THIRD SECTION

CASE OF LITVINOVICH v. RUSSIA

(Application no. 43038/11)

JUDGMENT

STRASBOURG

15 December 2020

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

In the case of Litvinovich v. Russia,

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

 Georgios A. Serghides, *President,* Georges Ravarani, María Elósegui, *judges,*
and Olga Chernishova, *Deputy Section Registrar,*

Having regard to:

the application (no. 43038/11) 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 Vitaliy Andreyevich Litvinovich (“the applicant”), on 16 June 2011;

the decision to give notice to the Russian Government (“the Government”) of the complaints concerning the non-enforcement of the judgments of 2 August 2006 and 27 May 2010 and the lack of an effective remedy, and to declare inadmissible the remainder of the application;

the parties’ observations;

Having deliberated in private on 24 November 2020,

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

INTRODUCTION

1.  This case concerns the authorities’ failure to enforce final judgments in the applicant’s favour in the part concerning the indexation of periodic compensation payments.

1. THE FACTS

2.  The applicant was born in 1958 and lives in Kimry.

3.  The Russian Government (“the Government”) were represented initially by Mr G. Matyushkin, Representative of the Russian Federation to the European Court of Human Rights, and then by his successor in that office, Mr M. Galperin.

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

5.  In 1986 the applicant took part in emergency operations at the Chernobyl nuclear disaster site and suffered from extensive exposure to radioactive emissions. He became entitled to various social benefits in this connection.

* 1. Judgment of 2 August 2006 in the applicant’s favour

6.  On 2 August 2006 the Kimry Town Court of the Tver Region (“the Town Court”) ordered the Military Commission of the Tver Region (“the debtor authority”) to pay the applicant in arrears a lump sum in respect of certain compensation payments, and to make monthly and yearly payments in future. The court set the amounts of the periodic payments at 2,089 Russian roubles (RUB) in respect of monthly food allowance, RUB 10,124 in respect of compensation for health damage and RUB 2,957 in respect of yearly compensation for health damage, and ordered the debtor authority to index-link the monthly and yearly payments. The court did not specify the method of indexation.

7.  The judgment was not appealed against and became enforceable ten days later. Shortly thereafter the lump sum and monthly payments were paid to the applicant. The debtor authority refused to index-link subsequent payments, arguing that it was not competent to increase compensation payments if they had been awarded by a court.

* 1. Indexation proceedings in 2007-2008

8.  On 13 July 2007 the Town Court allowed the applicant’s separate claim for indexation of the periodic payments due to him under the judgment of 2 August 2006 for the year 2007. Referring to the inflation rate in Russia for the reference period, the court ordered the debtor authority to pay the applicant RUB 10,133.87 in arrears and to index-link the monthly and yearly payments on a yearly basis, in accordance with domestic law.

9.  The debtor authority refused to index-link the monthly payments from August 2007 on the basis that the court had failed to specify the amounts due to the applicant. They argued, referring to instructions of the financial unit of their military circuit, that there was no legal mechanism allowing a military commission to index-link amounts awarded by a court and exceed those specified in Law no. 1244-1 of 15 May 1991 (“the Chernobyl Law”) in respect of monthly compensation for health damage and food allowance.

10.  On 8 February 2008 the Town Court clarified its judgment of 13 July 2007 at the applicant’s request, setting the specific amounts of the payments (as applicable on 1 August 2007) in respect of relevant allowances.

11.  According to the Government, shortly after the above clarification the debtor authority paid the arrears and started making monthly payments in the amounts determined by the Town Court.

* 1. Clarification of the judgment of 2 August 2006 given in 2009

12.  On 30 June 2009 the Town Court clarified its judgment of 2 August 2006 at the applicant’s request, specifying that the amounts of compensation were to be index-linked in future in line with indexation coefficients established by governmental decrees. Accordingly, the court explained that subsequent payments in respect of food allowance and compensation for health damage were to be made in higher amounts than those determined in August 2006, and were to be reviewed and increased annually in line with the relevant coefficients. The clarification was not appealed against and became enforceable on 13 July 2009.

* 1. Indexation proceedings in November 2009

13.  On 18 November 2009 the Town Court allowed a claim by the applicant for indexation of the monthly payments for the period between 1 January 2008 and 1 November 2009, increased the periodic payments in line with inflation and ordered the debtor to pay him RUB 81,497 in arrears. It appears that shortly thereafter the debtor authority paid the arrears.

14.  It appears that from November 2009 the debtor authority made periodic payments to the applicant in the amount determined by the court but did not index-link them.

* 1. Complaint of unlawfulness of the debtor authority’s actions

15.  On 27 May 2010 the Town Court allowed a complaint by the applicant, finding that the debtor authority had acted unlawfully, as since November 2009 it had submitted “claims and registers” *(«заявки и реестры»)* in respect of the payments due to the applicant in amounts lower than those established by the final judicial decisions in his favour. The court ordered the debtor authority “to put an end to the identified shortcomings” and to submit “claims and registers” in respect of the compensation due to the applicant in good time and in compliance with the judicial decisions of 2 August 2006 and 30 June 2009. The judgment was not appealed against.

* 1. Refusal of indexation in 2010

16.  In late 2010 the applicant brought a new set of proceedings seeking indexation of the monthly payments for the period starting from November 2009. In a final decision of 23 December 2010 the Town Court discontinued the examination of his claim, finding that he had sought, in essence, to have the amounts awarded to him on 2 August 2006 completely recalculated. In the court’s view, that had to be done in a separate civil action.

* 1. The applicant’s new request for clarification of the judgments

17.  The applicant again asked the Town Court to clarify the judicial decisions of 2 August 2006, 30 June 2009 and 27 May 2010 in his favour.

18.  On 9 March 2011 the Town Court allowed his request in part and clarified that, in accordance with the judgment of 27 May 2010, the amounts due to the applicant (a) were to be index-linked using coefficients established by the government; (b) were to be increased on a yearly basis; and (c) had to be higher than those established in August 2006. The court refused to order payment of any specific sums, so as not to alter the substance of the initial judgment. On the same date the Town Court, in a separate ruling, drew the debtor’s attention to its obligation to comply with the final judicial decisions of 2 August 2006, 30 June 2009 and 27 May 2010, and ordered it to put an end to the violation of the applicant’s rights.

19.  On 3 May 2011 the Tver Regional Court (“the Regional Court”) allowed an appeal by the debtor authority against the above ruling, quashed the clarification of 9 March 2011 and dismissed the applicant’s request in full, finding that the operative part of the judgment of 27 May 2010 was sufficiently clear and did not require further clarification.

* 1. Subsequent developments

20.  In December 2011 the debtor authority requested clarification of the judgment of 13 July 2007, arguing that pursuant to the internal instructions of the Ministry of Defence it could not index-link the amounts awarded by a court if they were higher than those specified in the relevant governmental decrees. The applicant argued in reply that the judgment was sufficiently clear and that, contrary to the debtor authority’s assertion, did not refer to any specific “amounts” contained in some governmental decrees, but to the inflation coefficients determined by the government on a yearly basis.

21.  On 22 December 2011 the Town Court dismissed the request, agreeing with the applicant’s submissions. It held that his right to receive yearly compensation for health damage was provided for by domestic law, which meant that he was not required to reapply for it every year.

22.  In February 2013, when the latest exchange of observations by the parties took place, the judgments of 2 August 2006 and 27 May 2010 remained unenforced in the part concerning the indexation of the monthly and yearly social benefits.

1. RELEVANT LEGAL FRAMEWORK

23.  Article 208 of the Code of Civil Procedure provides for indexation of judicial awards: the court which made the award may adjust it at a party’s request in line with the increase in the official retail price index until the date of actual payment.

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

24.  The applicant complained under Article 6 § 1 of the Convention and Article 1 of Protocol No. 1 about the non-enforcement of the judgments of 2 August 2006 and 27 May 2010 in his favour. The relevant parts of these provisions 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.”

* + 1. Admissibility
			1. Submissions by the parties

25.  The Government submitted that the judgments had been fully enforced in so far as the lump sum payments were concerned. They argued, however, that the relevant judicial decisions had not specified the method of indexation. They noted that the amounts of compensation determined by the domestic courts on 2 August 2006 and 13 July 2007 (as clarified on 30 June 2009 and 8 February 2008 respectively) had significantly exceeded the amounts specified in the Chernobyl Law. Where Russian courts awarded claimants compensation in amounts higher than those specified in legislation, such awards could only be index-linked by the courts. Referring to certain instructions of the financial unit of the Moscow Military Circuit mandatory for the debtor authority, they argued that the indexation coefficients set by the government were inapplicable, and that therefore the debtor authority had had no basis for index-linking the award of 2 August 2006. They further submitted that the applicant had failed to lodge a claim for indexation after 8 February 2008. Accordingly, the Government argued that the application was manifestly ill-founded, as the authorities had taken all the measures necessary to enforce the judgments.

26.  The applicant submitted in reply that he had made multiple complaints to various authorities and had notably lodged several claims for indexation since 2008, but to no avail. He argued that the clarification of 30 June 2009 had provided the debtor authority with sufficiently precise indications as to the method of calculation, and that, contrary to the Government’s submissions, the debtor authority had clearly been able to index-link the payments using the yearly coefficients set by the government.

* + - 1. The Court’s assessment

27.  The Court notes at the outset that the applicant’s right to have his allowances index-linked is not disputed, as indexation was ordered by the Town Court in the initial judgment of 2 August 2006 and upheld by the domestic courts on several occasions (see paragraphs 6, 8, 10, 13, 15, 19 and 21 above, and contrast to *Nachkebiya v Russia* (dec). [Committee], no. 6351/13, 12 May 2020).

28.  In so far as the Government may be understood to be arguing that the applicant failed to exhaust domestic remedies, that is to say, to lodge a new claim for indexation after February 2008, the Court observes that he regularly brought proceedings for indexation of the amounts awarded to him on 2 August 2006 (see paragraphs 8 and 13 above), including for the period from November 2009, but that in the latest round of proceedings the courts disallowed his claim (see paragraph 16 above). Accordingly, the non‑exhaustion objection is to be dismissed.

29.  In addition, the Court observes that the applicant requested the Town Court to clarify the method of indexation on at least three occasions (see paragraphs 10, 12 and 17 above), and his latest request was disallowed in 2011 as there was no need for further clarification (see paragraph 19 above). Otherwise, it is unclear which further steps he had to take either to obtain enforcement or to receive further clarification concerning the method of indexation. It cannot therefore be said that he failed to comply with the minimum requirement of cooperation with the authorities (contrast *Gadzhikhanov and Saukov v. Russia*, nos. 10511/08 and 5866/09, §§ 25-31, 31 January 2012).

30.  Lastly, the Government may be understood as raising a *ratione materiae* objection, referring to the lack of any basis for the applicant’s claim in the domestic law and to the domestic courts’ failure to specify the method of indexation. It is true that the judgments of 2 August 2006 and 27 May 2010 did not specify a method of indexation (see paragraphs 6 and 15 above). In certain cases, the Court has been prepared to accept that a claim was not sufficiently established so as to qualify as an “asset” within the meaning of Article 1 of Protocol No. 1, where the relevant domestic judgment did not specify the amount of the claim or the procedure for payment of any sum due, and where, furthermore, the Court did not have information to allow it to make any calculations as to the amount due to the applicant (see *Nagovitsyn v. Russia*, no. 6859/02, § 38, 24 January 2008). However, the present case is different for the following reasons.

31.  Firstly, as regards the method of indexation, the domestic courts in the indexation and clarification decisions consistently referred to the inflation coefficients published by the government every year. It is not the Court’s task to decide whether the method referred to by the Town Court was correct in terms of domestic law. It is sufficient for the Court to note that the required calculation could be effectively performed using those coefficients, and that the courts had no difficulty in applying them for the period between the initial judgment and November 2009 (see paragraphs 10 and 13 above; see further, for the courts’ acceptance of the applicant’s method of calculation in 2011, paragraphs 20-21 above).

32.  Secondly, since 2009 the domestic courts have consistently rejected the parties’ requests for further clarification of the judgments, precisely on the grounds that those judgments were sufficiently clear in their terms to be enforceable (see paragraphs 19 and 21 above). The Court sees no reason to depart from these findings. It therefore considers that the judgment of 2 August 2006, as subsequently clarified, contained the information necessary to calculate the amounts due to the applicant as a result of indexation (see, *mutatis mutandis*, *Bulgakova v. Russia*, no. 69524/01, § 29, 18 January 2007, and *Shakhirzyanov v. Russia*, no. 39888/02, § 23, 20 November 2008). In the Court’s view, and as appears from the debtor authority’s submissions to the domestic courts (see paragraphs 7, 9 and 20 above), it was not the lack of clarity of the operative parts of the relevant judicial decisions, but rather the absence of a corresponding financial mechanism at the debtor’s level which prevented enforcement of the judgment. The Court further notes that, despite an apparent disagreement with the Town Court’s findings, the debtor authority, for unknown reasons, chose not to appeal against either the judgments of 2 August 2006 and 27 May 2010 or the clarification of 30 June 2009 to a higher court (see paragraphs 7, 12 and 15 above), but preferred to raise their objections to the enforceability of the judicial awards at the enforcement stage.

33.  In view of the above, the Court concludes that the applicant’s claim established by the initial judgment in his favour of 2 August 2006, as clarified on 30 June 2009 and upheld on 27 May 2010, was sufficiently clear and specific to be enforceable (see, *mutatis mutandis*, *Bulgakova*, cited above, §§ 29-31). Accordingly, the proceedings at issue established a particular pecuniary obligation of the State vis-à-vis the applicant. The Court further considers that there existed “a genuine and serious dispute” over a “civil right” which could be said, at least on arguable grounds, to be recognised under domestic law, and that the outcome was decisive for the applicant, as required for the applicability of the civil limb of Article 6 of the Convention (see *Denisov v. Ukraine* [GC], no. 76639/11, § 44, 25 September 2018). The objection is therefore to be dismissed.

34.  The Court further notes that this complaint is neither manifestly ill‑founded nor inadmissible on any other grounds listed in Article 35 of the Convention. It must therefore be declared admissible.

* + 1. Merits

35.  The parties agree that that the lump sums awarded by the Town Court on 2 August 2006 were paid to the applicant without undue delay (see paragraph 7 above). It further appears that the debts accrued as a result of the non-indexation of the initial awards between 2007 and November 2009 were each time paid to the applicant within periods not exceeding one year (see paragraphs 11 and 13 above), which seems reasonable.

36.  However, the parties further agree that, despite the court order, no indexation of the periodic payments took place between November 2009 and at least February 2013 (see paragraphs 14 and 22 above), that is to say, for more than three years. That period is prima facie incompatible with the requirements of the Convention.

37.  Having regard to its above findings (see paragraphs 28‒29 and 31‑32 above), the Court finds that the delay in enforcement cannot be attributed to the applicant. On the other hand, and as regards the authorities’ reference to the absence of a financial mechanism allowing for the requisite indexation, the Court reiterates that the complexity of the domestic enforcement procedure or State budgetary system cannot relieve the State of its obligation to guarantee to everyone the right to have a binding and enforceable judicial decision enforced within a reasonable time (see, among many other authorities, *Burdov (no. 2)*, no. 33509/04, § 70, ECHR 2009). Having regard to its case-law (see *Gerasimov and Others v. Russia*, nos. 29920/05 and 10 others, 1 July 2014), the Court finds that by failing, for years, to comply with the enforceable judgments in the applicant’s favour, the domestic authorities impaired the essence of his right to a court, and that this failure also constituted an unjustified interference with his right to peaceful enjoyment of possessions.

38.  There has accordingly been a violation of Article 6 of the Convention and Article 1 of Protocol No. 1 on account of the non‑enforcement of the judgments of 2 August 2006 (as clarified on 30 June 2009) and 27 May 2010.

* 1. ALLEGED VIOLATION OF ARTICLE 13 OF THE CONVENTION

39.  The applicant complained under Article 13 of the Convention of the lack of an effective remedy in respect of his non-enforcement complaint. Article 13 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.”

40.  The Court has already noted the existence of a new domestic remedy against the non-enforcement of domestic judgments imposing obligations of a pecuniary and non-pecuniary nature on the Russian authorities, introduced in the wake of the *Gerasimov and Others* pilot judgment (cited above) by Federal Law No. 450-FZ amending the Compensation Act of 2010 (for further details and the Court’s assessment of the remedy, see *Shtolts and Others v. Russia*, nos. 77056/14 and 2 others, §§ 30-78, 87-116 and § 123, 30 January 2018). In the light of the adoption of the new domestic remedy and in line with its previous decisions, the Court considers that it is not necessary to examine separately the admissibility and merits of the complaint under Article 13 (see, *mutatis mutandis, Tkhyegepso and Others v. Russia*, nos. 44387/04 and 11 others, §§ 21-24, 25 October 2011).

* 1. APPLICATION OF ARTICLE 41 OF THE CONVENTION

41.  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.”

* + 1. Damage

42.  The applicant claimed 180,000 Russian roubles ((RUB) – approximately 4,425 euros (EUR)) in respect of pecuniary damage and RUB 250,000 (approximately EUR 6,145) in respect of non-pecuniary damage.

43.  The Government contested the claims, arguing that the applicant’s rights had not been violated and that, in any event, the claim in respect of pecuniary damage was unsubstantiated and the amount claimed in respect of non-pecuniary damage was excessive.

44.  As regards the pecuniary damage, in the absence of either an itemised calculation or documents in support of the claim, the Court is not in a position to assess the accuracy of the amount claimed, and accordingly rejects the claim as submitted by the applicant. However, the Court further notes that it has found established that the periodic payments in the applicant’s favour had not been index-linked between November 2009 and at least February 2013 (see paragraph 37 above). Therefore, the applicant was prevented from receiving the amounts he had legitimately expected to receive under the binding and enforceable judicial decisions. Accordingly, in the Court’s view, the State has an outstanding obligation to enforce, by appropriate means, the domestic judicial decisions which remain unenforced in so far as the arrears in index-linked periodic payments for the impugned period are concerned (see, among others, *Pridatchenko and Others v. Russia,* nos. 2191/03 and 3 others, § 68, 21 June 2007). The Court further awards the applicant EUR 3,900 in respect of non-pecuniary damage, plus any tax that may be chargeable, and rejects the remainder of his claim under this head.

* + 1. Costs and expenses

45.  The applicant did not submit a claim in respect of costs and expenses. Accordingly, there is no need to make an award under this head.

* + 1. Default interest

46.  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.

1. FOR THESE REASONS, THE COURT, UNANIMOUSLY,
2. *Declares* the complaint under Article 6 of the Convention and Article 1 of Protocol No. 1 concerning the non-enforcement of the judgments of 2 August 2006 and of 27 May 2010 admissible;
3. *Holds* that there has been a violation of Article 6 of the Convention and Article 1 of Protocol No. 1 on account of the non‑enforcement of the judgments of 2 August 2006 and of 27 May 2010 in the applicant’s favour;
4. *Holds* that there is no need to examine the admissibility and merits of the complaint under Article 13 of the Convention;
5. *Holds* that the respondent State shall ensure, by appropriate means, within three months, the enforcement of the domestic judicial decisions in the applicant’s favour which remain unenforced in so far as the arrears in index-linked periodic payments are concerned;
6. *Holds*
	1. that the respondent State is to pay the applicant, within three months, EUR 3,900 (three thousand nine hundred euros), plus any tax that may be chargeable, in respect of non-pecuniary damage;
	2. 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;
7. *Dismisses* the remainder of the applicant’s claims for just satisfaction.

Done in English, and notified in writing on 15 December 2020, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Olga Chernishova Georgios A. Serghides
 Deputy Registrar President