



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

FIRST SECTION

CASE OF LAVROV v. RUSSIA

(Application no. 33422/03)

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 Lavrov v. Russia,

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

Nina Vajić, *President*,
Anatoly Kovler,
Peer Lorenzen,
Elisabeth Steiner,
Khanlar Hajiyeu,
Mirjana Lazarova Trajkovska,
Julia Laffranque, *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. 33422/03) 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 Lavrov (“the applicant”), on 3 October 2003.

2. The Russian Government (“the Government”) were represented first by Ms V. Milinchuk and then by Mr G. Matyushkin, Representatives of the Russian Federation at the European Court of Human Rights.

3. On 3 May 2007 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, 15 January 2009), this application was adjourned pending its resolution at the domestic level.

5. The Government later informed the Court that enforcement of the domestic judgment in the applicant’s favour was impossible as the applicant was obstructing the enforcement and requested the Court to strike out the application out of its list of cases. The Court therefore decided to resume examination of the present case.

THE FACTS

I. THE CIRCUMSTANCES OF THE CASE

6. The applicant was born in 1962 and lives in Shchekino, Tula Region.

7. The applicant retired from military service in 1993 and became entitled to obtain a permanent housing funded by the State. Following the State's failure to comply with this obligation voluntarily, on 19 October 1998 the Shchekinskiy District Court of the Tula Region ("the District Court") granted the applicant's action against the Tula Regional Administration and awarded him 143,100 Russian roubles (RUB) for purchasing a flat.

8. On 2 March 1999 the Tula Regional Court supplemented the judgment of 19 October 1998, noting that the judgment award should be paid from the federal funds.

9. Enforcement proceedings were instituted and the applicant submitted a writ of execution to the Tula Regional Department of the Federal Treasury.

10. On 7 March 2002 the applicant received a letter from the Tula Regional Department of the Ministry of Justice informing him that the judgment of 19 October 1998, as amended on 2 March 1999, could not be enforced because the Tula Regional Administration did not have the necessary funds to do it. He received a number of similar letters in 2003 and 2004.

11. Following communication of the applicant's case and its subsequent remittal to the Government for resolution in accordance with the *Burdov (no. 2)* pilot judgment cited above, the Ministry of Finance of Russia applied to the trial court seeking modification of the method and order of enforcement of the judgment. Its request was granted on 6 September 2010 by the District Court which ordered that the Ministry of Finance credit RUB 143,100 to the account of the Tula Regional Administration, which should in turn pay this amount to the applicant.

12. By a decision of 18 November 2010 the Tula Regional Court upheld that judgment on appeal.

13. The applicant lodged a new claim to the court seeking increase of the original award to cover the inflation losses and compensation of non-pecuniary damage inflicted as a result of lengthy non-enforcement of the judgment.

14. On 27 October 2010 the Tsentralniy District Court of Tula relied on Article 1069 of the Code of Civil Procedure of Russia and awarded the applicant RUB 1,601,208 instead of the original amount to cover pecuniary damage. It also rejected the rest of his claim.

15. However, by a decision of 23 December 2010 the Tula Regional Court reversed the first-instance judgment. The appeal court found that Article 1069 was inapplicable to the applicant's case and noted that the situation rather warranted application of Article 208 of the Code of Civil Procedure, which provides for index-linking of the original awards. At the same time, the Regional Court relied on the Compensation Act (Law No. 68-Ø3 of 30 April 2010) and awarded the applicant RUB 50,000

(approximately 1,200 euros (EUR)) for non-pecuniary damage resulted from lengthy non-enforcement. It is not clear whether the applicant has been paid this amount.

16. By a letter of 28 February 2011 the Tula Regional Administration requested that the applicant communicate his bank account details to enable payment of the original award constituting RUB 143,100. To date the applicant has refused to comply with this request arguing that the original award had depreciated and was no longer sufficient to purchase a flat.

17. The judgment of 19 October 1998, as amended on 2 March 1999, remains unenforced.

II. RELEVANT DOMESTIC LAW

A. Code of Civil Procedure

18. Pursuant to Article 1069 of the Code of Civil Procedure, a State agency or a State official shall be liable to a citizen for damage caused by their unlawful actions or failure to act.

19. Article 208 of the Code of Civil Procedure provides for “indexation” of judicial awards: the court which made the award may upgrade it upon a party’s request in line with the increase in the official retail price index until the date of effective payment. Default interest and other compensation for pecuniary damage may in addition be recovered from the debtor for non-compliance with a monetary obligation and use of another person’s funds (Article 395 of the Civil Code).

B. Compensation Act

20. Federal Law № 68-Φ3 “On Compensation for Violation of the Right to a Trial within a Reasonable Time or the Right to Enforcement of a Judgment within a Reasonable Time” of 30 April 2010 (in force as of 4 May 2010) provides that in case of a violation of the right to trial within a reasonable time or of the right to enforcement of a final judgment, the Russian citizens are entitled to seek compensation of the non-pecuniary damage.

THE LAW

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

21. The applicant complained that the judgment of 19 October 1998 in his favour remained unenforced. He relied on Articles 1, 6 and 8 of the Convention and Article 1 of Protocol No. 1. The Court will examine this complaint under Article 6 § 1 of the Convention and Article 1 of Protocol No. 1, which in the relevant part 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.”

22. The Government submitted that they considered the judgment enforced in view of the applicant’s own behaviour obstructing payment of the award. Adding that the applicant had already received compensation for non-pecuniary damage sustained as the result of lengthy non-enforcement, they requested that the Court strike the application out of its list of cases.

23. The applicant contended that the original award made for purchase or construction of a flat had depreciated over the years and could not be considered acceptable. He insisted that the judgment remained unenforced.

A. Admissibility

24. The Court reiterates that according to Article 37 of the Convention it can decide to strike an application out of its list of cases if the applicant does not intend to pursue his or her application, if the matter has been resolved or for any other reason established by the Court which would make further examination of the case unjustified.

25. The Court notes that neither of the above conditions applies to the instant case and that it does not discern any other reason that would render

further examination of the case unnecessary. Therefore, it rejects the Government's request to strike the application out of its list of cases.

26. At the same time, the Court observes that the domestic court acknowledged the unreasonable delay in the execution of the judgment in the applicant's favour and awarded him compensation for non-pecuniary damage (see paragraph 15 above). In view of these developments, the Court has to examine whether the applicant can still be regarded as a victim of the alleged breach of his rights under the Convention. Even though the Government did not expressly challenge his victim status, the Court will decide on the issue *proprio motu*.

27. The Court reiterates that a decision or measure favourable to the applicant is not in principle sufficient to deprive him of his status as a "victim" unless the national authorities have acknowledged, either expressly or in substance, and then afforded redress for, the breach of the Convention (see, for example, *Amuur v. France*, 25 June 1996, § 36; *Reports of Judgments and Decisions*; 1996-III, and *Dalban v. Romania* [GC], no. 28114/95, § 44, ECHR 1999-VI).

28. In the present case the Court is satisfied that the Tula Regional Court expressly acknowledged that the delay in the enforcement of the judgment in the applicant's favour had been excessive. The Court will examine whether the authorities have also afforded the applicant redress for the breach of his right.

29. It notes in this respect that the Tula Regional Court awarded the applicant an amount of RUB 50,000 (approximately EUR 1,200) as non-pecuniary damage for the enforcement delay of more than twelve years. In so deciding the domestic court referred to the established principle that the amount of compensation should be reasonable and equitable, taking into account, *inter alia*, the Court's case-law. While fully supporting the above principle, the Court cannot agree that the amount awarded in the present case complies with the Convention standards.

30. Where a State has taken a significant step by introducing a compensatory remedy, the Court must leave a wider margin of appreciation to the State to allow it to organise the remedy in a manner consistent with its own legal system and traditions and consonant with the standard of living in the country concerned. The Court has therefore been prepared to accept that the compensation amounts awarded by domestic courts for violations of the Convention rights may be somewhat lower than those granted by the Court in similar cases (see, *mutatis mutandis*, *Scordino v. Italy* (no. 1) [GC], no. 36813/97, § 189, ECHR 2006-V). In the present case, however, the amount of compensation awarded by the domestic court falls far below what the Court awards in comparable situations in respect of non-pecuniary damage. With reference to the Convention criteria as they were set out in the pilot judgment (see *Burdov (no. 2)*, cited above, § 154-157), the Court considers that the amount of EUR 1,200 awarded to the applicant by the

Tula Regional Court is unreasonably low, taking into consideration notably the nature of the court award at issue and the extremely long delay in enforcement which had exceeded twelve years by that time. The Court furthermore notes that the applicant's claim for compensation of pecuniary damage, while granted in the first instance, was dismissed on appeal by the Tula Regional Court.

31. The Court finally notes that the authorities have still not managed to pay the judicial award of 19 October 1998 to the applicant, referring to his refusal to respond to the letter of 28 February 2011, by which they asked for his bank details. However, even assuming that the authorities are no longer responsible for non-enforcement of the judgment after that date, the Court must still regard the applicant as a victim of the previous enforcement delay of more than 12 years, for which he has not been granted adequate and sufficient redress at the domestic level.

32. The Court further notes that the application is not manifestly ill-founded within the meaning of Article 35 § 3 (a) of the Convention, nor is it inadmissible on any other grounds. It must therefore be declared admissible.

B. Merits

33. The parties' submissions are summarised in paragraphs 22 and 23 above.

34. 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).

35. The Court observes firstly that contrary to the Government's argument that the judgment had been enforced, the amount awarded to the applicant by the judgment of 19 October 1998 has not been paid to him to date. Enforcement of that judgment has thus remained pending for over twelve years.

36. The Court considers that the enforcement proceedings were not particularly complex given the nature of the obligation. It reiterates that the lack of funds mentioned by the authorities (see paragraph 10 above) could not justify the State's failure to pay the judgment debt (see *Burdov (no. 2)*, cited above, § 70). The Government has not provided any valid justification for non-enforcement of the judgment since 1998, except for several months after 28 February 2011 when the applicant refused to provide the authorities with his bank details.

37. As to the applicant's behaviour, the Court observes that since 28 February 2011 he has indeed refused to comply with the request by the Tula Regional Administration to communicate his bank account details to enable payment of the award on the ground that the amount had depreciated. The Court reiterates that the authorities' request for the applicants' bank

details must be regarded as a reasonable and necessary procedural step with a view to payment of the judgment debt (see *Burdov (no. 2)*, cited above, § 69). The applicant's disagreement with the amount to be paid cannot excuse him for failure to cooperate in the context of enforcement of the judgment in his favour. The Court thus accepts that starting from 28 February 2011 the applicant has obstructed enforcement of the judgment and the authorities cannot be held responsible for the ensuing delay. It considers, nonetheless, that the delay in the enforcement caused by the applicant's conduct as from 28 February 2011 is negligible in comparison to the rest of the delay attributable to the authorities.

38. The foregoing considerations are sufficient to enable the Court to conclude that the authorities failed to comply with their obligation until February 2011, that is for more than twelve years.

39. 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

40. 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

41. In his observations submitted to the Court on 25 October 2007 the applicant claimed in respect of pecuniary damage the amount of the judgment debt and interest rate on it calculated according to the refinancing rates of the Central Bank of Russia from 1998 to 2007 and totalling 310,736 Russian roubles (RUB). He also claimed 132,000 euros (EUR) in respect of non-pecuniary damage. In his later comments the applicant referred to his previous observations.

42. The Government countered that compensation for pecuniary damage could not exceed the interest accrued between 2 March 1999 (the date of the final decision in the applicant's case) and December 2003 as since the latter date the applicant had not undertaken any actions to obtain enforcement of the award. They also found the applicant's claim for non-pecuniary damage excessive and unreasonable.

43. The Court reiterates that the most appropriate form of redress in respect of the violations found would be to put the applicant as far as possible in the position he 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). It 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).

44. As regards the pecuniary damage, the Court refers to its finding of a violation on account of the authorities' failure to pay the judicial award of RUB 143,100 for more than twelve years. Moreover, the applicant's attempt to obtain compensation for pecuniary damage at the domestic level was unsuccessful, as the decision of the Tsentralniy District Court of Tula awarding him RUB 1,601,208 instead of the original award was later quashed on appeal by the Tula Regional Court (see paragraphs 14-15 above). In these circumstances the Court finds it appropriate to decide the question of just satisfaction in respect of pecuniary damage.

45. First of all, the sum of RUB 143,100, which has not been paid in accordance with the judgment of 19 October 1998, must be paid to the applicant in full. Given the depreciation of the national currency stressed by the applicant, the Court finds it appropriate to convert the amount into euros at the rate applicable on 1 January 1999. The Court thus awards the applicant EUR 5,520 as compensation for the unpaid judgment debt.

46. As regards the applicant's claim for interest calculated on the basis of the refinancing rates of the Central Bank of Russia from 1998 to 2007, the Court notes that the Government partially accepted the claim but asserted that calculation of the interest on the original award should be limited to a certain period due to the applicant's alleged failure to act after it. The Court is not convinced by the Government's assertion. It 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) or undertake any extraordinary measures that go beyond the necessary minimum. The Court does not consider the applicant's claim for interest amounting to RUB 310,736 for the period from 1998 to 2007 as unreasonable and decides to grant it in full. Converting the sum claimed into euros at the rate applicable on 31 December 2007, it awards him an amount of EUR 8,610 under this head, thus bringing the Court's total award in respect of pecuniary damage to EUR 14,130. Finally, the Court notes that no interest was claimed by the applicant for the subsequent delay in enforcement and makes no award in that respect.

47. Turning to the claim for non-pecuniary damage, the Court accepts that the applicant suffered distress and frustration following the authorities' persistent failure to enforce the judgment in his favour for more than twelve years. It also attaches great importance to the nature of the court award as it was meant to finance a new housing to which the applicant was entitled on

account of his service in the military. The authorities' prolonged failure to pay such an important award necessarily increased his distress and frustration. At the same time, the Court considers that the amount awarded under this head should be reduced so as to take account of the compensation already awarded to the applicant at the domestic level (see paragraph 15 above). 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

48. The applicant also claimed RUB 513 (approximately EUR 13) for the postal expenses.

49. The Government provided no comments on this claim.

50. 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.

51. The Court notes that the applicant submitted two receipts totalling approximately EUR 8 for two mailings made to the domestic courts. Regard being had to the fact that the incurred expenses have no clear connection to the proceedings at Strasbourg, the Court rejects this claim.

C. Default interest

52. 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 lengthy non-enforcement of the judgment in the applicant's favour;
3. *Holds*
 - (a) that the respondent State is to pay the applicant, within three months, the following amounts, to be converted into Russian roubles at the rate applicable at the date of settlement:

- (i) EUR 14,130 (fourteen thousand one hundred and thirty euros), 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;

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