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. 63995/00
by Mikhail Mikhaylovich KUKALO
against Russia

The European Court of Human Rights (First Section), sitting on 3 June 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 17 October 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, Mr Mikhail Mikhaylovich Kukalo, is a Russian national, who was born in 1941 and lives in the town of Kurgan. The respondent Government were represented by Mr P. A. Laptev, the representative of the Russian Federation at the European Court of Human Rights.

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

In 1986 the applicant was called up by the authorities to take part in emergency operations at the site of the Chernobyl nuclear plant disaster. As a result, the applicant suffered from extensive exposure to radioactive emissions. In 1997 following an expert opinion of 14 April 1997, which established the link between the applicant's poor health and his involvement in the Chernobyl events, the applicant was awarded monthly compensation in accordance with the law on social benefits for Chernobyl workers.

Unhappy with the amount of the compensation, between 1999 and 2002 the applicant brought a number of proceedings against the Kurgan Social Security Service (*МУ «Центр социальной защиты населения г. Кургана»*, "the authority") to the Kurgan Town Court (*Курганский городской суд*, "the Town Court").

1. Court proceedings concerning the amount of compensation for the period between 1996 and 1999

a. Determination of the case

On 18 February 1999 the applicant filed a claim in which he challenged the amount of monthly compensation paid by the authorities.

On 12 May 1999 the Town Court examined the claim and found in the applicant's favour. The court ruled that the authority had erred in setting the amount of the applicant's monthly compensation. The court fixed it at Russian Roubles (RUR) 791.87 as of 6 March 1996, RUR 950.24 as of 1 April 1996, RUR 1,045.27 as of 1 July 1997, and RUR 1,350.58 from 14 April 1997.

The parties did not appeal, and the judgment came into force on 25 May 1999.

b. Clarification of the judgment of 12 May 1999

In August 1999 the applicant requested the Town Court to clarify the judgment of 12 May 1999. In particular, he asked the court to specify the exact sum of money due for the period between 1996 and 1999.

On 7 September 1999 the Town Court granted the request, stating that the authority was to pay him RUR 24,495.94 for the above period. The decision was not appealed, and on 18 September 1999 it became final.

c. Execution of the judgment of 12 May 1999

The enforcement proceedings, brought by the applicant in respect of the judgment of 12 May 1999 as clarified by the decision of 7 September 1999, lasted until 6 October 2000 when the authority executed the judgment.

2. Court proceedings concerning the penalty for delay in execution of the judgment of 12 May 1999

a. Determination of the case

On an unspecified date the applicant brought court proceedings against the authority for the delay in execution of the judgment of 12 May 1999. He claimed penalties and non-pecuniary damages.

On 21 July 1999 the Town Court found that the authority had indeed failed to comply timely with the judgment of 12 May 1999 and awarded the applicant RUR 1,000.00 as a penalty for the delay. By the same judgment the court rejected the applicant's claim for non-pecuniary damage.

The judgment of 21 July 1999 was upheld on appeal by the Kurgan Regional Court (*Судебная коллегия по гражданским делам Курганского областного суда*, "Regional Court") on 5 October 1999.

b. Execution of the judgment of 21 July 1999

The judgment of 21 July 1999 as upheld on appeal on 5 October 1999 was executed on 26 August 2002.

3. Court proceedings concerning the applicant's claim for free housing

a. Determination of the case

By reference to his status as a participant in a special operation in Chernobyl, the applicant requested a flat from the Kurgan Town Local Council (*Администрация г. Кургана*, "the local council"). Having faced a refusal he passed the matter to a court.

On 10 May 2000 the Town Court ordered the local council to provide the applicant with a free municipal flat in the Town of Kurgan of a total living space of no less than 52 square metres, which would comply with the sanitary regulations.

On 22 June 2000 the Regional Court upheld the judgment on appeal.

b. Execution of the judgment of 10 May 2000

On 10 July 2000 the bailiffs instituted enforcement proceedings and on 21 December 2001 the applicant was given a flat pursuant to the judgment of 10 May 2000 as upheld on appeal on 22 June 2000.

According to the applicant, the flat required major renovation works.

4. Court proceedings concerning the amount of monthly compensation as of February 2000

a. Determination of the case

In February 2000 the applicant lodged a fresh court claim, asking the court to increase the amount of his monthly compensation.

On 16 May 2000 the Town Court allowed his claim and fixed the compensation at RUR 1,814.13 per month as of 8 February 2000.

The parties did not appeal, and the judgment came into force on 27 May 2000.

b. Clarification of the judgment of 16 May 2000

On 18 October 2000 the Town Court clarified the judgment, confirming that the authority was to pay the compensation in the amount of RUR 1,814.13 per month since 8 February 2000.

This ruling came into force on 31 October 2000.

c. Execution of the judgment of 16 May 2000

The judgment of 16 May 2000 was enforced on 26 August 2002.

COMPLAINTS

1. The applicant complained, without a reference to a specific Convention provision, about the non-execution over a long period of time of the judgments of the Kurgan Town Court of 12 May 1999, 21 July 1999 as upheld on appeal on 5 October 1999, 10 May 2000 as upheld on appeal on 22 June 2000 and 16 May 2000 taken in his favour against the State.

2. As regards the judgment of the Kurgan Town Court of 21 July 1999 as upheld on appeal on 5 October 1999, the applicant also complained that the court should not have reduced the requested amount of penalty nor dismissed the claim for non-pecuniary damage.

THE LAW

1. The applicant complained about the long non-enforcement of the judgments of 12 May 1999, 21 July 1999 as upheld on appeal on 5 October 1999, 10 May 2000 as upheld on appeal on 22 June 2000 and 16 May 2000 in his favour against the State. The applicant did not refer to any particular Convention provision.

The Court will examine these complaints under Article 6 of the Convention and Article 1 of Protocol No. 1 to the Convention, which provide, in so far as relevant, as follows:

Article 6 of the Convention

"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 ... ."

The Government submitted that all the decisions in question had been fully enforced. Therefore the complaint should be rejected as manifestly ill-founded.

The applicant asserted that the delays in enforcement proceedings were such that they undermined his right to benefit from the result of the litigation especially taking into account the high level of inflation in the country.

The Court would not exclude that in so far as the applicant could be understood as complaining about the non-execution of the court decisions as such, the complaint would appear to be manifestly ill-founded as all the decisions in question have been executed. However, the Court notes that it took the authorities approximately from a year and four months to two years and ten months to execute the decisions, which certainly is the applicant's concern. The Court recalls that a delay in the execution of judgment may, in certain circumstances, be incompatible with the Convention (see *Burdov v. Russia*, no. 59498/00, ECHR 2002-III).

Having regard to this aspect of the case the Court further recalls that, under Article 35 § 1 of the Convention the Court may only deal with applications introduced within a period of six months after the final domestic decision. It also recalls its established case-law according to which when there is no available remedy in national law, the six-month period runs from the end of the situation complained of (see, for example, *Demirel v. Turkey* (dec.), no. 30493/96, 9 March 1999). In the present case, it has not been suggested by the parties that there was an effective remedy available to the applicant under Russian law to challenge the length of the execution of judgments. The Court therefore, for the purposes of the present case, considers that six months run from the end of the situation complained of.

The subject-matter of the present complaint is the length of the execution proceedings in respect of the judgments of 12 May 1999, 21 July 1999 as upheld on appeal on 5 October 1999, 10 May 2000 as upheld on appeal on 22 June 2000 and 16 May 2000. Those judgments were fully executed on 6 October 2000, 26 August 2002, 21 December 2001 and 26 August 2002 accordingly. The applicant filed his grievances with the European Court on 17 October 2000, when the execution proceedings in respect of the last three judgments were pending and when less than six months elapsed from the moment of execution of the first judgment. Accordingly, the application has been introduced and pursued in accordance with the six-month rule prescribed in Article 35 § 1.

Furthermore, the Court finds that the applicant's complaints raise complex issues of facts and law, the determination of which should depend on an examination of the merits. This part of the application cannot therefore be regarded as 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, without referring to any specific Convention provision, about the findings of the Kurgan Town Court in its judgment of 21 July 1999.

The Court notes that this complaint concerns the court's determination of the applicant's claim, and that these proceedings, despite the delay in the execution of the judgment, ended with the decision of the Kurgan Regional Court of 5 October 1999, by which the judgment of the Kurgan Town Court of 21 July 1999 was upheld on appeal. The present application was lodged on 17 October 2000, which is more than six months later.

It follows that this complaint is introduced out of time and must be rejected in accordance with Article 35 §§ 1 and 4 of the Convention.

For these reasons, the Court unanimously

Declares admissible, without prejudging the merits, the applicant's complaint concerning the execution of judgments of 12 May 1999, 21 July 1999 as upheld on appeal on 5 October 1999, 10 May 2000 as upheld on appeal on 22 June 2000 and 16 May 2000 in his favour against the State;

Declares inadmissible the remainder of the application.

Søren NIELSEN
Registrar

Christos ROZAKIS
President