



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

FIRST SECTION

CASE OF KONDRASHOV AND OTHERS v. RUSSIA

*(Applications nos. 2068/03, 2076/03, 5224/03, 5385/03, 5414/03 and
5656/03)*

JUDGMENT

STRASBOURG

8 January 2009

FINAL

08/04/2009

This judgment may be subject to editorial revision.

In the case of Kondrashov and others 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 4 December 2008,

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

PROCEDURE

1. The case originated in six applications (nos. 2068/03, 2076/03, 5224/03, 5385/03, 5414/03 and 5656/03) 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 seven Russian nationals (“the applicants”). The applicants’ names and the dates of their applications to the Court appear in the appended table.

2. The applicants were represented by Mr V. Gandzyuk, a lawyer practising in Ryazan. The Russian Government (“the Government”) were represented by Mr P. Laptev and Ms V. Milinchuk, former representatives of the Russian Federation at the Court.

3. The applicants complained of non-enforcement of binding and enforceable judgments delivered in their favour in 2001 and of their quashing in supervisory-review proceedings.

4. On 25 November 2003 the President of the First Section decided to communicate the complaint concerning the non-enforcement of the domestic judgments to the Government. On 21 May 2007 the President decided under Rule 54 § 2(c) of the Rules of the Court to invite the Government to submit further written observations notably concerning non-enforcement of these domestic judgments and their quashing by way of supervisory review. It was also decided to examine the merits of the applications at the same time as their admissibility (Article 29 § 3).

THE FACTS

I. THE CIRCUMSTANCES OF THE CASE

5. The applicants' names and other details are indicated in the appended table. All the applicants were members of the Russian military forces and took part in peace-keeping operations in former Yugoslavia and/or in other military missions outside the Russian Federation.

6. In 2001 they sued the military unit no. 03611 before the Ryazan Garrison Military Court for payment of outstanding daily allowance allegedly due to them on account of their military missions abroad. The court granted the applicants' claims (see dates of the judgments and sums awarded in the appended table). The judgments were not appealed against and became binding and enforceable on the dates indicated in the appended table.

7. The judgments of 11 December 2001 were not enforced. On 6 November 2002 the Presidium of the Moscow Circuit Military Court decided, upon its President's request for supervisory review, to quash these judgments in view of an erroneous application of material law and sent the cases for a new consideration to the Ryazan Garrison Military Court (judgments Nos. 338п/г, 339п/г and 341п/г). The applicants did not attend the hearing. It does not appear from the case-file that the applicants or their counsel had been informed of the supervisory-review proceedings or that they were able to take part in these proceedings.

8. On 9 and 10 April 2003 the Ryazan Garrison Military Court reconsidered the cases and dismissed the applicants' claims. These judgments were upheld on appeal by the Moscow Circuit Military Court on 10 and 17 June 2003 and thus became final.

9. The judgments of 13 and 20 December 2001 in favour of S. Panchenko were enforced on 3 April 2006 and 24 April 2003 respectively. On 2 June 2006 the Ryazan Garrison Military Court partially granted this applicant's claim for compensation of the inflation losses due to the delay in the execution of the judgment of 13 December 2001. The court awarded compensation for the inflation losses occurred between 1 January 2006 and 31 March 2006, i.e. a sum of 12 428.64 RUB instead of 124,350.48 RUB claimed by the applicant for the total delay in enforcement.

II. RELEVANT DOMESTIC LAW

10. The relevant domestic law as in force in the material time is summed up in the Court's judgment in the case of *Ryabykh* (see *Ryabykh v. Russia*, no. 52854/99, § 31-42, ECHR 2003-IX).

11. In 2001-2005 the judgments delivered against the public authorities were executed in accordance with a special procedure established, *inter alia*, by the Government's Decree No. 143 of 22 February 2001 and, subsequently, by Decree No. 666 of 22 September 2002, entrusting execution to the Ministry of Finance (see further details in *Pridatchenko and Others v. Russia*, nos. 2191/03, 3104/03, 16094/03 and 24486/03, §§ 33-39, 21 June 2007).

THE LAW

I. JOINDER OF THE APPLICATIONS

12. Given that these six applications concern the same facts and complaints and raise identical issues under the Convention, the Court decides to consider them in a single judgment.

II. ALLEGED VIOLATION OF ARTICLE 6 AND ARTICLE 1 OF PROTOCOL NO. 1 ON ACCOUNT OF THE QUASHING OF THE JUDGMENTS IN THE APPLICANTS' FAVOUR

13. The applicants complained that the quashing by way of supervisory review of the binding and enforceable judgments of 11 December 2001 delivered by the Ryazan Garrison Military Court in their favour violated their rights under Article 6 and Article 1 of Protocol No.1, which insofar as relevant, provide as follows:

Article 6 § 1

“In the determination of his civil rights and obligations ..., everyone is entitled to a fair and public hearing within a reasonable time 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...”

A. Admissibility

14. The Government argued that Article 6 of the Convention was not applicable to the applicants' cases as they were servicemen in the Russian military forces at the material time. Accordingly, their lawsuits in the Russian military courts could not be qualified as "civil" and thus were not protected by Article 6.

15. The applicants contested this argument. Relying on the Court's case-law, they submitted that their access to courts was allowed by domestic legislation and that their claims had been effectively considered by domestic military courts. They concluded that Article 6 was applicable.

16. The Court notes that it has already considered the argument submitted by the Government and rejected it in previous similar cases (see, among other authorities, *Dovguchits v. Russia*, no.2999/03, §§ 19-24, 7 June 2007). It recalls that civil servants can only be excluded from the protection embodied in Article 6 if the State in its national law expressly excluded access to a court for the category of staff in question and if this exclusion was justified on objective grounds in the State's interest (see *Vilho Eskelinen and Others v. Finland*, [GC], no. 63235/00, § 62, ECHR 2007-...). The Court observes that these conditions were not satisfied in the present cases. The applicants lawfully sued their employer military unit in the Ryazan Garrison Military Court which granted their claims. The case was later reconsidered on several occasions by military courts. The Court therefore agrees with the applicants that their access to a court was allowed by domestic legislation and considers in the light of the aforementioned case-law that Article 6 applied to these cases. The Government's objection must therefore be dismissed.

17. The Court notes that the applicants' complaints are not manifestly ill-founded within the meaning of Article 35 § 3 of the Convention. It further notes that they are not inadmissible on any other grounds. They must therefore be declared admissible.

B. Merits

18. The applicants argued that the quashing of the binding and enforceable judgments of 11 December 2001 delivered by the Ryazan Garrison Military Court in their favour violated the principle of legal certainty and, therefore, their right to a court and the right to peaceful enjoyment of their possessions. They emphasised that the defendant military unit did not use the available means of appeal against the judgments before they became binding and enforceable and that the subsequent supervisory review upon application of the President of the Moscow Circuit Military Court could not be justified by the higher court's mere disagreement with the decision on the merits.

19. The Government stated that the supervisory-review proceedings in the Presidium of the Moscow Circuit Military Court upon application of its President had been lawful and necessary to remedy errors in the application of material law by a lower court. They provided detailed information on the material norms that had allegedly been ignored by the Ryazan Garrison Military Court. In the Government's view, the applicants should accordingly have had no expectation of any benefit arising from the judgments in their favour. They stressed that a judicial decision could not be considered as equitable and lawful, and the judicial protection as effective, without judicial errors being corrected. The Government concluded that the quashing of the judgments in all present cases had been justified, well-founded and thus compatible with the principle of legal certainty.

20. The Court reiterates that legal certainty, which is one of the fundamental aspects of the rule of law, presupposes respect for the principle of *res judicata*, that is the principle of the finality of judgments. A departure from that principle is justified only when made necessary by circumstances of a substantial and compelling character, such as correction of fundamental defects or miscarriage of justice (see *Brumărescu v. Romania* [GC], no. 28342/95, § 61, ECHR 1999-VII; *Ryabykh v. Russia*, no. 52854/99, § 51-52, ECHR 2003-IX).

21. The Court recalls that it has frequently found violations of the principle of legal certainty and of the right to a court in the supervisory-review proceedings governed by the former Code of Civil Procedure as it allowed final judgments in the applicants' favour to be set aside by higher courts following applications by state officials, whose power to make such applications was not subject to any time-limit (see, among other authorities, *Ryabykh*, cited above, §§ 51-56; *Volkova v. Russia*, no. 48758/99, §§ 34-36, 5 April 2005; *Roseltrans v. Russia*, no. 60974/00, §§ 27-28, 21 July 2005). The Court further recalls that it found violations of Article 6 and of Article 1 of Protocol No.1 in a case involving very similar facts (see *Kozeyev v. Russia*, no. 934/03, 31 July 2007) and does not see any reason to reach a different conclusion in the present cases.

22. The Court notes that the applicants' claims were upheld by the judgments of 11 December 2001 of the Ryazan Garrison Military Court which became binding and enforceable on 24 December 2001 without any appeal being brought against them by the defendant military unit. More than ten months later, these judgments were quashed by the Presidium of the Moscow Circuit Military Court upon application of its President. The Government did not demonstrate to the Court that this unexpected intervention of a higher court in the applicants' case was made necessary by circumstances of a substantial and compelling character (see paragraph 20 above). That the Presidium of the Moscow Circuit Military Court disagreed with the application by the first-instance court of domestic material law is not in itself an exceptional circumstance justifying departure from the

principle of legal certainty (see *Kot v. Russia*, no. 20887/03, § 29, 18 January 2007). Nor can this departure be justified by the position of other Russian military courts which according to the Government dismissed similar claims in numerous similar cases at the material time.

23. The above elements are sufficient to conclude that the quashing of the judgments of 11 December 2001 in supervisory-review proceedings initiated by the President of the Moscow Circuit Military Court violated the applicants' right to a court protected by Article 6 of the Convention.

24. The Court further reiterates that the binding and enforceable judgments created an established right to payment in the applicants' favour, which is considered as "possession" within the meaning of Article 1 of Protocol No. 1 (see *Vasilopoulou v. Greece*, no. 47541/99, § 22, 21 March 2002). The quashing of these judgments in breach of the principle of legal certainty frustrated the applicants' reliance on the binding judicial decisions and deprived them of an opportunity to receive the judicial awards they had legitimately expected to receive (see *Dovguchits*, cited above, § 35). There has accordingly been also a violation of that Article 1 of Protocol No. 1.

III. ALLEGED VIOLATION OF ARTICLE 6 OF THE CONVENTION ON ACCOUNT OF UNFAIRNESS OF THE SUPERVISORY-REVIEW PROCEEDINGS

25. The applicants also complained of a violation of Article 6 of the Convention on account of unfairness of the supervisory-review proceedings. However, in their later observations they did not appear to maintain this complaint. Given the Court's finding that the applicants' right to a court was violated by the quashing of the judgments in their favour in the supervisory-review proceedings (see paragraph 23), the Court does not find it necessary to examine separately this issue.

IV. ALLEGED VIOLATION OF ARTICLE 6 OF THE CONVENTION AND ARTICLE 1 OF PROTOCOL NO. 1 ON ACCOUNT OF THE NON-ENFORCEMENT OF THE JUDGMENTS

26. The applicants also complained of a violation of Article 6 of the Convention and of Article 1 of Protocol No. 1 on account of non-enforcement of the judgments of 11 December 2001 delivered by the Ryazan Garrison Military Court. Invoking the same provisions the applicant S. Panchenko also complained of delayed enforcement of the two other judgments delivered by the same court on 13 and 20 December 2001 and of insufficient compensation subsequently awarded by the same court on account of this delayed enforcement. The relevant parts of the Convention's provisions are cited above.

27. The Court reiterates that the principles insisting that a final judicial decision must not be called into question and should be enforced represent two aspects of the same general concept, namely the right to a court. The Court observes that the judgments of 11 December 2001 were quashed shortly after having become binding and enforceable. Having regard to its finding of violations of Article 6 on account of the quashing of these judgments in supervisory-review proceedings, the Court finds that it is not necessary in these circumstances to examine separately the issue of their non-enforcement by the authorities (see *Boris Vasilyev v. Russia*, no.30671/03, §§41-42, 15 February 2007; and *Sobelin and Others v. Russia*, nos. 30672/03 *et al.*, §§ 67-68, 3 May 2007).

28. The Court considers that the situation is different in respect of the delayed enforcement of the judgments of 13 and 20 December 2001 in favour of S. Panchenko (see paragraph 9 above). Indeed, these judgments became binding and enforceable but remained unenforced for longer periods of time. The Court will thus examine separately S. Panchenko's complaint about the delay in enforcement of these judgments.

A. Admissibility

29. The Court notes that the complaint 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

30. The Government referred *inter alia* to the complex multilevel procedure of execution of judgments against the State and its entities and to the insufficient funding which delayed in 2001-2004 the execution of more than 96 000 judgments, including those in the applicant's favour.

31. The applicant maintained his complaint.

32. The Court reiterates that an unreasonably long delay in the enforcement of a binding judgment may breach the Convention (see *Burdov v. Russia*, no. 59498/00, ECHR 2002-III). The reasonableness of such delay is to be determined having regard in particular to the complexity of the enforcement proceedings, the applicant's own behaviour and that of the competent authorities, the amount and the nature of court award (see *Raylyan v. Russia*, no. 22000/03, § 31, 15 February 2007).

33. The Court observes that the judgment delivered on 13 December 2001 in favour of S. Panchenko became binding and enforceable on 25 December 2001 and remained unenforced until 3 April 2006, i.e. during more than 4 years and 3 months. The judgment of 20 December 2001 in his

favour became binding and enforceable on 31 December 2001 and remained unenforced until 4 April 2003 i.e. during more than 1 year and 3 months.

34. In the light of the Court's established case-law, such long delays appear at the outset incompatible with the requirement to enforce the judgments within a reasonable time. The Government provided no argument allowing the Court to come to a different conclusion in the present case.

35. The Court notes in particular that the enforcement of the present judgments required a simple payment of monetary awards to the applicant and thus was not in itself of any complexity. The Court reiterates that it is not open to a State authority to cite the lack of funds as an excuse for not honouring a judgment debt (see *Burdov*, cited above, §35). Nor can the complexity of the domestic enforcement procedure relieve the State of its obligation under the Convention to guarantee to everyone the right to have a binding and enforceable judicial decision enforced within a reasonable time. It is for the Contracting States to organise their legal systems in such a way that the competent authorities can meet their obligation in this regard (see *mutatis mutandis Comingersoll S.A. v. Portugal* [GC], no. 35382/97, § 24, ECHR 2000-IV *Frydlender v. France* [GC], no. 30979/96, § 45, ECHR 2000-VII).

36. In view of the foregoing, the Court considers that these delays in enforcement were unreasonable and also impaired this applicant's right to a court. The Court accordingly concludes that the prolonged failure to enforce the two judgments in S. Panchenko's favour amounted to violations of Article 6 of the Convention and of Article 1 of Protocol No. 1.

V. APPLICATION OF ARTICLE 41 OF THE CONVENTION

37. 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

38. The applicants claimed in respect of pecuniary damage the sums awarded to them by the judgments of 11 December 2001 given by the Ryazan Garrison Military Court and compensation for inflation losses in 2002-2007 (see details in the table appended). They also claimed EUR 7,000 for each applicant in respect of non-pecuniary damage.

39. The Government considered that nothing should be awarded while making no specific comment on the calculation of pecuniary damage by the

applicants. They considered the claim for non-pecuniary damage to be excessive and unreasonable.

40. The Court recalls that the most appropriate form of redress in respect of the violations found would be to put the applicants as far as possible in the position they would have been if the Convention requirements had 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 considers that this principle should apply in the present cases (see *Dovguchits* cited above, §48).

41. The applicants were prevented from receiving the amounts they had legitimately expected to receive under the binding and enforceable judgments delivered by domestic courts in their favour. Accordingly, the Court awards the applicants the amounts awarded by the judgments of 11 December 2001 of the Ryazan Garrison Military Court (see details in the table appended).

42. The Court further accepts the applicants' argument relating to the loss of value of these awards between 2002 and 2007. As the Government has not submitted any comment in respect of the method used by the applicants for the calculation of these losses, the Court decides to grant the applicants claims in full (see details in the table appended).

43. As regards the delay in enforcement of the judgment of 13 December 2001 in favour of S. Panchenko (see paragraphs 9 and 34 above), the Court notes that while the applicant referred in his observations to insufficient compensation awarded by the domestic court in this respect, he did not specify any separate claim for just satisfaction in relation to this judgment. Nor did the applicant present any such claim in respect of the late enforcement of the judgment of 20 December 2001. Accordingly, the Court makes no award in this respect.

44. The Court also finds that the applicants have suffered non-pecuniary damage as a result of the violations found which cannot be compensated by the mere finding of a violation. Having regard to the circumstances of the cases and making its assessment on an equitable basis, as required by Article 41 of the Convention, the Court awards to each applicant a 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

45. Each applicant claimed 10,000 RUB (EUR 285) paid to their representative for his legal assistance in the preparation of their applications and observations to the Court. The lawyer's bills were provided in support of this claim.

46. The Government considered that these claims were unsubstantiated.

47. According to the Court's case-law, an applicant is entitled to the reimbursement of 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. In the present case, regard being had to the information in its possession and the above criteria, the Court decides to award the sums claimed in full, i.e. EUR 285 to each applicant, plus any tax that may be chargeable on that amount.

C. Default interest

48. 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. *Decides* to join the applications;
2. *Declares* the applications admissible;
3. *Holds* that there has been a violation of Article 6 of the Convention and of Article 1 of Protocol No. 1 on account of the quashing of the judgments of 11 December 2001 in supervisory-review proceedings;
4. *Holds* that it is not necessary to examine separately the issue of alleged unfairness of supervisory review proceedings and the issue of non-enforcement of the judgments of 11 December 2001;
5. *Holds* that there has been a violation of Article 6 of the Convention and of Article 1 of Protocol No. 1 on account of delayed enforcement of the judgments of 13 and 20 December 2001 in favour of S. Panchenko;
6. *Holds*
 - (a) that the respondent State is to pay the applicants, within three months from the date on which the judgment becomes final in accordance with Article 44 § 2 of the Convention, the following sums to be converted into Russian roubles at the rate applicable at the date of the settlement:
 - (i) in respect of pecuniary damage:
EUR 19,783 (nineteen thousand seven hundred eighty three euros)
to I. Kondrashov

EUR 19,833 (nineteen thousand eight hundred thirty three euros) to O. Kravets

EUR 20,181 (twenty thousand one hundred eighty one euros) to I. Litvinov

EUR 19,883 (nineteen thousand eight hundred eighty three euros) to V. Shapolov

EUR 19,187 (nineteen thousand one hundred eighty seven euros) to I. Kravets

EUR 19,533 (nineteen thousand five hundred thirty three euros) to A. Kravets

EUR 19,883 (nineteen thousand eight hundred eighty three euros) to S. Panchenko

(ii) EUR 3,000 (three thousand euros) to each applicant in respect of non-pecuniary damage plus any tax that may be chargeable on this amount;

(iii) EUR 285 (two hundred eighty five euros) to each applicant in respect of costs and expenses plus any tax that may be chargeable on this amount;

(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;

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

Done in English, and notified in writing on 8 January 2009, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Søren Nielsen
Registrar

Christos Rozakis
President

APPENDIX

APP. NO. (DATE)	APPLICANT (YEAR OF BIRTH)	JUDGMENT(S) COURT(S)/DATE(S)	AMOUNT(S) AWARDED (RUB)	APPLICANTS' CLAIMS FOR DAMAGE CAUSED BY INFLATION (RUB)
2068/03 (17/12/02)	Kondrashov Igor Vladimirovich (1966)	Ryazan Garrison Military Court, 11/12/01, enforceable on 24/12/01	369,425.99	323,654.10
2076//03 (25/12/02)	Kravets Oleg Ivanovich (1974)	Ryazan Garrison Military Court, 11/12/01, enforceable on 24/12/01	370,353.82	324,466.98
5224/03 (30/12/02)	Litvinov Ivan Viktorovich (1960)	Ryazan Garrison Military Court, 11/12/01, enforceable on 24/12/01	376,848.63	330,157.08
5385/03 (25/12/02)	Shapolov Viktor Alexandrovich (1966)	Ryazan Garrison Military Court, 11/12/01, enforceable on 24/12/01	371,281.65	325,279.85
5414/03 (27/12/02)	Kravets Ivan Ivanivich (1978) Kravets Anatoly Ivanovich (1957)	Ryazan Garrison Military Court, 11/12/01, enforceable on 24/12/01	358,292.03 369,425.99	313,899.64 314,893.10
5656/03 (5/12/02)	Panchenko Sergey Vasilyevich (1965)	Ryazan Garrison Military Court, 11/12/01, enforceable on 24/12/01	371,281.65	325,279.85
		Ryazan Garrison Military Court, 13/12/01, enforceable on 25/12/01	213,550.55	none
		Ryazan Garrison Military Court, 20/12/01, enforceable on 31/12/01	88,960.80	none