



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

FIRST SECTION

CASE OF KOZODOYEV AND OTHERS v. RUSSIA

(Applications nos. 2701/04, 3597/04, 11898/04, 31946/04, and 34826/04)

JUDGMENT

STRASBOURG

15 January 2009

FINAL

05/06/2009

This judgment may be subject to editorial revision.

In the case of Kozodoyev and Others v. Russia,

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

Christos Rozakis, *President*,

Anatoly Kovler,

Elisabeth Steiner,

Dean Spielmann,

Sverre Erik Jebens,

Giorgio Malinverni,

George Nicolaou, *judges*,

and Søren Nielsen, *Section Registrar*,

Having deliberated in private on 11 December 2008,

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

PROCEDURE

1. The case originated in applications 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 the Russian nationals listed in the table below.

2. The Russian Government (“the Government”) were represented by Ms V. Milinchuk, former Representative of the Russian Federation at the European Court of Human Rights.

3. The President of the First Section decided to communicate the complaint concerning non-enforcement of judgments to the Government. It was also decided to examine the merits of the applications at the same time as their admissibility (Article 29 § 3). The Government objected to the joint examination of the admissibility and merits, but the Court rejected this objection.

THE FACTS

4. The applicants obtained civil judgments against the State and its agencies. The judgments became binding but their full enforcement was delayed. Particulars of the judgments are tabulated below.

THE LAW

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

5. The applicants complained about the delayed enforcement of the judgments. The Court will examine this complaint under Article 6 § 1 of the Convention and Article 1 of Protocol No. 1. Insofar 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

6. The Government argued that this complaint was inadmissible. Not all applicants had been victims, among other things because the delayed awards had been adjusted for the cost of living. Some judgments had been given before 5 May 1998 (the date of entry into force of the Convention in respect of Russia), and hence the complaint was incompatible *ratione temporis*. The applicants had failed to exhaust domestic remedies such as a claim for damages, an adjustment for the cost of living, and a negligence action. The applicants had missed the six-month time-limit for applying to the Court. The authorities had done their best to enforce the judgments. Any delays had been caused by objective obstacles such as the complexity of the budgetary system, the applicants' failure to respect formalities, and the applicants' refusal of settlement offers.

7. The applicants maintained their complaints insisting that the judgments had been enforced with unreasonable delays or enforced only partly.

8. The Court notes that it has on many occasions rejected arguments similar to the ones raised by the Government in the present case (see, among other authorities, *Burdov v. Russia* (dec.), no. 59498/00, ECHR 2001-VI; *Akashev v. Russia*, no. 30616/05, §§ 22–23, 12 June 2008; *Nazarchuk v. Ukraine*, no. 9670/02, § 20, 19 April 2005; *Plotnikovy v. Russia*, no. 43883/02, § 16, 24 February 2005). In the present cases the Court will also reject these arguments.

9. The Court notes that this 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

10. 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). To decide if the delay was reasonable, the Court will look at how complex the enforcement proceedings were, how the applicant and the authorities behaved, and what the nature of the award was (see *Raylyan v. Russia*, no. 22000/03, § 31, 15 February 2007).

11. In the present cases, for each applicant the enforcement of at least one judgment exceeded one year. Taking into consideration the lack of complexity of the enforcement, the parties' behaviour and the nature of the awards, the Court finds that this period was incompatible with the requirements of the Convention.

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

II. OTHER ALLEGED VIOLATIONS OF THE CONVENTION

13. The applicants also made a number of accessory complaints referring to Articles 3, 4, 5, 6, 7, 11, 13, 17, and 18 of the Convention, and Article 1 of Protocol No. 1.

14. However, in the light of all the material in its possession, and in so far as the matters complained of are within its competence, the Court finds that they do not disclose any appearance of a violation of the rights and freedoms set out in the Convention or its Protocols.

It follows that these complaints are manifestly ill-founded and must be rejected in accordance with Article 35 §§ 3 and 4 of the Convention.

III. APPLICATION OF ARTICLE 41 OF THE CONVENTION

15. 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.”

16. The applicants advanced wide-ranging claims in respect of pecuniary damage, non-pecuniary damage, and costs and expenses. The Government contested most of the claims as unfounded.

17. The Court considers that the applicants have sustained pecuniary and non-pecuniary damage as a result of the delayed enforcement of the judgments. The Government shall secure, by appropriate means, the enforcement of the judgments that are marked as outstanding in the table below (see, with further references, *Poznakhirina v. Russia*, no. 25964/02, § 33, 24 February 2005). In addition, making its assessment on equitable and reasonable bases, the Court awards to the applicants the amounts shown in the last column of the table below.

18. 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 complaint concerning non-enforcement of judgments admissible and the remainder of the applications inadmissible;
3. *Holds* that there has been a violation of Article 6 § 1 of the Convention and Article 1 of Protocol No. 1;
4. *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 the enforcement of the judgments marked as outstanding in the table below, and in addition pay the applicants the amounts shown in the last column of the table below;
 - (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;

5. *Dismisses* the remainder of the applicants' claims for just satisfaction.

Done in English, and notified in writing on 15 January 2009, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Søren Nielsen
Registrar

Christos Rozakis
President

No.	Applicant	Born	Court	Judgment of	Award	Binding on	Enforced on	Period	Just satisfaction
2701/04	Kozodoyev Viktor Vasilyevich	1949	Sudogodskiy District Court of the Vladimir Region	25/04/97	Social flat	01/05/97	30/08/06	8y 3m	5 100 €
	Kozodoyeva Neonila Grigoryevna	1950	Sudogodskiy District Court of the Vladimir Region	25/04/97	Social flat	01/05/97	30/08/06	8y 3m	5 100 €
	Kozodoyeva Tatyana Viktorovna	1977	Sudogodskiy District Court of the Vladimir Region	25/04/97	Social flat	01/05/97	30/08/06	8y 3m	5 100 €
	Kozodoyev Andrey Viktorovich	1973	Sudogodskiy District Court of the Vladimir Region	25/04/97	Social flat	01/05/97	30/08/06	8y 3m	5 100 €
3597/04	Maksimchuk Viktor Anatolyevich	1962	Petrozavodsk Town Court	25/02/03	Chernobyl benefits	22/04/03	17/12/03	0y 7m	0 €
			Petrozavodsk Town Court	14/07/04	Chernobyl benefits	27/07/04	02/11/06	2y 3m	2 600 €
11898/04	Kozhevnikova Lyubov Mikhaylovna	1936	Zherdevskiy District Court of the Tambov Region	20/10/93	Damages for wrongful prosecution	20/10/93	outstanding	10y 6m	5 100 €
31946/06	Sukhachev Ilya Ivanovich	1952	Tsentralnyi District Court of Volgograd	18/03/04	Chernobyl benefits	19/05/04	24/06/05	1y 1m	2 000 €
			Tsentralnyi District Court of Volgograd	10/07/06	Chernobyl benefits	20/07/06	29/11/07	1y 4m	–
34826/04	Kulev Viktor Aleksandrovich	1961	Pskov Town Court	11/12/02	Chernobyl benefits	24/12/02	01/05/06	3y 4m	3 600 €