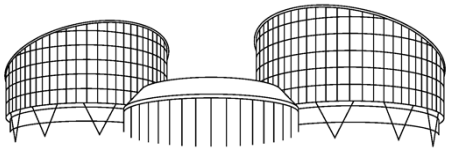

EUROPEAN COURT OF HUMAN RIGHTS
COUR EUROPÉENNE DES DROITS DE L'HOMME

FIRST SECTION

CASE OF GURGACH v. RUSSIA

(Application no. 10122/04)

JUDGMENT

STRASBOURG

19 June 2014

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

In the case of Gurgach v. Russia,

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

Mirjana Lazarova Trajkovska, *President,*
Paulo Pinto de Albuquerque,
Ksenija Turković, *judges,*

and André Wampach, *Deputy Section Registrar,*

Having deliberated in private on 27 May 2014,

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

PROCEDURE

1. The case originated in an application (no. 10122/04) 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 Igor Antonovich Gurgach ("the applicant"), on 5 February 2004.

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

3. On 12 June 2007 the application was communicated to the Government. In accordance with the pilot judgment *Burdov v. Russia (no. 2)* (no. 33509/04, ECHR 2009), the application was adjourned pending its resolution at the domestic level.

4. The Government later informed the Court that the judgment in the applicant's favour had been enforced within reasonable time and requested the Court to consider the application on the merits. The Court therefore decided to resume examination of the present case.

THE FACTS

I. THE CIRCUMSTANCES OF THE CASE

5. The applicant was born in 1950 and lives in Murmansk.

A. Judgment of 10 June 2002 in the applicant's favour

6. The applicant brought proceedings against the Murmansk Regional branch of the Pension Fund ("the initial respondent") seeking to have his pension recalculated in view of the fact that he worked in the Far North of

Russia and had become entitled to preferential conditions of retirement. The applicant relied on the provisions of the 1993 Act on Guarantees and Compensations for Persons Working and Residing in the Far North ("the Far North Act"). The respondent authority disagreed, stating that provisions of the Pensions Act (in force as of 1 January 2002) were to be applied and that those provisions did not contain any basis for the requested increase.

7. On 10 June 2002 the Oktyabrskiy District Court of Murmansk ("the District Court") granted the applicant's claim and found that the Far North Act remained in force and was applicable to the dispute at stake. The court ordered the Murmansk Regional Department of the Pension Fund to recalculate his pension in accordance with the preferential conditions and to pay him the arrears for the period from 1 January 2002 to 30 June 2002 in the amount of 1,642.64 Russian roubles (RUB) and to further recalculate his pension in line with the applicable provisions of the pensions law, that is to increase it at a time and a half rate.

8. The respondent authority appealed, arguing an incorrect application of the domestic law. On 30 October 2002 the Murmansk Regional Court dismissed the appeal and upheld the judgment.

B. Request to modify the way of execution and the change of the respondent

9. On 27 January 2003 the respondent authority requested the district court to modify the way of execution, arguing that the Oktyabrskiy District Department of the Pensions Fund was a due authority to enforce the judgment.

10. On 12 February 2003 the initial respondent claimed suspension of the enforcement proceedings pending determination of the request.

11. On 13 February 2003 the District Court granted the request.

12. On 19 February 2003 the same court ordered that the judgment was to be enforced by the Oktyabrskiy District Department of the Pensions Fund ("the District Department").

13. On 6 March 2003 the District Department challenged the above decision. On 10 April 2003 the Murmansk Regional Court dismissed the appeal and upheld the Ruling of 19 February 2003.

C. Payment of the lump sum to the applicant

14. On 21 January 2003 the bailiffs' service recovered RUB 1,642.64 from the District Department. The payment order erroneously defined the purpose of the payment as "reimbursement of the transportation expenses". The District Department challenged the recovery as unlawful, referring to the error in the documents. On 29 April 2003 the judicial award in the amount of RUB 1,642.64 was paid to the applicant.

D. Proceedings concerning a fine imposed on the Head of the District Department

15. On 24 September 2003 the bailiffs' service fined the head of the District Department for the failure to comply with the judgment in the applicant's favour. The head of the District Department challenged that decision. According to the Government, on 22 December 2003 the District Court adjourned the enforcement proceedings pending determination of a dispute until 7 April 2004. It appears that the proceedings were resumed after that date. The Government did not provide copies of the respective documents.

E. Quashing of the judgment owing to newly discovered circumstances and further developments

16. On 29 January 2004 the Constitutional Court of the Russian Federation reviewed constitutionality of certain legal provisions concerning calculation of the pensions and clarified how to apply the law.

17. On 25 June 2004 the District Court granted the request by the District Department of 14 April 2004 to reopen the case owing to a newly discovered circumstance as defined in Article 392 of the Code of Civil Procedure, namely the binding clarifications of the Constitutional Court of 29 January 2004. The court decided to annul the judgment and to remit the case for a fresh examination.

18. On 2 September 2004 District Court examined the case afresh and dismissed the applicant's claims. The applicant did not appeal against the judgment.

19. On 19 October 2004 the District Court ordered the applicant to reimburse RUB 1,642.64 paid to him under the judgment of 10 June 2002. The applicant appealed. On 15 December 2004 the Murmansk Regional Court dismissed the appeal and upheld the judgment.

20. The Court was notified of the events outlined in paragraphs 16-19 above by the Government on 11 September 2007, date of the submission of their observations.

II. RELEVANT DOMESTIC LAW

21. Article 392 of the Code of Civil Procedure, as in force at the material time, contained a list of situations which could justify the reopening of a case which has already been completed, on account of newly discovered circumstances. In particular, the grounds for reconsideration included significant circumstances which had not been- and could not have been known to the party who applied for reconsideration (Article 392 § 2 (1)).

THE LAW

I. THE GOVERNMENT'S OBJECTION AS TO ABUSE OF PETITION

22. The Government submitted that the applicant had not informed the Court of the quashing of the judgment. In their view, such a failure amounted to an abuse of the right of application within the meaning of Article 35 § 3 (a) of the Convention which, insofar as relevant, reads as follows:

> "The Court shall declare inadmissible any individual application submitted under Article 34 if it considers that the application is incompatible with the provisions of the Convention or the Protocols thereto, manifestly ill-founded, or an abuse of the right of individual application."

23. The Court reiterates that, except in extraordinary cases, an application may only be rejected as abusive if it was knowingly based on untrue facts (see *Akdivar and Others v. Turkey*, 16 September 1996, §§ 53-54, *Reports of Judgments and Decisions* 1996-IV; *I.S. v. Bulgaria* (dec.), no. 32438/96, 6 April 2000; *Varbanov v. Bulgaria*, no. 31365/96, § 36, ECHR 2000-X). The Court further reiterates that applicants should keep it informed of all circumstances relevant to the application.

24. The Court notes that the applicant has indeed failed to inform it without undue delay of several developments in his case. However, in the circumstances of the present case, it does not consider this failure, although regrettable, to amount to an abuse of the right of petition (see *Plekhova v. Russia*, no. 42752/04, § 19, 31 January 2008). The Court therefore rejects the Government's objection.

II. ALLEGED VIOLATION OF ARTICLE 6 OF THE CONVENTION AND ARTICLE 1 OF PROTOCOL No. 1 ON ACCOUNT OF NON-ENFORCEMENT

25. The applicant complained under Article 6 of the Convention about non-enforcement of the judgment of 10 June 2002 in his favour. The Court will examine this complaint under Article 6 of the Convention and Article 1 of Protocol No. 1. These provisions, 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 ...”

26. The Government argued that the applicant’s complaint was incompatible *ratione materiae*. According to them, Article 6 did not apply and the applicant did not have a legitimate expectation amounting to a possession since the judgment in his favour had been quashed on 2 September 2004, and he had omitted to appeal against the later decision. Further, he had failed to exhaust the domestic remedies, since he had not applied for an index-linking of the initial award. The award in the part concerning the lump sum had been executed on 21 January 2003. As regards the recalculation of the pension, the period between 31 October 2002 and 9 April 2003 had been justified by the suspension of the enforcement proceedings on 13 February 2003, and the period between 22 December 2003 and 7 April 2004 by another suspension order pending the determination of the pension fund’s complaint against the bailiffs concerning an allegedly unlawfully imposed fine. In any event, the delay in enforcement was justified because, first, the initial judgment had been based on an incorrect application of the domestic pensions law. Second, the non-enforcement was justified by the quashing of the initial award which, in its turn, had not breached the legal certainty principle. Indeed, the Constitutional Court’s ruling constituted a new circumstance. The annulment was necessary to ensure a uniform application of the domestic law. Therefore, in any event, the complaint was manifestly ill-founded.

27. The applicant maintained his claim. He emphasised that the award in his favour comprised two distinct parts. While the award in respect of the lump sum had indeed been paid to him without an undue delay, the remainder of the judgment ordering to index-link his pension had never been executed. He disagreed with the Government’s argument that either the quashing or the incorrect application of the pensions law justified the delay. He submitted that the scope of his complaint was precisely the authorities’ failure to comply with the judgment during one year and eight months prior to its quashing and submitted that until 14 April 2004, date of the request for the review of the judgment, the authorities had never attempted to interpret the applicable pensions law, let alone challenge its application to his case.

A. Admissibility

28. As regards the Government’s objection that the applicant’s complaint under Article 6 § 1 of the Convention and Article 1 of Protocol No. 1 is incompatible *ratione materiae*, the Court notes that the Government have raised an identical objection in many cases concerning the reopening of proceedings in pension disputes owing to so-called “newly discovered circumstances (see, among many others, *Yerogova v. Russia*,

no. 77478/01, §§ 23-26, 19 June 2008, with further references). The Court sees no reason to depart from those findings in the present case and dismisses the objection.

29. Similarly, as regards exhaustion of domestic remedies, the Court has already found that the suggested remedy was ineffective (see, in so far as relevant, *Burdov (no. 2)*, cited above, §§ 103 and 106-107; and *Moroko v. Russia*, no. 20937/07, §§ 25-30, 12 June 2008).

30. The Court further takes cognisance of the existence of the remedy introduced by the federal laws № 68-FZ and № 69-FZ in the wake of the pilot judgment adopted in the case of *Burdov (no. 2)* (cited above). The Court recalls that in the above pilot judgment it stated that it would be unfair to request the applicants whose cases have already been pending for many years in the domestic system and who have come to seek relief at the Court to bring again their claims before domestic tribunals (*Burdov (no. 2)*, cited above, § 144). In line with this principle, and having regard to the specific circumstances of the case, namely the quashing of the impugned judicial award some six years before the introduction of the new remedy, the Court decides to examine the present application on its merits. However, the fact of examination of the present case on its merits should in no way be interpreted as prejudging the Court's assessment on the quality of the remedy.

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

B. Merits

32. 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). Turning to the instant case, the Court observes that on 10 June 2002 the domestic court made a monetary award in the applicant's favour and ordered to recalculate his pension. This judgment which entered into force on 30 October 2002. As regards the lump sum, the Court accepts that the payment had been made to the applicant on 29 April 2003 (see paragraph 14 above). As regards the requirement to recalculate the pension, it is a common ground between the parties that the award in this part has not been enforced.

33. The Court will now examine whether the arguments submitted by the Government are capable of justifying the delay.

34. The Government submitted at the outset that the judgment could not be enforced due to its annulment on 25 June 2004 which, in its turn, was compatible with the legal certainty principle. The Court reiterates that its task in the present case is not to assess whether the quashing of the judgment as such was compatible with the Convention. It rather has to

decide whether the quashing was capable of justifying the failure to enforce the judgment (see *Sukhobokov v. Russia*, no. 75470/01, § 26, 13 April 2006). The Court is unable to accept the Government's argument in the present case for the following reasons.

35. The Court reiterates that for the sake of legal certainty implicitly required by Article 6, final judgments should generally be left intact. They may be disturbed only to correct fundamental defects (see *Ryabykh v. Russia*, no. 52854/99, §§ 51–52, ECHR 2003-IX). Quashing of judgments because of newly-discovered circumstances is not by itself incompatible with this requirement, but the manner of its application may be (see *Pravednaya v. Russi*a, no. 69529/01, §§ 27–34, 18 November 2004). The Court notes from the domestic law provisions in force at the material time that newly-discovered circumstances were circumstances that existed during the trial, remained hidden from the court, and became known after trial. In the present case, the Constitutional Court provided its binding interpretation of the relevant domestic law provisions on 29 January 2004. The Court has already found in several cases that, since the interpretation of the relevant domestic law post-dated the initial judgment, it did not justify the quashing (see *Yerogova,* cited above, § 33). Having regard to the facts of the present application, the Court sees no reason to distinguish it from the previous cases and finds that by granting the pension authority's request to set aside the final judgment of 10 June 2002 the Town Court failed to respect the principle of legal certainty.

36. The Court further reiterates that the quashing of a judgment in a manner which has been found to have been incompatible with the principle of legal certainty and the applicant's "right to a court" cannot be accepted as justification for the failure to enforce that judgment (see *Sukhobokov,* cited above, § 26). In the present case the judgment in the applicant's favour was enforceable until at least 25 June 2004 and it was incumbent on the State to abide by its terms (see, among others, *Velskaya v. Russia*, no. 21769/03, § 18, 5 October 2006). However, in the present case the State avoided paying the judgment debt for one year and eight months.

37. It remains now to be ascertained whether the reasons relied upon by the Government were capable of justifying that delay. In fact, the crux of the applicant's complaint as maintained in the observations is exactly the authorities' failure to comply with the judgment in his favour during the period between 30 October 2002, date of the judgment's entry into force, and 25 June 2004, date of the quashing.

38. First, the Court agrees with the applicant that the Government's reference to an incorrect application of the domestic law in the present case as a reason for non-enforcement sits ill with the fact that until 14 April 2004 neither the initial respondent nor the District Department had attempted to challenge the judgment of 10 June 2002 on that ground.

39. Second, as regards two episodes of the adjournment of the enforcement proceedings referred to by the Government, the Court reiterates that complexity of the domestic enforcement procedure cannot relieve the State of its obligation under the Convention to guarantee to everyone the right to have a binding and enforceable judicial decision enforced within a reasonable time *(Burdov (no. 2),* cited above, § 70). In particular, the Court notes, as regards the adjournment between 22 December 2003 and 7 April 2004, that the parties had not submitted any documents in that respect. In any event – and especially in the absence of the relevant documents – the Court does not see a reason how the District Department's challenge of a fine imposed on them could have possibly had any bearing on the authorities' obligation under the Convention to comply with its obligation to enforce the judicial award within reasonable time. Therefore, the Court considers that this period was imputable to the authorities. As regards the period between 31 October 2002 and 9 April 2003, the Court finds it difficult to accept that an adjournment of the enforcement proceedings requested on 12 February 2003 – and ordered as of 13 February 2003 (see paragraphs 10-11 above) – could have justified the authorities' inaction between 31 October 2002 and 11 February 2003.

40. Thus, the Court considers that the reasons cited by the Government are not capable of justifying the State's failure to comply with the judgment in the applicant's case. The Court finds that by failing, for one year and eight months, to comply with the enforceable judgment in the applicant's favour the domestic authorities impaired the essence of his right to a court and prevented him from receiving the money he could reasonably have expected to receive.

41. The foregoing considerations are sufficient to enable the Court to conclude that the authorities' failure to ensure the enforcement of the judgment of 10 June 2002 amounts to a violation of Article 6 § 1 of the Convention and Article 1 of Protocol No. 1.

III. APPLICATION OF ARTICLE 41 OF THE CONVENTION

42. Article 41 of the Convention provides:

> "If the Court finds that there has been a violation of the Convention or the Protocols thereto, and if the internal law of the High Contracting Party concerned allows only partial reparation to be made, the Court shall, if necessary, afford just satisfaction to the injured party."

A. Damage

43. The applicant claimed 10,000 euros (EUR) in respect of non-pecuniary damage.

44. The Government contested the claim as excessive and ill-founded.

45. The Court accepts that the applicant suffered distress and frustration due to the authorities' failure to enforce the judgment in his favour for one year and eight months. Deciding on an equitable basis and with reference to all relevant factors (see *Burdov (no. 2)*, cited above, §§ 154-57), the Court awards the applicant EUR 1,500 in respect of non-pecuniary damage, plus any tax that may be chargeable, and rejects the remainder of his claims under that head.

B. Costs and expenses

46. The applicant did not submit any claims for costs and expenses. The Court accordingly sees no reason to make an award under this head.

C. Default interest

47. The Court considers it appropriate that the default interest rate should be based on the marginal lending rate of the European Central Bank, to which should be added three percentage points.

FOR THESE REASONS, THE COURT, UNANIMOUSLY,

1. *Declares* the application admissible;

2. *Holds* that there has been a violation of Article 6 of the Convention and Article 1 of Protocol No. 1 thereto on account of non-enforcement of the judgment of 10 June 2002 in the applicant's favour;

3. *Holds*

   (a) that the respondent State is to pay the applicant, within three months, EUR 1,500 (one thousand and five hundred euros), plus any tax that may be chargeable, in respect of non-pecuniary damage, to be converted into Russian roubles at the rate applicable at the date of settlement;

   (b) that from the expiry of the above-mentioned three months until settlement simple interest shall be payable on the above amount at a rate equal to the marginal lending rate of the European Central Bank during the default period plus three percentage points;

4. *Dismisses* the remainder of the applicant's claim for just satisfaction.

Done in English, and notified in writing on 19 June 2014, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

André Wampach
Deputy Registrar

Mirjana Lazarova Trajkovska
President