



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

FIRST SECTION

CASE OF GRIBANENKOV v. RUSSIA

(Application no. 16583/04)

JUDGMENT

STRASBOURG

18 February 2010

FINAL

18/05/2010

This judgment has become final under Article 44 § 2 of the Convention. It may be subject to editorial revision.

In the case of Gribanenko 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 Hajiyev,

Dean Spielmann,

Sverre Erik Jebens, *judges*,

and Søren Nielsen, *Section Registrar*,

Having deliberated in private on 28 January 2010,

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

PROCEDURE

1. The case originated in an application (no. 16583/04) 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 Sergey Vasilyevich Gribanenko (“the applicant”), on 5 April 2004.

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

3. On 28 November 2005 the President of the First Section decided to give notice of the application to the Government. It was also decided to examine the merits of the application at the same time as its admissibility (Article 29 § 3).

THE FACTS

I. THE CIRCUMSTANCES OF THE CASE

4. The applicant, Mr Sergey Vasilyevich Gribanenko, is a Russian national who was born in 1949 and lives in the Leningrad Region. The facts of the case, as submitted by the applicant, may be summarised as follows.

5. In 1986 and 1987 the applicant took part in the clean-up operation at the Chernobyl nuclear disaster site. He was subsequently granted disability status and became entitled to various social benefits. The present case concerns disputes over these benefits.

A. First set of proceedings

6. On 3 December 2000 the applicant brought a civil action against the authorities seeking an increase in the monthly disability allowance he was entitled to receive.

7. On 17 April 2001 the Moskovskiy District Court of St. Petersburg ruled that it lacked jurisdiction to consider the claim and remitted the case to the Sosnoviy Bor Town Court. After receiving the applicant's case file on 6 June 2001, the President of the Sosnoviy Bor Town Court applied, without success, for supervisory review of the decision of 17 April 2001. Eventually the case was remitted to the Sosnoviy Bor Town Court for consideration on the merits.

8. On 7 August 2002 the Sosnoviy Bor Town Court informed the applicant that his case could not be heard before 17 October 2002 because there were a large number of cases pending and the judge was on leave.

9. On 17 October 2002 the hearing was adjourned until 19 December 2002.

10. On 23 December 2002 the Sosnoviy Bor Town Court granted the applicant's claim in part.

11. On 29 January 2003 the Leningradskiy Regional Court quashed the judgment on appeal and remitted the matter for fresh consideration.

12. The hearing of the case was then adjourned on 1 and 10 April, 24 September and 16 and 28 October 2003.

13. On 28 November 2003 the Sosnoviy Bor Town Court awarded the applicant 624,653.85 Russian roubles (RUB) in arrears and increased the monthly disability allowance to RUB 28,205.27 as from December 2003. On 14 January 2004 that judgment was upheld by the Leningradskiy Regional Court.

14. In August 2005 the judgment was enforced in full.

15. On 31 January 2006 the Sosnoviy Bor Town Court adjusted the sums awarded under the judgment of 28 November 2003, which had been paid belatedly, to allow for inflation and awarded the applicant RUB 83,185. The decision became final on 16 March 2006 and was enforced on 4 December 2007.

B. Second set of proceedings

16. On 3 March 2004 the applicant brought a new action against the authorities seeking an increase in the monthly disability allowance he was entitled to receive.

17. On 6 December 2004 the Sosnovoborskiy Town Court awarded the applicant RUB 63,445 in arrears for the period from 1 July 2000 to 1 January 2004 and RUB 225,721.98 in arrears for the period from 1 January to 30 November 2004, and increased the monthly disability

allowance from RUB 28,205.27 to RUB 30,000 as from December 2004. The parties did not appeal against the judgment and it became final on 17 December 2004.

18. The judgment was enforced in full on 20 April 2007.

19. On 29 March 2006 the Sosnoviy Bor Town Court adjusted the sums awarded under the judgment of 6 December 2004, which had been paid belatedly, to allow for inflation and awarded the applicant RUB 36,688.91. The decision was enforced on 4 December 2007.

THE LAW

I. ALLEGED VIOLATION OF ARTICLE 6 § 1 OF THE CONVENTION AND OF ARTICLE 1 OF PROTOCOL No. 1 ON ACCOUNT OF NON-ENFORCEMENT

20. The applicant complained under Article 6 § 1 of the Convention and Article 1 of Protocol No. 1 about non-enforcement of the judgment of 28 November 2003 as upheld by the judgment of 14 January 2004, and of the judgment of 6 December 2004.

21. 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. [...]”

22. The Government, in their memorandum of 20 February 2006, admitted that the judgment of 28 November 2003, as upheld on appeal on 14 January 2004, and the judgment of 6 December 2004 were not fully enforced within a reasonable time, which violated the applicant's right to peaceful enjoyment of possessions. At the same time, in a letter of 10 July 2007, they argued that the applicant's rights were not violated as the decisions in his favour had eventually been fully enforced.

A. Admissibility

23. The Court observes that by the court decisions of 31 January 2006 and 29 March 2006 the applicant was awarded inflation-adjusted compensation for the belated enforcement of the judgments. However, this cannot be considered as adequate redress as the enforcement of these decisions also took an unreasonably long time, namely 20 and 19 months (see paragraphs 16 and 20 above). Only payment made without undue delay, together with acknowledgement of the violations by the authorities, might under certain circumstances have deprived the applicant of his victim status. Accordingly, the applicant may still claim to be a “victim” (see *Lesnova v. Russia*, no. 37645/04, § 13, 24 January 2008, and *Burdov v. Russia (no. 2)*, no. 33509/04, § 52, ECHR 2009-...).

24. 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

25. 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).

26. In the present case, the judgment of 28 November 2003 as upheld on 14 January 2004 was fully enforced in August 2005, approximately 19 months after it had become final.

27. The judgment of 6 December 2004 was enforced in full on 20 April 2007, which is some 28 months after the judgment had become final.

28. The judgments were not difficult to enforce as they required only a bank transfer. The applicant did not obstruct the enforcement.

29. The Court concludes that the enforcement of the judgments of 28 November 2003, as upheld on 14 January 2004, and of 6 December 2004 took too long and that there has been a violation of Article 6 § 1 of the Convention and Article 1 of Protocol No. 1.

II. ALLEGED VIOLATION OF ARTICLE 6 § 1 OF THE CONVENTION ON ACCOUNT OF EXCESSIVE LENGTH OF PROCEEDINGS

30. The applicant complained that the length of both sets of proceedings, which ended with the judgments of 28 November 2003, as upheld on

14 January 2004, and of 6 December 2004 respectively, had been incompatible with the “reasonable time” requirement laid down in Article 6 § 1 of the Convention, which reads as follows:

“In the determination of his civil rights and obligations ..., everyone is entitled to a ... hearing within a reasonable time by [a] ... tribunal...”

31. The Court reiterates that the periods of pure non-enforcement should not be taken into account in respect of the complaint concerning the length of proceedings if the Court has already considered these periods when assessing the complaint about the non-enforcement (see *Malama v. Greece*, no. 43622/98, § 34 ECHR 2001-II; *Androsov v. Russia*, no. 63973/00, § 76, 6 October 2005; and *Veretennikov v. Russia*, no. 8363/03, § 31, 12 March 2009).

32. Therefore the period to be taken into consideration in respect of the first set of proceedings began on 3 December 2000 and ended on 14 January 2004 (see paragraphs 7-14 above). It thus lasted 3 years and 10 months, for two levels of jurisdiction.

33. In respect of the second set of proceedings the period lasted from 3 March 2004 until 6 December 2004 (see paragraphs 17-19 above), which is approximately nine months, for one level of jurisdiction.

A. Admissibility

34. As to the first set of proceedings, 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.

35. As to the second set of proceedings, the length of proceedings of some nine months does not raise an issue under the Convention and the relevant complaint is therefore manifestly ill-founded and must be rejected in accordance with Article 35 §§ 3 and 4 as inadmissible (see, for example, *Ivanova v. Russia* (dec.), no. 74705/01, 1 April 2004).

B. Merits

36. The Government did not comment on the issue.

37. The applicant maintained his complaint.

38. The Court reiterates that the reasonableness of the length of proceedings must be assessed in the light of the circumstances of the case and with reference to the following criteria: the complexity of the case, the conduct of the applicant and the relevant authorities and what was at stake for the applicant in the dispute (see, among many other authorities, *Frydlender v. France* [GC], no. 30979/96, § 43, ECHR 2000-VII).

39. The Court observes that, compared to the length of proceedings in certain cases brought before the Court, the period of three years and ten months is not very long (see, for instance, *Ivanova*, cited above). On the other hand, the Court cannot accept long periods of total inactivity of the domestic courts (see *Bunkate v. the Netherlands*, 26 May 1993, § 23, Series A no. 248-B, and *Mikhaylovich v. Russia*, no. 30019/05, § 26, 12 February 2009).

40. The Court observes that the case in question was not complex and it appears that the length of the proceedings was largely due to the authorities' failure to pursue them with the requisite speed.

41. In particular, there were two substantial periods of inactivity of the courts. The first period lasted one year and six months, from 17 April 2001 to 17 October 2002, when the court of first instance repeatedly contested its jurisdiction instead of considering the case on the merits (see *Gheorghe v. Romania*, no. 19215/04, § 58, ECHR 2007-III). The second period of inactivity on the part of the authorities lasted nine months and 29 days, from 29 January 2003 to 28 November 2003, when the appellate court quashed the first-instance judgment and remitted the case for fresh examination on the merits.

42. The Court further notes that the applicant does not appear to have contributed to the length of the proceedings and that the benefits at stake were the applicant's main, if not his sole, source of income.

43. In the light of these factors the Court finds that the length of the proceedings failed to meet the "reasonable time" requirement. There has accordingly been a violation of Article 6 § 1 of the Convention.

III. ALLEGED VIOLATION OF ARTICLE 13 OF THE CONVENTION

44. The applicant further complained that he had no effective remedies for his complaint concerning the excessive length of the proceedings. He relied on Article 13 of the Convention, which reads as follows:

"Everyone whose rights and freedoms as set forth in [the] Convention are violated shall have an effective remedy before a national authority notwithstanding that the violation has been committed by persons acting in an official capacity."

45. The Government did not comment on this issue.

A. Admissibility

46. The Court refers to its findings in paragraphs 34-35 above as to the admissibility of the complaint concerning length of proceedings and notes that this complaint is linked to it and must therefore likewise be declared admissible in respect of the first set of proceedings (paragraphs 7-14) and inadmissible in respect of the second set of proceedings (paragraphs 17-18).

B. Merits

47. The Court reiterates that Article 13 guarantees an effective remedy before a national authority for an alleged breach of the requirement under Article 6 § 1 to hear a case within a reasonable time (see *Kudła v. Poland* [GC], no. 30210/96, § 156, ECHR 2000-XI).

48. The Court further observes that according to its case-law there is no effective remedy under Russian law capable of affording redress for the unreasonable length of civil proceedings (see, among many other authorities, *Kormacheva v. Russia*, no. 53084/99, §§ 61-62, 29 January 2004; *Kuzin v. Russia*, no. 22118/02, §§ 42-46, 9 June 2005; *Bakiyevets v. Russia*, no. 22892/03, § 53, 15 June 2006; *Markova v. Russia*, no. 13119/03, § 31, 8 January 2009; and *Zaytsev and Others v. Russia*, no. 42046/06, § 48, 25 June 2009).

49. In the present case the Government did not indicate any remedy that could have expedited the determination of the applicant's case or provided him with adequate redress for the delays that had already occurred.

50. Accordingly, the Court considers that in the present case there has been a violation of Article 13 of the Convention in that the applicant had no domestic remedy whereby he could enforce his right to a “hearing within a reasonable time” as guaranteed by Article 6 § 1 of the Convention.

IV. APPLICATION OF ARTICLE 41 OF THE CONVENTION

51. 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

52. The applicant submitted that had the judgment of 6 December 2004 been taken earlier, before 29 May 2004 when a relevant legal provision was changed, he would have been awarded monthly payments of 32,633.5 Russian roubles (RUB) instead of RUB 28,205.27. He took into account the average life expectancy, calculated his future losses and claimed RUB 514,382.84 in respect of pecuniary damage caused by the excessive length of the proceedings.

53. He also claimed 35,000 euros (EUR) in respect of non-pecuniary damage caused by lengthy proceedings and non-enforcement.

54. The Government submitted that no satisfaction should be awarded since the applicant had failed to substantiate his allegedly excessive and unreasonable claims. They also submitted that if the Court found a violation

of the Convention or the Protocols thereto, that finding would be adequate just satisfaction.

55. The Court observes, in respect of the pecuniary damage, that the claim concerns the second set of proceedings, which ended with the judgment of 6 December 2004. The Court declared that complaint inadmissible (see paragraph 35 above). The applicant has not claimed pecuniary damage in respect of the part of the application in which violations have been found. Therefore no pecuniary award is made.

56. As to non-pecuniary damage, the Court considers that the applicant must have suffered distress and frustration resulting from the authorities' failure to duly enforce the judgments in his favour. However, the amount claimed appears excessive. Making its assessment on an equitable basis, the Court awards the applicant EUR 3,100 in respect of non-pecuniary damage, plus any tax that may be chargeable.

B. Costs and expenses

57. The applicant made no claims under this head. Accordingly, the Court will make no award.

C. Default interest

58. 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 complaints concerning non-enforcement, the length of the first set of proceedings and the lack of a relevant effective remedy against such length of proceedings admissible and the remainder of the application inadmissible;
2. *Holds* that there has been a violation of Article 6 of the Convention and of Article 1 of Protocol No. 1 in respect of non-enforcement of the judgments of 28 November 2003 as upheld on 14 January 2004, and of 6 December 2004;
3. *Holds* that there has been violation of Article 6 § 1 of the Convention on account of the length of the proceedings which ended with the judgment of 28 November 2003 as upheld on 14 January 2004;

4. *Holds* that there has been a violation of Article 13 of the Convention on account of lack of an effective remedy against the excessive length of civil proceedings;
5. *Holds*
 - (a) that the respondent State is to pay the applicant, within three months from the date on which the judgment becomes final in accordance with Article 44 § 2 of the Convention, EUR 3,100 (three thousand one hundred euros), plus any tax that may be chargeable to the applicant, 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;
6. *Dismisses* the remainder of the applicant's claim for just satisfaction.

Done in English, and notified in writing on 18 February 2010, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Søren Nielsen
Registrar

Christos Rozakis
President