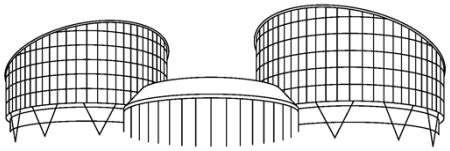

EUROPEAN COURT OF HUMAN RIGHTS
COUR EUROPÉENNE DES DROITS DE L'HOMME

FIRST SECTION

CASE OF LUKINYKH v. RUSSIA

(Application no. 34822/04)

JUDGMENT

STRASBOURG

10 July 2014

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

In the case of Lukinykh v. Russia,

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

Khanlar Hajiyev, *President,*
Julia Laffranque,
Dmitry Dedov, *judges,*

and André Wampach, *Deputy Section Registrar,*

Having deliberated in private on 17 June 2014,

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

PROCEDURE

1. The case originated in an application (no. 34822/04) 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, Ms Yevlampiya Sergeyevna Lukinykh ("the applicant"), on 19 August 2004.

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

3. On 25 April 2008 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 enforcement of the domestic judgment in the applicant's favour was impossible because it had been quashed by way of the supervisory-review proceedings 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 1937 and lives in Nizmennoye, the Kaliningrad Region.

6. In the 1990s the applicant subscribed to a State savings scheme which would entitle her to receive a passenger car in 1994. She paid the car's full value but never received the car. The applicant brought the court action

against the authorities, claiming the full monetary value of the special-purpose settlement orders for purchasing of a car.

7. On 19 August 2002 the Yakutsk Town Court of the Sakha (Yakutiya) Republic allowed the applicant's action. The court found that the State commodity bonds, including the special-purpose settlement orders, were to be recognised as the State internal debt, and should be settled at the expense of the federal budget. With reference to the State Commodity Bonds Act of 1995 as amended on 2 June 2000 the court noted that the compensation to the bearers of special-purpose settlement orders that gave the right to purchase passenger cars in 1993-1995 was to be paid in 2002-2003. The court awarded the applicant 115,000 Russian roubles against the Ministry of Finance of the Russian Federation.

8. On 18 September 2002 the Supreme Court of the Sakha (Yakutiya) Republic upheld the judgment and it became final. The award remained unenforced.

9. According to the Government's observations of 23 October 2008, on 16 September 2004 the Presidium of the Supreme Court of the Sakha (Yakutiya) Republic reviewed the lower courts' judgments by way of the supervisory review proceedings, acting upon a relevant request by the respondent authority. The Presidium found that the lower courts had failed to take into account the provisions of the amended State Commodity Bonds Act and the Government's Resolution no. 1006 and therefore had misapplied the domestic law. The Presidium annulled the judgment of 19 August 2002 and the appeal decision of 18 September 2002 and delivered a new judgment in which it dismissed the applicant's claim in full.

II. RELEVANT DOMESTIC LAW

10. On 2 June 2000, section 3 of the State Commodity Bonds Act (federal law no. 86-FZ of 1 June 1995) providing that the special-purpose settlement orders were to be recognised as the State internal debt was amended to read, in the relevant parts, as follows:

> "To set, in the [State Programme for the redemption of the State internal debt of the Russian Federation], the following sequence and terms of redemption of State commodity bonds, depending on the type of the bond:
>
> - in respect of bearers of special-purpose settlement orders that gave the right to purchase passenger cars in 1993-1995 – payment of monetary compensation equal to a part of the value of the car described in the order, as determined on account of the percentage of the part of the full value of car paid by the owner by 1 January 1992 (in accordance with the price scales in force until 1 January 1992), as well as the price of the cars determined in co-ordination with car manufacturers at the moment of redemption."

11. On 27 December 2000 the Government approved, by Resolution no. 1006, the State Programme for the redemption of the State internal debt

of the Russian Federation arising from State commodity bonds in the period of 2001-2004. Paragraph 3 of the Programme set out that the State commodity bonds were to be redeemed by way of payment of pecuniary compensation.

12. For a summary of other relevant provisions on the State commodity bonds, see *Grishchenko v. Russia* (dec.), no. 75907/01, 8 July 2004.

THE LAW

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

13. The applicant complained under Articles 13 and 17 of the Convention and Article 1 of Protocol No.1 thereto about non-enforcement of the judgment of 19 August 2002 in her 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 ..."

14. The Government stated that the applicant had failed to apply to the bailiffs' service, as well as to lodge the claim for compensation of damages under Article 208 of the Code of Civil Procedure. In any event, they argued that the judgment was not executed "for the objective reasons", because it had been quashed by way of the supervisory-review procedure. They submitted that the supervisory-review proceedings were held in compliance with the domestic law requirements, and the Presidium had reversed the judgment because of a serious violation of substantive law. They provided detailed information on the material norms allegedly misinterpreted by the first instance court and pointed out that the lower courts had failed to take into account the clarifications on the matter issued by the Supreme Court of Russia, and concluded that the proceedings before the lower courts were tarnished with a fundamental defect.

15. The applicant maintained her complaint, stating that there had not been any objective reason absolving the authorities from their obligation to pay the judgment debt.

A. Admissibility

16. As regards exhaustion of domestic remedies, the Court has already found that the suggested remedies are ineffective (see, among others, *Burdov (no. 2)*, cited above, §§ 103 and 106-16; and *Moroko v. Russia*, no. 20937/07, §§ 25-30, 12 June 2008).

17. 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.

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

B. Merits

19. 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 19 August 2002 the domestic court made a monetary award in the applicant's favour. This judgment which entered into force one month later was not enforced.

20. The Government submitted that the judgment could not be enforced due to its quashing on 16 September 2004. 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.

21. Turning to the Government's arguments concerning the reasons for the quashing, the Court reiterates that the annulment by way of supervisory review of a judicial decision which has become final and binding may render the litigant's right to a court illusory and infringe the principle of legal certainty (see, among many other authorities, *Ryabykh v. Russia*, no. 52854/99, §§ 56-58, 24 July 2003). Departures from that principle are justified only when made necessary by circumstances of a substantial and compelling character (see *Kot v. Russia*, no. 20887/03, § 24, 18 January 2007). The Court observes that in the case at hand the judgment was set aside by way of a supervisory review solely on the ground that the lower courts had incorrectly applied the substantive law. The Court reiterates its constant approach that in the absence of a fundamental defect in the previous proceedings a party's disagreement with the assessment made by the first-instance and appeal courts is not a circumstance of a substantial and compelling character warranting the quashing of a binding and enforceable judgment and re-opening of the proceedings on the applicant's claim. The Court has on several occasions found that the quashing of the final and binding judgment solely for the reason of the misapplication of the domestic law by the lower courts was in breach of the legal certainty principle in a number of cases concerning very similar sets of facts (see, among many others, *Sizintseva and Others v. Russia*, nos. 38585/04, 2795/05, 18590/05, 24012/07 and 55283/07, §§ 31-32, 8 April 2010, and *Markovtsi and Selivanov v. Russia*, nos. 756/05 and 25761/05, § 20, 23 July 2009). The Government did not put forward any arguments which would enable the Court to reach a different conclusion in the present case. The Court accordingly concludes that the quashing of the judgment of 19 August 2002 did not respect the principle of legal certainty.

22. 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 16 September 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, and *Markovtsi and Selivanov,* cited above, § 29). However, in the present case the State avoided paying the judgment debt for two years.

23. Thus, the Court considers that the reason cited by the Government is 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 two years, to comply with the enforceable judgment in the applicant's favour the domestic authorities impaired the essence of her right to a court and

prevented her from receiving the money he could reasonably have expected to receive.

24. The foregoing considerations are sufficient to enable the Court to conclude that the authorities' failure to ensure the enforcement of the judgment of 19 August 2002 amounts to a violation of Article 6 § 1 of the Convention and Article 1 of Protocol No. 1.

II. ALLEGED VIOLATION OF ARTICLE 13 OF THE CONVENTION

25. Lastly, the applicant complained under Article 13 of the Convention that there had been no effective remedy at her disposal in respect of the non-enforcement. The relevant provision reads as follows:

> "Everyone whose rights and freedoms as set forth in [the] Convention are violated shall have an effective remedy before a national authority notwithstanding that the violation has been committed by persons acting in an official capacity."

26. The Court considers that this complaint should be declared admissible. However, having regard to its above findings (see, in particular, paragraph 17 above), the Court does not find it necessary to consider separately the applicant's complaint under Article 13 in the present case (see, for a similar approach, *Tkhyegepso and Others v. Russia*, nos. 44387/04, 2513/05, 24753/05, 34770/07, 37169/07, 54527/07, 21648/08, 42081/08, 56022/08, 59873/08, 671/09 and 4555/09, §§ 21-24, 25 October 2011).

III. APPLICATION OF ARTICLE 41 OF THE CONVENTION

27. 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

28. The applicant claimed 275,000 Russian roubles (RUB) representing the full value of the passenger car in 2008 in respect of pecuniary damage and RUB 1,000,000 in respect of non-pecuniary damage.

29. The Government contested those claims as unfounded and excessive. They noted that by virtue of the judgment of 19 August 2002 the applicant was awarded a lump sum, and not the value of a specific car. In any event, they challenge the method of calculation of the car price provided by the applicant as incorrect and unreliable.

30. As regards the claim for pecuniary damage, the Court notes that on 19 August 2002 the domestic court awarded the applicant the lump sum of RUB 115,000, and judgment in the applicant's favour has not been enforced. It accordingly awards the applicant the equivalent in euros of the domestic award in the applicant's favour, that is 3,345 euros (EUR), in respect of pecuniary damage, plus any tax that may be chargeable. As regards the outstanding sum claimed by the applicant, the Court accepts the Government's argument and rejects the remainder of the claim in respect of pecuniary damage.

31. As regards the claim for non-pecuniary damage, the Court accepts that the applicant suffered distress and frustration due to the authorities' failure to enforce the judgment in her favour for two years. 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 her claims under that head.

B. Costs and expenses

32. The applicant also claimed RUB 6,500 for the costs and expenses incurred before the domestic courts and in the Strasbourg proceedings. She submitted three receipts in respect of three payments in the amount of RUB 3,000 for completing the application form, RUB 2,500 for preparation of the observations and RUB 1,000 for preparation of the complaint against the bailiffs in the domestic proceedings.

33. The Government challenged the claim in respect of the third payment as irrelevant to the non-enforcement complaint before the Court.

34. According to the Court's case-law, an applicant is entitled to the reimbursement of costs and expenses only in so far as it has been shown that these have been actually and necessarily incurred and were reasonable as to quantum. Regard being had to the documents in its possession and to its case-law, the Court considers it reasonable to grant the claim and to award the sum of EUR 189 covering costs under all heads, plus any tax that may be chargeable to the applicant.

C. Default interest

35. 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 the non-enforcement of the judgment of 19 August 2002;

3. *Holds* that it is not necessary to consider separately the complaints under Article 13 of the Convention;

4. *Holds*
   (a) that the respondent State is to pay the applicant, within three months, the following amounts, to be converted into the currency of the respondent state at the rate applicable at the date of settlement:
      (i) EUR 3,345 (three thousand three hundred and forty-five euros), plus any tax that may be chargeable, in respect of pecuniary damage;
      (ii) EUR 1,500 (one thousand and five hundred euros), plus any tax that may be chargeable, in respect of non-pecuniary damage;
      (iii) EUR 189 (one hundred and eighty-nine euros), plus any tax that may be chargeable to the applicant, in respect of costs and expenses;
   (b) that from the expiry of the above-mentioned three months until settlement simple interest shall be payable on the above amounts at a rate equal to the marginal lending rate of the European Central Bank during the default period plus three percentage points;

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

Done in English, and notified in writing on 10 July 2014, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

André Wampach
Deputy Registrar

Khanlar Hajiyev
President