



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

FIRST SECTION

CASE OF VASILYEVA AND OTHERS v. RUSSIA

(Application no. 8011/02)

JUDGMENT

STRASBOURG

29 June 2006

FINAL

29/09/2006

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 Vasilyeva 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,

Mrs N. VAJIĆ,

Mr A. KOVLER,

Mr D. SPIELMANN,

Mr S.E. JEBENS, *judges*,

and Mr S. NIELSEN, *Section Registrar*,

Having deliberated in private on 8 June 2006,

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

PROCEDURE

1. The case originated in an application (no. 8011/02) 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 seven Russian nationals, Mrs Mariya Petrovna Vasilyeva, Mrs Mariya Andreevna Kovalenko, Mr Aleksandr Ivanovich Kovalenko, Mr Nikolay Ivanovich Kovalenko, Mrs Anna Vasiliyevna Terekhova, Mr Vyacheslav Dmitriyevich Kotov and Mrs Polupanova Evdokiya Fateyevna (“the applicants”), on 27 March 2001.

2. As of 17 January 2002 the application on behalf of the late Mrs A. V. Terekhova has been pursued by her son, Mr Mikhail Gavrilovich Terekhov. As of 9 February 2004 the application on behalf of the late Mrs M. P. Vasilyeva has been pursued by Mrs A. A. Kosolapova. As of 11 February 2004 the application on behalf of the late Mr A. I. Kovalenko has been pursued by his brother Mr Nikolay Ivanovich Kovalenko.

3. The applicants were represented by Ms S. A. Poznakhirina, a lawyer practising in the town of Novovoronezh. The Russian Government (“the Government”) were represented by Mr P. Laptev, Representative of the Russian Federation at the European Court of Human Rights.

4. On 19 November 2003 the Court decided to communicate the application.

5. 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

6. The first five applicants were born in 1910, 1935, 1939, 1912 and 1940 respectively. The sixth and the seventh applicant were born on unspecified dates. At the relevant time all the applicants lived in the town of Voronezh.

7. The applicants were entitled to pecuniary awards against the State in connection with the late payment of their pensions.

8. By judgment of 7 August 2000 of the Novovoronezhskiy Town Court of the Voronezh Region (“the Town Court”) the first applicant was granted 2,117.38 Russian roubles (“RUR”, approximately 84 euros, “EUR”) to be paid by the State. The judgment came into force on 28 September 2000.

9. Having examined the claims of the third and the fourth applicant, on 5 September 2000 the Town Court granted them RUR 1,461.78 (approximately EUR 59) and RUR 2,320.81 (approximately EUR 93) respectively against the State. This judgment came into force on 15 September 2000.

10. On 18 September 2000 the Town Court granted the second applicant’s claim and awarded her RUR 3,346.63 (approximately EUR 140) to be paid by the State.

11. On 25 September 2000 the fifth applicant was successful in a claim before the Town Court against the pension authority. The court granted him RUR 2,318.63 (approximately EUR 97). The judgment came into force on 4 October 2000.

12. The awards in respect of the sixth and the seventh applicant were made by the Town Court on 18 and 19 September 2000.

13. On an unspecified date the applicants applied to bailiffs’ service, requesting to assist in enforcement of the said awards.

14. By letter of 30 January 2001 the bailiffs’ service returned the execution writs without enforcement.

15. It appears that the above judgments were not enforced at least until 25 May 2004 which is the date on which the respondent Government have filed their observations.

THE LAW

I. STRIKING OUT OF THE LIST

16. On 5 April 2006 the applicants’ counsel informed the Court that Mr Kotov and Mrs Polupanova, the sixth and the seventh applicant, had

passed away and that their heirs did not intend to pursue their application before the Court.

17. Regard being had to the absence of any heirs who wish to pursue the application on behalf of the sixth and the seventh applicant or any reasons which would require a continuation of the examination of the case (see, by way of contrast, *Karner v. Austria*, judgment of 24 July 2003, *Reports of Judgments and Decisions* 2003-IX, § 28), the Court, in so far as their complaints are concerned, strikes the application out of its list, in accordance with Article 37 § 1 (c) of the Convention.

II. ALLEGED VIOLATION OF ARTICLES 6 § 1 OF THE CONVENTION AND 1 OF PROTOCOL NO. 1

18. The applicants complained that the authorities' refusal to enforce the judgments in their cases violated their "right to a court" under Article 6 § 1 of the Convention and their right to the peaceful enjoyment of possessions as guaranteed in Article 1 of Protocol No. 1. 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

19. The Government submitted that between 1995 and 1999 there had been systematic delays in payment of pensions due to a nation-wide economic crisis. Many pensioners applied to courts claiming compensation for the delays. In view of the lack of legal norms providing for payment of such compensations and rules on budgetary discipline, respective court judgments were enforced with considerable delays, if at all. The Government acknowledged that delays in enforcement of these judgments

had taken place and informed the Court that the problem had called for an adoption of a special federal law aimed at combating that problem. At the time of submission of the Government's observations, the draft law on compensation for delays in payment of pensions was being examined by the Russian authorities.

20. The applicants maintained their complaints.

21. 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

22. The Court first notes that the five judgments dated 7 August, 5, 18 and 25 September 2000 respectively remained without enforcement at least until 25 May 2004, i.e. for the period of more than three years and eight months.

23. The Court has found violations of Article 6 § 1 of the Convention and Article 1 of Protocol No. 1 in many 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 v. Russia*, no. 36494/02, 24 February 2005, 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 such substantial periods to comply with the enforceable judgments in the applicants' favour the domestic authorities prevented them from receiving the money which they were entitled to receive under final and binding judgments.

25. There has accordingly been a violation of Articles 6 § 1 of the Convention and 1 of Protocol No. 1 in respect of all five applicants.

III. APPLICATION OF ARTICLE 41 OF THE CONVENTION

26. 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

27. The applicants requested the enforcement of the respective court judgments and claimed RUR 1,452, RUR 2,295, RUR 1,002, RUR 1,591 and RUR 1,590 (calculated on the basis on a monthly statutory interest rate in Russia) respectively in respect of pecuniary damage. Each applicant also claimed EUR 10,000 in respect of non-pecuniary damage.

28. The Government contested the amount of non-pecuniary damage as excessive.

29. The Court notes that the State’s outstanding obligation to enforce the judgments at issue is not in dispute. Accordingly, insofar as the judgments have not yet been enforced (see § 15 above), the applicants are still entitled to recover the principal amount of the debt in the course of domestic proceedings. The Court recalls that the most appropriate form of redress in respect of a violation of Article 6 is to ensure that the applicant as far as possible is put in the position he would have been had the requirements of Article 6 not been disregarded (see *Piersack v. Belgium* (Article 50), judgment of 26 October 1984, Series A no. 85, p. 16, § 12, *mutatis mutandis*, *Gençel v. Turkey*, no. 53431/99, § 27, 23 October 2003 and *Makarova and Others v. Russia*, no. 7023/03, § 37, 24 February 2005). The Court finds that in the present case this principle applies as well, having regard to the violations found. It therefore considers that the Government shall secure, by appropriate means, the enforcement of the awards made by the domestic courts. For this reason the Court does not find it necessary to make an award for pecuniary damage in so far as it relates to the principal amount.

30. As the Government did not dispute the calculations of interest presented by the applicants, and as the Court does not find them unreasonable, it makes the awards on that basis. The Court awards the first applicant RUR 1,452, the second applicant RUR 2,295, the third applicant RUR 1,002, the fourth applicant RUR 1,591 and the fifth applicant RUR 1,590 in compensation for pecuniary damage, plus any tax that may be chargeable on these amounts.

31. The Court also accepts that the applicants suffered distress because of the State authorities’ failure to enforce the judgments. 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 applicants' age, personal income, the nature of the awards in the present case, i.e. arrears in respect of the increase of retirement pension, the length of the enforcement proceedings and other relevant aspects. Making its assessment on an equitable basis, it awards each applicant EUR 2,800 in respect of non-pecuniary damage, plus any tax that may be chargeable on these amounts.

B. Costs and expenses

32. The applicants did not submit any claims under this head and the Court accordingly makes no award in respect of costs and expenses.

C. Default interest

33. 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 of cases, in so far as the sixth and the seventh applicant are concerned;
2. *Declares* the application admissible;
3. *Holds* that there has been a violation of Article 6 of the Convention and Article 1 of Protocol No. 1 in respect of all five applicants;
4. *Holds*
 - (a) that the respondent State, within three months from the date on which the judgment becomes final according to Article 44 § 2 of the Convention, shall secure, by appropriate means, the enforcement of the awards made by the domestic courts, and in addition pay the following amounts:
 - to the first applicant RUR 1,452 (one thousand four hundred and fifty-two roubles) in respect of pecuniary damage and EUR 2,800 (two thousand and eight hundred euros) in respect of non-pecuniary damage, plus any tax that may be chargeable on these amounts,
 - to the second applicant RUR 2,295 (two thousand two hundred and ninety-five roubles) in respect of pecuniary damage and EUR 2,800 (two

thousand and eight hundred euros) in respect of non-pecuniary damage, plus any tax that may be chargeable on these amounts,

- to the third applicant RUR 1,002 (one thousand and two roubles) in respect of pecuniary damage and EUR 2,800 (two thousand and eight hundred euros) in respect of non-pecuniary damage, plus any tax that may be chargeable on these amounts;

- to the fourth applicant RUR 1,591 (one thousand five hundred and ninety-one roubles) in respect of pecuniary damage and EUR 2,800 (two thousand and eight hundred euros) in respect of non-pecuniary damage, plus any tax that may be chargeable on these amounts;

- to the fifth applicant RUR 1,590 (one thousand five hundred and ninety roubles) in respect of pecuniary damage and EUR 2,800 (two thousand and eight hundred euros) in respect of non-pecuniary damage, plus any tax that may be chargeable on these amounts;

(b) that the amounts awarded in euros shall be converted into the national currency of the respondent State at the rate applicable at the date of settlement;

(c) 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. *Dismisses* the remainder of the applicants' claim for just satisfaction.

Done in English, and notified in writing on 29 June 2006, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Søren NIELSEN
Registrar

Christos ROZAKIS
President