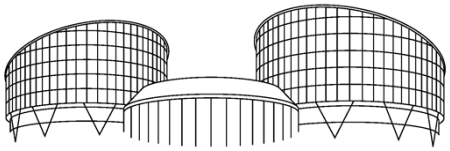

EUROPEAN COURT OF HUMAN RIGHTS
COUR EUROPÉENNE DES DROITS DE L'HOMME

FIRST SECTION

CASE OF LI v. RUSSIA

(Application no. 38388/07)

JUDGMENT

STRASBOURG

24 April 2014

This judgment is final but it may be subject to editorial revision.

In the case of Li v. Russia,

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

Khanlar Hajiyev, *President,*
Erik Møse,
Dmitry Dedov, *judges,*

and André Wampach, *Deputy Section Registrar,*

Having deliberated in private on 1 April 2014,

Delivers the following judgment, which was adopted on that date:

PROCEDURE

1. The case originated in an application (no. 38388/07) against the Russian Federation lodged with the Court under Article 34 of the Convention for the Protection of Human Rights and Fundamental Freedoms ("the Convention") by a Russian national, Mr Roman Mikhaylovich Li ("the applicant"), on 20 July 2007.

2. The Russian Government ("the Government") were represented by Mr G. Matyushkin, Representative of the Russian Federation at the European Court of Human Rights.

3. On 14 January 2013 the application was communicated to the Government.

THE FACTS

I. THE CIRCUMSTANCES OF THE CASE

4. The applicant was born in 1966 and lives in Magadan.

5. On 28 January 2003 the Magadan City Court awarded 30,000 Russian roubles as compensation for unlawful conviction of the applicant. The decision of the court came into force on 16 February 2003.

6. The applicant obtained the respective writ of execution on 5 March 2003. In September 2007 the applicant sought in domestic courts issuance of a duplicate of the writ of execution which according to him had been stolen in 2004 from his office. On 13 September 2007 a national court refused to issue the duplicate because the term for submission of this document for the execution had expired under Article 14 of the Russian Federal Law on Enforcement Proceedings.

7. On 27 September 2007 the applicant addressed the Ministry of Finance of the Russian Federation with a request to execute the judgment of

2003. The Ministry of Finance replied that the execution is not possible without submission of the writ of execution.

II. RELEVANT DOMESTIC LAW

8. Article 242.1 § 1 of the Budget Code of the Russian Federation (No. 145-FZ of 31 July 1998) provides that enforcement of judicial decisions recovering funds from the budgetary system of the Russian Federation is held on the basis of the enforcement documents (writ of execution, court order) in accordance with the requirements set by domestic law regarding such documents and terms for their submission for execution.

9. Under Article 14 of the Russian Federal Law on Enforcement Proceedings (No. 119-FZ of 21 July 1997) in force at the material time, writs of execution may be submitted for execution within three years as of the moment of the entrance into force of a court's decision on the basis of which the respective write of execution was issued.

THE LAW

I. ALLEGED VIOLATION OF ARTICLE 6 § 1 AND ARTICLE 1 OF PROTOCOL No. 1

10. The applicant complained that the authorities had failed to enforce the judgment in his favour. The Court will examine this complaint under Article 6 § 1 of the Convention and Article 1 of Protocol No. 1, which read in their relevant parts 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.

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."

11. The Government submitted that the authorities could not enforce the judgments in question, since the applicant had failed to cooperate with a

view to recovery of the awards. They referred in particular to the applicant's continuing failure to submit the writ of execution to the competent authorities.

12. The applicant argued that it was the obligation of the State to execute the judgment in question even if the respective writ of execution had not been submitted for the execution.

A. Admissibility

13. The Court notes that this complaint is not manifestly ill-founded within the meaning of Article 35 § 3 (a) of the Convention. It further notes that it is not inadmissible on any other grounds. It must therefore be declared admissible.

B. Merits

14. The Court reiterates that an unreasonably long delay in the enforcement of a binding judgment may breach the Convention (see *Burdov v. Russia*, no. 59498/00, ECHR 2002-III). It has been the Court's constant position that a person who has obtained a judgment against the State may not be expected to bring separate enforcement proceedings (see *Metaxas v. Greece*, no. 8415/02, § 19, 27 May 2004). The Court held that the burden to ensure compliance with a judgment against the State lies primarily with the State authorities starting from the date on which the judgment becomes binding and enforceable (*Burdov v. Russia (no. 2)*, no. 33509/04, § 69, ECHR 2009).

15. At the same time, the Court has accepted that a successful litigant may be required to undertake certain procedural steps in order to recover the judgment debt (see *Shvedov v. Russia*, no. 69306/01, § 32, 20 October 2005). The creditor's uncooperative behaviour may be an obstacle to timely enforcement of a judgment, thus alleviating the authorities' responsibility for delays (see *Belayev v. Russia* (dec.), no. 36020/02, 22 March 2011).

16. The Government argued that the applicants' failure to comply with the necessary formalities made it impossible for the State to pay the judicial awards. In the present case the Court must ascertain the existence of the State's responsibility for non-enforcement of the judgments in a situation where the applicant since 2003 till 2007 has not taken any steps to recover the judgment debt, especially when the applicant did not undertake any actions during two years after the disappearance of the writ of execution which he had received from the competent court.

17. The Court observes that the requirement for the creditor to submit the writ of execution is established in clear terms by Article 242.1 of the Budget Code (see paragraph 8 above). According to this Article of the Budget Code a successful litigant may request the trial court to forward the

writ of execution directly to the competent State authority. In the Court's understanding, this option was meant to facilitate and accelerate the payment of judicial awards by the State. If, however, the applicant for any reason obtains himself the writ of execution from the trial court, it would appear logical, in the Court's view, to require that he submits it to the competent authority with a view to enforcement of the judgment (see *Gadzhikhanov and Saukov v. Russia*, nos. 10511/08 and 5866/09, § 26, 31 January 2012).

18. Turning to the facts of the present case, the Court notes that the applicant has never contested his persistent failure to take any action in order to recover the judgment debt. Neither did the applicant claim to be unaware of the procedure to follow or to have difficulties with understanding it. Nor did he claim the legal requirement to impose a disproportionate burden on him or to be otherwise unreasonable or unnecessary. Finally, the applicant has not pointed to any valid circumstance preventing or dispensing him from taking the necessary actions to restore, without unreasonable delay, the writ of execution which had allegedly been stolen from his office, or from complying with other formalities to allow the authorities paying him the judgment debt within a reasonable time.

19. In view of the above circumstances, the Court agrees with the Government that the applicant's failure to take reasonable procedural steps constituted an obstacle to enforcement of the judgment in his favour. While the primary responsibility for enforcement of a judgment against the State lies with the authorities, they cannot comply with their obligations without the applicant's minimal cooperation to that effect. In the absence of any explanation from the applicant, the Government's assumption that he had deliberately withheld the writ of execution for several years does not appear unfounded. In the Court's view, the present situation differs from that observed in virtually all other non-enforcement cases decided against Russia, in which the applicants took the necessary steps with a view to payment of the judicial awards by the State (see also *Gadzhikhanov and Saukov*, cited above, § 29).

20. In view of the foregoing, the Court concludes that the applicant's behaviour in the present case was an obstacle to enforcement of the judgment in his favour. Consequently, the authorities cannot be held responsible under the Convention for the non-enforcement of that judgment.

21. There has accordingly been no violation of Article 6 § 1 and Article 1 of Protocol No. 1.

II. OTHER ALLEGED VIOLATIONS OF THE CONVENTION

22. The applicant also raised other complaints under Articles 6 and 13 of the Convention and Article 3 of Protocol No. 7.

23. However, 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.

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

FOR THESE REASONS, THE COURT, UNANIMOUSLY,

1. *Declares* the complaint concerning non-enforcement of the judgment admissible and the remainder of the application inadmissible;

2. *Holds* that there has been no violation of Article 6 § 1 of the Convention and Article 1 of Protocol No. 1.

Done in English, and notified in writing on 24 April 2014, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

André Wampach
Deputy Registrar

Khanlar Hajiyev
President