



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

FIRST SECTION

CASE OF VLADIMIR MELNIKOV v. RUSSIA

(Application no. 38202/07)

JUDGMENT

STRASBOURG

17 January 2012

FINAL

17/04/2012

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

In the case of Vladimir Melnikov v. Russia,

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

Nina Vajić, *President*,
Anatoly Kovler,
Peer Lorenzen,
Mirjana Lazarova Trajkovska,
Julia Laffranque,
Linos-Alexandre Sicilianos,
Erik Møse, *judges*,

and Søren Nielsen, *Section Registrar*,

Having deliberated in private on 13 December 2011,

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

PROCEDURE

1. The case originated in an application (no. 38202/07) 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 Vladimir Alekseyevich Melnikov (“the applicant”), on 15 July 2007.

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-...), the application was adjourned pending its resolution at the domestic level.

5. As the matter was not resolved at the domestic level, the Court decided to resume examination of the present application.

THE FACTS

THE CIRCUMSTANCES OF THE CASE

6. The applicant was born in 1957 and lives in Vladikavkaz, Republic of North Ossetia-Alania.

7. By a judgment of 30 April 2002 the Military Court of the Vladikavkaz Garrison granted the applicant’s complaint against the commander of the

North-Caucasus Military Institute of the Interior Armed Forces and, among other things, recovered in his favour a number of unpaid allowances due to the applicant for his service in the conditions of an armed conflict. The Court did not mention any specific amounts, instead suggesting that the debtor calculate them on a certain basis.

8. The above judgment was not appealed and became final. It was enforced in the larger part on 11 July 2008, with only the food allowance remaining unpaid.

9. On 8 December 2008 the applicant was paid the outstanding food allowance, and the judgment of 30 April 2002 was thus enforced in full.

THE LAW

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

10. Without relying on any specific provisions of the Convention, the applicant complained about the authorities' delayed enforcement of the judgment of 30 April 2002. The Court will consider his complaint under 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

11. The Government requested that the application be struck out of the Court's list of cases in accordance with Article 37 § 1 (a) of the Convention arguing that the applicant had withdrawn his application following enforcement of the judgment concerned.

12. Based on the applicant's correspondence and observations, the Court finds that he has no intention of withdrawing his application despite the fact

that the judgment concerned has now been enforced. In these circumstances the Court cannot accept the view that the applicant lost interest in his application and rejects the Government's request to strike the case out.

13. 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

14. The parties agreed that the judgment of 30 April 2002 had been fully enforced on 8 December 2008.

15. 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).

16. The Court observes that the judgment in the applicant's favour was enforced approximately six years and seven months after its delivery, and that no delays were attributable to the applicant. It considers that this delay was incompatible with the Convention standards.

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

II. APPLICATION OF ARTICLE 41 OF THE CONVENTION

18. 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

19. The applicant claimed 149,916 Russian roubles (approximately 3,730 euros (EUR)) in respect of pecuniary damage. He also requested to be awarded compensation for non-pecuniary damage resulting from the delay in the enforcement of the judgment, to be calculated in accordance with the Court's own practice.

20. The Government did not submit any relevant comments.

21. The Court reiterates that under Rule 60 of the Rules of Court any claim for just satisfaction must be itemised and submitted in writing together with the relevant supporting documents or vouchers, failing which it may reject the claim in whole or in part.

22. The Court observes that the applicant did not substantiate the amount he claimed as pecuniary damage and therefore rejects the claim.

23. On the other hand, the Court accepts that the applicant suffered distress and frustration owing to the authorities' failure for many years to enforce the judgment in his favour. Deciding on an equitable basis and having regard to all relevant factors (see *Burdov (no. 2)*, cited above, §§ 154-157), it awards the applicant EUR 6,000 as non-pecuniary damage.

B. Costs and expenses

24. The applicant also requested to be awarded costs and expenses according to the Court's practice.

25. According to the Court's case-law, an applicant is entitled to the reimbursement of costs and expenses only in so far as it has been shown that these have been actually and necessarily incurred and were reasonable as to quantum.

26. Regard being had to the applicant's failure to substantiate any specified claim, the Court will not make any award under this head.

C. Default interest

27. 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 Article 1 of Protocol No. 1 on account of non-enforcement;
3. *Holds*
 - (a) that the respondent State is to pay the applicant, within three months from the date on which the judgment becomes final in accordance with Article 44 § 2 of the Convention, EUR 6,000 (six thousand euros), plus any tax that may be chargeable, in respect of non-pecuniary damage, to be converted into Russian roubles at the rate applicable at the date of settlement;
 - (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;

4. *Dismisses* the remainder of the applicant's claim for just satisfaction.

Done in English, and notified in writing on 17 January 2012, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Søren Nielsen
Registrar

Nina Vajić
President