



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

FIRST SECTION

DECISION

Application no. 4383/06
Gennadiy Alekseyevich KISHCHENKO
against Russia

The European Court of Human Rights (First Section), sitting on 4 March 2014 as a Committee composed of:

Khanlar Hajiyev, *President*,

Julia Laffranque,

Dmitry Dedov, *judges*,

and André Wampach, *Deputy Section Registrar*,

Having regard to the pilot-judgment in the case of *Burdov v. Russia (no. 2)* (no. 33509/04, ECHR 2009),

Having regard to the above application lodged on 5 December 2005,

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

Having deliberated, decides as follows:

THE FACTS

The applicant, Mr Gennadiy Alekseyevich Kishchenko, is a Russian national, who was born in 1959 and lives in Orsk. He was represented before the Court by Mr S.I. Kiryukhin, a lawyer practising in Orsk.

The Russian Government (“the Government”) were represented by their Agent, Mr Matyushkin, 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.

The applicant was awarded 6,500 Russian roubles by a court order of the Sovetskiy District Court of Orsk dated 25 January 2006 as compensation of expenses for legal representation in the criminal case in which he had been acquitted. The awarded amount had been transferred to the applicant on 7 December 2006.

COMPLAINTS

The applicant complained under Article 6 of the Convention and Article 1 of Protocol No. 1 about the delayed enforcement of the judgment in his favour.

THE LAW

The Court will examine the complaint about the delayed enforcement of the judgment 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.”

The Court reiterates at the outset that as from 4 May 2009, the date on which the pilot judgment in the case of *Burdov (no. 2)*, cited above, became final, it adjourned the adversarial proceedings on all applications lodged with the Court in which the applicants complained of non-enforcement or delayed enforcement of domestic judgments ordering monetary payments by State authorities pending the adoption of domestic remedial measures. However, such adjournment was without prejudice to the Court’s power at any moment to declare inadmissible any such case (see *Burdov (no. 2)*, cited above, § 146).

The Court also notes that the present case was communicated to the respondent State on 14 December 2011 with a view to its settlement in line with the above-mentioned pilot judgment. The Government argued in response that the complaint was inadmissible because the domestic court order had been enforced in 10 months and 1 day after it had become final, and thus the delay of execution had not been unreasonable. The applicant maintained that he was entitled to a compensation for pecuniary and non-pecuniary damages without clarification of the grounds and without challenging the Government’s account of facts.

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, it will look, first, at how long it took the authorities to execute the judgment and also 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).

In the present application, the period of enforcement was less than one year. Having regard to this fact and the Court's case-law in similar cases, and taking into account the other circumstances of the present case, the Court considers that this period did not fall short of the requirements of the Convention (see, for example, *Belkin and Others v. Russia* (dec.), nos. 14330/07 et al., 5 February 2009).

It follows that the non-enforcement complaint raised by the applicant is manifestly ill-founded and must be rejected in accordance with Article 35 §§ 3 and 4 of the Convention.

For these reasons, the Court unanimously

Declares the application inadmissible.

André Wampach
Deputy Registrar

Khanlar Hajiyev
President