CONSEIL DE L'EUROPE

COUNCIL OF EUROPE

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

FIRST SECTION

DECISION

Application no. 76737/01
by Olga Georgiyevna ANDREYEVA
against Russia

The European Court of Human Rights (First Section), sitting on 16 October 2003 as a Chamber composed of:

Mr P. LORENZEN, *President*,
Mr E. LEVITS,
Mrs S. BOTOUCHAROVA,
Mr A. KOVLER,
Mr V. ZAGREBELSKY,
Mrs E. STEINER,
Mr K. HAJIYEV, *judges*,
and Mr S. NIELSEN, *Deputy Section Registrar*,

Having regard to the above application lodged on 28 September 2001,

Having regard to the observations submitted by the respondent Government and the observations in reply submitted by the applicant,

Having deliberated, decides as follows:

THE FACTS

The applicant, Ms Olga Georgiyevna Andreyeva, was a Russian national who was born in 1933 and lived in Shakhty, the Rostov Region. The applicant received a pension as a dependant of her son, Mr Vladimir Babinyan, who had been a clean-up worker at the Chernobyl nuclear accident site and who died in 1998.

In 1999 the applicant brought a civil action against the local social security office to have the amount of her pension adjusted and the arrears paid. On 23 March 1999 the Shakhty District Court of the Rostov Region

granted her claim and made an award against the Shakhty social security office.

When the applicant lodged her application with this Court, the judgment of 23 March 1999 had not been enforced.

On 13 September 2002 the applicant died.

COMPLAINTS

The applicant complained under Article 6 § 1 of the Convention and Article 1 of Protocol No. 1 to the Convention about non-enforcement of a final judgment in her favour.

THE LAW

1. By letter of 26 September 2002 the applicant's son, Mr Georgiy Babinyan, requested the Court to be allowed to take the applicant's place.

The Court notes that in a number of cases in which an applicant died in the course of the proceedings it has taken into account the statements of the applicant's heirs or of close family members expressing the wish to pursue the proceedings before the Court (see, among other authorities, *Deweer v. Belgium*, judgment of 27 February 1980, Series A no. 35, pp. 19-20, §§ 37-38; *X. v. the United Kingdom*, judgment of 5 November 1981, Series A no. 46, p. 15, § 32; *Vocaturo v. Italy*, judgment of 24 May 1991, Series A no. 206-C, p. 29, § 2; *G. v. Italy*, judgment of 27 February 1992, Series A no. 228-F, p. 65, § 2; *Pandolfelli and Palumbo v. Italy*, judgment of 27 February 1992, Series A no. 231-B, p. 16, § 2; *X. v. France*, judgment of 31 March 1992, Series A no. 234-C, p. 89, § 26; and *Raimondo v. Italy*, judgment of 22 February 1994, Series A no. 281-A, p. 8, § 2).

The Court notes that in the instant case the applicant had divorced her husband in 1970 and thereafter she lived with her children, Mr Vladimir Babinyan and Mr Georgiy Babinyan. Mr Vladimir Babinyan was not married and did not have children. After his death, Mr Georgiy Babinyan remained the applicant's only son. Following the death of the applicant (his mother), he has become the only surviving member of the family. Therefore, the Court concludes that Mr Georgiy Babinyan is the applicant's next of kin and only heir and that the present application cannot be struck out of the list of cases for the absence of any heir or close relative who has expressed the wish to pursue an application (see, *a contrario*, *Scherer v. Switzerland,* judgment of 25 March 1994, Series A no. 287, § 31; see also *Malhous v. Czech Republic* (dec.), no. 33071/96, ECHR 2001-XII). It is also essential that Mr Georgiy Babinyan can claim a legitimate interest in

having the proceedings in the applicant's case pursued before the Court. The Court considers it sufficient in this respect that Mr Georgiy Babinyan is the only legal heir of his mother and, therefore, the applicant's claims against the social security office form a part of the estate that accrues to Mr Georgiy Babinyan (see, *mutatis mutandis*, *Malhous v Czech Republic* (dec.), cited above; see also *Karner v. Austria*, no. 40016/98, § 25, 24 July 2003).

The Court therefore recognises Mr Georgiy Babinyan's entitlement to pursue the application in the place of the applicant.

2. By letter of 22 October 2002 the Government expressly acknowledged that there had been a violation of the Convention in the applicant's case and informed the Court that they had paid the arrears and compensation for non-enforcement and were prepared to pay additional compensation for non-pecuniary damage.

On 4 January 2003 the Court received the following declaration from the Government:

> "I declare that the Russian authorities have already paid the sums due under the domestic judgment of which the applicant complains. In addition, we offer to pay the amount of EUR 3,000 to Mr Georgiy Akopovich Babinyan in respect of the application no. 76737/01 on an *ex gratia* basis for the withdrawal of the application brought by Ms Olga Georgiyevna Andreyeva [and] pending before the Court. This sum (EUR 3,000) shall cover any pecuniary and non-pecuniary damage as well as costs, and it will be payable converted in Russian roubles on the date of payment, free of any taxes that may be applicable, within three months after the notification of the decision taken by the Court pursuant to Article 37 § 1 a) and c) of the European Convention on Human Rights. This payment will constitute the final resolution of the case."

On 16 January 2003 the Court received the following declaration signed by Mr Georgiy Babinyan on 16 December 2002:

> "I note the Russian authorities' declaration in the letter of 22 October 2002 and that they have paid the sums due under the domestic judgment. I also note that the Russian authorities are prepared to pay me, within three months after the notification of the decision taken by the Court pursuant to Article 37 § 1 a) and c) of the European Convention on Human Rights, a total sum of EUR 3,000 converted into roubles in respect of the application no. 76737/01 on an *ex gratia* basis, for the withdrawal of the application pending before the Court.
>
> I accept the proposal and withdraw the application, waving any further claims against Russia in respect of the facts of this application."

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 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."

Article 37 § 1 *in fine* states :

> "However, the Court shall continue the examination of the application if respect for human rights as defined in the Convention and the protocols thereto so requires."

The Court has examined carefully the terms of the respondent Government's declaration. Having regard to the nature of the statements contained in the declaration and the amount of compensation proposed, as well as to Mr Babinyan's agreement to the terms of the declaration, the Court considers that it is no longer justified to continue the examination of the application (Article 37 § 1 (c)). The Court also notes that the amount of non-pecuniary damage which the Government are prepared to pay to Mr Babinyan is similar to the amount awarded by the Court to Mr Burdov whose complaints had been based on a similar set of circumstances (see *Burdov v. Russia*, no. 59498/00, judgment of 7 May 2002, ECHR 2002-III; see generally *Aleksentseva and 28 Others v. Russia*, nos. 75025/01 *et seq.*, 4 September 2003).

Moreover, the Court is satisfied that respect for human rights as defined in the Convention and the protocols thereto does not require it to continue the examination of the application (Article 37 § 1 *in fine*).

Accordingly, the application should be struck out of the list.

For these reasons, the Court unanimously

Decides to strike the application out of its list of cases.

Søren NIELSEN	PEER LORENZEN
Deputy Registrar	President