



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

FIRST SECTION

CASE OF KRASNOV v. RUSSIA

(Application no. 18892/04)

JUDGMENT

STRASBOURG

22 November 2011

FINAL

22/02/2012

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

In the case of Krasnov v. Russia,

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

Nina Vajić, *President*,

Anatoly Kovler,

Peer Lorenzen,

Khanlar Hajiyeu,

Mirjana Lazarova Trajkovska,

Julia Laffranque,

Linós-Alexandre Sicilianos, *judges*,

and André Wampach, *Deputy Section Registrar*,

Having deliberated in private on 3 November 2011,

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

PROCEDURE

1. The case originated in an application (no. 18892/04) 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 Pavel Nikolayevich Krasnov (“the applicant”), on 16 April 2004.

2. The Russian Government (“the Government”) were represented by Mr G. Matyushkin, the Representative of the Russian Federation at the European Court of Human Rights.

3. On 22 April 2008 the President of the First Section decided to give notice of the application to the Government.

4. In accordance with the pilot judgment *Burdov v. Russia* (no. 2) (no. 33509/04, ECHR 2009-...), this application was adjourned pending its resolution at the domestic level.

5. The Government later informed the Court that enforcement of the judgment in the applicant’s favour was impossible as the applicant’s successor was obstructing the enforcement. The Court therefore decided to resume examination of the present case.

THE FACTS

THE CIRCUMSTANCES OF THE CASE

6. The applicant was born in 1981 and lived in Vetluga, Nizhniy Novgorod Region.

7. By a judgment of 23 September 2002 the Vetluga District Court of the Nizhniy Novgorod Region (“the District Court”) granted in part the applicant’s claim for recovery of unpaid military allowance and awarded him 224,926 Russian roubles (RUB) to be recovered from military unit 3761.

8. The judgment became final on 4 October 2002 and shortly thereafter the applicant obtained a writ of execution. Between September 2004 and November 2005 the Departments of the Federal Treasury of the Chechen Republic and of the Republic of North Ossetia-Alania returned the enforcement documents to the applicant on three occasions without enforcement due to his failure to submit his bank account details and then due to re-organisation of the debtor.

9. By a decision of 10 October 2006 the District Court allowed the applicant’s request and changed the method and order of enforcement of the judgment of 23 September 2002, replacing the defunct debtor with the Ministry of the Interior of Russia.

10. The applicant forwarded the writ of execution concerning the decision of 10 October 2006 to the head office of the bailiffs’ service in Moscow in November 2006. It appears from the correspondence and the applicant’s submissions that the writ was subsequently lost.

11. On 19 November 2007 the applicant died.

12. By a decision of 15 September 2008 the District Court ruled that the deceased applicant was to be succeeded by his mother, Natalya Vyacheslavovna Zintsova.

13. According to Ms Zintsova, in May 2010 she was contacted by a representative of the Ministry of the Interior who explained to her that she was to obtain a copy of the lost writ of execution at the trial court and forward it to the authorities to enable further enforcement proceedings.

14. On 30 August 2010 the Chief Command Office of the Internal Armed Forces of the Ministry of the Interior informed that the debtor was ready to pay the due amount provided that they received the pertinent documents, including the writ of execution.

15. The Government submitted that the applicant’s mother had refused to obtain a copy of the writ of execution from the trial court despite the authorities’ repeated invitations thereto, convinced that the award could be obtained only through the proceedings at the Court. Ms Zintsova did not dispute this allegation.

16. The judgment of 23 September 2002, as amended on 10 October 2006, remains unenforced to date.

THE LAW

I. LOCUS STANDI

17. The Court takes note of the applicant's death and of the wish of Ms Zintsova, his mother, to pursue the proceedings he initiated.

18. The Court reiterates that where an applicant dies during the examination of a case his or her heirs may in principle pursue the application on his or her behalf (see *Ječius v. Lithuania*, no. 34578/97, § 41, ECHR 2000-IX). Furthermore, in some cases concerning non-enforcement of court judgments, the Court recognised the right of the relatives of the deceased applicant to pursue the application (see *Shiryayeva v. Russia*, no. 21417/04, §§ 8-9, 13 July 2006).

19. The Court notes that the rights at stake in the present case are very similar to those at the heart of the case referred to above. Nothing suggests that the rights the applicant sought to protect through the Convention mechanism were eminently personal and non-transferable (see *Malhous v. the Czech Republic* [GC], no. 33071/96, § 1, 12 July 2001). The Government did not contend that Ms Zintsova had no standing to pursue the case. Therefore, the Court considers that the applicant's mother has a legitimate interest in pursuing the application.

II. ALLEGED VIOLATION OF ARTICLE 6 § 1 OF THE CONVENTION AND ARTICLE 1 OF PROTOCOL No. 1

20. The applicant complained about the authorities' failure to enforce the judgment of 23 September 2002. She relied on Article 6 § 1 of the Convention and Article 1 of Protocol No. 1, which in the relevant part read as follows:

"In the determination of his civil rights and obligations ... everyone is entitled to a fair ... hearing ... by [a] ... tribunal ..."

"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."

A. Admissibility

21. The Court notes that the application is not manifestly ill-founded within the meaning of Article 35 § 3 (a) of the Convention. It further notes that it is not inadmissible on any other grounds. It must therefore be declared admissible.

B. Merits

22. The Government argued that the applicant had failed firstly to submit the necessary enforcement documents to the right enforcement body and then to obtain a copy of the lost writ of execution at the court and re-submit it for enforcement. They further contended that the authorities were deprived of the opportunity to enforce the judgment owing to the applicant's behaviour.

23. The applicant submitted that the authorities had failed for many years to pay the award due to her late son through no fault of his own and she no longer trusted them.

24. 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).

25. The Court further reiterates that a person who has obtained a judgment against the State may not be expected to bring separate enforcement proceedings (see *Metaxas v. Greece*, no. 8415/02, § 19, 27 May 2004). Where a judgment is against the State, the defendant State authority must be duly notified thereof and is thus well placed to take all necessary initiatives to comply with it or to transmit it to another competent State authority responsible for compliance (see *Akashev v. Russia*, no. 30616/05, § 21, 12 June 2008). Where the creditor's cooperation is required, it must not go beyond what is strictly necessary and in any case does not relieve the authorities of their obligation under the Convention to take timely and *ex officio* action, on the basis of the information available to them, with a view to honouring the judgment against the State (*ibid*, § 22).

26. The Court observes that in the instant case the judgment of 23 September 2002 has been pending enforcement for almost nine years. It notes that the enforcement proceedings were not particularly complex given the nature of the award and that no significant delays can be attributed to the applicant.

27. The Court is aware of the fact that after May 2010 the applicant has refused to cooperate with the authorities by obtaining a copy of the lost writ of execution but considers that the delay caused by her behaviour is negligible in the circumstances where at the time of her refusal the enforcement had already been pending for over seven years and where the creditor's previous initiatives had not been successful.

28. The foregoing considerations are sufficient to enable the Court to conclude that the authorities failed to comply with their obligations under the Convention.

29. There has accordingly been a violation of Article 6 § 1 of the Convention and Article 1 of Protocol No. 1.

III. ALLEGED VIOLATION OF ARTICLE 13 OF THE CONVENTION

30. The applicant also complained under Article 13 of the Convention that she did not have at her disposal an effective domestic remedy in respect of the excessive delays in the enforcement of the judgment. The relevant provision 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.”

31. The Government did not specify their position in relation to this complaint.

32. The Court takes cognisance of the existence of a new remedy introduced by the federal laws № 68-ΦЗ and № 69-ΦЗ in the wake of the pilot judgment adopted in the case of *Burdov (no. 2)*, cited above. These statutes, which entered into force on 4 May 2010, set up a new remedy which enables those concerned to seek compensation for the damage sustained as a result of excessive delays in the enforcement of court judgments against the State.

33. On 23 September 2010 the Court decided that all new cases introduced after the *Burdov (no. 2)* pilot judgment and falling within the scope of the new domestic remedy had to be submitted in the first place to the national courts (see *Nagovitsyn and Nalgiyev v. Russia* (dec.), nos. 27451/09 and 60650/09, § 41, 23 September 2010). In so doing, the Court relied in particular on the transitional provisions of the new law allowing all applicants before the Court to lodge their complaints to domestic courts during six months after its entry into force (see paragraph 13 above).

34. At the same time, the Court recalls that in the pilot judgment cited above it decided to follow a different course of action in respect of the applications lodged before the delivery of the judgment. The Court considered that it would be unfair if the applicants in such cases, who had allegedly been suffering for years of continuing violations of their right to a court and sought relief in this Court, were compelled yet again to resubmit their grievances to the domestic authorities, be it on the grounds of a new remedy or otherwise (see *Burdov (no. 2)*, cited above, § 144). The Court therefore resumed examination of the present application on its merits notwithstanding the existence of an effective domestic remedy which was

available to the applicant pursuant to the transitional provisions of the new law and remains available up to date as the domestic judgment in her favour remains unenforced.

35. Having regard to these special circumstances, although admissible, the Court does not find it necessary to consider separately the applicant's complaint under Article 13 (see, *mutatis mutandis*, *Kravchenko and Others (military housing) v. Russia*, nos. 11609/05 et al., § 45, 16 September 2010).

IV. APPLICATION OF ARTICLE 41 OF THE CONVENTION

36. 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

37. In respect of pecuniary damage the applicant claimed the judgment debt in the amount of 224,926 Russian roubles (RUB) (approximately 5,300 euros (EUR)) and an additional RUB 285,160 (approximately EUR 6,700) to cover depreciation of the award due to the inflation losses. She calculated the latter amount based on the consumer price indexes for the years when the enforcement had been pending. She claimed additionally an interest rate that had allegedly accrued since 1 January 2003 and requested that the Court determine this rate according to its own standards. Finally, she claimed EUR 20,000 as non-pecuniary damage.

38. The Government did not comment on the claim for pecuniary damage. They found the amount claimed as non-pecuniary damage excessive and unsubstantiated, suggesting that in the case of finding of a violation the Court's award to the applicant under this head should not exceed EUR 2,500.

39. The Court reiterates that the most appropriate form of redress in respect of the violations found would be to put the applicants as far as possible in the position they would have been if the Convention requirements had not been disregarded (see *Piersack v. Belgium* (Article 50), 26 October 1984, § 12, Series A no. 85 and, *mutatis mutandis*, *Gençel v. Turkey*, no. 53431/99, § 27, 23 October 2003). The Court also recalls its constant approach that the adequacy of the compensation would be diminished if it were to be paid without reference to various circumstances liable to reduce its value (see, *mutatis mutandis*, *Gizzatova v. Russia*, no. 5124/03, § 28, 13 January 2005).

40. The Court notes in the instant case that the applicant demonstrated the method she used to calculate her claim for pecuniary damage. It further notes that the Government did not provide an alternative method of calculation, nor did it supply any other comments on this claim. It considers that in view of the length of the delay in the enforcement of the judgment, the amount claimed does not appear unreasonable. At the same time, the Court does not discern a need for additional application of an interest rate. In total, it awards the applicant EUR 12,000 as pecuniary damage.

41. As to non-pecuniary damage, the Court accepts that the applicant suffered distress and frustration caused by the authorities' lengthy failure to honour the State's debt. Deciding on an equitable basis and having regard to all relevant factors, in particular those mentioned in paragraphs 26-27 above (see, in addition, *Burdov (no. 2)*, cited above, §§ 154-157), it awards the applicant EUR 6,000 as non-pecuniary damage.

B. Costs and expenses

42. The applicant did not submit any claim for costs and expenses. The Court will therefore make no award under this head.

C. Default interest

43. 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 application admissible;
2. *Holds* that there has been a violation of Article 6 § 1 of the Convention and of Article 1 of Protocol No. 1 on account of lengthy non-enforcement of the judgment in the applicant's favour;
3. *Holds* that there is no need for separate examination of the complaint under Article 13 of the Convention;
4. *Holds*
 - (a) that the respondent State is to pay the applicant, Ms Zintsova, within three months from the date on which the judgment becomes final in accordance with Article 44 § 2 of the Convention, the following

amounts, to be converted into Russian roubles at the rate applicable at the date of settlement:

- (i) EUR 12,000 (twelve thousand euros), plus any tax that may be chargeable, in respect of pecuniary damage;
- (ii) EUR 6,000 (six thousand euros), plus any tax that may be chargeable, in respect of non-pecuniary damage;
- (b) that from the expiry of the above-mentioned three months until settlement simple interest shall be payable on the above amounts 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 applicant's claim for just satisfaction.

Done in English, and notified in writing on 22 November 2011, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

André Wampach
Deputy Registrar

Nina Vajić
President