



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

FIRST SECTION

CASE OF ALEKSENTSEVA AND OTHERS v. RUSSIA

(Applications nos. 75025/01, 75026/01, 75028/01, 75029/01, 75031/01, 75033/01, 75034/01, 75036/01, 76386/01, 77049/01, 77051/01, 77052/01, 77053/01, 3999/02, 5314/02, 5384/02, 5388/02, 5419/02, and 8192/02)

JUDGMENT

STRASBOURG

17 January 2008

FINAL

17/04/2008

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 Aleksentseva and Others v. Russia,

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

Christos Rozakis, *President*,

Loukis Loucaides,

Nina Vajić,

Anatoli Kovler,

Elisabeth Steiner,

Khanlar Hajiyev,

Dean Spielmann, *judges*,

and Søren Nielsen, *Section Registrar*,

Having deliberated in private on 11 December 2007,

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

PROCEDURE

1. The case originated in thirty applications (nos. 75025/01, 75026/01, 75027/01, 75028/01, 75029/01, 75030/01, 75031/01, 75032/01, 75033/01, 75034/01, 75035/01, 75036/01, 75037/01, 75038/01, 75136/01, 76386/01, 76542/01, 76736/01, 76737/01, 77049/01, 77051/01, 77052/01, 77053/01, 3999/02, 5314/02, 5384/02, 5388/02, 5419/02, 8190/02, 8192/02) 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 thirty Russian nationals (“the applicants”).

2. The applicants Mr Lobanov, Mr Vazhenin, Mr Chernyshkov, Mrs Suvorova, Mr Klimchuk, Mr Novikov, Mr Fedorenko, and Mr Panteleyev were represented before the Court by the applicant Mr Mandrykin. The Russian Government (“the Government”) were represented by Mr P. Laptev, Representative of the Russian Federation at the European Court of Human Rights.

3. The applicants complained about belated enforcement of judgments in their favour.

4. On 21 March 2002 the Court decided to join the thirty applications and communicated the complaints to the Government.

5. On 4 September 2003 the Court decided to disjoin application no. 76737/01 and to strike the remaining applications out of its list of cases in accordance with Article 37 § 1 (c) of the Convention.

6. By a decision of 23 March 2006, the Court decided to restore the twenty-nine applications to its list of cases in accordance with Article 37 § 2 of the Convention and declared them admissible.

7. The applicants and the Government filed observations on the merits (Rule 59 § 1).

8. On 12 April and 7 June 2007 the Court decided to disjoin applications nos. 75027/01, 75030/01, 75032/01, 75035/01, 75037/01, 75038/01, 75136/01, 76542/01, 76736/01, and 8190/02 and adopted separate judgments in these cases.

THE FACTS

9. The applicants are clean-up workers of the Chernobyl nuclear accident site or dependants of deceased workers. They live in the town of Shakhty in the Rostov Region.

10. On various dates the applicants sued local social-security offices for an increase of monthly pension in line with inflation. On the following dates the Shakhty Town Court ruled in favour of the applicants and fixed their monthly compensation in the following amounts which were to be subsequently adjusted for inflation:

- Ms Valentina Aleksentseva: 6 July 1999, 584.52 Russian roubles (RUB), current monthly compensation amounts to RUB 1,526.91;
- Mr Anatoliy Gladkov: 5 July 1999, RUB 2,886.72, current monthly compensation RUB 7,150.82;
- Mr Vladimir Mandrykin: 9 July 1999, RUB 3,743.90, current monthly compensation RUB 7,387.23;
- Mr Vladimir Lobanov: 21 May 1999, RUB 6,040.75, current monthly compensation RUB 9,535.41;
- Mr Ivan Olishchuk: 24 June 1999, RUB 3,599.72, current monthly compensation RUB 6,546.31;
- Mr Nikolay Vazhenin: 7 October 1999, RUB 3,016.47, current monthly compensation RUB 5,951.94;
- Mr Aleksandr Chernyshkov: 31 March 1999, RUB 1,145.75, current monthly compensation RUB 4,117.58;
- Mr Nikolay Avsetsin: 4 June 1999, RUB 4,707.28, current monthly compensation RUB 8,560.50;
- Mr Vyacheslav Kosygin: 25 May 1999, RUB 4,398.30, current monthly compensation RUB 8,998.42;
- Mrs Svetlana Suvorova: 21 February 2000, RUB 2,658.62, current monthly compensation RUB 5,245.84;
- Mr Vladimir Frolov: 1 July 1999, RUB 2,643.65, current monthly compensation RUB 6,905.92;
- Mr Yevgeniy Klimchuk: 4 October 1999, RUB 2,636.35, current monthly compensation RUB 5,201.89;
- Mr Vladimir Paramonov: 26 June 1999, RUB 1,044.46, current monthly compensation RUB 5,451.31;

- Mr Vladimir Pakhomov: 24 May 1999, RUB 2,203.77, current monthly compensation RUB 4,007.70;
- Mr Dmitriy Suyev: 24 June 1999, RUB 1,714.40, current monthly compensation RUB 4,156.98;
- Mr Nikolay Novikov: 3 June 1999, RUB 2,675.62, current monthly compensation RUB 5,279.37;
- Mr Vitaliy Ochiyev: 21 May 1999, RUB 4,376.72, current monthly compensation RUB 7,959.32;
- Mr Aleksandr Fedorenko: 15 July 1999, RUB 4,899.11, current monthly compensation RUB 9,666.64;
- Mr Yuriy Panteleyev: 17 June 1999, RUB 3,568.95, current monthly compensation RUB 7,042.05.

11. The monies awarded to the applicants were paid in April 2002.

THE LAW

I. THE GOVERNMENT'S REQUEST TO STRIKE THE CASE OUT OF THE LIST OF CASES IN ACCORDANCE WITH ARTICLE 37 § 1 (b) OF THE CONVENTION

12. The Government contested the Court's decision to restore the case to its list in accordance with Article 37 § 2 of the Convention on three counts. Firstly, they submitted that the circumstances invoked by the Court by way of justification of its decision to restore the case, had not been new or “exceptional” and that the decision to restore had therefore impaired the principle of *res judicata*. Secondly, the Government asserted that only seven applicants had asked for their applications to be restored to the list and that the Court's decision to restore all the applications had thus been groundless and arbitrary. Finally, the Government claimed that the applicants were “generally satisfied” with the acknowledgment of the violation by the Russian authorities and that their only aim in the Strasbourg proceedings was to obtain a larger compensation which ran contrary to the interests of justice. The Government insisted that the case should be struck out of the list in accordance with Article 37 § 1 (b) of the Convention on account of the loss of the “victim” status by the applicants.

13. The applicants maintained that they still could claim to be “victims” of the alleged violations because they had not been offered adequate redress for the lengthy non-enforcement of judgments in their favour.

14. The Court notes at the outset that, before deciding on whether to restore the present application to its list of cases, it had requested the Government to submit the information relating to the implementation of their unilateral declarations and indicated that on the basis of that

information it would consider whether the circumstances justified the restoration of the application to its list of cases. Thus, the Government had been afforded an ample opportunity to comment on the issue whether they considered the restoration justified. Their objections to the decision to restore the application raised at the present stage of the proceedings, after the application had been already restored to the list and declared admissible, are obviously belated.

15. In any event, the Court reiterates that it may take the decision to restore the case to its list of cases at any moment if it is satisfied that the circumstances justify such a course (Article 37 § 2 of the Convention and Rule 43 § 5 (former Rule 44) of the Rules of Court). Neither the Convention nor the Rules of Court establish that the party's request to that effect is a condition precedent for taking such a decision. The Government's objection that not every applicant filed a request for restoration of the application, is therefore without merit. As regards the Government's disagreement with the Court's appreciation of the circumstances of the present case as "exceptional circumstances", the Court considers that the factual and legal grounds for its findings are set out in sufficient detail in its decision of 23 March 2006 and sees nothing in the Government's submissions of the nature to warrant a new consideration of the matter.

16. As regards the Government's argument about the loss of the "victim" status by the applicants, the Court reiterates that "a decision or measure favourable to the applicant is not in principle sufficient to deprive him of his status as a 'victim' unless the national authorities have acknowledged, either expressly or in substance, and then afforded redress for, the breach of the Convention" (see *Amuur v. France*, judgment of 25 June 1996, *Reports of Judgments and Decisions* 1996-III, p. 846, § 36, *Dalban v. Romania* [GC], no. 28114/95, § 44, ECHR 1999-VI, and *Rotaru v. Romania* [GC], no. 28341/95, § 35, ECHR 2000-V). Only when these conditions are satisfied does the subsidiary nature of the protective mechanism of the Convention preclude examination of an application (see, for example, *Jensen and Rasmussen v. Denmark* (dec.), no. 52620/99, 20 March 2003).

17. In the present case the mere fact that the authorities enforced the domestic judgments in the applicants' favour after a substantial delay cannot be viewed as automatically depriving the applicants of their status as "victims" of the alleged violations of the Convention. Although the Government acknowledged that the prolonged non-enforcement had led to a violation of Article 6 of the Convention and Article 1 of Protocol No. 1, the applicants have not been afforded sufficient redress for that violation. In fact, it was the Government's failure to pay compensation for non-pecuniary damage sustained through the prolonged non-enforcement that prompted the Court to restore the application to its list of cases (see the decision of 23 March 2006). As one of the conditions which may have led to the loss of the "victim" status has not been fulfilled, the Court finds that the applicants

may still claim to be “victims” of the alleged violations and rejects the Government's request to strike the case out of its list of cases.

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

18. The applicants complained about the lengthy non-enforcement of judgments in their favour. They relied on Article 6 of the Convention and Article 1 of Protocol No. 1. Article 6, in the relevant part, provides as follows:

“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 reads as follows:

“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...”

19. The applicants maintained that the original judgments had not been enforced in their entirety because the amount of monthly payments had not been adjusted in line with the statutory minimum wage.

20. The Government submitted that in April 2002 all the amounts outstanding had been paid and that an offer of compensation for non-pecuniary damage had been made. The amount of monthly compensation had been subsequently adjusted for inflation on the annual basis in accordance with the domestic law. Those applicants who had not been satisfied with the amount of the adjustment had a possibility to contest the social-security office's calculations before a court. So far only the applicants Mr Pakhomov, Mr Ochiyev, Mr Olishchuk, Mr Avsetsin, Mr Kosygin and Mr Suyev, made use of that possibility and the proceedings on their claims were pending.

21. The Court notes that on various dates in 1999 and 2000 the applicants obtained enforceable domestic judgments which established the domestic authorities' obligation to pay them a monthly compensation in a specific amount with its subsequent adjustment in line with inflation. The monthly compensation in the amount determined by the domestic courts and the arrears accrued since the dates of the judgments were paid in April 2002.

22. As regards the obligation to adjust the compensation in line with inflation, the applicants maintained that the method for adjustment or the coefficients applied had not been in compliance with the domestic law, which was disputed by the Government.

23. The Court observes that the original judgments did not indicate any specific method for adjustment but rather established a general obligation of the domestic authorities to adjust monthly payments in line with inflation. In case of disagreement on the scope of that obligation or on the manner of

its discharge it was open to the applicants to seek a judicial determination of these matters which, as it appears from the Government's submissions, some of them have done. However, these proceedings would result in a separate award which would obviously fall outside the scope of the present case. For the purposes of the present application it is sufficient for the Court to ascertain that the obligation to increase monthly payments has been complied with. Having regard to the evident difference between the current amount of compensation and that payable under the 1999/2000 judgments (see paragraph 10 above), the Court considers that this obligation has been discharged and that the judgments in the applicants' favour have been enforced in that part as well.

24. In sum, the Court finds that, although the judgments in the applicants' favour have been eventually enforced, this only happened after a substantial delay spanning over more than thirty months. The Government did not offer any plausible justification for the delay in the enforcement of the judgments.

25. 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 *Gizzatova v. Russia*, no. 5124/03, § 19 et seq., 13 January 2005; *Petrushko v. Russia*, no. 36494/02, § 23 et seq., 24 February 2005; *Wasserman v. Russia*, no. 15021/02, § 35 et seq., 18 November 2004; *Burdov v. Russia*, no. 59498/00, § 34 et seq., ECHR 2002-III).

26. Having examined the material submitted to it, the Court notes that the Government have 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 to comply with the enforceable judgments in the applicants' favour for more than thirty months, the domestic authorities impaired their right to a court and prevented them from receiving the money they could reasonably have expected to receive.

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

III. APPLICATION OF ARTICLE 41 OF THE CONVENTION

28. 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

29. The following applicants submitted the following claims for compensation in respect of pecuniary and/or non-pecuniary damage:

- Mrs Aleksentseva: 3,000 euros (EUR) for non-pecuniary damage;
- Mr Mandrykin: RUB 913,377.07 for the pecuniary damage, representing the amount of monthly compensation which would have been due to him if it were adjusted for inflation according to his calculations;
- Mr Avsetsin: EUR 10,000 for non-pecuniary damage; and
- Mr Kosygin: RUR 180,201.42 for the pecuniary damage, representing the inflation losses and interest for the period of non-enforcement, and EUR 20,000 for non-pecuniary damage.

30. Mr Gladkov, Mr Olishchuk, Mr Frolov, Mr Paramonov, Mr Pakhomov, and Mr Suyev asked the Court to determine the amount of compensation in respect of non-pecuniary damage.

31. The other applicants did not submit any specific claim for just satisfaction within the time-limit fixed by the Court.

32. The Government did not submit their comments on the applicants' claims within the time-limit fixed by the Court and their request for an extension was refused.

33. In accordance with Rule 60 § 3 of the Rules of Court, the Court makes no award of just satisfaction under Article 41 of the Convention to the applicants Mr Lobanov, Mr Vazhenin, Mr Chernyshkov, Mrs Suvorova, Mr Klimchuk, Mr Novikov, Mr Ochiyev, Mr Fedorenko, and Mr Panteleyev who failed to submit itemised particulars of all claims, together with any relevant supporting documents, within the time-limit fixed for the submission of their observations on the merits.

34. As regards the claims for pecuniary damage submitted by the applicants Mr Mandrykin and Mr Kosygin, the Court notes that in the present case it found a violation of Article 6 § 1 of the Convention and Article 1 of Protocol No. 1 in that the award in their favour had not been paid to them in good time. Mr Mandrykin claimed the amounts which he believed should have been paid to him if his monthly compensation had been adjusted in accordance with his chosen method. However, his right to these monies had not been upheld in any domestic proceedings and the Court accordingly rejects his claim in full. Mr Kosygin claimed the losses resulting from the delay in enforcement of the judgments that were the subject of the present case. Although the principal amount due was eventually paid to him, the Court reiterates that the adequacy of the compensation would be diminished if it were to be paid without reference to various circumstances liable to reduce its value, such as an extended delay in enforcement (see *Gizzatova*, cited above, § 28, and *Metaxas v. Greece*, no. 8415/02, § 36, 27 May 2004). Having regard to the materials in its

possession, the Court accepts the applicant Mr Kosygin's claim in respect of pecuniary damage and awards him EUR 5,200, plus any tax that may be chargeable on that amount.

35. The Court further considers that the applicants must have suffered distress and frustration resulting from the State authorities' failure to enforce the judgments in good time. The Court takes into account the relevant aspects, such as the length of the enforcement proceedings and the nature of the awards, and making its assessment on an equitable basis, awards each of the applicants Mrs Aleksentseva, Mr Gladkov, Mr Olishchuk, Mr Avsetsin, Mr Kosygin, Mr Frolov, Mr Paramonov, Mr Pakhomov, and Mr Suyev EUR 2,300 in respect of non-pecuniary damage, plus any tax that may be chargeable on that amount.

B. Costs and expenses

36. The following applicants claimed the following amounts in respect of costs and expenses:

- Mr Gladkov: RUB 540.30 of postal expenses;
- Mr Mandrykin: RUB 1,931.83 of postal expenses;
- Mr Olishchuk: RUB 628.30 of postal expenses;
- Mr Kosygin: RUB 780.40 of postal and typing expenses and EUR 100 for self-representation before the Court;
- Mr Frolov: RUB 323.30 of postal expenses;
- Mr Paramonov: RUB 826.50 of postal expenses;
- Mr Pakhomov: RUB 600.82 of postal expenses; and
- Mr Suyev: RUB 681.51 of postal expenses.

37. The Government did not submit their comments on the applicants' claims within the time-limit fixed by the Court and their request for an extension was refused.

38. 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. The Court notes that the applicant Mr Kosygin was not represented in the Strasbourg proceedings. However, he must have incurred expenses in preparing his written pleadings (see *Lauko v. Slovakia*, judgment of 2 September 1998, *Reports of Judgments and Decisions* 1998-VI, § 75). The Court further notes that the applicants submitted receipts showing the amount of postal and other expenses. Regard being had to the information in its possession, the Court considers it reasonable to award EUR 120 to the applicant Mr Kosygin, EUR 60 to the applicant Mr Mandrykin, and EUR 25 to each of the applicants Mr Gladkov, Mr Olishchuk, Mr Frolov, Mr Paramonov, Mr Pakhomov, and Mr Suyev, in respect of costs and expenses, plus any tax that may be chargeable on these amounts.

C. Default interest

39. 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. *Holds* that there has been a violation of Article 6 of the Convention and Article 1 of Protocol No. 1;
2. *Holds*
 - (a) that the respondent State is to pay, within three months from the date on which the judgment becomes final in accordance with Article 44 § 2 of the Convention, the following amounts, to be converted into Russian roubles at the rate applicable at the date of settlement:
 - (i) EUR 5,200 (five thousand two hundred euros) to the applicant Mr Kosygin in respect of pecuniary damage;
 - (ii) EUR 2,300 (two thousand three hundred euros) to the applicants Mrs Aleksentseva, Mr Gladkov, Mr Olishchuk, Mr Avsetsin, Mr Kosygin, Mr Frolov, Mr Paramonov, Mr Pakhomov, and Mr Suyev in respect of non-pecuniary damage;
 - (iii) EUR 120 (one hundred twenty euros) to the applicant Mr Kosygin, EUR 60 (sixty euros) to the applicant Mr Mandrykin, and EUR 25 (twenty-five euros) to the applicants Mr Gladkov, Mr Olishchuk, Mr Frolov, Mr Paramonov, Mr Pakhomov, and Mr Suyev, in respect of costs and expenses;
 - (iv) 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;
3. *Dismisses* the remainder of the applicants' claims for just satisfaction.

Done in English, and notified in writing on 17 January 2008, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Søren NIELSEN
Registrar

Christos ROZAKIS
President