

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

THIRD SECTION

CASE OF DOLBIN v. RUSSIA

(Application no. 18451/04)

JUDGMENT

STRASBOURG

19 April 2016

This judgment is final but it may be subject to editorial revision.



In the case of Dolbin v. Russia,

The European Court of Human Rights (Third Section), sitting as a Committee composed of:

Helena Jäderblom, *President,*
Dmitry Dedov,
Branko Lubarda, *judges,*
and Stephen Phillips, *Section Registrar,*

Having deliberated in private on 22 March 2016,

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

PROCEDURE

1. The case originated in an application (no. 18451/04) 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 Nikolay Ivanovich Dolbin ("the applicant"), on 22 April 2004.

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

3. The applicant complained, *inter alia*, of the quashing of binding and enforceable judgments in his favour by way of supervisory review and on the basis of newly discovered circumstances between 2003 and 2008, as well as the delayed enforcement of the judgment in his favour delivered in 2006.

4. On 10 January 2008 the application was communicated to the Government.

THE FACTS

I. THE CIRCUMSTANCES OF THE CASE

5. The applicant was born in 1952 and lives in Rostov region. He took part in the clean-up operation at the Chernobyl nuclear disaster site. He was subsequently registered disabled, and became entitled to various social benefits.

A. Proceedings brought in 2003-2004

6. In February 2003 the applicant brought proceedings claiming that his benefits should be increased in accordance with a particular method. The adjustment method suggested by the applicant was approved by the domestic courts, which in addition increased the social benefits to which he was entitled to in 2002 in accordance with this same method (judgment of 25 February 2003).

7. In June 2003 the applicant brought a similar set of proceedings in respect of social benefits to which he was entitled to during the first six months of 2003. Relying on their previous judgment by which they approved the adjustment method suggested by the applicant, the domestic courts increased his social benefits for the new period accordingly (judgment of 18 June 2003).

8. In October 2003 the judgment of 25 February 2003 approving the adjustment method suggested by the applicant was quashed by a supervisory review court.

9. In March 2004 the domestic courts quashed on the basis of newly discovered circumstances the judgment delivered on 18 June 2003 on the ground that it was based on the judgment delivered in February 2003 but quashed since then by way of supervisory review.

10. Both judgments, of February and June 2003, remained unenforced prior to their quashing.

B. Proceeding brought in 2006

11. In 2006 the applicant brought proceedings against welfare authorities claiming arrears for various benefits as well as indexation of those benefits. The Zernogradskiy District Court of the Rostov Region granted the applicant's claims (judgment of 19 June 2006, upheld on 18 July 2006). This judgment remained unenforced for fourteen months.

II. RELEVANT DOMESTIC LAW

12. The relevant domestic provisions governing the supervisory review procedure in force between 1 February 2003 and 7 January 2008 is summed up in the Court's judgment in the case of *Kot v. Russia* (no. 20887/03, § 17, 18 January 2007).

THE LAW

I. ALLEGED VIOLATIONS OF ARTICLE 6 OF THE CONVENTION AND ARTICLE 1 OF PROTOCOL No. 1 TO THE CONVENTION AS REGARDS THE QUASHING AND NON-ENFORCEMENT OF THE JUDGMENTS DELIVERED IN 2003

13. Relying on Article 6 of the Convention and Article 1 of Protocol No. 1 to the Convention, the applicant complained of the quashing of the binding and enforceable judgments of 25 February 2003, upheld on 23 April 2003, by way of supervisory review and of 18 June 2003, final on 23 July 2003, on the basis of newly discovered circumstances and of their non-enforcement prior to the quashing. Both provisions, insofar as relevant, read as follows:

Article 6 § 1

"In the determination of his civil rights and obligations ..., everyone is entitled to a fair and public hearing within a reasonable time 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 ..."

A. Admissibility

14. The Court notes that the applicant's complaints are not manifestly ill-founded within the meaning of Article 35 § 3 of the Convention. It also notes that they are not inadmissible on any other grounds. They must therefore be declared admissible.

B. Merits

1. Quashing of the judgment of 25 February 2003, upheld on 23 April 2003, by way of supervisory review

15. The Government argued that the supervisory review proceeding resulting in the quashing of the judgment of 25 February 2003, upheld on 23 April 2003, in the applicant's favour was lawful: it had been initiated by the defendant authorities within the time-limits provided for by domestic law. The Presidium of the Rostov Regional Court had quashed the lower court's judgment which had been based on an incorrect application of substantive law, thus correcting flagrant injustices and eliminating dangerous precedents.

16. The applicant maintained his position.

17. The Court observes that it has already found numerous violations of the Convention on account of the quashing of binding and enforceable judgments by way of supervisory review under the Code of Civil Procedure as in force at the material time (see *Kot*, cited above, § 29). Some of these violations were found in similar circumstances and similarly concerned the quashing of final domestic judgments awarding benefits to the former participants in the clean-up operation at the Chernobyl nuclear disaster site (see, among many other authorities, *Androsov v. Russia*, no. 63973/00, 6 October 2005; *Finkov v. Russia*, no. 27440/03, 8 October 2009; and *Davletkhanov and other "Chernobyl pensioners" v. Russia*, nos. 7182/03, 10115/04, 21752/04 and 22963/04, 23 September 2010). The Court sees no reason to reach a different conclusion in the present case.

18. The Court accordingly concludes that the quashing of the final judgment of 25 February 2003, upheld on 23 April 2003, in the applicant's favour by way of supervisory review amounted to a breach of the principle of legal certainty in violation of Article 6 of the Convention and Article 1 of Protocol No. 1 to the Convention.

2. Quashing of the judgment of 18 June 2003, final on 23 July 2003, on the basis of newly discovered circumstances

19. The Government argued that the quashing of the judgment of 18 June 2003, upheld on 23 July 2003, had been in accordance with the regulations of the Civil Code of Procedure since it had been based on the findings of a judgment which was subsequently quashed by way of supervisory review.

20. The applicant maintained his position.

21. The Court notes that the quashing of the final judgment of 18 June 2003 resulted in the retrospective recalculation of the judicial awards already made. It reiterates in this respect that whatever the justification for the quashing of final judgments could be, backdating the recalculation with the effect that the sums due were reduced involves an individual and excessive burden for the applicants and is incompatible with Article 1 of the Protocol No. 1 to the Convention (see, among many other authorities, *Bulgakova v. Russia*, no. 69524/01, § 47, 18 January 2007). There has accordingly been a violation of Article 1 of Protocol No. 1 to the Convention in respect of the quashing of the final judgment of 18 June 2003, as upheld on 23 July 2003, on the basis of newly discovered circumstances.

22. Having regard to this finding, the Court considers that there is no need to examine the applicant's complaint based on the same facts under Article 6 § 1 of the Convention.

3. Non-enforcement

23. The Government considered that the non-enforcement of the judgments had only been attributable to the applicant, who had failed to submit the necessary documents to the appropriate institution.

24. The applicant maintained his claim.

25. The Court observes that both judgments in the applicant's favour remained unenforced prior to their quashing for less than a year (see the Appendix). Therefore, the Court finds that it is not necessary to examine separately the issue of the non-enforcement of the judgments in the applicant's favour delivered in 2003 (see *Kulkov and Others v. Russia*, nos. 25114/03, 11512/03, 9794/05, 37403/05, 13110/06, 19469/06, 42608/06, 44928/06, 44972/06 and 45022/06, § 35, 8 January 2009, with further references).

II. ALLEGED VIOLATION OF ARTICLE 6 OF THE CONVENTION AND ARTICLE 1 OF PROTOCOL No. 1 TO THE CONVENTION ON ACCOUNT OF THE DELAYED ENFORCEMENT OF THE JUDGMENT DELIVERED IN 2006

26. Relying on Article 6 § 1 of the Convention and Article 1 of Protocol No. 1 to the Convention, both cited above, the applicant further complained about the delayed enforcement of the judgment of 19 June 2006, upheld on 18 July 2006 (see the Appendix).

27. The Government considered that the delay in enforcement of the judgment had been reasonable and that if there had been a delay, it had only been attributable to the applicant, who had failed to submit the necessary documents promptly.

28. The applicant maintained his claim. He pointed out that the judgment should have been executed immediately and that he had not been at fault for the delayed enforcement of the court awards.

29. The Court observes that the judgment of 19 June 2006, upheld on 18 July 2006, was enforced after a period of more than one year. Having regard to its case-law, the Court finds that such delays were incompatible with the reasonable time requirement (see, among others, *Kozodoyev and Others*, cited above, § 11).

30. As regards the Government's argument referred to above, the Court reiterates its established case-law that the applicant's alleged failure to submit the enforcement documents to the appropriate institution promptly does not constitute a valid reason for the prolonged non-enforcement of the judgment (see *Akashev v. Russia*, no. 30616/05, §§ 21-23, 12 June 2008). It sees no reasons to hold otherwise in the present case.

31. There has, accordingly, been a violation of Article 6 § 1 of the Convention and Article 1 of Protocol No. 1 to the Convention in the present

case on account of the delayed enforcement of the judgment in the applicant's favour delivered in 2006.

III. ALLEGED VIOLATION OF ARTICLE 13 OF THE CONVENTION

32. The applicant, in addition, complained under Article 13 of the Convention about the lack of a domestic remedy against the delayed enforcement of the judgment of 19 June 2006, upheld on 18 July 2006.

33. The Court notes that on 4 May 2010 a new domestic remedy was introduced by the federal laws № 68-FZ and № 69-FZ in the wake of the *Burdov (no. 2)* pilot judgment (see *Burdov v. Russia (no. 2)*, no. 33509/04, ECHR 2009) and that it was also made available to all applicants, whose applications were lodged with the Court before its delivery. Given those special circumstances, the Court decided in a number of cases involving violations on account of lengthy non-enforcement of judgments that although admissible it was not necessary to proceed to a separate examination of the applicant's complaints under Article 13 of the Convention (see *Krasnov v. Russia*, no. 18892/04, §§ 32-35, 22 November 2011). The Court will follow the same approach in the present case.

IV. OTHER ALLEGED VIOLATIONS OF THE CONVENTION

34. Lastly, the applicant complained under Articles 6, 14 and 17 of other different violations of the Convention.

35. In the light of all the material in its possession, and in so far as the matters complained of are within its competence, the Court finds that these complaints do not disclose any appearance of a violation of the rights and freedoms set out in the Convention or its Protocols. It follows that they are manifestly ill-founded and must be rejected in accordance with Article 35 §§ 3 and 4 of the Convention.

V. 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. The applicant claimed EUR 50,000 euros (EUR) in respect of pecuniary and non-pecuniary damage.

38. The Government contended that the sum claimed was excessive and unreasonable.

39. The Court notes that the present case is similar to numerous other Russian cases that concern the same issues it has already addressed in numerous other judgments finding violations of the Convention on account of the quashing of final judgments by way of the supervisory review procedure and non-enforcement of domestic judicial decisions (see, for instance, *Moskalenko and Others v. Ukraine* [Committee], nos. 1270/12 and 246 others, § 23, 18 July 2013, and, most recent, (see *Kovalenko and others v. Russi*a [Committee], nos. 36299/03, 14222/04, 15030/04, 36581/04, 1407/05, 2071/05 and 24618/05, §§ 39-43, 8 December 2015). If one or more heads of damage cannot be calculated precisely or if the distinction between pecuniary and non-pecuniary damage proves difficult, the Court may decide to make a global assessment (see *Comingersoll S.A. v. Portugal* [GC], no. 35382/97, § 29, ECHR 2000-IV).

40. In these circumstances and having regard to the principles developed in its case-law on determination of compensation in similar cases, the Court considers it reasonable and equitable to award Mr Dolbin a total of EUR 5,000 to cover all heads of damage.

B. Costs and expenses

41. The applicant claimed the amounts of 1,000 Russian roubles for costs and expenses.

42. The Government argued that the applicant had not substantiated his claim.

43. The applicant did not submit any evidence in support of his claim. It should thus be rejected by the Court.

C. Default interest

44. The Court considers it appropriate that the default interest rate 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 complaints under Article 6 and 13 of the Convention and Article 1 of Protocol No. 1 to the Convention concerning the quashing by way of supervisory review and on the grounds of newly discovered circumstances of final domestic judgments in the applicant's favour as well as the delayed enforcement of the final judgments and the lack of a

domestic remedy against the delayed enforcement admissible and the remainder of the application inadmissible;

2. *Holds* that there has been a violation of Article 6 of the Convention and Article 1 of Protocol No. 1 to the Convention on account of the quashing of the judgment of 25 February 2003, upheld on 23 April 2003, in the applicant's favour by way of supervisory review;

3. *Holds* that there has been a violation of Article 1 of Protocol No. 1 to the Convention on account of the quashing of the judgment of 18 June 2003, upheld on 23 July 2003, in the applicant's favour on the basis of newly discovered circumstances and that it is not necessary to consider separately the applicant's complaint under Article 6 of the Convention in this respect;

4. *Holds* that it is not necessary to consider separately the applicant's complaint under Article 6 of the Convention and Article 1 of Protocol No. 1 to the Convention on account of the delayed enforcement of the judgments of 25 February 2003, upheld on 23 April 2003, and of 18 June 2003, final on 23 July 2003;

5. *Holds* that there has been a violation of Article 6 of the Convention and Article 1 of Protocol No. 1 to the Convention on account of the delayed enforcement of the judgment of 19 June 2006, upheld on 18 July 2006 in the applicant's favour and that there is no need to examine separately the applicant's complaint under Article 13 of the Convention about the lack of a domestic remedy in this respect;

6. *Holds*
(a) that the respondent State is to pay Mr Nikolay Ivanovich Dolbin, within three months EUR 5,000 (five thousand euros) in respect of both pecuniary and non-pecuniary damage, to be converted into the currency of the respondent State at the rate applicable at the date of settlement, plus any tax that may be chargeable;
(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;

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

Done in English, and notified in writing on 19 April 2016, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Stephen Phillips Registrar	Helena Jäderblom President

APPENDIX

Application no. and date of lodging	Applicant name Date of birth Place of residence Nationality	Final domestic judgment a) date of delivery b) date of becoming final	Awards (in Russian roubles)	Quashing	Subsequent developments	Length of non-enforcement (separate complaint)
18451/04 22/04/2004	**Nikolay Ivanovich DOLBIN** 10/05/1952 Novyye Postroyki Russian	1) Zernogradskiy District Court of the Rostov Region 25/02/2003 23/04/2003	1) RUB 40,360.92 (lump sum for social benefit arrears) + RUB 6,941.51 (monthly payments of social benefits)	1) Presidum of the Rostov Regional Court 30/10/2003	1) No information available	1) 6 months and 7 days
		2) Zernogradskiy District Court of the Rostov Region 18/06/2003 23/07/2003	2) RUB 25,841 (lump sum for social benefit arrears) + RUB 8,746.30 (monthly payments of social benefits)	2) Zernogradskiy District Court of the Rostov Region 10/03/2004 (newly discovered circumstances)	2) 10 March 2004; claim was granted/enforced; RUB 35,423.11 (lump sum for social benefit arrears) + RUB 5,635.5 (monthly payments of social benefits)	2) 7 months and 17 days
		3) The Zernogradskiy District Court of the Rostov Region 19/06/2006 18/07/2006	3) RUB 33,939 (lump sum for arrears) + RUB 1,308 (monthly payments for food allowance)+RUB 2,180 (yearly payments of social benefits)			3) 14 months