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

FIRST SECTION

CASE OF GOROKHOV AND RUSYAYEV v. RUSSIA

(Application no. 38305/02)

JUDGMENT

STRASBOURG

17 March 2005

FINAL

12/10/2005

This judgment will become final in the circumstances set out in Article 44 § 2 of the Convention. It may be subject to editorial revision.

In the case of Gorokhov and Rusyayev v. Russia,

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

Mr C.L. ROZAKIS, *President*,
Mrs N. VAJIĆ,
Mrs S. BOTOUCHAROVA,
Mr A. KOVLER,
Mrs E. STEINER,
Mr K. HAJIYEV,
Mr D. SPIELMANN, *judges*,
and Mr S. NIELSEN, *Section Registrar*,

Having deliberated in private on 24 February 2005,

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

PROCEDURE

1. The case originated in an application (no. 38305/02) 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 two Russian nationals, Mr Dmitriy Ivanovich Gorokhov and Mr Rostislav Vladimirovich Rusyayev ("the applicants"), on 12 September 2002.

2. The applicants were represented by Mmes K. A. Moskalenko and E. L. Liptser, lawyers practising in Moscow. The Russian Government ("the Government") were represented by Mr P.A. Laptev, the representative of the Russian Federation at the European Court of Human Rights.

3. The applicants alleged a violation of Article 6 § 1 and Article 1 of Protocol No. 1 in that the respondent State failed to enforce final judicial decisions in their favour.

4. On 8 January 2004 the Court decided to communicate the application to the Government. Under the provisions of Article 29 § 3 of the Convention, it decided to examine the merits of the application at the same time as its admissibility.

5. The applicants and the Government each filed observations on the admissibility and merits (Rule 54A § 1).

THE FACTS

I. THE CIRCUMSTANCES OF THE CASE

6. The applicants were born in 1952 and 1961 respectively and both live in Moscow.

7. The applicants took part in the liquidation of the consequences of the nuclear accident at the Chernobyl nuclear plant. They were recognised as handicapped, becoming entitled to a special disability pension.

1. Court judgments in the applicants' favour

8. In 2000 the applicants brought a civil action against the social security authorities, claiming that the amounts of their disability pensions had not been properly calculated. They maintained that the social security authorities should have increased their pensions in line with the increase of the minimal wage in Russia, but failed to do so.

9. On 29 January 2001 the Nikulinskiy District Court of Moscow satisfied their claims awarding the first applicant 11,568.98 Russian roubles (RUR), and the second applicant RUR 14,862.5. The arrears awarded to the applicants by the District Court constituted more than 58 per cent of the amounts received by the applicants from the social security authorities within the contested period. On 18 April 2001 this decision was upheld by the Moscow City Court.

10. Later this year the applicants brought a new action claiming the outstanding amounts of the disability pensions due to them for the period starting from January 2001. They also claimed penalties for the delayed payment of their pensions during this period.

11. On 21 June 2001 the Nikulinskiy District Court awarded the first applicant RUR 10,351 and the second applicant RUR 13,274 as the outstanding amount of their pensions for the period January – June 2001. The sums awarded by the District Court as arrears constituted approximately 50 per cent of the amount paid to the applicants by the social security authorities during this period. Both applicants were also entitled to penalties, to be recovered from the social security authorities. The penalties were calculated on the basis of the amounts due to the applicants for the period between January and June 2001. On 28 November 2001 this decision was upheld in the main by the Moscow City Court, which only reduced the amount of penalties to RUR 1,000 for each applicant.

2. Enforcement proceedings

12. On an unspecified date between May and September 2001 the applicants obtained writs of execution in respect of the first judgments of the Nikulinskiy District Court of January 2001. In December 2001 the applicants obtained execution writs in respect of the decisions rendered by the District Court in June 2001. These execution writs were forwarded to the bailiffs. However, for a certain period of time the judgments of the Nikulinskiy District Court remained unexecuted.

13. In December 2001 the Ministry of Justice of the Russian Federation, which was in charge of the bailiffs, informed the applicants that the execution of the above judgments was conditional upon the availability of budgetary funds allocated for these purposes by the federal legislature and could not be carried out through the bailiffs. The applicants were advised to send their writs of execution directly to the Ministry of Finance, a State body in charge of distributing budgetary funds.

14. However, as follows from the letter of 5 March 2002, the Ministry of Finance was no longer responsible for distributing the pension funds. Consequently, in 2002 the execution writs were forwarded to the Ministry of Labour and Social Security.

15. In April 2002 the bailiffs discontinued the enforcement proceedings. The applicants challenged the discontinuation, and on 1 November 2002 the Nikulinskiy District Court of Moscow ordered the resumption the enforcement proceedings.

16. On 1 November 2002 the above judgments were enforced. The authorities paid RUR 22,919.32 to Gorokhov and RUR 29,136.40 to Rusyayev. On 5 November 2002 the money were received by the applicants. On 20 February 2004 the authorities offered the applicants additional compensation on certain conditions. However, the applicants rejected this offer.

II. RELEVANT DOMESTIC LAW AND PRACTICE

17. The Russian Law on Enforcement Proceedings (no. 119-FZ of 21 July 1997) designates the court bailiffs' service as the authority charged with enforcement of court decisions (Section 3 § 1). Pursuant to this Law, any decision of the bailiff can be challenged in court within 10 days from the moment when the concerned person learned about this decision (Article 90 § 1). Articles 19 and 90 § 2 of this law stipulate that the damage caused by the bailiffs should be compensated under general rules of civil responsibility.

18. Article 1064 § 1 of the Civil Code of the Russian Federation provides that the damage caused to the person or property of a citizen shall be compensated in full by the tortfeasor.

19. Under Article 1069 of the Civil Code a State agency or a State official shall be liable to a citizen for damage caused by their unlawful actions or failures to act. Such damage is to be compensated at the expense of the federal or regional treasury.

THE LAW

I. ALLEGED VIOLATION OF ARTICLE 6 § 1 OF THE CONVENTION

20. The applicants complained that the lengthy non-enforcement of the court judgments in their favour rendered by the Nikulinskiy District Court on 29 January and 21 June 2001 constituted a breach of their right to a court and the right to peaceful enjoyment of their possessions. They referred to Article 6 § 1 of the Convention and Article 1 of Protocol no. 1 to the Convention, which, insofar as relevant, read as follows:

Article 6

"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 to the Convention

"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."

21. In their observations to the Court the respondent Government indicated that the judgments in the applicants' favour had been duly enforced and that an additional compensation calculated on the basis of the Court's case-law in similar cases had been offered to the applicants. On this ground the Government submitted that the application was incompatible with the provisions of the Convention because the applicants were no longer victims of the alleged violation.

22. In reply to the Government's observations the applicants accepted that the outstanding amounts of their pensions, awarded by the courts, had been paid to them. The applicants further recognised that the Government had offered them compensation, which, however, they did not accept.

23. In their additional observations the applicants also claimed that the social security authorities failed to comply with the decisions of the Nikulinskiy District Court of Moscow in that they did not increase the disability pensions in line with the raise of the minimum wage in Russia.

A. Admissibility

1. Non-enforcement of the judgments in the applicants' favour

24. In their initial application the applicants complained about the non-payment of the outstanding amounts awarded to them in January and June 2001 by the Nikulinskiy District Court. The Court notes that these judgments entitled the applicants only to previous underpayments; no decision as to the future indexation of their pensions has ever been taken within these proceedings. Consequently, the complaint that the above decisions remain unexecuted because the pensions were not increased by the social security authorities is manifestly ill-founded.

25. As regards the payment of the arrears awarded by the Nikulinskiy District Court, the Court notes that, once the applicants had brought proceedings to Strasbourg in September 2002, the domestic authorities executed the judgments within less than two months. It is regrettable that the applicants did not inform the Court about this fact at the relevant time. The Court finds that, in so far the applicants complain about the non-enforcement as such, they could not any longer claim to be victims within the meaning of Article 34 of the Convention.

2. Length of enforcement proceedings

26. However, the Court notes that it took the domestic authorities from eleven to sixteen months to execute the judgments, which, without doubt, was the applicants' concern (see § 20 above). The Court recalls in this respect that the "right to a court", derived from Article 6, comprises a duty of the State to implement final judicial decisions (see *Hornsby v. Greece*, judgment of 19 March 1997, *Reports of Judgments and Decisions* 1997-II, § 40). The interference with this right may shape into an absolute ban on execution. However, it may also take the form of a delayed execution of the court judgment (see *Burdov v. Russia*, no. 59498/00, ECHR 2002-III). When considering the applicants' grievances in this way, the Court accepts that the applicants may still claim to be victims within the meaning of Article 34 of the Convention and, thus, the Court has to examine whether the late execution of the judgments in the applicants' favour constituted a breach of their "right to a court" implied by Article 6 of the Convention.

27. Having regard to this aspect of the case the Court recalls that, under Article 35 § 1 of the Convention, the Court may only deal with applications

introduced after all domestic remedies have been exhausted and within a period of six months after the final domestic decision. In the present case, the Government did not suggest that there was an effective remedy available to the applicants 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 (see, for example, *Demirel v. Turkey* (dec.), no. 30493/96, 9 March 1999).

28. As to the compliance with the six-month rule, the Court notes that the subject-matter of the present complaint is the length of the execution proceedings in respect of the judgments of 29 January and 21 June 2001, as upheld on 18 April and 28 November 2001 respectively. The applicants filed their grievances with the European Court on 12 September 2002, when the execution proceedings in respect these judgments were still pending. Accordingly, the application has been introduced and pursued in accordance with the six-month rule prescribed in Article 35 § 1.

29. The Court further notes that first judgment in the applicants' favour was executed with a delay of one year, six months, and eighteen days, and that the second judgment was executed within one year after it had become effective. These delays do not seem insignificant. Therefore, this complaint cannot be regarded as manifestly ill-founded within the meaning of Article 35 § 3 of the Convention. The Court concludes that the complaint about the length of enforcement proceedings raises complex issues of facts and law, the determination of which should depend on an examination of the merits. No other ground for declaring it inadmissible has been established.

B. Merits

1. General principles

30. The Court accepts that not every delay in the execution of a judgment constitutes a breach of Article 6 § 1 of the Convention (see, among recent authorities, *Grishchenko v. Russia*, (dec.), 8 July 2004, no. 75907/01). However, the delay may not be such as to impair the essence of the "right to a court" protected by this provision (see *Immobiliare Saffi v. Italy* [GC], no. 22774/93, § 74, ECHR 1999-V). The Court's task will be to establish whether the delays in executing the judgments in the applicants' favour were justified in the particular circumstances of the present case.

31. The Court recalls that the execution proceedings are an integral part of the "trial" for the purposes of Article 6 of the Convention (see, *Hornsby v. Greece* and *Burdov v. Russia* mentioned above). Consequently, whether the length issue is raised in respect of a trial or enforcement proceedings, applicable principles are broadly similar. The limit of tolerance as regards the delay in honouring a judgment debt will depend of different factors,

such as the complexity of the enforcement proceedings, the applicant's own behaviour and that of the competent authorities, the amount and the nature of court award (see, by analogy, *Frydlender v. France* [GC], no. 30979/96, § 43, ECHR 2000-VII, see also *Grishchenko* mentioned above).

2. Application of these principles in the present case

32. Turning to the present case, the Court notes that the applicants were awarded a sum of money. Hence, the judgments were not particularly difficult to execute.

33. As regards the conduct of the parties, the Court observes that the State authorities were perfectly aware of the applicants' claims, and, as soon as the judgments in the applicants' favour were upheld on appeal, it became incumbent on the State to execute them. It is true that the enforcement proceedings were initiated by the applicants with a certain delay (see § 12). However, as transpires from the materials of the case, the only apparent reason for the non-enforcement of the judgments was the authorities' reluctance to make adequate budgetary appropriations (see § 13). Therefore, whether the bailiffs were involved in the enforcement proceedings or not did not change the situation. Moreover, a person who has obtained an enforceable judgment against the State as a result of successful litigation cannot be required to resort to enforcement proceedings in order to have it executed (see *Metaxas v. Greece*, no. 8415/02, § 19, 27 May 2004). The Government present no evidence that the applicants somehow contributed to the overall length of the enforcement proceedings. The Court therefore concludes that the whole period between the appeal court's decisions upholding the judgments in the applicants' favour (18 April and 28 November 2001 respectively) and the date of receipt by the applicants of the amounts due to them under these judgment (5 November 2002) should be considered as a delay in execution imputable to the State authorities.

34. As to what was at stake for the applicants in the present case, the Court notes that the sum awarded by the Nikulinskiy District Court to each applicant constituted an important part of their disability pensions, to which they were entitled as victims of the Chernobyl nuclear accident (see § 9 and § 11). From the materials of the case it appears that these pensions were the applicants' main source of income. In view of the above the Court concludes that the domestic authorities should have treated the applicants' cases with special diligence.

35. Regard being had to the above considerations the Court concludes that that the length of the enforcement proceedings as regards the first judgment of January 2001 (one year, six months and eighteen days) was clearly excessive. As regards the duration of the second set of enforcement proceedings (eleven months and seven days) the Court notes that, although this length does not appear unreasonable by itself, in the circumstances of the present case and especially given the importance of this court award for

the applicants, it was unjustified. The Court accordingly finds that both judgments were not enforced within the "reasonable time".

There has accordingly been a violation of Article 6 § 1 of the Convention.

II. ALLEGED VIOLATION OF ARTICLE 1 OF THE PROTOCOL NO. 1

36. The applicants complained that the failure to honour a judgment debt interfered with their property rights under Article 1 of Protocol No. 1 which reads 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."

37. The Government contested that argument.

A. Admissibility

38. The Court notes that this complaint is linked to the one examined above and must be therefore declared admissible.

B. Merits

39. The Court reiterates that a "claim" can constitute a "possession" within the meaning of Article 1 of Protocol No. 1 if it is sufficiently established to be enforceable (see *Burdov v. Russia*, cited above, § 40; *Stran Greek Refineries and Stratis Andreadis v. Greece*, judgment of 9 December 1994, Series A no. 301-B, p. 84, § 59).

40. The Court further reiterates that, in so far as the judgments of 29 January and 21 June 2001, as upheld on 18 April and 28 November 2001 respectively, are concerned, the State did not discharge its duty to enforce them in a sufficiently prompt and adequate manner (see § 35 above). The Court considers that the impossibility for the applicants to have these judgment enforced, which persisted for a relatively long period of time, constituted an interference with their right to peaceful enjoyment of their possessions, as set out in the first sentence of the first paragraph of Article 1 of Protocol No. 1. The Court further notes that the Government do not advance any plausible justification for this interference and the lack of funds cannot justify such an omission (see *Burdov v. Russia*, cited above, § 41).

41. It follows that there has been a violation of Article 1 of Protocol no. 1 to the Convention.

III. APPLICATION OF ARTICLE 41 OF THE CONVENTION

42. 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

1. Pecuniary damage

43. In respect of pecuniary damage the first applicant claims RUR 90,939.70 and the second applicant RUR 110,966. In the Government's view, these claims are unsubstantiated.

44. The Court notes that the amounts claimed constitute the alleged underpayments of the applicants' disability pensions for the period after June 2001. However, as it has already been established by the Court (see § 24 above), the court judgments which were at the heart of the present case did not entitle them to any future raise of their pensions. The judgments concerned only the arrears due to the applicants for the period before June 2001. Since the applicants presented no other claims in respect of possible pecuniary damages caused by the lengthy non-enforcement of the judgments in their favour, the Court considers that there is no call to award them any sum on that account.

2. Non-pecuniary damage

45. The applicants also claim compensation for non-pecuniary damage "in the amount established in the case Burdov v. Russia". In their comments the Government consider the claim for non-pecuniary damages as excessive and unreasonable. Alternatively the Government indicate that if the Court nevertheless decides to award non-pecuniary damages, a symbolic amount would suffice.

46. The Court accepts that the applicants have suffered distress because of the State authorities' failure to enforce the judgments in their favour within a reasonable time. The Court recalls that in the case *Burdov* cited above and referred to by the applicants it made an award of EUR 3,000 for non-pecuniary damage suffered as a result of non-enforcement of a judgment in the applicant's favour. In *Burdov*, as in the present case, the judgment at issue concerned the Chernobyl-victim's pension payable as

compensation for health damage leading to disability, the applicant's main source of income.

47. The Court notes, however, that the delay in execution of the judgments in the present case was shorter than in *Burdov*. Taking into account these aspects of the present case, as well as other relevant factors, such as the amounts of the court awards the Court on equitable basis awards to the each applicant EUR 900 in respect of non-pecuniary damage, plus any tax that may be chargeable.

B. Default interest

48. 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* admissible the complaint concerning delayed payment of the amounts awarded by the Nikulinskiy District Court on 29 January and 21 June 2001, as upheld on 18 April and 28 November 2001 respectively, and the remainder of the application inadmissible;

2. *Holds* that there has been a violation of Article 6 § 1 of the Convention;

3. *Holds* that there has been a violation of Article 1 of Protocol no. 1 to the Convention;

4. *Holds*:
   (a) that the respondent State is to pay each of the applicants, within three months from the date on which the judgment becomes final according to Article 44 § 2 of the Convention, EUR 900 (nine hundred euros) in respect of non-pecuniary damage, to be converted into Russian Roubles at a rate applicable at the date of payment, plus any tax that may be chargeable on that amount;
   (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;

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

Done in English, and notified in writing on 17 March 2005, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Søren NIELSEN
Registrar

Christos ROZAKIS
President