CONSEIL DE L'EUROPE

COUNCIL OF EUROPE

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

FIRST SECTION

DECISION

AS TO THE ADMISSIBILITY OF

Application no. 63501/00
by Vladimir Nikolayevich KONOVALOV
against Russia

The European Court of Human Rights (First Section), sitting on 27 May 2004 as a Chamber composed of:

Mr C.L. ROZAKIS, *President*,
Mr P. LORENZEN,
Mr G. BONELLO,
Mr A. KOVLER,
Mr V. ZAGREBELSKY,
Mrs E. STEINER,
Mr K. HAJIYEV, *judges*,
and Mr S. NIELSEN, *Section Registrar*,

Having regard to the above application lodged on 12 September 2000,

Having regard to the observations submitted by the respondent Government and the observations in reply submitted by the applicant,

Having deliberated, decides as follows:

THE FACTS

The applicant, Vladimir Nikolayevich Konovalov, is a Russian national, who was born in 1953 and lives in Slavyansk-na-Kubani of the Krasnodar Region. He was represented before the Court by Mrs L. F. Konovalova.

The respondent Government were represented by Mr P. A. Laptev, the representative of the Russian Federation at the European Court of Human Rights.

A. The circumstances of the case

The facts of the case, as submitted by the parties, may be summarised as follows.

The applicant is a former military man. In 1993, after thirty two years of service in Sakhalin, he retired and moved to the Krasnodar Region. As the laws on privileges for retired servicemen entitled him to free housing, financed by the federal budget, he applied to the Slavyansk town authority with such request.

1. Litigation with the local authority

Having faced a refusal, in January 1996 the applicant brought an action against the town authority. On 26 January 1996 the Slavyansk Town Court of the Krasnodar Region ordered the authority to provide the applicant with a free flat. The judgment came into force.

As the authority failed to comply with the judgment the applicant brought, in March 1998, another action before the Slavyansk Town Court against the authority, this time asking for a subsidy to buy a flat.

On 31 March 1998 the Slavyansk Town Court received a letter from the President of the Krasnodar Regional Court. The letter, distributed to all town and district courts of the region, recommended to judges "in order to secure normal functioning of the State bodies" to award payments against them on condition that the bodies receive sufficient funds from a respective budget, federal or local.

On 6 April 1998 the town court granted the applicant's claim and ordered the respondent to pay to the applicant 113,040 Russian roubles ("RUR") for purchasing a flat once respective allocations were received from the federal budget. The authority did not appeal and the judgment became final on 17 April 1998. On 19 May 1998 the court issued a writ of execution.

According to the Government, the execution proceedings on the judgment of 6 April 1998 had been discontinued pursuant to the applicant's request of 23 June 1998. According to the applicant, he never requested the court to discontinue the execution proceedings.

On 4 and 17 December 1998 the Ministry of Finance and the local authority responded to the applicant's inquiry informing him about the lack of federal funds for the payment of housing compensation to him as a retired serviceman.

As the 1998 judgment had not been executed in time the applicant brought an application for index-linking of the award in line with an increase in market prices of real property. On 19 April 2000 the court granted this claim and increased the amount awarded to the applicant to RUR 377,020, which was to be paid upon receipt of funds from the federal budget.

It follows from a letter of 28 April 2000 of the regional prosecutor's office to the applicant that the local authority did not receive funds from the federal budget for the payment of housing subsidies to retired servicemen.

According to the Government, the applicant submitted a writ of execution in respect of the decision of 19 April 2000 only on 30 October 2000.

The judgment of 6 April 1998 with the adjustment made on 19 April 2000 was not executed.

On 12 September 2000 the applicant lodged his application with the Court, complaining about the non-enforcement of the judgments.

Following an application by the Krasnodar Regional Prosecutor's Office for supervisory review of the judgment of 6 April 1998, on 2 November 2000, the Presidium of the Krasnodar Regional Court quashed the judgment on the ground that it conflicted with substantive and procedural laws and ordered a fresh examination of the case. The applicant's appeal against this decision was rejected by the Supreme Court (letters of 17 January and 19 March 2001).

On 20 December 2000 the Slavyansk Town Court discontinued the proceedings in the case determined by the decision of 19 April 2000.

The applicant states that in the course of the proceedings concerning the fresh examination of the case ordered by the decision of 2 November 2000, he withdrew his action, on 22 March 2001, because he had been assured by the head of the town authority that he would be given a certificate for receiving free housing. The request was granted on the same day. The applicant did not appeal against this decision. On 3 April 2001 the execution proceedings were discontinued. In August 2001 the applicant learned that the town authority had refused to give him the housing certificate.

2. Litigation with the Government

The applicant also brought proceedings against the Government of Russia. On 25 June 1999 the Pervomayskiy District Court of Krasnodar ordered the Government, unconditionally, to pay him RUR 350,000 as a subsidy for purchasing a flat. The Government did not appeal and the judgment became final on 5 July 1999. The judgment was not executed because of the lack of funding.

On an unknown date the President of the Krasnodar Regional Court lodged an application for supervisory review of the judgment of 25 June 1999. He asked the court to quash the judgment because the first-instance court “should have examined whether the funding for the provision of free housing to retired servicemen residing in Slavyansk had been allocated [from the federal budget] and whether the right of [the applicant] to the subsidy [for purchasing a flat] had been violated”. On 18 November 1999 the Presidium of the Krasnodar Regional Court quashed the judgment and

ordered a fresh examination of the case. The Presidium's decision reproduced verbatim the application for supervisory review.

On 28 January 2000 the Pervomayskiy District Court dismissed the case because the Slavyansk Town Court had already granted the same request of the applicant in its judgment of 6 April 1998.

On 27 April 2000 the Supreme Court disallowed the applicant's appeal against the decision of 18 November 1999.

B. Relevant domestic law

The relevant domestic law has been summarised in the *Burdov v. Russia* judgment (see *Burdov v. Russia*, no. 59498/00, §§ 24-25, ECHR 2002-III).

COMPLAINTS

1. The applicant complained under Article 6 § 1 of the Convention about the non-execution of the judgments of the Slavyansk Town Court of the Krasnodar Region of 26 January 1996 and 6 April 1998 (with adjustments of 19 April 2000) and the judgment of the Pervomayskiy District Court of Krasnodar of 25 June 1999.

2. He further complained under Article 1 of Protocol No. 1 to the Convention about a violation of his property rights insofar as the judgments in his favour had not been executed.

3. The applicant also complained under Article 13 of the Convention that he did not have an effective remedy against the non-enforcement of the judgments.

THE LAW

1. The applicant complained about the non-execution of the judgment of 6 April 1998 amended by the decision of 19 April 2000. He relied on Article 6 § 1 of the Convention, which, in so far as relevant, provides as follows:

> "In the determination of his civil rights and obligations ... everyone is entitled to a fair ... hearing within a reasonable time by an independent and impartial tribunal established by law ..."

The Government submitted first that the judgment had been quashed on supervisory review and the relevant proceedings discontinued. Secondly, the applicant himself requested discontinuation of the execution proceedings. Therefore this complaint lacked the subject for its examination and should

be rejected as manifestly ill-founded. The Government also contended that the applicant in any event had failed to exhaust domestic remedies as he had not appealed against the decision of the Slavyansk Town Court of 22 March 2001.

The applicant maintained his initial complaints, stating that the judgments were not executed at the authorities' fault. He asserted that the Government's statements were untrue. Thus, he never requested to discontinue the execution of the judgment. His only reason for withdrawing his suit on 22 March 2001 was the promise of the head of the town authority to give him a flat, which the applicant indicated in his relevant application to the court.

As regards the Government's first argument, the Court notes that the judgment has been quashed. However, it does not change the fact that the applicant could not obtain the enforcement of the judgment for two and a half years preceding the quashing. The Court recalls that the right to a court as guaranteed by Article 6 also protects the implementation of final, binding judicial decisions, which, in States that accept the rule of law, cannot remain inoperative to the detriment of one party (see *Hornsby v. Greece*, judgment of 19 March 1997, *Reports of Judgments and Decisions* 1997-II, § 40). The Court therefore rejects this argument.

Based on the same considerations, the Court finds irrelevant to the complaint in question and rejects the Government's submission concerning the applicant's failure to appeal against the decision of the Slavyansk Town Court of 22 March 2001, which accepted the applicant's withdrawal of his claim in the course of the new examination of the case subsequent to the quashing of the judgment on supervisory review.

To the extent that the Government contended that the applicant himself requested discontinuation of the execution proceedings of the judgment of 6 April 1998, the Court notes that it had been the non-enforcement of the said judgment that later, on 19 April 2000, led the court to index-link the award. Furthermore, the court, when taking its decision on 19 April 2000, held that the 1998 judgment had not been executed due to the lack of federal funding and therefore the award should be increased in line with an increase in relevant market prices. The Court thus rejects this argument as being inconsistent with the facts of the case.

The Court considers, in the light of the parties' submissions, that the complaint concerning the non-enforcement of the judgment of 6 April 1998 amended by the decision of 19 April 2000 raises serious issues of fact and law under the Convention, the determination of which requires an examination of the merits. The Court concludes therefore that this part of the complaint is not manifestly ill-founded within the meaning of Article 35 § 3 of the Convention. No other ground for declaring it inadmissible has been established.

2. The applicant also complained under Article 6 § 1 of the Convention about the non-execution of the judgment of the Slavyansk Town Court of the Krasnodar Region of 26 January 1996.

The Government submitted that this judgment ordering the authority to provide the applicant with a flat had later been replaced by the judgment of the same court of 6 April 1998 ordering the authority to pay to the applicant a subsidy to buy a flat, thus modifying the way to resolve the applicant's housing problem.

The applicant contended that both judgments were due for enforcement.

The Court understands the Government's view as based on the consideration that the two ways to resolve the applicant's housing problem were alternative and mutually exclusive. The Court accepts that to consider the later judgment as replacing the earlier one is a reasonable interpretation of the outcome of the second proceedings. It follows that the 1998 judgment subsumed the 1996 judgment, which, accordingly, ceased to be due for execution on the date the 1998 judgment was taken, that is on 6 April 1998. The Court further notes that the relevant period ended before 5 May 1998, which is the date when the Convention came into force in respect of Russia. However, the Convention only governs facts which are subsequent to its entry into force with respect to the Contracting Party concerned.

It follows that this complaint is incompatible *ratione temporis* with the provisions of the Convention within the meaning of Article 35 § 3 and must be rejected in accordance with Article 35 § 4.

3. Lastly, the applicant complained about the non-execution of the judgment of the Pervomayskiy District Court of Krasnodar of 25 June 1999. He relied on Article 6 § 1 of the Convention.

The Court notes that this complaint was lodged with the Court on 12 September 2000, which is more than six months after the judgment in question had been quashed by the Presidium of the Krasnodar Regional Court on supervisory review on 18 November 1999 and also more than six months after the decision of the Pervomayskiy District Court of Krasnodar of 28 January 2000 to dismiss the case.

This complaint must therefore be rejected in accordance with Article 35 §§ 1 and 4 of the Convention (see *Sardin v. Russia* (dec.), no. 69582/01, 12 February 2004).

4. The applicant further complained that the non-enforcement of the judgments breached his rights guaranteed by Article 1 of Protocol No. 1 to the Convention, which provides as follows:

> "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."

The Government asserted that as the execution proceedings concerning all the judgments delivered in the applicant's favour had been discontinued the complaint should be rejected as manifestly ill-founded.

The applicant disagreed, arguing that the authorities were responsible for the fact that the judgments had not been executed.

The Court will consider the complaint in respect of each judgment separately.

(a) As regards the judgment of the Slavyansk Town Court of the Krasnodar Region of 6 April 1998 (with adjustments of 19 April 2000), the Court considers, in the light of the parties' submissions, that the complaint raises serious issues of fact and law under the Convention, the determination of which requires an examination of the merits. The Court concludes therefore that the complaint in this part is not manifestly ill-founded within the meaning of Article 35 § 3 of the Convention. No other ground for declaring it inadmissible has been established.

(b) As regards the judgment of the Slavyansk Town Court of the Krasnodar Region of 26 January 1996, the Court, in view of the foregoing finding under Article 6 § 1 of the Convention in respect of this judgment, rejects this part of the complaint as incompatible *ratione temporis* with the provisions of the Convention, pursuant to Article 35 §§ 3 and 4.

(c) As to the remaining part of the complaint concerning the judgment of the Pervomayskiy District Court of Krasnodar of 25 June 1999, the Court, having regard to the foregoing finding under Article 6 § 1 of the Convention in respect of the judgment in question, rejects it as lodged outside the six months period, in accordance with Article 35 §§ 1 and 4 of the Convention.

5. The applicant further complained that contrary to Article 13 of the Convention he had no effective remedy against the non-execution of the judgments. Article 13 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."

The Court does not consider it necessary to examine the same complaint as above also under Article 13 because Article 6 is *lex specialis* with respect to this part of the application (see *Jasiuniene v. Lithuania*, no. 41510/98, § 32, 6 March 2003).

It follows that this complaint must be rejected in accordance with Article 35 §§ 3 and 4 of the Convention.

For these reasons, the Court unanimously

Declares admissible, without prejudging the merits, the applicant's complaints under Article 6 § 1 of the Convention and Article 1 of Protocol

No. 1 to the Convention concerning the non-enforcement of the judgment of 6 April 1998 amended by the decision of 19 April 2000;

Declares the remainder of the application inadmissible.

Søren NIELSEN
Registrar

Christos ROZAKIS
President