



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

FIRST SECTION

CASE OF AGIBALOVA AND OTHERS v. RUSSIA

(Application no. 26724/03)

JUDGMENT

STRASBOURG

13 April 2006

FINAL

13/07/2006

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 Agibalova 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,

Mrs F. TULKENS,

Mr P. LORENZEN,

Mrs N. VAJIĆ,

Mrs S. BOTOUCHAROVA,

Mr A. KOVLER, *judges*

and Mr S. NIELSEN, *Section Registrar*,

Having deliberated in private on 23 March 2006,

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

PROCEDURE

1. The case originated in an application (no. 26724/03) 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 forty-six Russian national listed in appendix 1 on 20 November 2001.

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 7 October 2003 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.

4. On 23 March 2006 the Court decided that a hearing in the case was unnecessary (Rule 59 § 3 of the Rules of Court).

THE FACTS

I. THE CIRCUMSTANCES OF THE CASE

5. The applicants live in the Voronezh Region.

6. They are in receipt of welfare payments for their children. In 1999 – 2001 the applicants brought separate sets of civil proceedings against a local welfare authority, claiming arrears in those payments.

7. 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.

8. On 26 July 2001 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.

9. Thereafter the applicants unsuccessfully applied to various public bodies seeking to have the judgments in their favour enforced.

10. In January and February 2004 the applicants were paid the amounts due pursuant to the writs of execution.

II. RELEVANT DOMESTIC LAW

11. 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.

12. 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. WITHDRAWAL OF SIX APPLICANTS

13. On 20 February 2004 the Government informed the Court that six of the applicants, namely Ms Mariya Fedorovna Bobrovskaya, Ms Galina Petrovna Vostrikova, Ms Galina Ivanovna Guzenko, Ms Svetlana Sergeyevna Zavertyayeva, Ms Galina Anatolyevna Kolesnikova and Ms Lyudmila Georgiyevna Morozova, had accepted an offer in settlement of their application and invited the Court, in so far as the complaints of the respective applicants were concerned, to strike the case out of its list of cases under Article 37 § 1 (a) and (b) of the Convention. The Government enclosed copies of friendly settlement agreements dated 11 and 12 February 2004 signed by an official representing the Government and the applicants. Under these agreements the Government undertook to pay the judgment debts and compensation in respect of non-pecuniary damage and

legal costs to the applicants, while the latter declared that they did not intend to pursue the proceedings before the Court.

14. By registered letters of 2 September 2005 the Court transmitted copies of the above agreements to the applicants and invited them to affirm formally, before 7 October 2005, that they had accepted the settlement in question and that, therefore, they did not intend to pursue their application. No reply was received from any of the applicants.

15. Taking into account the declarations of the aforementioned six applicants and the fact that they did not submit any comments regarding the friendly settlement, the Court finds that the matter has been resolved and the respective applicants have lost interest in pursuing their application. It finds no reasons of a general character, as defined in Article 37 § 1 *in fine*, which would require the examination of the application by virtue of that Article. Accordingly, in so far as the complaints of the six applicants listed above are concerned, the Court strikes the application out of its list, in accordance with Article 37 § 1 of the Convention (see *Tikhomirov and Tikhomirova v. Russia* (dec.), no. 43172/98, 21 March 2002).

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

16. The remaining 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

17. The Government notified 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, the fact that, in any event, the judgments in the applicants' favour had been enforced, and the admissibility decision in the case of *Aleksentseva and Others v. Russia* (no. 75025/01 *et seq.*, 4 September 2003) the Government invited the Court to strike out the application, in accordance with Article 37 of the Convention.

18. 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.

19. The Court firstly observes that the parties were unable to agree on the terms of a friendly settlement of the case. It notes that whilst 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-...), this procedure is not, as such, intended to circumvent the applicant's opposition to a friendly settlement.

20. Moreover, a distinction must be drawn between, on one hand, declarations made in the context of strictly confidential friendly settlement proceedings (Article 38 § 2 of the Convention and Rule 62 § 2 of the Rules of Court) and, on the other hand, unilateral declarations made by a respondent Government in public and adversarial proceedings before the Court.

21. On the facts, the Court observes that the Government failed to submit 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, *Akman v. Turkey* (striking out), no. 37453/97, §§ 23-24, ECHR 2001-VI).

22. 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).

23. 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.

24. 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

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

26. The applicants maintained their complaint.

27. 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.

28. 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).

29. 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.

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

III. OTHER ALLEGED VIOLATIONS OF THE CONVENTION

31. 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.

32. 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 30 above), the Court considers that it is not necessary to examine whether, in this case, there has been a violation of Article 13.

IV. APPLICATION OF ARTICLE 41 OF THE CONVENTION

33. 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

34. The applicants claimed amounts set out in appendix 2 which represented the judgment debts index-linked to the inflation rate for the default period. The applicants further 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 each USD 45,000 in respect of non-pecuniary damage.

35. The Government contested the applicants' claims as excessive and unjustified. As regards the pecuniary damage, they pointed out that under national law it was open to the applicants to file a court claim, seeking interest for the delayed payment of their judgment debts, and that the domestic courts would calculate such interest on the basis of a statutory rate which was currently equal to 14%. Therefore, in the Government's view, the interest accrued by the applicants should amount to 40 – 45% of their judgment debts. As to the non-pecuniary damage, the Government considered that should the Court find a violation in this case that would in itself constitute sufficient just satisfaction.

36. Having regard to the materials in its possession, the Court accepts the Government's argument and awards the applicants the respective amounts set out in appendix 2, plus any tax that may be chargeable.

37. In so far as the compensation of non-pecuniary damage is concerned, the Court would not exclude that the applicants might have suffered distress and frustration resulting from the State authorities' failure to enforce the judgment in their favour. However, 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, *Mikhaylova and others v. Russia*, no. 22534/02, § 41, 17 November 2005, or *Bobrova v. Russia*, no. 24654/03, § 37, 17 November 2005).

B. Costs and expenses

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

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

40. 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 RUR 500 in respect of costs and expenses.

C. Default interest

41. 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. *Decides* to strike the application out of its list in so far as the complaints of Ms Mariya Fedorovna Bobrovskaya, Ms Galina Petrovna Vostrikova, Ms Galina Ivanovna Guzenko, Ms Svetlana Sergeyevna Zavertyayeva, Ms Galina Anatolyevna Kolesnikova and Ms Lyudmila Georgiyevna Morozova are concerned;
2. *Declares* the application admissible in so far as the complaints of the remaining applicants are concerned;
3. *Holds* that there has been a violation of Article 6 of the Convention and Article 1 of Protocol No. 1 to the Convention;
4. *Holds* that there is no need to examine the complaint under Article 13 of the Convention;
5. *Holds*
 - (a) that the respondent State is to pay each of 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) RUR 500 (five hundred roubles) in respect of costs and expenses;
 - (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;
6. *Holds* that the finding of a violation constitutes in itself sufficient just satisfaction for any non-pecuniary damage sustained by the applicants;
7. *Dismisses* the remainder of the applicants' claim for just satisfaction.

Done in English, and notified in writing on 13 April 2006, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Søren NIELSEN
Registrar

Christos ROZAKIS
President

APPENDIX 1

NAME OF APPLICANT	FINAL JUDGMENT TO BE ENFORCED Date/Decision Body	AWARDED AMOUNT (RUR)
1. Irina Fedorovna Agibalova	18 May 2001 / the Levoberezhny District Court of Voronezh	2,485.93
2. Natalya Sergeyevna Avdeyeva	30 November 2000 / the Levoberezhny District Court of Voronezh	4,706.37
3. Mariya Vasilyevna Aksenova	25 February 2000 / the Sovetskiy District Court of Voronezh	3,758.31
4. Yelena Mitrofanovna Alekseyeva	10 February 2000 / the Kominternovskiy District Court of Voronezh	2,685.57
5. Yuliya Aleksandrovna Anokhina	28 April 2000 / the Semiluki Town Court of the Voronezh Region	3,858.91
6. Nadezhda Anatolyevna Anpilogova	30 March 2000 / the Kominternovskiy District Court of Voronezh	2,020.26
7. Lyudmila Vladimirovna Aristova	9 February and 12 July 2000 / the Kominternovskiy District Court of Voronezh	17,040.37
8. Mariya Mikhaylovna Balko	19 November 1999 / the Levoberezhny District Court of Voronezh	1,949.8
9. Mariya Fedorovna Bobrovskaya	21 March 2000 / the Levoberezhny District Court of Voronezh	8,561.02
10. Galina Ivanovna Vedeneyeva	7 April 2000 / the Levoberezhny District Court of Voronezh	6,164.24
11. Galina Petrovna Vostrikova	17 December 1999 / the Tsentralny District Court of Voronezh	7,496.01
12. Marina Leonidovna Gotovtseva	19 December 2000 / the Tsentralny District Court of Voronezh	4,580.32
13. Galina Ivanovna Guzenko	11 January 2001 / the Levoberezhny District Court of Voronezh	4,678.62
14. Lyudmila Ivanovna Gurova	24 November 2000 / the Levoberezhny District Court of Voronezh	2,143.52
15. Lyubov Vyacheslavovna Drovyanikova	23 May 2000 / the Sovetskiy District Court of Voronezh	4,062.27
16. Lyudmila Georgiyevna Zhdanova	28 December 1999 / the Kominternovskiy District Court of Voronezh	2,564.84
17. Yelena Yuryevna Zhuravel	29 September 2000 / the Levoberezhny District Court of Voronezh	9,425.65
18. Svetlana Sergeyevna Zavertyayeva	6 July 2000 / the Zheleznodorozhny District Court of Voronezh	3,839.24
19. Lyubov Nikolayevna Zolotareva	6 October 2000 / the Khokholskiy Town Court of the Voronezh Region	3,688.98
20. Alla Aleksandrovna Ishmuratova	4 August 2000 / the Levoberezhny District Court of Voronezh	4,416.56
21. Nina Valentinovna Kamyshova	8 December 1999 / the Levoberezhny District Court of Voronezh	16,296.14
22. Anna Ivanovna Koshcheyeva	16 December 1999 / the Bobrov Town Court of the Voronezh Region	3,682.5
23. Vera Pavlovna Klementyeva	10 April 2000 / the Sovetskiy District Court of Voronezh	2000,94

24. Valentina Ivanovna Kolesnikova	8 February 2000 / the Tsentralny District Court of Voronezh	8,878.88
25. Lyudmila Mitrofanovna Kolesnikova	4 July 2001 / the Levoberezhny District Court of Voronezh	5,369.13
26. Galina Anatolyevna Kolesnikova	31 May 2000 / the Semiluki Town Court of the Voronezh Region	2,030.2
27. Yelena Viktorovna Kostina	12 January 2001 / the Levoberezhny District Court of Voronezh	4,406.25
28. Vera Nikolayevna Krasova	6 April 2000 / the Kominternovskiy District Court of Voronezh	1,870
29. Olga Vladimirovna Krugova	23 June 2000 / the Kominternovskiy District Court of Voronezh	4,059.24
30. Zhanneta Alekseyevna Kukhareva	19 January 2000 / the Sovetskiy District Court of Voronezh	3,745.64
31. Anna Ivanovna Kuznetsova	25 December 2000 / the Levoberezhny District Court of Voronezh	2,341.05
32. Svetlana Vasilyevna Levagina	23 April 2001 / the Kominternovskiy District Court of Voronezh	4,461.52
33. Lyudmila Nikolayevna Minakova	31 January 2000 and 1 March 2001 / the Sovetskiy District Court of Voronezh	15,635.64
34. Lyudmila Georgiyevna Morozova	28 June 2000 and 31 October 2000 / the Kominternovskiy District Court of Voronezh	4,587.14
35. Svetlana Anatolyevna Nezhevenko	23 May 2000 / the Zheleznodorozhny District Court of Voronezh	1,360.26
36. Yelena Ivanovna Nuzhdina	4 August 2000 / the Levoberezhny District Court of Voronezh	4,267.24
37. Yelena Vasilyevna Pavlova	10 April 2000 / the Sovetskiy District Court of Voronezh	4,002.3
38. Nadezhda Petrovna Pershina	14 January 2000 / the Levoberezhny District Court of Voronezh	954
39. Yelena Viktorovna Pilyugina	8 February 2001 / the Levoberezhny District Court of Voronezh	3,201.2
40. Natalya Vladimirovna Rychkova	22 May 2000 / the Sovetskiy District Court of Voronezh	2,030.87
41. Yelena Borisovna Skryabina	22 May 2000 / the Tsentralny District Court of Voronezh	12,287.2
42. Olga Alekseyevna Smolyaninova	29 December 1999 / the Levoberezhny District Court of Voronezh	4,246.35
43. Tatyana Anatolyevna Stenyushkina	23 June 2000 / the Leninskiy District Court of Voronezh	5,792
44. Natalya Mikhaylovna Tolokonnikova	28 April 2000/ the Levoberezhny District Court of Voronezh	2,090.62
45. Zinaida Aleksandrovna Chesnokova	30 March 2000 / the Kominternovskiy District Court of Voronezh	1,320.64
46. Irina Anatolyevna Shalneva	13 September 2000 / the Levoberezhny District Court of Voronezh	2,250.59

APPENDIX 2

NAME OF APPLICANT	CLAIMS FOR PECUNIARY DAMAGE (RUR)	AMOUNTS TO BE PAID FOR PECUNIARY DAMAGE (RUR)
1. Irina Fedorovna Agibalova	2,040.53	1,118.66
2. Natalya Sergeyevna Avdeyeva	3,237.14	2,117.86
3. Mariya Vasilyevna Aksenova	4,566.34	1,691.23
4. Yelena Mitrofanovna Alekseyeva	5,415.62	1,208.5
5. Yuliya Aleksandrovna Anokhina	5,794.15	1,736.5
6. Nadezhda Anatolyevna Anpilogova	1,328.35	909.12
7. Lyudmila Vladimirovna Aristova	39,323.88	7,668.16
8. Mariya Mikhaylovna Balko	2,796.66	877.05
9. Galina Ivanovna Vedeneyeva	9,398	2,773.9
10. Marina Leonidovna Gotovtseva	8,790.54	2,061.14
11. Lyudmila Ivanovna Gurova	1,369.2	964.58
12. Lyubov Vyacheslavovna Drovyannikova	5,987.79	1,828.02
13. Lyudmila Georgiyevna Zhdanova	6,412.48	1,154.17
14. Yelena Yuryevna Zhuravel	10,807.92	4,241.54
15. Lyubov Nikolayevna Zolotareva	4,100.67	1,660.04
16. Alla Aleksandrovna Ishmuratova	3,828.41	1,987.45
17. Nina Valentinovna Kamyshova	27,265.06	7,333.26
18. Anna Ivanovna Koshcheyeva	9,876.02	1,657.12
19. Vera Pavlovna Klementyeva	3,044.03	900.42
20. Valentina Ivanovna Kolesnikova	19,244.97	3,995.5
21. Lyudmila Mitrofanovna Kolesnikova	4,637.58	2,416.1
22. Yelena Viktorovna Kostina	3,566.7	1,982.81
23. Vera Nikolayevna Krasova	3,268.31	841.5
24. Olga Vladimirovna Krugova	5,849.36	1,826.65
25. Zhanneta Alekseyevna Kukhareva	10,144.69	1,685.53
26. Anna Ivanovna Kuznetsova	2,045.03	1,053.47
27. Svetlana Vasilyevna Levagina	3,755.11	2,007.58
28. Lyudmila Nikolayevna Minakova	34,077.91	7,036.03
29. Svetlana Anatolyevna Nezhevenko	960.79	612.11
30. Yelena Ivanovna Nuzhdina	4,352.84	1,920.25
31. Yelena Vasilyevna Pavlova	6,088.7	1,801.03
32. Nadezhda Petrovna Pershina	2,567.28	429.3
33. Yelena Viktorovna Pilyugina	2,939.6	1,440.54
34. Natalya Vladimirovna Rychkova	2,995.75	913.89
35. Yelena Borisovna Skryabina	18,116.33	5,529.24
36. Olga Alekseyevna Smolyaninova	10,851.61	1,912.2
37. Tatyana Anatolyevna Stenyushkina	8,376.87	2,687.4
38. Natalya Mikhaylovna Tolokonnikova	2,768.78	940.77
39. Zinaida Aleksandrovna Chesnokova	1,903.04	564.28
40. Irina Anatolyevna Shalneva	2,369.04	1,012.76