



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

FIRST SECTION

**CASE OF KOLAYEV v. RUSSIA**

*(Application no. 43284/02)*

JUDGMENT

STRASBOURG

3 July 2008

**FINAL**

***03/10/2008***

*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 Kolayev v. Russia,**

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

Christos Rozakis, *President*,

Nina Vajić,

Anatoly Kovler,

Elisabeth Steiner,

Khanlar Hajiyeu,

Giorgio Malinverni,

George Nicolaou, *judges*,

and Søren Nielsen, *Section Registrar*,

Having deliberated in private on 12 June 2008,

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

**PROCEDURE**

1. The case originated in an application (no. 43284/02) 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 a Russian national, Mr Dmitriy Aleksandrovich Kolayev (“the applicant”), on 12 November 2002.

2. The applicant was represented by Mr K. Volokitin, a lawyer practising in Novoaltaysk. The Russian Government (“the Government”) were represented by Mrs V. Milinchuk, the Representative of the Russian Federation at the European Court of Human Rights.

3. On 19 June 2007 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 applicant was born in 1970 and lives in Novoaltaysk, a town in the Altay Region.

5. The applicant brought three civil actions against the Government and Ministry of Finance seeking to liquidate Soviet commodity bonds and saving certificates.

6. On 10 August 2001 the Novoaltaysk Town Court awarded the applicant 227,540 Russian roubles (“RUB”). This judgment became binding on 24 October 2001, but was not enforced.

7. On 25 December 2001 the town court awarded the applicant RUB 347,406. This judgment became binding on 24 April 2002, and was enforced on 20 September 2007.

8. On 25 December 2001 the town court awarded the applicant RUB 168,944.21. This judgment became binding on 24 April 2002. On 7 December 2004 it was quashed in supervisory-review proceedings. Nevertheless, on 2 June 2006 the sum due was by mistake paid to the applicant. The Ministry of Finance sought to recover the mistakenly paid sum, but on 14 November 2007 the Altay Regional Court decided that the applicant could keep the money as compensation for the judgment’s lengthy non-enforcement.

## II. RELEVANT DOMESTIC LAW

9. Under section 9 of the Federal Law on Enforcement Proceedings of 21 July 1997, a bailiff must enforce a judgment within two months. Under section 242.2.6 of the Budget Code of 31 July 1998, the Ministry of Finance must enforce a judgment within three months.

## THE LAW

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

10. The applicant complained under Article 6 § 1 of the Convention and Article 1 of Protocol No. 1 about the lengthy non-enforcement of the judgments. As far as relevant, these Articles 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

11. The Government argued that the applicant had not exhausted domestic remedies, as required by Article 35 § 1 of the Convention, because he had not challenged the Ministry of Finance’s negligence, had not applied for an upgrade of the awards in line with the inflation, and had not claimed non-pecuniary damage in a court. Besides, the applicant had had no legitimate expectation to have the commodity bonds liquidated, because these bonds had been meant only for agricultural workers. The Government admitted, nevertheless, that the non-enforcement of the first and second judgments had been incompatible with the Convention. As to the third judgment, the applicant was no longer a victim because this judgment had been quashed, but the applicant had been permitted to retain the money nevertheless.

12. The applicant maintained his complaint.

13. The Court rejects the Government’s argument as to non-exhaustion of domestic remedies.

14. Under Article 35 § 1 of the Convention, the Court may deal with an application only after all domestic remedies have been exhausted. This rule allows the State to put matters right domestically, without recourse to international litigation (see *Akdivar and Others v. Turkey*, judgment of 16 September 1996, *Reports of Judgments and Decisions* 1996-IV, § 65). This rule extends only to the normal use of remedies that are effective, sufficient, and available (see *Pine Valley Developments Ltd and Others v. Ireland*, no. 12742/87, Commission decision of 3 May 1989, *Decisions and Reports* (DR) 61, p. 206).

15. The three remedies suggested by the Government lack this quality.

16. First, an appeal against the Ministry’s negligence would yield a declaratory judgment that would reiterate what was in any event evident from the original judgment: the State was to honour its debt. This new judgment would not bring the applicant closer to his desired goal, that is the actual payment (see *Jasiūnienė v. Lithuania* (dec.), no. 41510/98, 24 October 2000; *Plotnikovy v. Russia*, no. 43883/02, § 16, 24 February 2005).

17. Second, a request to upgrade the judgment debt would not bring the applicant closer to the liquidation of his debt either.

18. Third, a claim for non-pecuniary damage would also be ineffective (see *Wasserman v. Russia* (no.2), no. 21071/05, §§ 51–58, 10 April 2008).

19. With regard to the first two judgments, the Court notes that this part of 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.

20. With regard to the third judgment, the Court notes that on 14 November 2007 the Altay Regional Court acknowledged a breach of the Convention and provided redress, thus depriving the applicant of his status as a victim (see *Amuur v. France*, judgment of 25 June 1995, *Reports of Judgments and Decisions* 1996-III, § 36; and *Dalban v. Romania*, judgment of 28 September 1999, *Reports* 1999-VI, § 44). It follows that this complaint is incompatible *ratione personae* with the provisions of the Convention within the meaning of Article 35 § 3 and must be rejected in accordance with Article 35 § 4.

## **B. Merits**

21. The Government have admitted that the delay in the enforcement of the first and second judgments violated Article 6 § 1 of the Convention and Article 1 of Protocol No. 1.

22. There has, accordingly, been a breach of these Articles.

## **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 applicant claimed RUB 227,540 in respect of pecuniary damage and 10,000 euros (“EUR”) in respect of non-pecuniary damage.

25. The Government argued that the applicant had shown no causal link between the alleged violation and the damage, and that a mere finding of a violation would be adequate just satisfaction.

26. As to pecuniary damage, the Court reiterates that the violation found is best redressed by putting the applicant in the position he would have been if the Convention had been respected. The Government shall therefore secure, by appropriate means, the enforcement of the domestic courts’ outstanding award (see, with further references, *Poznakhirina v. Russia*, no. 25964/02, § 33, 24 February 2005).

27. As to non-pecuniary damage, the Court accepts that the non-enforcement of the judgments must have distressed the applicant. On an equitable basis, the Court awards EUR 3,900 under this head.

#### **B. Default interest**

28. 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 10 August and 25 December 2001 admissible and the remainder of the application inadmissible;
2. *Holds* that there has been a violation of Article 6 § 1 of the Convention and of 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 award made by the domestic court, and in addition pay to the applicant EUR 3,900 (three thousand nine hundred euros), plus any tax that may be chargeable, in respect of non-pecuniary damage, to be converted into Russian roubles at the rate applicable at the date of settlement;
  - (b) that from the expiry of the above-mentioned three months until settlement simple interest shall be payable on the above amount 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 applicant's claim for just satisfaction.

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

Søren Nielsen  
Registrar

Christos Rozakis  
President