



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

FIRST SECTION

CASE OF KHVOROSTINA AND OTHERS v. RUSSIA

(Application no. 20098/03)

JUDGMENT

STRASBOURG

5 April 2007

FINAL

05/07/2007

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 Khvorostina 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 N. VAJIĆ,

Mr A. KOVLER,

Mrs E. STEINER,

Mr S.E. JEBENS,

Mr G. MALINVERNI, *judges*,

and Mr S. NIELSEN, *Section Registrar*,

Having deliberated in private on 15 March 2007,

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

PROCEDURE

1. The case originated in an application (no. 20098/03) 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 five Russian nationals, whose names are listed in the schedule, on 20 June 2003.

2. The Russian Government (“the Government”) were represented by Mr P. Laptev, the Representative of the Russian Federation at the European Court of Human Rights.

3. On 24 March 2006 the Court decided to give notice of 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

4. The applicants are Russian nationals who live in the town of Korenovsk in the Krasnodar Region. They are former employees of the Architecture and Town Planning Department of the Korenovskiy District Council (hereafter – the Council). The three applicants were employed as engineers, one as a technician and one as a land engineer.

A. Proceedings for reinstatement and wage arrears

5. In January 2001 the applicants were dismissed from their positions.

6. The applicants sued the Council for reinstatement and wage arrears for the period from October 2000 to January 2001.

7. On 28 March 2001 the Korenovskiy District Court dismissed the applicants' claims for reinstatement but awarded them the amounts listed in the schedule. The judgment became final on 22 May 2001 when the Krasnodar Regional Court upheld it on appeal. The judgment remains unenforced because the Council does not have necessary funds.

B. Proceedings for wage arrears for the period from February to April 2001

8. The applicants asked the Justice of the Peace of the 153rd Court Circuit of the Korenovskiy District to award them wage arrears for the period from February to April 2001.

9. On 20 June 2001 the Justice of the Peace accepted their action against the Council and awarded them the amounts listed in the schedule. The judgment was not appealed against and became final.

10. Enforcement proceedings were instituted, but the judgment was not enforced because the Council did not have funds.

11. On 8 August 2002 the sums awarded by the judgment of 20 June 2001 were credited to the applicants' accounts.

C. Proceedings concerning the protracted non-enforcement of the judgments

12. The applicants lodged an action against the Council, complaining that the Council failed to enforce the judgments of 28 March and 20 June 2001. They sought payment of the amounts awarded under those judgments.

13. On 20 November 2002 the Justice of the Peace held that the Council should pay the applicants compensation for the delay in enforcement of the judgment of 28 March 2001 for the period from 22 May 2001 to 20 November 2002 (the amounts awarded are listed in the schedule). The judgment of 20 November 2002 was upheld on appeal on 24 December 2002.

14. Enforcement proceedings were instituted but the judgment of 20 November 2002, as upheld on appeal on 24 December 2002, remains unenforced because the Council does not have funds.

THE LAW

I. ALLEGED VIOLATION OF ARTICLE 6 OF THE CONVENTION AND ARTICLE 1 OF PROTOCOL NO. 1 ON ACCOUNT OF PROTRACTED NON-ENFORCEMENT OF THE JUDGMENTS

15. The applicants complained that the judgments of 28 March 2001 and 20 November 2002 remained unenforced and that the enforcement of the judgment of 20 June 2001 had been delayed. The Court considers that this complaint falls to be examined under Article 6 § 1 of the Convention and Article 1 of Protocol No. 1 (see *Burdov v. Russia*, no. 59498/00, § 26, ECHR 2002-III). The relevant parts of these provisions read as follows:

Article 6 § 1

“In the determination of his civil rights and obligations ..., everyone is entitled to a fair ... hearing within a reasonable time... 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...”

A. Admissibility

16. The Court notes that the 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

17. The Government argued that the Council lacked necessary funds for execution of the judgments in the applicants' favour. They further submitted that the judgments of 28 March 2001 and 20 November 2002 remained unenforced, and thus, the applicants' rights under Article 6 of the Convention and Article 1 of Protocol No. 1 were violated. As regards the judgment of 20 June 2001, the Government submitted that it was fully enforced on 8 August 2002.

18. The applicants maintained their claims.

19. The Court observes that on 28 March and 20 June 2001 and 28 November 2002 the applicants obtained enforceable judgments by which the Council, a State body, was to pay them certain sums. The judgments of 28 March 2001 and 20 November 2002 have not been enforced yet. They thus remain unenforced for several years. The judgment of 20 June 2001 was fully enforced on 8 August 2002 when the sums of arrears were credited to the applicants' accounts. Thus the judgment of 20 June 2001 remained unenforced for approximately fourteen months.

20. 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 *Burdov v. Russia*, no. 59498/00, § 19 et seq., ECHR 2002-III; *Gizzatova v. Russia*, no. 5124/03, § 19 et seq., 13 January 2005; *Gerasimova v. Russia*, no. 24669/02, § 17 et seq., 13 October 2005).

21. Having examined the materials submitted to it, the Court notes that the Government have not put forward any fact or argument capable of justifying the delay in enforcement of the judgments. The Court finds that by failing for years to comply with the enforceable judgments in the applicants' favour the domestic authorities impaired the essence of their right to a court and prevented them from receiving the money they had legitimately expected to receive.

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

II. ALLEGED VIOLATION OF ARTICLE 6 OF THE CONVENTION ON ACCOUNT OF UNFAIRNESS OF THE PROCEEDINGS

23. The applicants complained that the proceedings which had ended with the judgment of 20 November 2002 had been unfair in that the courts had incorrectly assessed evidence and applied the law. They relied on Articles 6 and 17 of the Convention. The Court considers that the present complaint falls to be examined under Article 6 § 1 of the Convention.

24. In this respect the Court recalls that it is not a court of appeal from the decisions of domestic courts and that, as a general rule, it is for those courts to assess the evidence before them. The Court's task under the Convention is to ascertain whether the proceedings as a whole were fair (see, among many authorities, *García Ruiz v. Spain* [GC], no. 30544/96, §§ 28-29, ECHR 1999-I).

25. The Court observes that on 20 November 2002 the Justice of the Peace accepted the applicants' claims and made a judgment in their favour. In this respect, the Court notes that any violations of the Convention which had allegedly occurred in the course of those proceedings were rectified by the court's finding in the applicants' favour. In any event, on the basis of the materials submitted by the applicants, the Court notes that within the

framework of the civil proceedings the applicants were able to introduce all necessary arguments in defence of their interests, and the judicial authorities gave them due consideration.

26. It follows that this part of the application must be rejected as being manifestly ill-founded, pursuant to Article 35 §§ 3 and 4 of the Convention.

III. APPLICATION OF ARTICLE 41 OF THE CONVENTION

27. 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

28. The applicants claimed sums awarded to them by the judgments of 28 March 2001 and 20 November 2002. They further claimed EUR 10,000 to be paid to each of them in respect of non-pecuniary damage.

29. The Government submitted that the applicants' claims in respect of the sums awarded by the judgments of 28 March 2001 and 20 November 2002 were reasonable. As regards the applicants' claims in respect of non-pecuniary damage, the Government argued that they were excessive.

30. The Court notes that the State's outstanding obligation to enforce the judgments in the applicants' favour is not in dispute. Accordingly, the applicants are still entitled to recover the principal amounts of the judgment debts in the 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, and, *mutatis mutandis*, *Gençel v. Turkey*, no. 53431/99, § 27, 23 October 2003). The Court finds that in the present case this principle applies as well, having regard to the violations found (cf. *Poznakhirina v. Russia*, no. 25964/02, § 33, 24 February 2005). It therefore considers that the Government shall secure, by appropriate means, the enforcement of the awards made by the domestic courts under the judgments of 28 March 2001 and 20 November 2002 in the applicants' favour.

31. The Court further considers that the applicants must have suffered distress and frustration resulting from the State authorities' failure to enforce the judgments in their favour. The Court takes into account the relevant aspects, such as the length of the enforcement of the proceedings and the

nature of the awards, and making its assessment on an equitable basis, awards each of the applicants EUR 3,900 in respect of non-pecuniary damage, plus any tax that may be chargeable on the above amounts.

B. Costs and expenses

32. The applicants also claimed RUR 5,000 and EUR 5,000 for the costs and expenses incurred before the domestic courts and the Court, of which RUR 5,000 represented lawyer's fees and EUR 5,000 other unspecified costs.

33. The Government submitted that the applicants' claims in respect of the lawyer's fees were reasonable. They did not comment on the remaining claims.

34. 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 rejects the claim for EUR 5,000 as the applicants did not submit any receipts or other vouchers in support of that claim. As regards the claim for legal expenses, the Court considers that the sum claimed should be awarded in full, plus any tax that may be chargeable on that amount.

C. Default interest

35. 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 of 28 March and 20 June 2001 and 20 November 2002 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, 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 in the applicants' favour under the judgments of 28 March 2001 and 20 November 2002;

(b) that the respondent State shall 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, EUR 3,900 (three thousand and nine hundred euros) in respect of non-pecuniary damage, to be converted into Russian roubles at the rate applicable at the date of the settlement, plus any tax that may be chargeable;

(c) that the respondent State shall pay the applicants, within three months from the date on which the judgment becomes final in accordance with Article 44 § 2 of the Convention, RUR 5,000 (five thousand Russian roubles) in respect of costs and expenses, plus any tax that may be chargeable;

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

Done in English, and notified in writing on 5 April 2007, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Søren NIELSEN
Registrar

Christos ROZAKIS
President

SCHEDULE

NAME OF THE APPLICANT	AWARDS UNDER THE JUDGMENT OF 28 MARCH 2001 (RUR)	AWARDS UNDER THE JUDGMENT OF 20 JUNE 2001 (RUR)	AWARDS UNDER THE JUDGMENT OF 20 NOVEMBER 2002 (RUR)
Olga Grigoryevna Khvorostina	13,805.15	5,719.56	4,404.99
Aleksandr Konstantinovich Kubyshkin	16,634.90	6,869.92	5,307.93
Lyudmila Vladimirovna Dankova	3,991.50	1,713.06	1,273.62
Anna Yuryevna Prokhorets	15,728.84	6,810.61	5,018.81
Olga Mikhaylovna Chunikhina	16,237.48	6,711.91	5,181.09