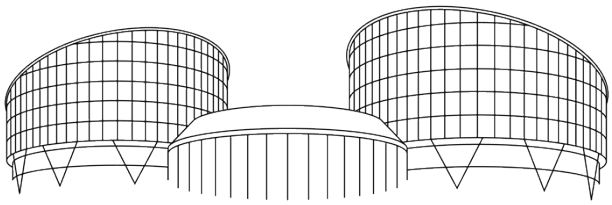

EUROPEAN COURT OF HUMAN RIGHTS
COUR EUROPÉENNE DES DROITS DE L'HOMME

FIRST SECTION

DECISION

Application no. 18977/06
Grachik Mkhitarovich MAZULYAN
against Russia

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

Peer Lorenzen, *President,*
Khanlar Hajiyev,
Julia Laffranque, *judges,*

and André Wampach, *Deputy Section Registrar,*

Having regard to the above application lodged on 28 April 2006,

Having regard to the decision to apply the pilot-judgment procedure taken in the case of *Burdov (no. 2) v. Russia* (no. 33509/04, ECHR 2009-...),

Having regard to the declaration submitted by the respondent Government on 25 November 2010 requesting the Court to strike the application out of the list of cases,

Having deliberated, decides as follows:

THE FACTS

The applicant, Mr Grachik Mkhitarovich Mazulyan, is a Russian national who was born in 1962 and lives in Kazan, the Republic of Tatarstan. He was represented before the Court by Mr S.I. Khapugin, a lawyer practising in Kazan. The Russian Government ("the Government") were represented by Mr G. Matyushkin, the Representative of the Russian Federation at the European Court of Human Rights.

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

A. Initial judgment in the applicant's favour

By judgment of 28 August 2001 the Federal Commercial Court of the Republic of Tatarstan awarded the applicant 653,976 Russian roubles (RUB) against the State Cinema and Video Service Company of the Balvinskiy District and the Town of Balva, the Republic of Tatarstan. The award became final on 29 September 2001 but was not enforced.

The applicant brought proceedings against the administration of the Bavlinskiy District claiming to hold the latter vicariously liable for the respondent company's debt.

On 29 September 2003 the Commercial Court of the Republic of Tatarstan granted the applicant's claim and obliged the Administration of the Bavlinskiy District acting for the Bavlinskiy District municipality to pay the applicant RUB 653,976. The judgment became final and enforceable on 29 October 2003.

On 28 February 2006 the applicant ceded the right to collect the debt from the authorities to the limited liability company P., against the payment of RUB 330,000.

On 20 December 2006 the Appeal Instance of the Federal Commercial Court of the Povolzhskiy Region by the final decision endorsed the cession agreement and ordered that as from that date the company be considered creditor in the enforcement proceedings. From the note signed by the applicant and Mr Khapugin, and dated 1 March 2007, it transpires that the applicant had received RUB 330,000 from the limited liability company, as agreed.

B. Subsequent developments as regards enforcement proceedings and the applicant's interview at the prosecutor's office

On 19 February 2007 the Federal Commercial Court of the Republic of Tatarstan ordered the respondent authority to pay company P. RUB 170,578 of damages for delayed execution of the initial judgment. On 31 July 2007 the company had received the sum awarded by the judicial decision.

On 26 December 2007 the applicant was interviewed by the prosecutor of the Prosecutor's Office of the Republic of Tatarstan. When interviewed, the applicant confirmed that he had authorised Mr Khapugin to represent him before the courts of various jurisdictions. However, he had not applied to the European Court and he could not remember whether he had authorised Mr Khapugin to represent him before the Court or to lodge any applications in his name. He further confirmed to the prosecutor that he had had no further claims against the respondent authority. The Government referred to a record of the interview in support of these submissions.

On 29 December 2007 the initial judgment debt in the amount of RUB 653,976 was paid to company P. in full.

On 29 December 2007 the applicant submitted an authority form dated 20 July 2005, authorising Mr Khapugin, the head of company P.'s law office and his representative before the Court, to represent the applicant before the European Court of Human Rights. On the same date Mr Khapugin by a separate letter advised the Court that the applicant wished to withdraw the application because "on 27 December 2007 the respondent authority had paid the debt in full". He further enclosed a copy of the payment order evidencing the transfer of the judgment debt to the company P.'s bank account.

On 14 April 2008 the applicant represented by Mr Khapugin submitted his observations in respect of the application. In these observations he confirmed, in particular, that he wished to maintain his application before the Court.

COMPLAINTS

The applicant complained under Article 6 of the Convention and Article 1 of Protocol No. 1 about non-enforcement of the judgment of 28 August 2001.

The applicant further complained, without referring to any Article of the Convention, that unspecified officers of the Republican prosecutor's office had exercised moral pressure on him, questioned him about the application to the Court and made him sign a forged testimony as a result of the interview.

THE LAW

I. COMPLAINT ABOUT NON-ENFORCEMENT

The applicant complained under Article 6 of the Convention and Article 1 of Protocol No. 1 about non-enforcement of the judgment of 28 August 2001. These Articles, in so far as relevant, 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."

By letter dated 25 November 2010 the Government informed the Court that they proposed to make a unilateral declaration with a view to resolving the issue raised by the application. They further requested the Court to strike out the application in accordance with Article 37 of the Convention.

The declaration provided as follows:

"I, Georgy Matyushkin, the Representative of the Russian Federation at the European Court of Human Rights, hereby declare that the Russian authorities acknowledge the excessive duration of the enforcement of the judgment delivered by the Commercial Court of the Republic of Tatarstan [on] 28 August 2001 in favour of Mazulyan Grachik Mhitarovich.

The authorities are ready to pay the applicant [...] a sum of EUR 1,547 as just satisfaction.

The authorities therefore invite the Court to strike the present case out of the list of cases. They suggest that the present declaration might be accepted by the Court as "any other reason" justifying the striking out of the case of the Court's list of cases, as referred to in Article 37 § 1 (c) of the Convention.

The sum referred to above, which is to cover any pecuniary and non-pecuniary damage as well as costs and expenses, will be free of any taxes that may be applicable. It will be payable within three months from the date of notification of the decision taken by the Court pursuant to Article 37 § 1 of the European Convention on Human Rights. In the event of failure to pay this sum within the said three-month period, the Government undertake to pay simple interest on it from expiry of that period until settlement, at a rate equal to the marginal lending rate of the European Central Bank during the default period plus three percentage points.

This payment will constitute the final resolution of the case."

The applicant did not submit comments in reply.

The Court recalls that Article 37 of the Convention provides that it may at any stage of the proceedings decide to strike an application out of its list of cases where the circumstances lead to one of the conclusions specified, under (a), (b) or (c) of paragraph 1 of that Article. Article 37 § 1 (c) enables the Court in particular to strike a case out of its list if:

"for any other reason established by the Court, it is no longer justified to continue the examination of the application".

It also recalls that in certain circumstances it may strike out an application under Article 37 § 1(c) on the basis of a unilateral declaration by a respondent Government even if the applicant wish the examination of the case to be continued.

To this end, the Court will examine carefully the declaration in the light of the principles emerging from its case-law, in particular the *Tahsin Acar* judgment (*Tahsin Acar v. Turkey*, [GC], no. 26307/95, §§ 75-77, ECHR 2003-VI); *WAZA Spółka z o.o. v. Poland* (dec.) no. 11602/02, 26 June 2007; and *Sulwińska v. Poland* (dec.) no. 28953/03).

Turning to the facts of present case, the Court observes that the judgment of 28 August 2001 providing the applicant with an enforceable claim, as clarified in the final instance on 29 October 2003, had remained unenforced until 28 February 2006, date of the assignment of the debt to company P.

Having examined the terms of the Government's declaration, the Court understands them as intending to give the applicant redress in line with the pilot judgment (see *Burdov (no. 2)*, cited above, §§ 127 and 145 and point 7 of the operative part).

The Court is satisfied that the excessive length of the execution of judgment of 28 August 2001 is acknowledged by the Government explicitly. The Court also notes that the compensation offered is comparable with Court awards in similar cases, taking account, *inter alia*, of the delay of enforcement in this particular case (see *Burdov (no. 2)*, cited above, §§ 99 and 154), as well as of other specific circumstances of the case, such as the cession of the debt by the applicant to a private company on 28 February 2006.

Consequently, the Court considers that it is no longer justified to continue the examination of the applicant's complaint of non-enforcement of the judgment of 28 August 2001. It is also satisfied that respect for human rights as defined in the Convention and the protocols thereto does not require it to continue the examination of this complaint. Accordingly, in this part the application should be struck out of the list.

As regards the question of implementation of the Government's undertakings, the Committee of Ministers remains competent to supervise this matter in accordance with Article 46 of the Convention (see the Committee's decisions of 14-15 September 2009 (CM/Del/Dec(2009)1065) and Interim Resolution CM/ResDH(2009)1 58 concerning the implementation of the *Burdov (no. 2)* judgment). In any event the Court's present ruling is without prejudice to any decision it might take to restore, pursuant to Article 37 § 2 of the Convention, the present application in respect of the first applicant to the list of cases (see *E.G. v. Poland* (dec.), no. 50425/99, § 29, ECHR 2008-... (extracts)).

II. ALLEGED FAILURE TO COMPLY WITH ARTICLE 34 OF THE CONVENTION

In his observations the applicant submitted, without referring to any Article of the Convention, that unspecified officers of the Republican prosecutor's office had exercised moral pressure on him, questioned him about the application to the Court and made him sign a forged testimony as a result of the interview. The Court will examine this issue under Article 34 which, in so far as relevant, reads as follows:

> "The Court may receive applications from any person, ... claiming to be the victim of a violation by one of the High Contracting Parties of the rights set forth in the

Convention or the Protocols thereto. The High Contracting Parties undertake not to hinder in any way the effective exercise of this right."

The Court recalls that the issue of whether or not contacts between the authorities and an applicant amount to unacceptable practices from the standpoint of Article 34 must be determined in the light of the particular circumstances of the case. In the context of the questioning of applicants about their applications under the Convention by authorities exercising a domestic investigative function, this will depend on whether the procedures adopted have involved a form of illicit and unacceptable pressure. "Pressure" includes not only direct coercion but also other improper indirect acts or contacts designed to dissuade or discourage applicants from pursuing a Convention remedy (see, for example, *Salman v. Turkey* [GC], no. 21986/93, § 130, ECHR 2000-VII).

The Court further observes that the applicant was interviewed by the prosecutors about his application to the Court and about the domestic judgment in his favour, the power of attorney for Mr Khapugin and the assignment of the judgment debt to company P. In the Court's view, the authorities' decision to hold such interview was justified, given that Mr Khapugin was not only the applicant's representative before the Court but also a lawyer at the company to which the applicant had ceded the judgment debt. The Court further finds no evidence in the submissions that the applicant was forced to give evidence to the prosecutor (see *Tarariyeva v. Russia*, no. 4353/03, § 121, ECHR 2006-XV (extracts)). Furthermore, in the absence of a detailed description of the events, the Court finds nothing in the submissions to suggest that the language used by the officers contained any expressions, references or insinuations of a threatening or dissuasive nature (see, by contrast, *Petra v. Romania*, 23 September 1998, § 44, *Reports of Judgments and Decisions* 1998-VII).

In these circumstances, the Court is unable to conclude that the interview in question involved any form of illicit and unacceptable pressure put on the applicant in order to dissuade him from pursuing his application to the Court. The Court concludes that the Government had not breached their obligations under Article 34.

For these reasons, the Court unanimously

Takes note of the terms of the respondent Government's declaration under Article 6 § 1 of the Convention and of the modalities for ensuring compliance with the undertakings referred to therein;

Decides to strike the application out of its list of cases in accordance with Article 37 § 1 (c) of the Convention in the part concerning the non-enforcement complaint under Article 6 of the Convention and Article 1 of Protocol No. 1;

Decides that the respondent Government have not failed to comply with Article 34 of the Convention.

André Wampach
Deputy Registrar

Peer Lorenzen
President