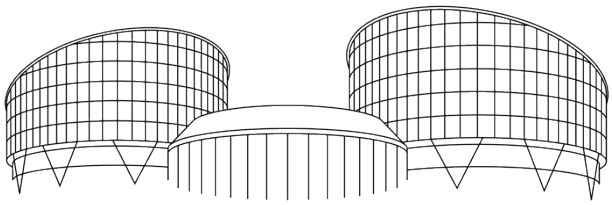

EUROPEAN COURT OF HUMAN RIGHTS
COUR EUROPÉENNE DES DROITS DE L'HOMME

FIRST SECTION

DECISION

Application no. 55242/08
Tatyana Nikolayevna CHALYKH
against Russia

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

Mirjana Lazarova Trajkovska, *President,*
Anatoly Kovler,
Erik Møse, *judges,*

and André Wampach, *Deputy Section Registrar,*

Having regard to the above application lodged on 30 December 2008,

Having regard to the declaration submitted by the respondent Government on 14 September 2010 requesting the Court to strike the application out of the list of cases and the applicant's reply to that declaration,

Having deliberated, decides as follows:

THE FACTS

The applicant, Ms Tatyana Nikolayevna Chalykh, is a Russian national who was born in 1963 and lives in Sortavala, Republic of Karelia. 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.

By a decision of 10 October 2003 the Commercial Court of the Republic of Karelia awarded the applicant 3,126.80 Russian roubles (approximately

80 euros (EUR) at the current exchange rate) to cover her legal expenses against the local tax inspection agency.

In November 2005 and January 2006 the writ of enforcement issued pursuant to the above judgment was returned to the applicant with a recommendation to amend the name of the debtor in the view of the reorganisation of the Ministry of Tax and Levies into the Federal Tax Service. On 23 June 2006 the Commercial Court of the Republic of Karelia amended the decision of 10 October 2003, while at the same time referring to Article 242.1 of the Budget Code which stipulated that in order to have a court decision enforced the creditor should submit a writ of enforcement with a certified copy of the relevant court decision and a statement containing the creditor's bank account details.

On 25 October 2010 the applicant submitted the writ of enforcement to the local office of the Federal Treasury. However, it was returned to her shortly for failure to enclose a certified copy of the court decision and her bank account details.

To date the decision remains unenforced.

COMPLAINT

Relying on Articles 1, 6 and 17 of the Convention, the applicant complained about the State's failure to enforce the court decision in her favour.

THE LAW

The applicant complained about non-enforcement of the court decision of 10 October 2003. The Court will examine this complaint under Article 6 of the Convention and Article 1 of Protocol No. 1 which, in so far as relevant, provide 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."

By letter dated 14 September 2010 the Government acknowledged the excessive duration of the enforcement proceedings in the present case and proposed to make a unilateral declaration with a view to resolving this issue. 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 Karelia on 10 October 2003 in favour of Chalykh Tatyana Nikolayevna.
>
> The authorities are ready to pay the applicant a sum of EUR 1,270 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."

In a letter of 26 October 2010 the applicant disagreed with the Government's declaration, insisting *inter alia* that the court decision in her favour had not been enforced. In her letter of 29 December 2011 she submitted a claim for just satisfaction stating that the amount proposed by the Government in their declaration was sufficient to cover the non-pecuniary damage inflicted by the lengthy non-enforcement.

In their reply to the applicant's claim for just satisfaction the Government pointed out that while the applicant could not be faulted for the State's failure to enforce the judgment prior to June 2006, the subsequent non-enforcement was the sole responsibility of the applicant who failed to submit the enforcement documents to the authorities.

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.

The Court recalls that in its pilot judgment cited above it ordered the Russian Federation to

> "grant [adequate and sufficient] redress, within one year from the date on which the judgment [became] final, to all victims of non-payment or unreasonably delayed payment by State authorities of a judgment debt in their favour who [had] lodged their applications with the Court before the delivery of the present judgment and whose applications [had been] communicated to the Government under Rule 54 § 2 (b) of the Rules of the Court."

In the same judgment the Court also held that:

> "pending the adoption of the above measures, the Court [would] adjourn, for one year from the date on which the judgment [became] final, the proceedings in all cases concerning solely the non-enforcement and/or delayed enforcement of domestic judgments ordering monetary payments by the State authorities, without prejudice to the Court's power at any moment to declare inadmissible any such case or to strike it out of its list following a friendly settlement between the parties or the resolution of the matter by other means in accordance with Articles 37 or 39 of the Convention."

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 v. Russia (no. 2)*, no. 33509/04, §§ 127 and 145 and point 7 of the operative part, ECHR 2009).

The Court is satisfied that the excessive length of the execution of the court decision in the applicant's favour is acknowledged by the Government explicitly, even if such acknowledgment is to be understood, with account of ensuing submissions, to have been made in respect of the period of non-enforcement lasting until June 2006. The Court takes cognisance of the fact that the court decision of 10 October 2003 has not been enforced by the State. However, even assuming that the responsibility for the non-enforcement lies with the State, the Court is mindful that the compensation suggested by the Government exceeded manifold the amount of the domestic award due to the applicant and that the applicant proposed the identical amount as desired compensation for the damage incurred. In these circumstances, the Court is of the opinion that accepting the Government's declaration would not prejudice the applicant's interests.

Consequently, the Court considers that it is no longer justified to continue the examination of the applicant's complaint. 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 application. Accordingly, 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 to the list of cases (see *E.G. v. Poland* (dec.), no. 50425/99, § 29, ECHR 2008 (extracts)).

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.

André Wampach
Deputy Registrar

Mirjana Lazarova Trajkovska
President