782.07
21. Vera Konstantinovna Myasoyedova	11,338.4
22. Lyubov Mikhaylovna Nebolsina	13,993.2
23. Marina Leonidovna Panina	12,589.5
24. Valentina Ivanovna Popova	8,032.4
25. Nina Ivanovna Ryabova	3,628.3
26. Valentina Yegorovna Sinelnikova	2,713.1
27. Lyubov Germanovna Skopintseva	16,166.7
28. Valentina Mikhaylovna Slepokurova	2,941.9
29. Natalya Aleksandrovna Spakhova	2,172
30. Yevgeniya Aleksandrovna Starykh	8,123.8
31. Valentina Alekseyevna Stolpovskaya	6,007.8
32. Tatyana Pavlovna Tomilina	9,730.2
33. Yelena Viktorovna Trofimova	5,432.5
34. Valentina Nikolayevna Urazova	5,317.7
35. Irina Viktorovna Tsunenkov	11,782.07
36. Galina Ivanovna Shamayeva	2,699.8
37. Tatyana Mitrofanovna Sheremetyeva	2,489.7
38. Nina Vasilyevna Yarkina	6,071.7