

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

THIRD SECTION

CASE OF NIKITIN v. RUSSIA

(Application no. 22185/07)

JUDGMENT

STRASBOURG

14 February 2017

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



In the case of Nikitin 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 Fatoş Aracı, *Deputy Section Registrar,*

Having deliberated in private on 24 January 2017,

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

PROCEDURE

1. The case originated in an application (no. 22185/07) 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 Nikitovich Nikitin ("the applicant"), on 10 April 2007.

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. On 23 February 2011 the application was communicated to the Government.

THE FACTS

I. THE CIRCUMSTANCES OF THE CASE

A. Judgments in the applicant's favour

4. The applicant was born in 1954 and lives in Ufa, the Republic of Bashkortostan.

5. In February 1996 the applicant was severely injured in a traffic accident.

6. On 24 April 1996 he lodged a civil action against the owner of the car, the State Unitary Subsidiary Passenger Transport Company of Ufa No. 3 (*Государственное унитарное дочернее уфимское пассажирское автотранспортное предприятие 3* – hereinafter "the transport company"), seeking compensation for damage.

7. On 29 November 2005 the Sovetskiy District Court of Ufa (hereinafter "the District Court") partly granted the applicant's claims.

8. On 15 February 2006 the transport company was declared insolvent and it was put into liquidation.

9. On 28 March 2006 the judgment of 29 November 2005 became final, as modified on appeal by the Supreme Court of the Republic of Bashkortostan. The final court award in the applicant's favour consisted of a sum in compensation for pecuniary and non-pecuniary damage sustained (equivalent to 30,462 euros (EUR)), to be paid once the judgment became final, and of a monthly allowance (equivalent of EUR 207), to be paid until the end of the applicant's life.

10. On 17 June 2006 the Commercial Court of the Republic of Bashkortostan (hereinafter "the Commercial Court") granted the applicant's application for aggregation as a lump sum («*капитализация*») of the amounts of the monthly allowance awarded by the judgment of 29 November 2005, in accordance with section 135 § 1 of the Insolvency Act (see paragraph 20 below). Therefore the transport company's debt under this head amounted to EUR 69,029.

11. Since the award remained unenforced, on 11 January 2009 the District Court granted a prior application by the applicant to have the amount of the monthly allowance index-linked, and raised it to EUR 909. The judgment became final on 22 January 2009.

12. On 3 March 2009 the Commercial Court once again granted the applicant's application for payment as a lump sum of the amounts of the monthly allowance. The applicant was awarded EUR 203,673. The judgment became final on 23 April 2009.

13. On 15 July 2009 the Commercial Court accepted the applicant's claim for transfer of the transport company's debt to the Russian Federation, as provided for in section 135 § 3 of the Insolvency Act (see paragraph 21 below). The court ordered that the judgment debts in the applicant's favour were to be paid by the Federal Tax Service of Russia. On 3 December 2009 the Commercial Court of the Uralskiy Circuit upheld that judgment and it became final.

14. Between August and October 2010 the applicant received the equivalent of EUR 15,131, which corresponded to total of the monthly allowance that he had not received in 2005-2010. Furthermore, on 6 August 2010 the applicant started receiving a monthly allowance of EUR 948.

B. Available information on the transport company

15. The transport company provided public transport services on a commercial basis. It was a subsidiary of another company, Bashavtotrans State Unitary Company (*ГУП «Башавтотранс»* – hereinafter "the parent company"). The legal provisions on subsidiary companies are summarised in paragraph 22 below.

16. The transport company had the right of "economic control" over the assets allocated to it by the parent company. The parent company was a unitary company with the right of "economic control" over the assets allocated to it by the State Committee on construction, architecture and transport of the Republic of Bashkortostan.

17. On 14 October 2004 the Government of the Republic of Bashkortostan issued Decree no. 918-P, by which all the transport company's assets were transferred to the parent company; the debts remained with the transport company.

18. On 15 February 2006 the transport company was declared insolvent, and it was put into liquidation. The liquidation proceedings ended on 31 December 2013.

II. RELEVANT DOMESTIC LAW

19. The relevant provisions and case-law governing unitary companies with the right of economic control are described in the judgments of *Liseytseva and Maslov v. Russia* (nos. 39483/05 and 40527/10, §§ 54-127, 9 October 2014), and of *Samsonov v. Russia* (dec.) (no. 2880/10, 16 September 2014).

20. Pursuant to section 135 § 1 of the Insolvency Act of 26 October 2002 No. 127-FZ, the total in claims of citizens to which the debtor is liable for harm to life or health shall be calculated by means of aggregating the relevant regular payments which were established on adoption by the commercial court of the decision declaring the debtor company insolvent and which are payable to those citizens until they reach the age of seventy, but with a minimum of ten years payment.

21. Pursuant to section 135 § 3 of the Insolvency Act, upon the citizen's consent his or her right to claim the aggregated amount of the regular payments shall be transferred to the Russian Federation. In this case the debtor's obligation to pay the aggregated amount to the citizen shall be transferred to the Russian Federation and shall be fulfilled by the State in compliance with federal law in the manner determined by the Government of the Russian Federation.

22. Pursuant to Article 105 of the Civil Code of Russia, as in force at the material time, a company shall be recognised as a subsidiary if the other (the parent) company, on account of its majority shareholding, or in conformity with an agreement signed between them, or in any other way, can exert a decisive impact on the decisions adopted by such a company.

THE LAW

I. ALLEGED VIOLATION OF ARTICLES 6 AND 13 OF THE CONVENTION AND ARTICLE 1 OF PROTOCOL No. 1 TO THE CONVENTION

23. The applicant complained of the non-enforcement of domestic decisions given in his favour and of the lack of any effective remedy in domestic law. He relied on Article 6 § 1 and Article 13 of the Convention and on Article 1 of Protocol No. 1 to the Convention, which 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 13

"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."

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."

24. The Government argued that the transport company had been a commercial organisation that had operated independently from the authorities. They accordingly submitted that its debts were not attributable to the State. The State had only become bound to pay the judgment debt when it had been ordered to do so by the judgment of the Commercial Court of the Uralskiy Circuit of 3 December 2009 (see paragraph 13 above). The authorities had started executing the judgment of 3 December 2009 as of August 2010, which is less than one year after the judgment had become final.

25. The applicant maintained that the debtor company had been, in fact, a State-run company controlled by the local authorities and that the State was responsible for the transport company's debts. He also submitted that the decision of 15 July 2009 (see paragraph 13 above), which had entitled him to a lump-sum payment of the amount awarded to him on 3 March 2009 (see paragraph 12 above), had not been enforced and complained that instead he had started to receive a monthly allowance.

A. Admissibility

26. The Court has held that the existing legal framework in Russia does not provide unitary companies with a degree of institutional and operational independence that would absolve the State from responsibility under the Convention for the debts of such companies (see *Liseytseva and Maslov*, cited above, §§ 193-204). In order to determine the issue of State responsibility for the debts of unitary companies the Court must examine whether and how the extensive powers of control provided for in domestic law were actually exercised by the authorities in the present case.

27. The Court notes that the debtor company was set up for providing public transport services. In *Liseytseva and Maslov* (cited above, § 215) the Court admitted that, in the absence of further information such activity could be regarded as purely commercial, as suggested by the Government.

28. However, the Court observes that the authorities disposed of the transport company's property as they saw fit. In fact, the regional government ordered that all the transport company's assets were to be transferred to the parent company (see paragraph 17 above), whilst the debts were not transferred.

29. In the light of the above the Court finds that the companies did not enjoy sufficient institutional and operational independence from the authorities and dismisses the Government's *ratione personae* objection. Accordingly, the municipality, and hence the State, is to be held responsible under the Convention for the debts owed by the transport company to the applicant in accordance with the final judgments in his favour. The Court therefore declares the complaint admissible.

B. Merits

30. The Court reiterates that execution of a judgment given by any court is an integral part of the "trial" for the purposes of Article 6 of the Convention; an unreasonably long delay in enforcement of a binding judgment may therefore breach the Convention (see *Hornsby v. Greece*, 19 March 1997, § 40, *Reports of Judgments and Decisions* 1997-II, and *Burdov v. Russia*, no. 59498/00, § 37, ECHR 2002-III). Some delay may be justified in particular circumstances but it may not, in any event, be such as to impair the essence of the right protected under Article 6 § 1 (ibid., § 35). The Court reiterates that, in order to decide if the delay in execution of the judgment was reasonable, it will look at how complex the enforcement proceedings were, how the applicant and the authorities behaved, and what the nature of the award was (see *Raylyan v. Russia*, no. 22000/03, § 31, 15 February 2007).

31. The Court notes that the first judgment in the applicant's favour, awarding him a lump sum and a monthly allowance, became final on

28 March 2006. With regard to the first award, the Government did not argue that the applicant had ever received it. As to the second award, it appears from the parties' submissions that the monthly allowance, as index-linked and aggregated into a lump sum by the judgments of 17 June 2006, 11 January 2009 and 3 March 2009 (see paragraphs 9-12 above) was not paid to the applicant until August 2010. Regard being had to the documents in its possession, the Court does not see any justification for such a delay.

32. As regards the effective remedies, the Court has already held in respect of similar situations in *Liseytseva and Maslov* (cited above, §§ 165-72) that there were no effective remedies for the applicant in his attempt to obtain either the execution of the awards made against the unitary companies or compensation for the alleged violations.

33. Accordingly, there has been a violation of Article 6 § 1 and Article 13 of the Convention and of Article 1 of Protocol No. 1 to the Convention on account of the non-enforcement of the final and binding judgments in the applicant's favour and the lack of effective remedies.

II. OTHER COMPLAINTS

34. The Court observes that the applicant also complained, under Article 6 § 1 of the Convention, of excessive length of the proceedings terminated with the decision of 28 March 2006 given by the Supreme Court of Bashkortostan.

35. Having regard to all the evidence in its possession, and to the extent that it has the power to examine the allegations, the Court does not find any appearance of a violation of the rights and freedoms guaranteed by those provisions. It follows that this part of the application must be rejected pursuant to Article 35 §§ 3 and 4 of the Convention.

III. 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 260,043 euros (EUR) in respect of pecuniary damage and EUR 1,213,532 in respect of non-pecuniary damage.

38. The Government submitted that the amounts claimed were excessive and unreasonable.

39. The Court notes that the applicant did not provide the Court with a calculation of his claim for pecuniary damage; it therefore rejects this claim. On the other hand, it awards the applicant EUR 2,000 in respect of non-pecuniary damage.

B. Costs and expenses

40. The applicant also claimed EUR 1,642 for the costs and expenses incurred before the domestic courts and EUR 810 for those incurred before the Court.

41. The Government submitted that only the costs and expenses incurred before the court are subject to just satisfaction.

42. Regard being had to the documents in its possession and to its case-law, the Court rejects the claim for costs and expenses in the domestic proceedings and considers it reasonable to award the sum of EUR 810 for the proceedings before the Court.

C. Default interest

43. 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 concerning the non-enforcement of domestic decisions and the lack of any effective remedy in domestic law under Article 6 § 1 and Article 13 of the Convention and Article 1 of Protocol No. 1 to the Convention admissible and the remainder of the application inadmissible;

2. *Holds* that there has been a violation of Article 6 § 1 and Article 13 of the Convention and of Article 1 of Protocol No. 1 to the Convention;

3. *Holds*
   (a) that the respondent State is to pay the applicant, within three months the following amounts, to be converted into the currency of the respondent State at the rate applicable at the date of settlement:
      (i) EUR 2,000 (two thousand euros), plus any tax that may be chargeable, in respect of non-pecuniary damage;
      (ii) EUR 810 (eight hundred and ten euros), plus any tax that may be chargeable, in respect of costs and expenses;

(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 14 February 2017, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Fatoş Aracı
Deputy Registrar

Helena Jäderblom
President