



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

FIRST SECTION

DECISION

Application no. 46983/06
Yevgeniy Sergeyevich AVERIN
against Russia

The European Court of Human Rights (First Section), sitting on 18 December 2012 as a Committee composed of:

Elisabeth Steiner, *President*,

Anatoly Kovler,

Linos-Alexandre Sicilianos, *judges*,

and André Wampach, *Deputy Section Registrar*,

Having regard to the above application lodged on 12 July 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 15 December 2011 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, Mr Yevgeniy Sergeyevich Averin, is a Russian national, who was born in 1946 and lives in Novochoerkassk, the Rostov Region. He was represented before the Court by Mr P.V. Sedlyar, a lawyer practising in Novochoerkassk. 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.

On 30 August 2004 the Novocherkassk Town Court of the Rostov Region by judgment no. 2-1634/04 awarded the applicant, a retired military serviceman, 206,690.87 Russian roubles (RUB) in pension arrears, to be paid by the military commissariat of the Rostov Region. The judgment entered into force on 9 September 2004. It remained unenforced until 2011.

By the final judgment of 9 April 2009 the Rostov Regional Court index-linked the unexecuted award and ordered the respondent commissariat to pay the applicant RUB 146,970.74. On 2 July 2009 that amount was transferred to the applicant's account.

On 12 December 2011 the judgment of 30 August 2004 was enforced in full.

COMPLAINTS

The applicant complained under Article 6 of the Convention and Article 1 of Protocol No. 1 about delayed enforcement of the judgment of 30 August 2004.

THE LAW

The applicant complained under Article 6 of the Convention and Article 1 of Protocol No. 1 about non-enforcement of the judgment of 30 August 2004. 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 15 December 2011 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 lengthy enforcement of the judgment of the Novocherkasskiy Town Court of the Rostov Region of 30 August 2004 in case no. 2-1634/04 delivered in favour of Averin Evgeniy Sergeevich. The judgment became final on 9 September 2004 and was fully enforced on 11 December 2011, i.e. during 7 years 3 months and 3 days.

The authorities are ready to pay the applicant a sum of EUR 4067,29 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.”

By letter of 20 January 2012 the applicant informed the Court that he agreed to the terms of the Government’s declaration.

The Court reiterates 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 in paragraph 1 (a), (b) or (c) of that Article. Article 37 § 1 in fine states:

“However, the Court shall continue the examination of the application if respect for human rights as defined in the Convention and the protocols thereto so requires.”

In the light of the applicant’s agreement with the terms of the Government’s declaration, the Court considers that Article 37 § 1 (b) is applicable in the present case. Further, the terms of the declaration are in line with the *Burdov (no. 2)* pilot judgment (*Burdov (no. 2)*), cited above, §§ 127 and 145 and point 7 of the operative part). In this connection, it is to be recalled that the Committee of Ministers remains competent to supervise the question of implementation of the Government’s undertakings in 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). Finally, the Court

considers that further examination of the application is not required by respect for human rights as defined in the Convention and the Protocols thereto (Article 37 § 1 *in fine*). Accordingly, the application should be struck out of the list.

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 Article 1 of Protocol No. 1 and of the modalities for ensuring compliance with the undertakings referred to therein, as well as of the applicant's comments thereon;

Decides to strike the application out of its list of cases in accordance with Article 37 § 1 (b) of the Convention.

André Wampach
Deputy Registrar

Elisabeth Steiner
President