



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

FIRST SECTION

DECISION

Application no. 18853/06
Anton Andreyevich SHVAYDAK
against Russia

The European Court of Human Rights (First Section), sitting on 12 November 2013 as a Committee composed of:

Khanlar Hajiyev, *President*,

Julia Laffranque,

Erik Møse, *judges*,

and André Wampach, *Deputy Section Registrar*,

Having regard to the above application lodged on 14 April 2006,

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 declaration submitted by the respondent Government on 26 June 2013 requesting the Court to strike the application out of the list of cases and the applicant's daughter's reply to that declaration,

Having deliberated, decides as follows:

FACTS AND PROCEDURE

The applicant, Mr Anton Andreyevich Shvaydak, was a Russian national, who was born in 1935 and lived in Novocherkassk.

On 26 May 2007 the applicant died. His daughter, Ms Lyudmila Antonovna Chernyshova (also referred to in the application form as Ms Shvaydak), born in 1958 and living in Novocherkassk, expressed a wish to pursue the application in his stead.

For the sake of convenience, Mr Anton Andreyevich Shvaydak will be referred to as "the applicant". He was represented before the Court by Mr P.V. Sedlyar, a lawyer practising in Novocherkassk, and so is Ms Chernyshova.

The Russian Government (“the Government”) were represented by Mr G. Matyushkin, their Representative at the European Court of Human Rights.

A. Facts

On 30 August 2004 the Novocherkassk Town Court awarded the applicant, a retired military serviceman, 343,228.31 Russian roubles in pension arrears, to be paid by the military commissariat of the Rostov Region. The judgment entered into force ten days later and remained unenforced.

At some point the respondent commissariat applied for extension of the time-limit for lodging an application for the supervisory review of the judgment. On 20 March 2006 the Novocherkassk Town Court granted the application. At some point the commissariat applied for supervisory review of the judgment, and a judge of the Rostov Regional Court requested the case-file from the Town Court for examination.

On 5 February 2007 the judicial award was executed.

On 26 May 2007 the applicant died.

By letter of 13 July 2007 his daughter expressed a wish to pursue the application in her late father’s stead. She submitted a copy of the death certificate in respect of the applicant, her own birth certificate and documents confirming that she had been in charge of the late applicant’s funeral.

On 27 July 2007 the Presidium of the Rostov Regional Court quashed the judgment of 30 August 2004 by way of supervisory review and referred the case for a fresh examination by a different court.

On 20 September 2007 the Oktyabrskiy District Court of Rostov examined the applicant’s claim and rejected it as having no basis in domestic law. Mr Anton Andreyevich Shvaydak was referred to as the plaintiff in the judgment.

B. Relevant domestic law

For the summary of the relevant domestic law, see *Streltsov and other “Novocherkassk military pensioners” cases v. Russia*, nos. 8549/06 et al, §§ 27-30, 29 July 2010.

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.

By letter of 1 March 2007 the applicant complained, without referring to any Convention provision, that the respondent commissariat initiated the supervisory-review proceedings and the case-file was requested by the Presidium of the Rostov Regional Court for examination.

By letter of 5 August 2008 Ms Lyudmila Antonovna Chernyshova informed the Court of the quashing of the judgment in the applicant's favour and maintained, under Article 6 of the Convention and Article 1 of Protocol No. 1 thereto, that the supervisory-review proceedings in the present case had been in breach of the legal certainty principle.

THE LAW

A. Complaint about non-enforcement

1. *Locus standi*

The Court takes note of the applicant's death and of the interest of his daughter in pursuing the proceedings in his stead.

The Court reiterates that where an applicant dies during the examination of a case his or her heirs may in principle pursue the application on his or her behalf (see *Jėčius v. Lithuania*, no. 34578/97, § 41, ECHR 2000-IX).

In so far as the applicant's daughter wished to maintain the application in the part concerning the non-enforcement complaint, the Court notes that it has on several occasions accepted that the late applicants' close relatives had a legitimate interest to maintain applications raising the non-enforcement issue (see, among others, *Andreyeva v. Russia* (dec.), no. 76737/01, 16 October 2003, and *Shiryayeva v. Russia*, no. 21417/04, § 8, 13 July 2006).

The Court further notes that the Government did not contend that the applicant's daughter had not had standing in the present case. Therefore, the Court considers that the applicant's daughter has a legitimate interest in pursuing the application before the Court, in so far as the complaint about delayed enforcement of the judgment in the applicant's favour is concerned.

2. Complaint under Article 6 and Article 1 of Protocol No. 1

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 11 July 2013 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 Novocherkassk Town Court of the Rostov Region of 30 August 2004. The judgment became final on 10 September 2004 and was fully enforced on 5 February 2007. The delay in enforcement constituted 2 years 5 months and 6 days.

The authorities are ready to pay the applicant’s legal successor, Ms Lyudmila Antonovna Chernyshova .. a sum of 1530 euros as just satisfaction, plus any tax that may be chargeable on the amount.

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 5 August 2013 the applicant’s daughter informed the Court that she 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 legal successor’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*).

In view of the above, it is appropriate to strike the case out of the list in so far as it relates to the above complaint.

B. Other complaints raised in the application

The Court notes that the applicant himself had raised other complaints in his application form and subsequent letters. Having carefully examined these complaints in the light of all the material in its possession, and in so far as the matters complained of are within its competence, the Court finds that they do not disclose any appearance of a violation of the rights and freedoms set out in the Convention or its Protocols.

It follows that this part of the application is manifestly ill-founded and must be rejected in accordance with Article 35 §§ 3 (a) and 4 of the Convention.

Finally, by letter of 5 August 2008 Ms Lyudmila Antonovna Chernyshova submitted under Article 6 of the Convention and Article 1 of Protocol No. 1 thereto that the supervisory-review proceedings in the present case breached the principle of legal certainty.

The Court notes at the outset that the judgment in the applicant’s favour was quashed on 27 July 2007, that is two months after the applicant’s death. In these circumstances, it was for the applicant’s daughter to substantiate that she could claim to have a sufficient legal interest to make a complaint about the alleged violation of the legal certainty principle in the proceedings which occurred after the applicant’s death (see, in so far as relevant, *Belskiy*

v. Russia (dec.), no. 23593/03, 26 November 2009; *Verigin v. Russia* (dec.), no. 53678/08, 25 November 2010; and *Gorodnichev v. Russia* (dec.), no. 32275/03, 15 November 2007). The Court is mindful of its findings in the aforementioned case of *Streltsov and other "Novocherkassk military pensioners" cases* (cited above, §§ 32-42), where it has accepted the two late applicants' relatives' standing to pursue the applications concerning both non-enforcement and the supervisory review issues. However, the present case is different from the aforementioned case, for the following reasons. First, in the present case the applicant did not complain about the quashing itself, and such complaint was introduced by his daughter after he had passed away. She was not a party to the supervisory-review proceedings which resulted into the quashing. Second, the supervisory review issue was not inter-related with the non-enforcement problem, since the judgment had been enforced before the quashing, and no outstanding judgment debt in the applicant's favour had existed by the moment of the judgment's annulment by way of the supervisory review. Further, there is nothing to suggest that the applicant's legal successor was at any point ordered to repay the sum initially awarded to the applicant by the judgment in his favour. In any event, the Court does not consider it necessary to decide on the applicant's daughter standing in respect of the complaints related to the quashing of the judgment by way of the supervisory-review procedure, for the following reason. The Court notes that the quashing of a final judgment is an instantaneous act which does not create a continuing situation, even if it entails a re-opening of the proceedings as in the instant case (see *Sitokhova v. Russia* (dec.), no. 55609/00, 2 September 2004). In the present case the quashing took place on 27 July 2007, and the applicant's daughter only informed the Court about it on 5 August 2008, that is more than six months after the judgment had been annulled. It was not argued that she had not timeously received the Presidium ruling or the judgment of 20 September 2007 issued by the district court in line with the Presidium's instructions. It follows that this part of the application has been introduced out of time and must be rejected in accordance with Article 35 §§ 1 and 4 of the Convention.

For these reasons, the Court unanimously

Decides that Ms Lyudmila Antonovna Chernyshova has a legitimate interest in pursuing the application in the applicant's stead in so far as the non-enforcement complaint is concerned;

Decides to strike the application out of its list of cases in so far as it concerns the complaint under Article 6 of the Convention and Article 1 of Protocol No. 1 about non-enforcement of the judgment of 30 August 2004 in the applicant's favour;

Declares the remainder of the application inadmissible.

André Wampach
Deputy Registrar

Khanlar Hajiyev
President