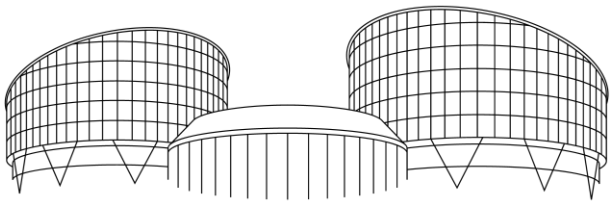

EUROPEAN COURT OF HUMAN RIGHTS
COUR EUROPÉENNE DES DROITS DE L'HOMME

FIRST SECTION

DECISION

Application no. 49716/08
by Valentin Andreyevich ORLOV
against Russia

The European Court of Human Rights (First Section), sitting on 15 November 2011 as a Committee composed of:

Linos-Alexandre Sicilianos, *President,*
Anatoly Kovler,
Erik Møse, *judges,*
and André Wampach, *Deputy Section Registrar,*

Having regard to the above application lodged on 13 September 2008,

Having regard to the decision to apply the pilot-judgment procedure taken in the case of *Burdov (no. 2) v. Russia* (no. 33509/04, ECHR 2009-...),

Having regard to the declaration of 26 August 2010 submitted by the respondent Government requesting the Court to strike the application out of the list of cases and the applicant's reply to that declaration,

Having deliberated, decides as follows:

THE FACTS

The applicant, Mr Valentin Andreyevich Orlov, is a Russian national who was born in 1932 and lives in Moscow. He was represented before the Court by Ms M. Samorodkina, a lawyer practising in Moscow. The Russian Government ("the Government") were represented by Mr G. Matyushkin, the Representative of the Russian Federation at the European Court of Human Rights.

The facts of the case, as submitted by the parties, may be summarised as follows.

The applicant receives compensation for health damage following his participation in the emergency clean-up operations at the Chernobyl nuclear plant site.

By a judgment of 9 February 2001 the Butyrskiy District Court of Moscow granted the applicant's complaint against the actions of the Social Security Centre of the Military Commissariat of Moscow and recovered in his favour unpaid compensation for health damage in the amount of 57,691 Russian roubles (RUB). It also ordered the respondent to pay the applicant a monthly allowance in the amount of RUB 5,445.99 starting from 1 February 2001. Finally, the court ordered that the monthly allowance be adjusted in accordance with the statutory minimum wage.

On 12 February 2001 the parliament enacted a new law providing that compensation for health damage be adjusted in line with the living wage. After this part of the law was declared unconstitutional on 19 June 2002, such compensation was to be adjusted in accordance with the inflation rate.

Since the judgment of 9 February 2001 in the part concerning adjustment of monthly payments was not being enforced, in February 2006 the applicant brought a relevant claim to court, seeking adjustment relative to the minimum wage. After four rounds of proceedings the Meshchanskiy District Court of Moscow granted the applicant's claim in part in a judgment of 19 December 2007 and awarded him RUB 241,242 in arrears, calculated in accordance with the inflation rate. That judgment was upheld on appeal by the Moscow City Court on 13 March 2008 when, in addition to the applicant and his lawyer, the court heard a prosecutor.

The judgment of 19 December 2007 was enforced on 2 June 2008.

Subsequently the applicant brought another claim seeking adjustment of the monthly payments in accordance with the legislation. On 20 August 2008 the Meshchanskiy District Court of Moscow granted his claim and recovered in his favour the arrears in the amount of RUB 35,620.80. It also ordered the respondent to pay the applicant a monthly allowance in the amount of RUB 10,653.91 starting from 1 July 2008 and to adjust that amount in accordance with the legislation.

COMPLAINTS

1. The applicant complained under Article 6 of the Convention and Article 1 of Protocol No. 1 that the authorities had failed to honour the judgment of 9 February 2001 by not calculating the monthly payments due to him in accordance with the method determined in that judgment. He also complained in substance that the judgment of 19 December 2007 had not been enforced on a timely basis.

2. Relying on Article 6 § 1, he further complained about the quality of the law governing enforcement of court judgments that did not award specific amounts, arguing that the bailiffs had not had effective means of enforcing such awards.

3. The applicant complained under the same provision of a violation of the principle of legal certainty in view of the fact that in the judgment of 19 December 2007 the court had used a different method to calculate the compensation.

4. He finally complained under Article 6 § 1 about the length of the proceedings that ended on 13 March 2008 and a violation of the principle of equality of arms in view of the participation of a prosecutor in the appeal hearing of 13 March 2008.

THE LAW

1. The applicant complained that the authorities had failed to honour the judgment of 9 February 2001 by not calculating the monthly payments due to him in accordance with the method determined in that judgment. He relied on Article 6 § 1 of the Convention and Article 1 of Protocol No. 1 which, as 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.

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."

By a letter of 26 August 2010 the Government informed the Court that they acknowleged a delay in the enforcement of the judgment of 9 February 2001 in the part concerning timely adjustment of the monthly payments and proposed to make a unilateral declaration with a view to resolving the issue. They further requested the Court to strike out the application in this part 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 excessive duration of the enforcement of the judgment delivered by the Butyrskiy District Court of Moscow [on] 9 February 2001 in favour of Orlov Valentin Andreevich in regard of adjustment of the sum of monthly payment for compensation for health damage. At the same time the authorities of the Russian Federation do not acknowledge the excessive duration of the enforcement of the judgment, delivered by the Meshchanskiy District Court of Moscow [on] 19 December 2007.

The authorities are ready to pay the applicant *ex gratia* a sum of EUR 4,700 as just satisfaction.

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."

In a letter of 22 October 2010 the applicant disagreed with the suggestion to strike his application out of the Court's list of cases insisting that the judgment of 9 February 2001 had not been enforced as the monthly payments due to him had not been subsequently calculated in accordance with the method set in that judgment. Furthermore, the proposed amount was too low as he would have received much more had the State fully enforced the judgment of 9 February 2001.

The Court recalls 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 under (a), (b) or (c) of paragraph 1 of that Article. Article 37 § 1 (c) enables the Court in particular to strike a case out of its list if:

"for any other reason established by the Court, it is no longer justified to continue the examination of the application".

It also recalls that in certain circumstances, it may strike out an application under Article 37 § 1(c) on the basis of a unilateral declaration by a respondent Government even if the applicants wish the examination of the case to be continued.

The Court recalls that in its pilot judgment cited above it ordered the Russian Federation to

"grant [adequate and sufficient] redress, within one year from the date on which the judgment [became] final, to all victims of non-payment or unreasonably delayed payment by State authorities of a judgment debt in their favour who [had] lodged their

> applications with the Court before the delivery of the present judgment and whose applications [had been] communicated to the Government under Rule 54 § 2 (b) of the Rules of the Court."

In the same judgment the Court also held that:

> "pending the adoption of the above measures, the Court [would] adjourn, for one year from the date on which the judgment [became] final, the proceedings in all cases concerning solely the non-enforcement and/or delayed enforcement of domestic judgments ordering monetary payments by the State authorities, without prejudice to the Court's power at any moment to declare inadmissible any such case or to strike it out of its list following a friendly settlement between the parties or the resolution of the matter by other means in accordance with Articles 37 or 39 of the Convention."

Having examined the terms of the Government's declaration, the Court understands them as intending to give the applicant redress in line with the pilot judgment (see *Burdov (no. 2)*, cited above, §§ 127 and 145 and point 7 of the operative part).

The Court is satisfied that the excessive length of the execution of judgment of 9 January 2001 in the part concerning timely adjustment of the monthly payments is acknowledged by the Government explicitly. The Court also notes that the compensation offered is comparable with Court awards in similar cases, taking account, *inter alia*, of the specific delays in each particular case (see *Burdov (no. 2)*, cited above, §§ 99 and 154).

As to the applicant's objections, the Court reiterates that neither Article 6, nor Article 1 of Protocol No. 1 guarantee a right to social benefits in a particular amount (see, *mutatis mutandis*, *Aunola v. Finland* (dec.), no. 30517/96, 15 March 2001). It is conceivable that a judgment loses its legal force when the legislative framework changes (see *Bulgakova v. Russia*, no. 69524/01, § 41, 18 January 2007). In particular, the Court stated in respect of statutory pension regulations that they are "liable to change and a judicial decision cannot be relied on as a guarantee against such changes in the future" (see *Sukhobokov v. Russia*, no. 75470/01, § 26, 13 April 2006), even if such changes are to the disadvantage of certain welfare recipients (see *Bulgakova*, cited above, § 41). It finds these principles to be applicable in the applicant's case.

The Court notes that the applicant effectively exercised his right to court challenging the actions of the officials in the wake of the judgment of 9 February 2001 and had his monthly compensation adjusted in accordance with the pertinent legislation on two subsequent occasions. It takes special cognisance of the fact that on the last occasion, the applicant sought adjustment of the monthly payments in accordance with the legislation. In view of the above, the Court considers that the applicant no longer has an enforceable claim under the judgment of 9 February 2001. Therefore, his objection must be rejected.

Consequently, the Court considers that it is no longer justified to continue the examination of the applicant's complaint of partial

non-enforcement of the judgment of 9 February 2001. It is also satisfied that respect for human rights as defined in the Convention and the protocols thereto does not require it to continue the examination of this complaint. Accordingly, in this part the application should be struck out of the list.

As regards the question of implementation of the Government's undertakings, the Committee of Ministers remains competent to supervise 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). In any event the Court's present ruling is without prejudice to any decision it might take to restore, pursuant to Article 37 § 2 of the Convention, the present application in respect of the first applicant to the list of cases (see *E.G. v. Poland* (dec.), no. 50425/99, § 29, ECHR 2008-... (extracts)).

2. The applicant further complained in substance of delayed enforcement of the judgment of 19 December 2007.

The Court observes that this judgment was enforced in less than three months after it became final. Having regard to its well-established case-law (see, among others, *Belkin and Others v. Russia* (dec.), nos. 14330/07 et al., 5 February 2009), the Court considers that this period complied with the requirements of the Convention.

This complaint is therefore manifestly ill-founded and must be rejected in accordance with Article 35 §§ 3 (a) and 4 of the Convention.

3. The applicant also made other assorted complaints as described above. 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.

It follows that this part of the application is also 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

Takes note of the terms of the respondent Government's declaration under Article 6 § 1 of the Convention and of the modalities for ensuring compliance with the undertakings referred to therein;

Decides to strike the application out of its list of cases in the part concerning delayed enforcement of the judgment of 9 February 2001, in accordance with Article 37 § 1 (c) of the Convention;

Declares inadmissible the remainder of the application.

André Wampach
Deputy Registrar

Linos-Alexandre Sicilianos
President