CONSEIL DE L'EUROPE

COUNCIL OF EUROPE

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

FIRST SECTION

CASE OF KORCHAGINA AND OTHERS v. RUSSIA

(Application no. 27295/03)

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 Korchagina and Others v. Russia,

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

Mr C.L. ROZAKIS, *President*,
Mrs S. BOTOUCHAROVA,
Mr A. KOVLER,
Mrs E. STEINER,
Mr K. HAJIYEV,
Mr D. SPIELMANN,
Mr S.E. JEBENS, *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 six Russian nationals listed in the appendix on 26 March 2003.

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 application 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. The applicants are in receipt of welfare payments for their children. In 1999 – 2000 they brought separate sets of civil proceedings against a local welfare authority, claiming arrears in those payments.

6. On the dates set out in the appendix 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. On 26 July 2001 the bailiffs discontinued the enforcement proceedings in respect of the judgments in the applicants' favour and returned them the writs of execution referring to the lack of the debtor's funds.

8. In 2002 – 2004 the applicants unsuccessfully applied to various public bodies seeking to have the judgments in the favour enforced.

9. On 2 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 about the prolonged non-enforcement of the judgments in their favour. The Court will examine this complaint under Article 6 § 1 of the Convention and 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 authorities of the Voronezh Region had made an offer to them, but did not allow the applicants to acquaint themselves with the terms of that offer and that, in any event, the amount of the judgment debts transferred to their accounts in 2004 had lost the purchasing power due to inflation.

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 the application 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 the lengthy non-enforcement of the judgments in their favour violated their rights to effective domestic remedies under Article 13 of the Convention.

27. The Court considers that this complaint is linked to the above issues of non-enforcement to such an extent that it should be declared admissible as well. However, having regard to the finding relating to Article 6 § 1 (see paragraph 25 above), the Court considers that it is not necessary to examine whether, in this case, there has been a violation of Article 13.

III. APPLICATION OF ARTICLE 41 OF THE CONVENTION

28. 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

29. As regards compensation for pecuniary damages, the applicants claimed the interest payable at statutory rate for the default period in the amount of RUR 3,791.85 for the first applicant, RUR 1,459.61 for the second applicant, RUR 3,263.19 for the third applicant, RUR 957.89 for the fourth applicant, RUR 5,883.43 for the fifth applicant and RUR 3,626.24 for the sixth applicant. They also claimed RUR 11,569.50, RUR 2,718.45, RUR 6,314.79, RUR 3,751.33, RUR 10,992.38 and RUR 17,968.91 without further explanation. In addition, the applicant claimed each 31,000 US dollars (USD), of which USD 10,000 represented the amount they could have earned during the period when, instead, they had sought the enforcement of their court awards and USD 20,000 was the compensation for the losses their children had sustained as a result of the untimely enforcement of the judgment in their favour in respect of pecuniary damage. The applicants did not specify their claims as regards the remaining USD 1,000. They also claimed USD 45,000 in respect of non-pecuniary damage.

30. The Government contested the applicants' claims as wholly excessive and unjustified. They argued that there was no causal link between the damage allegedly sustained by the applicants and the non-enforcement of the judgments in their favour. The Government considered that should the Court find a violation in this case that would in itself constitute sufficient just satisfaction.

31. 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 materials in its possession, the Court awards the first applicant RUR 3,791.85, the second applicant RUR 1,459.61, the third applicant RUR 3,263.19, the fourth applicant RUR 957.89, the fifth applicant RUR 5,883.43 and the sixth applicant RUR 3,626.24, plus any tax that may be chargeable, in respect of pecuniary damage.

32. 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

33. The applicants also claimed RUR 10,045 for the costs and expenses incurred before the domestic courts and the Court.

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

35. 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 each applicant the sum of EUR 20 in respect of costs and expenses, plus any tax that may be chargeable.

C. Default interest

36. 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 application admissible;

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* that there is no need to examine the complaint under Article 13 of the Convention;

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

(i) RUR 3,791.85 (three thousand seven hundred and ninety-one roubles and eighty-five kopecks) to the first applicant, RUR 1,459.61 (one thousand four hundred and fifty-nine roubles and sixty-one kopecks) to the second applicant, RUR 3,263.19 (three thousand two hundred and sixty-three roubles and nineteen kopecks) to the third applicant, RUR 957.89 (nine hundred and fifty-seven roubles and eighty-nine kopecks) to the fourth applicant, RUR 5,883.43 (five thousand eight hundred and eighty-three roubles and forty-three kopecks) to the fifth applicant and RUR 3,626.24 (three thousand six hundred and twenty-six roubles and twenty-four kopecks) to the sixth applicant in respect of pecuniary damage;

(ii) EUR 20 (twenty euros) to each of the applicants 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;

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

6. *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

NAME OF APPLICANT	FINAL JUDGMENT TO BE ENFORCED Date/Decision body	AWARDED AMOUNT (RUR)
1. Yelena Petrovna Korchagina	20 December 1999 / the Kominternovskiy District Court of Voronezh	3,893.05
2. Yelena Gennadyevna Kostyukova	12 September 2000 / the Levoberezhny District Court of Voronezh	2,151.13
3. Tatyana Ivanovna Kryukova	23 May 2000 / the Kominternovskiy District Court of Voronezh	3,919.58
4. Svetlana Gennadyevna Lavlinskaya	17 December 1999 / the Kominternovskiy District Court of Voronezh	1,290.77
5. Galina Aleksandrovna Palagina	28 March 2000 / the Kominternovskiy District Court of Voronezh	6,583.05
6. Nina Matveyevna Yurova	23 May 2000 / the Kominternovskiy District Court of Voronezh and 12 September 2000 / the Tsentralny District Court of Voronezh	5,119.98 3,344.28