

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

THIRD SECTION

DECISION

Application no. 33075/07
Aleksandr Ivanovich TSEPANOV
against Russia

The European Court of Human Rights (Third Section), sitting on 20 September 2016 as a Committee composed of:

Helena Jäderblom, *President,*
Dmitry Dedov,
Branko Lubarda, *judges,*

and Fatoş Aracı, *Deputy Section Registrar,*

Having regard to the above application lodged on 26 June 2007,

Having regard to the decision to apply the pilot-judgment procedure taken in the case of *Burdov v. Russia (no. 2)* (no. 33509/04, ECHR 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 Ivanovich Tsepanov, is a Russian national, who was born in 1946 and lives in Novosibirsk.

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

4. On an unspecified date the applicant initiated judicial proceedings against the Novosibirsk Regional Military Commissariat ("the Commissariat") in order to receive certain disability benefits in connection with his participation in a rescue operation on the site of the Chernobyl nuclear disaster.

5. On 10 September 2002 the Oktyabrskiy District Court of Novosibirsk ("the District Court") granted the applicant's claims in part and ordered the Commissariat to pay the applicant in compensation for the damage to health a lump sum of 84,627.35 Russian roubles (RUB) for the period from 1 June 1998 until 1 September 2002, as well as RUB 2,000 in respect of legal costs and expenses. The District Court also awarded the applicant regular monthly payments of RUB 5,532.16 with subsequent adjustment. When deciding on the lump sum to be paid, the District Court calculated the total amount of the benefits and deducted certain sums already paid to the applicant.

6. On 26 December 2002 the Novosibirsk Regional Court ("the Regional Court") upheld the judgment of 10 September 2002 on appeal.

7. On 25 December 2002 (according to the Government) and on 5 December 2002 (according to the applicant) the Commissariat paid the applicant RUB 70,230.22, and on 11 March 2003 the applicant further received RUB 24,660.80.

8. On 2 April 2003 the applicant received RUB 23,487.80.

9. The applicant disagreed that the above-mentioned amounts were paid to him in execution of the judgment of 10 September 2002. He obtained the writ of execution and submitted it for enforcement on several occasions. Various domestic authorities either returned the writ to the applicant as submitted to a wrong addressee, or the enforcement proceedings were terminated with the reasoning that the lump sum awarded by the judgment of 10 September 2002 had already been paid to the applicant.

10. On 19 February 2013 the District Court granted the applicant's claims to extend the time-limit for submission of the writ of execution. The court referred to the findings of the prosecutor's investigation conducted in 2012 which revealed that the decision of 10 September 2002 had not been fully enforced due to the failure of certain officers of the Commissariat to comply with applicable legal requirements.

11. On 26 March 2013 the Commissariat initiated judicial proceedings with the view to have the domestic courts acknowledge that the defendant's obligations under the decision of 10 September 2002 had been fulfilled. The applicant maintained that the payments he received were not made in execution of the judicial decision in his favour and, in particular, the first installment was paid to him before the judgment entered into force as upheld on appeal.

12. On 10 June 2013 the District Court found that the obligation of the Commissariat under the judgment of 10 September 2002 to pay the applicant the compensation for the damage to health had been fulfilled. The District Court found that RUB 9,090.67, an amount regarded as paid and deducted from the total amount of benefits the applicant was entitled to, had not reached the applicant (see paragraph 5 above). Thus, the District Court found that under the judgment of 10 September 2002 the applicant was

entitled to RUB 93,718.02 (the sum of RUB 84,627.35 and RUB 9,090.67). The District Court further found that this amount had been paid to the applicant in two installments, on 25 December 2002 and in April 2003 (see paragraphs 7 and 8 above). The court confirmed that both payments had been duly made in accordance with the relevant judicial award.

13. On 12 September 2013 the Regional Court upheld the decision of the District Court, having specified, in the operative part, that the obligation of the Commissariat under the judgment of 10 September 2002 had been executed "in the part concerning the payment of the lump sum RUB 84,627.35".

COMPLAINTS

14. The applicant complained under Article 6 of the Convention and Article 1 of Protocol No.1 to the Convention of the authorities' failure to enforce the judgment of 10 September 2002 in the part concerning the payment of the lump sum.

THE LAW

15. The applicant complained that the lump sum in accordance with the decision of 10 September 2002 had not been paid to him in full. He argued, *inter alia*, that the amount of RUB 70,230.22 received by him in December 2002 was not paid in execution of the judgment. The applicant noted, in particular, that the payment order for this amount had been issued before the decision of 10 September 2002 came into force. He relied on Article 6 of the Convention and Article 1 of Protocol No. 1 to the Convention, the relevant parts of which read:

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 ..."

16. With reference to the decision of 10 June 2013 the Government submitted that the lump sum under the decision of 10 September 2002 was

fully paid to the applicant in April 2003, i.e. within three months since its entry into force.

17. The applicant maintained his complaint.

18. The Court reiterates that an unreasonably long delay in the enforcement of a binding judgment may breach the Convention. To decide if the delay was reasonable, the Court 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 *Burdov (no. 2)*, cited above, § 66 with references therein).

19. The Court has taken the view that domestic courts are better placed to decide the issue of whether and when full and appropriate compliance with a judgment has been secured, and to ascertain the proper method of enforcement. In accordance with its established case-law, the Court requires that any dispute in that respect be first and foremost examined by domestic courts. The Court may only depart from this principle and accept an argument about the improper enforcement of a judgment in the event of flagrant inconsistency between the judgment requirements and a defendant authority's acts (see *Gerasimov and Others v. Russia*, nos. 29920/05 and 10 others, § 173, 1 July 2014, with references therein, and *Sirotin v. Russia* (dec.), no. 38712/03, 14 September 2006).

20. Turning to the present case, the Court observes that the question at issue is whether the decision of 10 September 2002 has been enforced in the part concerning the payment of the lump sum. In particular, it is disputed between the parties whether the payment of RUB 70,230.22 was made in execution of the decision at issue. In 2013 this question was addressed by the domestic courts (see paragraphs 11-13 above).

21. The Court finds no indication that the proceedings which led to the decision of 10 June 2013, as upheld on 12 September 2013, were arbitrary, nor did the conclusions by the domestic courts amount to a "flagrant inconsistency" (see *Gerasimov and Others*, cited above, § 173). The domestic courts analysed the applicant's arguments and the applicable domestic law. In particular, they confirmed that the method of calculation of the payments used in the decision of 10 September 2002 was correct. The courts acknowledged that the amount regarded as already paid when calculating the lump sum (RUB 9,090.67), had not been received by the applicant. This was taken into account when verifying whether the lump sum due to the applicant in accordance with the judgment of 10 September 2002 had been fully paid (see paragraph 12 above). The Regional Court explained that the findings of the prosecutor's investigation in 2012 did not disprove the conclusions of the District Court. It further held that the voluntary payment of the disputed amount before the judgment of 10 September 2002 came into force did not contradict the domestic law and confirmed a full enforcement of the judicial award in April 2003.

22. The Court reiterates its subsidiary role in the matters disputed by the parties, and finds no reason to depart from the conclusions of the domestic courts that the judgment of 10 September 2002 was fully enforced in the part concerning the payment of the lump sum on 2 April 2003, which is approximately in three months since it became final.

23. In the circumstances of the case and in the light of the Court's case-law, the Court considers that this period did not fall short of the requirements of the Convention (see, for example, *Belkin and Others v. Russia* (dec.), no. 14330/07, 5 February 2009).

24. It follows that this complaint should be rejected as being manifestly ill-founded in accordance with Article 35 §§ 3 and 4 of the Convention.

25. The applicant also made a number of accessory complaints. He alleged, *inter alia*, that the proceedings which led to the judgment of 10 September 2002 had been unfair, as the court admitted an allegedly forged document submitted by the Commissariat as evidence. The Court has examined this and other complaints submitted by the applicant. However, having regard to all the material in its possession, and in so far as these complaints fall within the Court's competence, it finds that they do not disclose any appearance of a violation of the rights and freedoms set out in the Convention or its Protocols. This part of the application must therefore be rejected as manifestly ill-founded, pursuant to Article 35 §§ 3 and 4 of the Convention.

For these reasons, the Court, unanimously,

Declares the application inadmissible.

Done in English and notified in writing on 13 October 2016.

Fatoş Aracı
Deputy Registrar

Helena Jäderblom
President