



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

FIRST SECTION

CASE OF ABDEYEVY v. RUSSIA

(Application no. 38405/02)

JUDGMENT

STRASBOURG

6 March 2008

FINAL

06/06/2008

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 Abdeyevy v. Russia,

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

Christos Rozakis, *President*,

Nina Vajić,

Anatoli Kovler,

Dean Spielmann,

Sverre Erik Jebens,

Giorgio Malinverni,

George Nicolaou, *judges*,

and Mr Søren Nielsen, *Section Registrar*,

Having deliberated in private on 12 February 2008,

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

PROCEDURE

1. The case originated in an application (no. 38405/02) 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 two Russian nationals, Mr Marat Minnullovi Abdeyev and Ms Rozaliya Khabibovna Abdeyeva (“the applicants”), on 20 September 2002.

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

3. On 28 April 2005 the Court decided to communicate the application to the Government. Under the provisions of Article 29 § 3 of the Convention, it decided to examine the merits of the applications at the same time as their admissibility.

THE FACTS

I. THE CIRCUMSTANCES OF THE CASE

4. The applicants were born in 1944 and 1946 respectively and live in Ufa, the Republic of Bashkortostan.

5. The applicants are entitled to a supplementary allowance to their pensions as former municipal officials. In 2001-2002 the allowance was not paid to them. The applicants brought several sets of proceedings against the local social security office to recover the underpayments. The Penzhinskiy

District Court of the Koryakskiy Autonomous Region granted the applicants' claims.

6. Thus, on 14 January 2002 the first applicant was awarded 26,754 Russian roubles (RUB); on 4 February 2002, RUB 20,037.72; on 5 September 2002, RUB 19,317.35; on 26 November 2002, RUB 18,655.80; and on 7 April 2003, RUB 18,037.16. The judgments were not appealed against and became final ten days after the delivery.

7. On 14 January 2002 the second applicant was awarded RUB 39,516.77; on 4 February 2002, RUB 29,449.32; on 5 September 2002, RUB 25,852.39; on 12 September 2002, RUB 11,694.56; and on 7 April 2003, RUB 26,259.90. The judgments were not appealed against and became final ten days after the delivery.

8. In January 2003 all the judgments, except for the judgments of 7 April 2003, were enforced. According to the applicants, the judgments of 7 April 2003 were enforced in July 2005.

THE LAW

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

9. The applicants complained about the prolonged non-enforcement of the judgments in their favour. The Court will examine this complaint under Article 6 § 1 of the Convention and Article 1 of Protocol No. 1 to the Convention. 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. Parties' submissions

10. The Government admitted that there were some delays in the enforcement proceedings. However, they argued that the delays in enforcement of the judgments that entered into force in 2002 amounted to less than a year and, therefore, were reasonable. The Government also referred to the difficulties of the budgetary process in the Extreme North, including the Koryakskiy Autonomous Region. They claimed that due to the budgetary process formalities, the money awarded in 2002 could have been paid only from the money allocated to the budget in 2003. On those grounds the Government concluded that the applicants' rights under the Convention had not been violated.

11. The applicants maintained their complaints.

B. Admissibility

12. The Court observes that the exact dates of execution of the judgments in the applicants' favour are not clear from the parties' submissions. However, it was undisputed that all the judgments (except for the ones delivered on 7 April 2003) were enforced in January 2003. As regards the judgments of 7 April 2003, according to the applicants, they were enforced in July 2005. The Government did not contest this allegation. The Court therefore accepts it.

13. The Court considers, in the light of the parties' submissions, that the complaints under Article 6 of the Convention and Article 1 of Protocol No. 1 to the Convention about delays in the enforcement of the court judgments in the applicants' favour raise serious issues of fact and law under the Convention, the determination of which requires an examination of the merits. The Court concludes therefore that these complaints are not manifestly ill-founded within the meaning of Article 35 § 3 of the Convention. No other ground for declaring them inadmissible has been established.

C. Merits

14. The Court must determine whether the delays in enforcement of the judgments in the applicants' favour have been compatible with their right to a court and to the peaceful enjoyment of their possessions. In doing so, the Court will look at the delays in enforcement of two groups of judgments separately. The first group includes the judgments of 5 September, 12 September and 26 November 2002; the second group includes the remaining judgments – of 14 January, 4 February 2002 and 7 April 2003.

1. First group of judgments

15. As to the first group of judgments the Court observes that they became enforceable on 14 September, 21 September and 5 December 2002 respectively. The applicants received the awards pursuant to these judgments in January 2003. Thus, the delays in the enforcement were less than five months.

16. In these circumstances, given the nature of the awards and the length of the delays in the enforcement of the judgments, the Court accepts the Government's argument that the judgments were enforced within a reasonable time. The Court considers that the delays were not so long as to deprive the outcome of the judicial process of "all useful effect" or to interfere with the applicants' right to the peaceful enjoyment of their possessions. There has accordingly been no violation of Article 6 § 1 of the Convention and Article 1 of Protocol No. 1 in respect of the delays in enforcement of the judgments of 5 September, 12 September and 26 November 2002.

2. Second group of judgments

17. As regard the second group of judgments the Court notes that the amounts awarded by the judgments of 14 January and 4 February 2002, which became enforceable on 24 January and 14 February respectively, were paid to the applicants in January 2003. The judgment of 7 April 2003, which became enforceable on 17 April 2003, was executed in July 2005. Hence, the delays in the enforcement of the above judgments constituted twelve months, eleven months and two years and four months respectively.

18. 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, among other authorities, *Burdov v. Russia*, no. 59498/00, ECHR 2002-III, and, more recently, *Petrushko*, cited above, or *Poznakhirina v. Russia*, no. 25964/02, 24 February 2005). The Court notes that the Government referred to the difficulties of budgeting process in the Koryakskiy Autonomous Region as justification for the delays in the enforcement proceedings. However, the Court recalls that it is incumbent on the State to organise its legal system in such a way that ensures co-ordination between various enforcement agencies and secures honouring of the State's judgment debts in good time (see *Reynbakh v. Russia*, no. 23405/03, § 23, 29 September 2005).

19. Considering the length of the periods of non-enforcement of court judgments, and having examined all relevant circumstances, the Court does not see any reason to depart from its previous case-law and concludes that the delayed execution of the judgments 14 January, 4 February 2002 and 7 April 2003 in favour of the applicants constituted a breach of Article 6 § 1 of the Convention and Article 1 of Protocol No. 1 to the Convention.

II. OTHER ALLEGED VIOLATIONS OF THE CONVENTION

20. The applicants also complained that the lengthy non-enforcement of the judgments in their favour violated their rights to effective domestic remedies under Article 13 of the Convention.

21. The Court considers that this complaint is linked to the above issues of non-enforcement to such an extent that it should be declared admissible as well. However, having regard to the finding relating to Article 6 § 1 (see paragraphs 20 and 22 above), the Court considers that it is not necessary to examine whether, in this case, there has been a violation of Article 13 (see, among other authorities, *Korchagina and Others v. Russia*, no. 27295/03, §§ 26-27, 17 November 2005).

III. APPLICATION OF ARTICLE 41 OF THE CONVENTION

22. 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

1. *Pecuniary damage*

23. The applicants made two claims in respect of pecuniary damage. Firstly, they explained that due to the non-payment of the allowance they had to raise a loan from a bank to be able to pay for the apartment they had bought. As a result, they sustained damage in the amount of 28,764 Russian roubles, which represented the interest payments they had made and would have to make to the bank in 2002-2006. In support of their claims the applicants presented the loan agreement.

24. Secondly, the applicants claimed pecuniary losses caused by the delayed payments as a result of the inflation. They did not submit a calculation of the damage sustained.

25. The Government considered that the amount claimed by the applicants was unsubstantiated. They further contended that there was no causal link between the alleged violation of the applicants' rights and the damages they claimed.

26. As to the claim to compensate the interest payments to the bank the Court does not discern any causal link between the violations found and the pecuniary damage alleged; it therefore rejects this claim.

27. As regards the claim to compensate the inflation losses, the Court observes that the applicant failed to present calculations of the damage sustained. The Court therefore finds that this claim was not substantiated and rejects it.

2. Non-pecuniary damage

28. The applicants claimed 100,000 United States dollars in respect of non-pecuniary damage.

29. The Government disputed the claim as unreasonable. They suggested that if the Court found a violation of the applicants' rights, such finding would by itself constitute sufficient just satisfaction.

30. The Court accepts that the applicants suffered distress because of the State authorities' failure to enforce the judgments. However, the amount claimed in respect of non-pecuniary damage appears excessive. The Court takes into account the nature and the amount of the awards, the delays before the enforcement and other relevant aspects. Making its assessment on an equitable basis, it awards 1,600 euros to each applicant in respect of non-pecuniary damage, plus any tax that may be chargeable on these amounts.

B. Costs and expenses

31. The applicant did not make any claims for the costs and expenses incurred before the domestic courts and before the Court.

32. Accordingly, the Court does not award anything under this head.

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. *Declares* the application admissible;
2. *Holds* that there has been no violation of Article 6 § 1 of the Convention and Article 1 of Protocol No. 1 of the Convention in respect of the enforcement of the judgments of 5 September, 12 September and 26 November 2002;
3. *Holds* that there has been a violation of Article 6 § 1 of the Convention and Article 1 of Protocol No. 1 of the Convention on account of the

delayed enforcement of the judgments of 14 January, 4 February 2002 and 7 April 2003;

4. *Holds* that there is no need to examine the complaint under Article 13 of the Convention;
5. *Holds*
 - (a) that the respondent State is to pay each applicant, within three months from the date on which the judgment becomes final in accordance with Article 44 § 2 of the Convention, EUR 1,600 (one thousand six hundred euros) in respect of non-pecuniary damage, to be converted into the Russian roubles at the rate applicable on the date of the settlement, plus any tax that may be chargeable;
 - (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;
6. *Dismisses* the remainder of the applicants' claim for just satisfaction.

Done in English, and notified in writing on 6 March 2008, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Søren Nielsen
Registrar

Christos Rozakis
President