



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

FIRST SECTION

DECISION

Application no. 2059/05
Boris Ivanovich KHIKHLYA
against Russia

The European Court of Human Rights (First Section), sitting on 10 April 2012 as a Committee composed of:

Peer Lorenzen, *President*,

Elisabeth Steiner,

Khanlar Hajiyev, *judges*,

and André Wampach, *Deputy Section Registrar*,

Having regard to the above application lodged on 20 December 2004,

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 (extracts)),

Having deliberated, decides as follows:

THE FACTS

The applicant, Mr Boris Ivanovich Khikhlya, is a Russian national who was born in 1947 and lives in Orenburg. The Russian Government (“the Government”) are represented by Mr G. Matyushkin, 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.

The applicant is disabled as a result of participation in the emergency clean-up operations at the site of the nuclear plant disaster in Chernobyl.

By a judgment of 7 August 2002 the Leninskiy District Court of Orenburg (“the District Court”) recovered in his favour from the military

commissariat of the Orenburg Region unpaid social allowance and ordered the respondent to pay the applicant, starting from September 2002, monthly social allowance in the amount of 30,000 Russian roubles (RUB) with subsequent yearly adjustment in accordance with the living wages.

By a judgment of 13 August 2003 the District Court recovered in the applicant's favour the arrears in respect of the food allowance in the amount totalling RUB 26,208.

By a judgment of 20 October 2003 the applicant's monthly allowance was adjusted in accordance with the judgment of 7 August 2002. The court recovered the arrears in the amount of RUB 125,700 and set the new amount of monthly payments at RUB 48,450. It also specified that the monthly payments should be further adjusted on a yearly basis in accordance with the living wages of the pensioners in the Orenburg Region and, in case of changes in Russian law, in accordance with the relevant legislation.

On 15 January 2004 the applicant was paid the lump-sum award made in the judgment of 20 October 2003.

The applicant further submitted that in June 2004 the authorities reduced the amount of his monthly social allowance by 38.1 per cent.

COMPLAINTS

The applicant complained under Articles 6 and 13 of the Convention and Article 1 of Protocol No. 1 that the authorities had delayed enforcement of the judgment of 13 August 2003 and had not adjusted the monthly payments in accordance with the procedure laid down in the judgment of 20 October 2003.

THE LAW

I. ALLEGED DELAY IN THE ENFORCEMENT OF THE JUDGMENT OF 13 AUGUST 2003

By a number of letters, the most recent of which dated 25 January 2012, the applicant informed the Court that the judgment of 13 August 2003 had been enforced on 1 March 2005 and withdrew his complaint in respect of the above judgment.

The Court considers that in these circumstances the applicant may be regarded as no longer wishing to pursue his application in this part, within the meaning of Article 37 § 1 (a) of the Convention.

Furthermore, in accordance with Article 37 § 1 *in fine*, the Court finds no special circumstances regarding respect for human rights as defined in the Convention and its Protocols which would require continued examination of this complaint.

In view of the above, it is appropriate to strike the case in respect of the present complaint out of the list.

II. ALLEGED DELAY IN THE ENFORCEMENT OF THE JUDGMENT OF 20 OCTOBER 2003

The applicant complained that by failing to adjust his monthly payments in line with the court's instructions after January 2004 and by reducing the amount of his monthly payments, the authorities had failed to enforce in full the judgment of 20 October 2003 in his favour. The Court will examine this complaint under Article 6 of the Convention and Article 1 of Protocol No. 1, which in the relevant part read as follows:

Article 6

“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.

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.”

The Government disagreed with the complaint, arguing that the judgment had been fully enforced on 15 January 2004.

The Court observes that on 15 January 2004 the applicant received the lump-sum payment due to him under the judgment of 20 October 2003. This delay cannot be considered excessive. As far as the complaint concerns the subsequent reduction of the monthly allowance and the authorities' alleged failure to adjust them in the prescribed manner, the Court considers that this does not, as such, concern the enforcement of the judgment of 20 October 2003 but the practical implementation of a specified condition set out in that judgment. In any event, it was open for the applicant to challenge the authorities' actions or failure to act in respect of the subsequent payments before a domestic court, but he does not appear to have done so.

Therefore, this complaint is manifestly ill-founded and should be rejected in accordance with Article 35 §§ 3 (a) and 4 of the Convention.

For these reasons, the Court unanimously

Decides to strike the application out of its list of cases in the part concerning enforcement of the judgment of 13 August 2003;

Declares the remainder of the application inadmissible.

André Wampach
Deputy Registrar

Peer Lorenzen
President