

Burdov v. Russia (no. 2) - 33509/04

Judgment 15.1.2009 [Section I]

Article 46

Pilot judgment

General measures

Respondent State required to introduce an effective remedy securing redress for non-enforcement or delayed enforcement of judgments and to grant redress to all victims in pending cases of this kind.

Article 41

Authorities' persistent failure to enforce domestic judgments in the applicant's favour without delay despite previous finding of violation by the Court in his case – practice incompatible with the Convention: *non-pecuniary damage award increased*

Facts: From 1997 onwards the applicant repeatedly sued the competent State authorities, seeking payment of social benefits in connection with his participation in emergency operations at the site of the Chernobyl nuclear plant disaster. The courts granted his claims but a number of their judgments remained unenforced for various periods of time. In 2000 the applicant lodged a first complaint with the European Court about the non-enforcement of domestic judicial decisions. In 2002 the Court found violations of Article 6 of the Convention and of Article 1 of Protocol No. 1 (see *Burdov v. Russia*, in Information Note no. 42). In a resolution of 2004 the Committee of Ministers of the Council of Europe indicated that the Government had paid the applicant the sum of just satisfaction provided for in the judgment of 2002 within the time allowed. It further noted the measures taken in respect of the category of persons in the applicant's position and concluded that it had exercised its functions under Article 46 § 2 of the Convention in this case. It recalled at the same time that the more general problem of the non-execution of domestic court decisions in Russia was being addressed by the authorities, under the Committee's supervision, in the context of other pending cases. In the meantime the applicant had obtained further judgments in his favour. They were fully enforced, but some of them with delays ranging from one to almost three years.

Law: The Court found violations of Article 6 of the Convention and of Article 1 of Protocol No. 1 on account of the State's prolonged failure to enforce three domestic judgments ordering monetary payments by the authorities to the applicant.

Article 13 – There was no effective domestic remedy, either preventive or compensatory, that allowed for adequate and sufficient redress in the event of violations of the Convention on account of prolonged non-enforcement of judicial decisions delivered against the State or its entities.

Conclusion: violation (unanimously).

Article 46 – Practice incompatible with the Convention: It was appropriate to apply the pilot-judgment procedure in this case, given the recurrent and persistent nature of the underlying problems, the large number of people affected and the urgent need for speedy and appropriate redress at the domestic level. The important concerns voiced and the findings of various authorities and institutions at the domestic and international level were consonant with some 200 judgments of the Court highlighting the structural problems at issue. These problems did not affect only Chernobyl victims, as in the present case, but also other large vulnerable groups of the Russian population: non-enforcement very frequently occurred in cases concerning the payment of pensions, child allowances and compensation for damage sustained during military service or for wrongful prosecution. Approximately 700 cases concerning similar facts were currently pending and in some instances could lead to the Court finding a second set of violations of the Convention in respect of the same applicants. It was a matter of grave concern that the violations found in the present judgment had occurred several years after its first judgment in the applicant's case, notwithstanding Russia's obligation under Article 46 to adopt, under the supervision of the Committee of Ministers, the necessary remedial and preventive measures. The breaches found thus reflected a persistent structural dysfunction and a practice incompatible with the Convention.

Introduction of an effective domestic remedy: The problems that had led the Court to find violations of Article 6 and Article 1 of Protocol No. 1 required the implementation of comprehensive and complex measures, possibly of a legislative and administrative character, involving various authorities at both federal and local level. The Committee of Ministers was better placed and equipped to monitor the necessary reforms. As regards the violation of Article 13, the Court's findings clearly called for the setting up of an effective domestic remedy or a combination of remedies that would allow adequate and sufficient redress to be granted to the large numbers of people affected by such violations. The Court therefore required the respondent State to introduce a remedy which secured genuinely effective redress for the violations of the Convention on account of the State authorities' prolonged failure to comply with judicial decisions delivered against the State or its entities. Such a remedy should conform to the Convention principles as laid down notably in the instant judgment and be available within six months from the date on which the judgment became final.

Adjournment of proceedings on new applications: The Court further decided to adjourn the proceedings on all new applications lodged after the delivery of the present judgment in which the applicants complained solely of the non-enforcement and/or delayed enforcement of domestic judgments ordering monetary payments by State authorities. The adjournment would be effective for a period of one year after the present judgment became final.

Redress to be granted in pending cases: As to applications lodged before the delivery of the instant judgment, the respondent State was required to grant adequate and sufficient redress, within one year from the date on which the judgment became final, to all victims of the non-payment or unreasonably delayed payment by State authorities of a domestic judgment debt in their favour. In the Court's view, such redress might be achieved through implementation *proprio motu* by the authorities of an effective domestic remedy in these cases or through *ad hoc* solutions such as friendly settlements with the applicants or unilateral remedial offers in line with the Convention requirements. This would apply to all those who had lodged their applications with the Court before the delivery of the present judgment and whose applications had been communicated to the Government. Pending the adoption of domestic remedial

measures by the authorities, the adversarial proceedings in all these cases would be adjourned for one year from the date on which the judgment became final.

Article 41 – The Court determined the size of awards for non-pecuniary damage by reference to such factors as the applicant's age, personal income, the nature and size of the domestic court awards, the length of the enforcement proceedings and other relevant aspects. The applicant's health was also taken into account, as well as the number of judgments that were not properly and/or timeously enforced. Such awards were, in principle, directly proportionate to the period during which a binding and enforceable judgment remained unenforced. In its judgment of 2002 the Court had awarded the same applicant EUR 3,000 in respect of non-pecuniary damage sustained on account of delays ranging between one and three years and concerning three domestic judgments. In the instant case, the same applicant had suffered from comparable delays in respect of similar awards under three other domestic judgments. However, his distress and frustration had been exacerbated by the authorities' persistent failure to honour their debts under the domestic judgments notwithstanding the previous finding of violations by the Court in his case. As a result, the applicant had had no choice but again to seek relief through time-consuming international litigation before the Court. In view of this important element, an increased award of EUR 6,000 in respect of non-pecuniary damage was appropriate.

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