



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

FIRST SECTION

DECISION

Application no. 39185/09
Aleksandr Petrovich ZABOTIN
against Russia

The European Court of Human Rights (First Section), sitting on
13 March 2012 as a Chamber composed of:

Nina Vajić, *President*,
Anatoly Kovler,
Peer Lorenzen,
Elisabeth Steiner,
Mirjana Lazarova Trajkovska,
Julia Laffranque,
Erik Møse, *judges*,

and André Wampach, *Deputy Section Registrar*,

Having regard to the above application lodged on 30 May 2009,

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

Having deliberated, decides as follows:

THE FACTS

1. The applicant, Mr Aleksandr Petrovich Zabotin, is a Russian national who was born in 1954 and lives in Kovrov, Vladimir Region. He is represented before the Court by Mr S. Shenkman, a lawyer practising in Kovrov. The Russian Government (“the Government”) are represented by Mr G. Matyushkin, the Representative of the Russian Federation at the European Court of Human Rights.

A. The circumstances of the case

2. The facts of the case, as submitted by the parties, may be summarised as follows.

3. On 9 February 2005 the applicant and his late wife sued the military unit No. 55034 claiming compensation of non-pecuniary damage and various costs resulting from serious bodily injuries caused to their son during his military service in Chechnya and his ensuing death.

4. On 25 October 2005 the Kovrov Town Court of the Vladimir Region granted their claim in part. The defendant military unit was ordered to pay the claimants a total of 58,465.80 Russian roubles (RUB) in compensation of the non-pecuniary damage and funeral costs. On 11 November 2005 the judgment became final.

5. Since that time the claimants lodged repeated requests for enforcement of the judgment with various State authorities including the commander of the defendant military unit, the Ministry of Defense, the bailiffs and the State Treasury. However, the judgment in their favour remained unenforced.

6. On 2 April 2009 the applicant's wife died.

7. On an unspecified date the defendant military unit was dismantled and the applicant reapplied to the Kovrov Town Court requesting an order for the awarded sums to be paid by the Ministry of Defence.

8. On 31 March 2010 the Kovrov Town Court ordered that the judicial awards of 25 October 2005 be paid to the applicant by the Ministry of Defense. The award of RUB 58,465.80 was credited to the applicant's bank account on 9 July 2010.

9. The applicant brought a claim seeking compensation for the lengthy failure to enforce the judgment in his favour. On 22 November 2010 the Vladimir Regional Court ruled in favour of the applicant and acknowledged a violation of his right to enforcement of the judgment of 25 October 2005 within a reasonable time and his right to peaceful possession of property. The Ministry of Finance was ordered to pay RUB 80,000 (2011 euros (EUR)) in compensation and RUB 2,935.65 (EUR 73) in costs and expenses. The court took account of the enforcement delay, the nature of the award, its significance for the applicant, and the efforts made to obtain the payment.

10. On 18 February 2011 the Supreme Court of the Russian Federation upheld the judgment on appeal.

11. The compensation of EUR 2011 and costs and expenses of EUR 73 were transferred to the applicant's bank account on 3 March and 11 April 2011 respectively.

B. Relevant domestic law

12. On 15 January 2009 the Court delivered the *Burdov (no. 2) v. Russia* pilot judgment (no. 33509/04, ECHR 2009 (extracts)). It ordered the respondent State to set up an effective domestic remedy which would secure adequate and sufficient redress for non-enforcement or delayed enforcement of domestic judgments.

13. Federal Law № 68-ФЗ of 30 April 2010 (“Compensation Act”), which entered in force on 4 May 2010, was adopted in response to the abovementioned judgment. It provides that in case of a violation of the right to enforcement of a final judgment within a reasonable time, the Russian citizens are entitled to seek compensation of non-pecuniary damage in Russian courts. Federal Law № 69-ФЗ adopted on the same day introduced the relevant changes in the Russian legislation.

14. Section 6 § 2 of the Compensation Act provides that everyone who has a pending application before the European Court of Human Rights concerning a complaint of the nature described in the law has six months to bring the complaint to a domestic court, provided the European Court did not declare the application admissible or decide it on the merits.

COMPLAINTS

15. The applicant complained under Articles 6 and 13 of the Convention and Article 1 of Protocol No. 1 about the excessively long failure to enforce the domestic judgment in his favour. The applicant in addition contended that the new domestic remedy in force since 4 May 2010 was not capable of providing adequate redress in the specific circumstances of his case.

THE LAW

16. The Government submitted that the applicant had lost his victim status as a result of the judgment delivered on 22 November 2010 by the Vladimir Regional Court in the applicant’s favour. In the Government view, the judgment acknowledged the violation of the applicant’s right and granted him adequate redress.

17. The applicant disagreed and maintained that the violation was not adequately redressed.

18. The Court reiterates that for an applicant to be able to claim to be the victim of a violation, within the meaning of Article 34 of the Convention, not only must he have the status of victim at the time the application is introduced, but such status must continue to obtain at all stages of the

proceedings. A decision or measure favourable to an 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 *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).

19. The Court notes that the Compensation Act had previously been found to be capable of resolving the issue of lengthy failure to enforce domestic judgments, in cases when the courts acknowledged existence of a violation and provided adequate redress (see *Balagurov v. Russia* (dec.), no. 9610/05, 2 December 2010, and *Khalin v. Russia* (dec.), no. 24169/05, 2 December 2010).

20. As regards the present case, the Court observes that on 22 November 2010 the Vladimir Regional Court, having regard to the specific circumstances of the case, acknowledged a violation of the applicant’s rights by the delay in enforcement of the domestic judgment and awarded the applicant a compensation of EUR 2011. The judgment became final on 18 February 2011 and the award was paid to the applicant on 3 March 2011.

21. The Court finds that the applicant successfully used the domestic remedy which was made available to him by the Compensation Act. The Vladimir Regional Court duly considered his case in line with the Convention criteria, found a violation of his right to enforcement of the judgment within a reasonable time and peaceful enjoyment of property and awarded a compensation comparable with the Court’s awards under Article 41 in similar cases. The Court furthermore notes that the compensation was rapidly paid to the applicant as required by the Convention (see *Burdov* (no. 2), cited above, § 99).

22. The Court concludes that the authorities acknowledged the breach of the applicant’s rights under the Convention and granted him adequate and sufficient redress. Accordingly, he may no longer claim to be a victim of the violation.

23. It follows that the application must be declared manifestly ill-founded within the meaning of Article 35 § 3 of the Convention and must be rejected pursuant to Article 35 § 4.

For these reasons, the Court unanimously

Declares the application inadmissible.

André Wampach
Deputy Registrar

Nina Vajić
President