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Decision on admissibility

[Nagovitsyn and Nalgiyev v. Russia](#)

(application nos. 27451/09 and 60650/09)

[Fakhretdinov and Others v. Russia](#)

(application nos. 26716/09, 67576/09 and 7698/10)

Applications inadmissible

**REMEDY ADOPTED BY RUSSIA IN RESPONSE TO PILOT JUDGMENT
HAS TO BE EXHAUSTED BEFORE APPLYING TO
THE EUROPEAN COURT OF HUMAN RIGHTS**

Principal facts

The applicants are Yuriy Nagovitsyn and Magometgiri Nalgiyev in the first case and Rustem Fakhretdinov, Vladimir Kuzovlev and Valeriy Sergeyev in the second. They are all Russian citizens living in various regions of the Russian Federation.

The cases concerned either the non-enforcement of domestic court judgments in the applicants' favour (***Nagovitsyn and Nalgiyev***) or the excessive length of court proceedings (***Fakhretdinov and Others***).

As regards the first case, Mr Nagovitsyn and Mr Nalgiyev obtained domestic courts' judgments ordering the State authorities to pay them various monetary awards. Those judgments became binding and enforceable in July and May 2007 respectively but remained unexecuted, either fully or in part.

In the second case, the applicants complained that the proceedings in their cases before the Russian courts had lasted for too long: in the case of Rustem Fakhretdinov and Valeriy Sergeyev, the proceedings concerned criminal charges brought against them in 2005 and 2002 for drug dealing and for negligently inflicting bodily harm respectively; in the case of Vladimir Kuzovlev, the proceedings concerned his civil claim brought in 2001 for invalidation of certain gift agreements.

On 15 January 2009 the Court delivered the *Burdov* (no. 2) pilot judgment which ordered the Russian Government to set up an effective domestic remedy securing adequate redress for non-enforcement of domestic judgments. Pending the introduction of a new remedy, the Court decided to take no action in new cases lodged after the pilot judgment and concerning non-enforcement of domestic judgments ordering monetary payments by the Russian authorities. Mr Nagovitsyn's and Mr Nalgiyev's cases were among those.

On 4 May 2010, a Compensation Act entered into force allowing compensation claims in domestic courts for delayed enforcement of domestic judgments against the State and for lengthy judicial proceedings. The Court advised all five applicants to make use of the remedy within the six-month time limit set by the Compensation Act. Mr Nagovitsyn indicated to the Court that he had brought proceedings under that act and obtained a judgment in his favour, against which he appealed, considering the domestic compensation award insufficient. Mr Fakhretdinov also informed the Court that he had brought a claim before the domestic courts in accordance with the new law. Mr Nalgiyev and Mr Sergeyev expressed an intention to lodge such a claim.

Notwithstanding the above developments, all five applicants explicitly maintained their applications before the Court. In particular, Mr Nagovitsyn and Mr Nalgiyev challenged the capacity of the new remedy to provide adequate redress. According to them, it could - at best - lead to inadequate compensation for delays but could not ensure the State's ultimate compliance with the judgment.

Complaints, procedure and composition of the Court

The applications were lodged respectively on 7 May 2009, 20 October 2009, 12 February 2009, 23 November 2009 and 16 December 2009.

The decision on admissibility was given by a Chamber composed of seven judges:

Christos **Rozakis** (Greece), **President**,
Nina **Vajić** (Croatia),
Anatoly **Kovler** (Russia),
Elisabeth **Steiner** (Austria),
Khanlar **Hajiyev** (Azerbaijan),
Dean **Spielmann** (Luxembourg),
Sverre Erik **Jebens** (Norway), **judges**,

and also André **Wampach**, *Deputy Section Registrar*.

Decision of the Court

The Court observed that the new domestic remedy was available to the applicants: their complaints concerned either the length of proceedings or non-enforcement of domestic judgments ordering monetary payments by the State authorities and were thus covered by the new Compensation Act. The applicants' possible claims under the Compensation Act were not time-barred, given notably that the transitional provisions of the Compensation Act allowed the new remedy to be applied to cases brought before the Court before the Compensation Act had entered into force and in which the Court had not yet ruled on admissibility. The Court noted that some of the applicants have already made use of the new remedy.

Examining the effectiveness of the new domestic remedy, the Court then noted that – when deciding on compensation claims - domestic courts were required to apply the Convention criteria as established in the Court's case law. In particular, compensation was awarded in monetary form; the amount of the compensation had to be determined in accordance with the applicants' claims, the circumstances of the case, the length of the period during which the violation took place, the significance of its consequences for the applicant, the principles of reasonableness and fairness, and the practice of the Court. Consequently, the

Compensation Act had been designed to address the issues of delayed enforcement of judgments and excessive length of judicial proceedings in an effective and meaningful manner. While it was true that the domestic courts had not had the time to establish any stable practice under the Compensation Act, the Court saw no reason to believe that the new remedy would not afford the applicants the opportunity to obtain adequate and sufficient compensation for their complaints or that it would not offer reasonable prospects of success.

The Court further recalled that States which had ratified the European Convention on Human Rights could choose solely to introduce a compensatory remedy in respect of undue length of proceedings and non-enforcement of judgments without that remedy being automatically regarded as ineffective. The Court acknowledged that prevention of a violation was, in absolute terms, the best solution and that a remedy designed to prevent delays in the proceedings and to hasten the ultimate recovery of the judgment debt would therefore be most desirable. However, the Court found that the pecuniary compensation that might be awarded to applicants under the Compensation Act would at least be capable of providing adequate and sufficient redress for those violations of the Convention which had allegedly occurred in applicants' cases to date.

The Court acknowledged that an issue could subsequently arise concerning whether the new compensatory remedy would still be effective in a situation in which the defendant State authority persistently failed to honour the judgment debt notwithstanding a compensation award or even repeated awards made by domestic courts under the Compensation Act. However the Court did not find it appropriate to anticipate such an event, nor to decide that issue in theory at the present stage.

The Court also found it appropriate and justified in the circumstances to require the applicants to use the new remedy despite the fact that it had become available only after the introduction of the applications. Once a domestic remedy was introduced, it was of particular importance for related complaints to be considered in the first place and without delay by the national authorities which were better placed than the Court to establish the facts and calculate monetary compensation.

In addition, the Court found it significant that the Compensation Act was introduced by the Russian authorities as a response to the *Burdov* pilot judgment it had adopted a year earlier. One of the aims of the pilot judgment procedure had been precisely to allow the speediest possible redress to be granted at national level to the large numbers of people suffering from the structural problem of non-enforcement. It would therefore be in line with the spirit and logic of the pilot judgment that they now claimed redress for their grievances in the first place through the new domestic remedy.

The Court also attached particular importance to the transitional provision of the Compensation Act (Section 6 § 2) which reflects the Russian authorities' intention to grant redress to those people who had already applied to the Court before the entry into force of the Act. In those circumstances, the continuation of the proceedings before the Court in the applicants' cases and hundreds of similar ones would be at odds with the principle of subsidiarity, which was paramount in the Convention system. The Court noted that the consideration of such cases mainly involved the establishment of basic facts and calculation of monetary compensation – both of which should, as a matter of principle and effective practice, be the domain of national jurisdictions. The Court reiterated that its task, as defined by Article 19, would not be best achieved by taking such cases to judgment in the place of national courts, let alone considering them in parallel with the domestic proceedings.

The Court accepted that it might exceptionally decide, for the sake of fairness and effectiveness, to conclude its proceedings by a judgment in certain such cases, which remained on its list for a long time or had already reached an advanced stage of proceedings. At the same time, the Court decided that it would require, as a matter of principle, that all new cases introduced after the pilot judgment and falling under the Compensation Act be submitted in the first place to the Russian courts.

The Court held however that it might review that position in the future, depending on the Russian courts' capacity to establish consistent case-law under the Compensation Act in line with the Convention requirements. The Court stressed in that connection that the burden of proof as to the effectiveness of the new remedy in practice lied with the Russian Government. Invoking the *Burdov* pilot judgment, the Court reiterated, finally, that the Russian authorities remained under a legal obligation to implement the necessary reforms under the supervision of the Committee of Ministers so as to ensure timely enforcement of domestic judgments. The setting up of domestic remedies, however important, did not relieve States from their general obligation to solve structural problems underlying violations.

The Court concluded that the applicants were required to exhaust the new domestic remedy by pursuing proceedings before the Russian courts and declared their applications in those cases inadmissible.

The decisions are available in English. This press release is a document produced by the Registry; the summary it contains does not bind the Court. The decisions are accessible on its Internet site (<http://www.echr.coe.int>).

Links to Council of Europe relevant documents on the topic:

- [Press release on the *Burdov* pilot judgment of 15 January 2009](#)
- Press releases on Interim Resolutions of the Committee of Ministers [CM/ResDH\(2009\)43](#) and [CM/ResDH\(2009\)158](#)
- [Statement by the Secretary General of 7 May 2010](#)

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The European Court of Human Rights was set up in Strasbourg by the Council of Europe Member States in 1959 to deal with alleged violations of the 1950 European Convention on Human Rights.