



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

FIRST SECTION

CASE OF KOZYYAKOVA AND GUREYEV v. RUSSIA

(Application no. 16108/06)

JUDGMENT

STRASBOURG

26 April 2007

FINAL

26/07/2007

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 Kozyakova and Gureyev v. Russia,

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

Mr C.L. ROZAKIS, *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 29 March 2007,

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

PROCEDURE

1. The case originated in an application (no. 16108/06) 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, Mrs Lyudmila Ivanovna Kozyakova and Mr Vladimir Tikhonovich Gureyev (“the applicants”), on 10 March 2006. The second applicant died on 1 January 2007 and his daughter, Mrs Lyudmila Vladimirovna Manukovskaya, has decided to pursue the application. The applicants were represented before the Court by Mr I. Sivoldayev, a lawyer practising in Voronezh.

2. The Russian Government were represented by Mr P. Laptev, Representative of the Russian Federation before the European Court of Human Rights.

3. On 22 June 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

I. THE CIRCUMSTANCES OF THE CASE

4. The applicants were born in 1925 and lived in Voronezh.

A. Court proceedings

5. At the relevant time the applicants were in receipt of a pension from the pension authority (“the authority”, *Комитет по социальной защите населения администрации Железнодорожного района г. Воронежа*).

6. It appears that in 1998 and 1999 there were delays in payment of their pension and in 2000 the applicants brought a court claim against the authority in this connection.

7. By judgments of 17 and 20 July 2000 the Zheleznodorozhnyy District Court of the town of Voronezh granted the applicants' claims and ordered the authority to pay the first applicant 1,109.36 roubles (RUR – approximately 42 euros) in damages. The second applicant was granted a compensation of RUR 1,355.46 (approximately 53 euros).

8. The judgments came into force on 27 and 31 July 2000 respectively.

B. Enforcement proceedings

9. On an unspecified date the District Court issued the writs of enforcement and directed them to the bailiffs for enforcement.

10. According to the applicants, in April 2001 the bailiffs returned the writs without enforcement with reference to the lack of funds.

11. It appears that the court award in respect of the first applicant was enforced on 7 December 2005. As regards the second applicant, the award was received on 9 December 2005.

12. According to the Government, the awards in respect of both applicants were enforced in full on 6 December 2005.

II. RELEVANT DOMESTIC LAW

13. 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 shall fix a time-limit for the defendant's voluntary compliance with the writ of execution. The time-limit cannot exceed five days. The bailiff shall also warn the defendant that coercive action will follow, should the defendant fail to comply within the time-limit.

14. Under Section 13 of the Law, the enforcement proceedings should be completed within two months upon receipt of the writ of enforcement by the bailiff.

THE LAW

I. ALLEGED VIOLATION OF ARTICLES 6 OF THE CONVENTION AND 1 OF PROTOCOL No. 1 TO THE CONVENTION

15. The applicants complained about the non-enforcement of the court judgments in their favour. They relied on Article 6 of the Convention and Article 1 of Protocol No. 1, which, 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

16. The Government accepted that there had been a delay in the enforcement of the court awards in favour of the applicants and acknowledged that there had been a breach of the mentioned Convention provisions.

17. The applicants' counsel maintained their complaints.

18. 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

19. The Court first notes that the judgments in the applicants' favour dated 17 and 20 July 2000 respectively remained without enforcement at least until 6 December 2005, i.e. for a period of more than five years and four months.

20. 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).

21. Having noted the Government's acknowledgement that there has been a violation of the said Convention provisions and in view of 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.

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

II. APPLICATION OF ARTICLE 41 OF THE CONVENTION

23. 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

24. The applicants each claimed 4,000 euros (EUR) in respect of non-pecuniary damage. They also requested the Court to award them 1,197.62 and 1,463.21 Russian roubles (RUR) respectively as regards the inflation losses. Finally, the applicants claimed penalty payments of RUR 1,774.47 and 2168.12, respectively.

25. The Government considered that the claims in respect of non-pecuniary damage were excessive and unreasonable. They made no comments as regards the applicants' alleged inflationary losses.

26. The Court accepts that the applicants suffered inflationary losses as a result of the delayed execution of the judgments in their favour and awards the first applicant RUR 1,197.62 and the second applicant RUR 1,463.21 in this respect. As regards the non-pecuniary damage, the Court finds that the applicants have suffered some non-pecuniary damage as a result of the violation found which cannot be compensated by the mere finding of a violation. Nevertheless, the amount claimed is excessive. Making its assessment on an equitable basis, as required by Article 41 of the Convention, the Court awards each applicant the sum of EUR 3,000 in

respect of non-pecuniary damage, plus any tax that may be chargeable on that amount.

B. Costs and expenses

27. The applicants also claimed EUR 40 for the costs and expenses incurred before the Court.

28. The Government submitted that no award should be made under this head.

29. Regard being had to the information in its possession and the Government's submissions, the Court finds it appropriate to grant the applicants jointly EUR 40 in respect of costs and expenses.

C. Default interest

30. 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 Articles 6 of the Convention and 1 of Protocol No. 1 to the Convention;
3. *Holds*
 - (a) that the respondent State is to pay the following amounts, within three months from the date on which the judgment becomes final in accordance with Article 44 § 2 of the Convention:
 - (i) to the first applicant RUR 1,197.62 (one thousand one hundred and ninety-seven roubles sixty-two kopecks) in respect of pecuniary damage and EUR 3,000 (three thousand euros) in respect of non-pecuniary damage;
 - (ii) to the second applicant's daughter RUR 1,463.21 (one thousand four hundred and sixty-three roubles twenty-one kopecks) in respect of pecuniary damage and EUR 3,000 (three thousand euros) in respect of non-pecuniary damage;
 - (iii) to the first applicant and the second applicant's daughter jointly EUR 40 (forty euros) in respect of costs and expenses;
 - (iv) 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;

4. *Dismisses* the remainder of the applicants' claim for just satisfaction.

Done in English, and notified in writing on 26 April 2007, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Søren NIELSEN
Registrar

Christos ROZAKIS
President