



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

FIRST SECTION

CASE OF GRIGORYEV AND KAKAUROVA v. RUSSIA

(Application no. 13820/04)

JUDGMENT

STRASBOURG

12 April 2007

FINAL

12/07/2007

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 Grigoryev and Kakaurova v. Russia,

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

Mr L. LOUCAIDES, *President*,

Mr A. KOVLER,

Mrs E. STEINER,

Mr K. HAJIYEV,

Mr D. SPIELMANN,

Mr S.E. JEBENS,

Mr G. MALINVERNI, *judges*,

and Mr S. NIELSEN, *Section Registrar*,

Having deliberated in private on 22 March 2007,

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

PROCEDURE

1. The case originated in an application (no. 13820/04) 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 two Russian nationals, Mr Guriy Aleksandrovich Grigoryev and Mrs Alevtina Aleksandrovna Kakaurova (“the applicants”), on 24 March 2004.

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 22 February 2005 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

I. THE CIRCUMSTANCES OF THE CASE

4. The applicants were born in 1930 and 1934 respectively and live in Irkutsk.

5. The facts of the case, as submitted by the parties, may be summarised as follows.

6. On 22 December 1986 the Irkutsk regional administration ordered expropriation of the applicants' plot of land, house and certain constructions

in the public interest and transferred them to the State enterprise “Vostok”. The actual transfer took place in 1992.

7. On 27 January 1993 the first applicant reached an agreement with “Vostok” by which the enterprise undertook to move the applicant's garage and cellar to his new place of residence. By a decision of the same date, the Sverdlovskiy District Court of the Irkutsk Region approved the agreement. It was later invalidated by domestic courts.

8. On 22 September 1995 the Sverdlovskiy District Court allowed the applicants' civil claims against “Vostok” and awarded them compensation for the expropriated property. The applicants did not specify the amount awarded. It appears that the judgment became binding and enforceable on 2 October 1995.

9. On 1 November 1996 and 13 March 2001 the District Court adjusted the award under the judgment of 22 September 1995 in line with the inflation.

10. According to the judgments of 22 September 1995, 1 November 1996 and 13 March 2001, the federal State unitary enterprise “Vostok” (*федеральное государственное унитарное предприятие “Восток”*) was to pay 72,502.20 Russian roubles (“RUR”) to the first applicant and RUR 4,856.30 to the second applicant.

11. On an unspecified date the bailiffs' service opened enforcement proceedings and placed the applicants on the waiting list, along with many others creditors of “Vostok”.

12. On 28 January 2002 the Commercial Court of the Irkutsk Region started insolvency proceedings against “Vostok”.

13. On 24 February 2004 the bailiff passed the enforcement documents to the company receiver.

14. On an unspecified date the applicants brought civil proceedings against the Irkutsk City Administration, claiming that the Administration should be liable for the debts of the State enterprise.

15. On 3 December 2003 the Kirovskiy District Court of Irkutsk dismissed their claim as having no basis in the domestic law. On 30 January 2004 the Irkutsk Regional Court upheld the judgment on appeal.

16. It appears that the judgments of 22 September 1995, 1 November 1996 and 13 March 2001 have not been enforced to date, and that the insolvency proceedings against “Vostok” are still pending.

II. RELEVANT DOMESTIC LAW

A. General provisions of Russian law on State enterprises

17. The Civil Code defines State and municipal unitary enterprises as a special form of legal entities that do not exercise the right of ownership in

respect of the property allocated to them by the property owner (Article 113 § 1). The State or municipal authority retains ownership of the property but the enterprise may exercise in respect of that property the right of economic control (*право хозяйственного ведения*) or operative management (*право оперативного управления*) (Article 113 § 2). The name of the unitary enterprise must indicate the owner of its property (Article 113 § 3).

18. The manager of a unitary enterprise is appointed by, and reports to, the property owner (Article 113 § 4). The owner has the right to re-organise or liquidate the unitary enterprise. A consent by the owner is required for any transaction that may lead to encumbrance or alienation of the property.

B. Unitary enterprises having the right of economic control

19. The State or municipal owner of the property is not liable for debts of unitary enterprises having the right of economic control over the property unless the owner has caused insolvency of the enterprise or violated the procedure for its liquidation (Article 114 of the Civil Code and section 184 of the Bankruptcy Act, federal law no. 8-FZ of 8 January 1998, effective at the material time).

20. Unitary enterprises having the right of economic control over the property may be declared insolvent in accordance with the insolvency procedure applicable to private companies. The State or municipal owner of the property may, but is not obliged to, pay debts of a State enterprise in the framework of insolvency proceedings (sections 1 and 89 of the Bankruptcy Act).

C. Unitary enterprises having the right of operative management

21. The State or municipal owner of the property is liable for debts of unitary enterprises having the right of operative management of the property in case of insufficiency of their funds (Article 115 of the Civil Code).

22. Unitary enterprises having the right of operative management of the property may not be declared insolvent (Article 65 of the Civil Code).

THE LAW

I. ALLEGED VIOLATION OF ARTICLE 6 § 1 AND ARTICLE 1 OF PROTOCOL NO. 1

23. The applicants complained about the continued non-enforcement of the judgments of 22 September 1995, 1 November 1996 and 13 March 2001

in their favour. This complaint falls to be examined under Article 6 § 1 of the Convention and Article 1 of Protocol No. 1. 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 ... 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

24. The Court reiterates that its jurisdiction *ratione temporis* covers only the period after the ratification of the Convention or its Protocols by the respondent State. From the ratification date onwards, all of the State's alleged acts and omissions must conform to the Convention or its Protocols and subsequent facts fall within the Court's jurisdiction even where they are merely extensions of an already existing situation (see, for example, *Yağcı and Sargin v. Turkey*, judgment of 8 June 1995, Series A no. 319-A, p. 16, § 40, and *Almeida Garrett, Mascarenhas Falcão and Others v. Portugal*, nos. 29813/96 and 30229/96, § 43, ECHR 2000-I).

25. The Court is competent to examine the facts of the present case for their compatibility with the Convention only in so far as they occurred after 5 May 1998, the date of ratification of the Convention by the Russian Federation. It may, however, have regard to the facts prior to ratification inasmuch as they could be considered to have created a situation extending beyond that date or may be relevant for the understanding of facts occurring after that date (see *Broniowski v. Poland* (dec.) [GC], no. 31443/96, §§ 74-77, ECHR 2002-X).

26. Turning to the facts of the present case, the Court notes the judgment of 1995, as modified in 1996, remains unenforced to date. The period after 5 May 1998, that is almost nine years, therefore falls within the scope of the Court's jurisdiction *ratione temporis*.

27. The Government submitted that the applicants had failed to exhaust domestic remedies because it had been open to them to bring a civil action against the bailiffs' service. The Government also submitted that the insolvency proceedings in respect of the "Vostok" enterprise were ongoing, and that the complaints about non-enforcement of the judgments in the applicants' favour were therefore premature.

28. The Court reiterates that Article 35 § 1 of the Convention, which sets out the rule on exhaustion of domestic remedies, provides for a distribution of the burden of proof. It is incumbent on the Government claiming non-exhaustion to satisfy the Court that the remedy was an effective one, available in theory and in practice at the relevant time, that is to say, that it was accessible, was one which was capable of providing redress in respect of the applicant's complaints and offered reasonable prospects of success (see *Selmouni v. France* [GC], no. 25803/94, § 76, ECHR 1999-V, and *Mifsud v. France* (dec.), no. 57220/00, § 15, ECHR 2002-VIII). The Court further observes that the domestic remedies must be "effective" in the sense either of preventing the alleged violation or its continuation, or of providing adequate redress for any violation that had already occurred (see *Kudła v. Poland* [GC], no. 30210/96, § 158, ECHR 2000-XI).

29. The Court notes that insolvency proceedings in respect of the "Vostok" enterprise started in 2002. It also notes that by that moment the applicants had already been on a waiting list of creditors of the "Vostok" enterprise (see paragraph 11 above). It follows that by the moment the insolvency proceedings commenced the "Vostok" enterprise had already for some time been unable to meet the creditors' claims. The Court concludes that in these circumstances any civil action brought by the applicants against the bailiffs would have been ineffective.

30. The Court further notes that the Government's objection concerning the ongoing insolvency proceedings is closely linked to the merits of the complaint and should be joined to the merits.

31. The Court considers, in the light of the parties' submissions, that the application raises serious issues of fact and law under the Convention, the determination of which requires an examination of the merits. It considers that the application is not manifestly ill-founded within the meaning of Article 35 § 3 of the Convention. No other ground for declaring it inadmissible has been established.

B. Merits

32. The Government contested their responsibility for the continued non-enforcement of the judgments. They submitted that the domestic authorities had shown due diligence in the enforcement of the judgments and could not be blamed for the delay.

33. The applicants insisted that the State was responsible for the failure for years to enforce the judgments in their favour.

34. The Court observes that on 22 September 1995, 1 November 1996 and 13 March 2001 the applicants obtained enforceable judgments by which the federal State unitary enterprise “Vostok” was to pay them a substantial amount. The judgments have not been enforced to date.

35. The Court notes that under the domestic law the owner of a unitary enterprise retains ownership of the property of that enterprise, approves all transactions with that property, controls the management of the enterprise and decides whether the enterprise should continue its activity or be liquidated (see paragraphs 17 and 18 above). It follows that the Government have not demonstrated that the federal unitary enterprise, such as the Vostok enterprise in the present case, enjoyed sufficient institutional and operational independence from the State to absolve the latter from responsibility under the Convention for its acts and omissions (see, *mutatis mutandis*, *Mykhaylenko and Others v. Ukraine*, nos. 35091/02, 35196/02, 35201/02, 35204/02, 35945/02, 35949/02, 35953/02, 36800/02, 38296/02 and 42814/02, §§ 41-46, ECHR 2004-XII; and *Lisyanskiy v. Ukraine*, no. 17899/02, §§ 17-20, 4 April 2006).

36. Thus, the Court considers that the State should be held liable for debts of the “Vostok” enterprise.

37. The Court reiterates that it is not open to a State authority to cite the lack of funds or other resources as an excuse for not honouring a court award (see, *mutatis mutandis*, *Burdov v. Russia*, no. 59498/00, § 35, ECHR 2002-III). Nor can the State, in such circumstances, justify its failure to enforce the judgment against a State enterprise with reference to the liquidation of the company.

38. 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, for example, *Burdov*, cited above, §§ 33-42; *Gerasimova v. Russia*, no. 24669/02, §§ 14-22, 13 October 2005; *Gizzatova v. Russia*, no. 5124/03, 13 January 2005, §§ 18-29).

39. Having examined the material submitted to it, the Court notes that the Government have not put forward any fact or argument capable of justifying the continued failure to enforce the judgments. It 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.

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

II. OTHER ALLEGED VIOLATIONS OF THE CONVENTION

41. The applicants also invoked Article 8 of the Convention without specifying the nature of their grievances. Having regard to all the material in its possession, the Court finds that there is no indication of a violation of this provision. 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

42. 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

43. The applicants claimed compensation in respect of pecuniary damage equal to the awards made in their favour by the domestic courts adjusted in line with increases of the minimum monthly wage since 1995. The first applicant finally claimed compensation for the failure to enforce the agreement concluded with “Vostok” in 1993. The applicants also claimed non-pecuniary damage in the amount of approximately 12,000 euros (“EUR”).

44. The Government submitted that the applicants' claims were unsubstantiated. They considered that a finding of a violation would provide sufficient just satisfaction.

45. The Court notes that the applicants have not received the original awards of RUR 72,502.20 and RUR 4,856.30. 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 violation found. It therefore considers that the Government shall secure, by appropriate means, the enforcement of the awards made in the applicants' favour by the domestic courts.

46. As regards the remainder of the applicants' claims for pecuniary damage, the Court considers that the applicants did not substantiate these claims. The Court therefore makes no award in this respect.

47. Turning to the applicants' claim for compensation for non-pecuniary damage, the Court accepts that the applicants suffered distress because of the State authorities' failure to enforce the judgments in their favour. However, the amount claimed in respect of non-pecuniary damage appears excessive. Making its assessment on an equitable basis, the Court awards EUR 3,000 to the first applicant and EUR 750 to the second applicant in respect of non-pecuniary damage, plus any tax that may be chargeable on these amounts.

B. Costs and expenses

48. The applicants did not seek reimbursement of costs and expenses relating to the proceedings before the domestic courts or the Convention organs and this is not a matter which the Court has to examine of its own motion (see *Motière v. France*, no. 39615/98, § 26, 5 December 2000).

C. Default interest

49. 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 complaints concerning the non-enforcement of the judicial decisions in the applicants' favour admissible and the remainder of the application inadmissible;
2. *Holds* that there has been a violation of Article 6 § 1 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 court and, in addition, pay the applicants the following amounts:
 - (i) EUR 3,000 (three thousand euros) in respect of non-pecuniary damage to the first applicant and EUR 750 (seven hundred fifty euros) in respect of non-pecuniary damage to the second applicant, both amounts to be converted into Russian roubles at the rate applicable on the date of settlement;

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

Done in English, and notified in writing on 12 April 2007, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Søren NIELSEN
Registrar

Loukis LOUCAIDES
President