

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

# THIRD SECTION

# DECISION

Application no. 6494/05
Alla Alekseyevna BORISENKO against Russia
and 8 other applications
(see list appended)

The European Court of Human Rights (Third Section), sitting on 7 December 2017 as a Committee composed of:

Luis López Guerra, *President,*
Dmitry Dedov,
Jolien Schukking, *judges,*

and Liv Tigerstedt, *Acting Deputy Section Registrar,*

Having regard to the above applications lodged on the various dates indicated in the appended table,

Having regard to the declarations submitted by the respondent Government requesting the Court to strike the applications out of the list of cases,

Having deliberated, decides as follows:

## FACTS AND PROCEDURE

The list of applicants is set out in the appended table.

The applicants' complaints under Articles 6 § 1 and 13 of the Convention and Article 1 of the Protocol No. 1 concerning the non-enforcement or delayed enforcement of domestic decisions and the lack of any effective remedy in domestic law were communicated to the Russian Government ("the Government"). In application no. 6494/05 the applicant also raised another complaint under the provisions of the Convention.

# THE LAW

Having regard to the similar subject matter of the applications, the Court finds it appropriate to examine them jointly in a single decision.

The Government informed the Court that they proposed to make unilateral declarations with a view to resolving the issues raised by these complaints. They further requested the Court to strike out the applications in accordance with Article 37 of the Convention.

The Government acknowledged the non-enforcement or delayed enforcement of domestic decisions and the lack of any effective remedy in domestic law. They offered to pay the applicants the amounts detailed in the appended table and invited the Court to strike the applications out of the list of cases in accordance with Article 37 § 1 (c) of the Convention. The amounts would be converted into the currency of the respondent State at the rate applicable on the date of payment, and would be payable within three months from the date of notification of the Court's decision. In the event of failure to pay these amounts within the above-mentioned three-month period, the Government undertook to pay simple interest on them, from the 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.

The payment will constitute the final resolution of the cases.

The applicants were sent the terms of the Government's unilateral declarations several weeks before the date of this decision. The Court has not received a response from the applicants accepting the terms of the declarations.

The Court observes that Article 37 § 1 (c) enables it 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".

Thus, it may strike out applications 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 cases to be continued (see the principles emerging from the Court's case-law, and in particular the *Tahsin Acar v. Turkey* judgment (preliminary objections) ([GC], no. 26307/95, §§ 75-77, ECHR 2003-VI)).

The Court has established clear and extensive case-law concerning complaints relating to the non-enforcement or delayed enforcement of domestic decisions (see, for example, *Gerasimov and Others v. Russia,* nos. 29920/05 and 10 others, 1 July 2014).

Noting the admissions contained in the Government's declarations as well as the amount of compensation proposed – which is consistent with the amounts awarded in similar cases – the Court considers that it is no longer justified to continue the examination of the applications (Article 37 § 1 (c)).

In the light of the above considerations, 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 applications (Article 37 § 1 *in fine*).

Finally, the Court emphasises that, should the Government fail to comply with the terms of their unilateral declarations, the applications may be restored to the list in accordance with Article 37 § 2 of the Convention (*Josipović v. Serbia* (dec.), no. 18369/07, 4 March 2008).

In view of the above, it is appropriate to strike the cases out of the list as regards the complaints concerning the non-enforcement or delayed enforcement of domestic decisions and the lack of any effective remedy in domestic law.

The applicant in application no. 6494/05 also raised another complaint under Article 6 of the Convention.

The Court has examined the application and considers that, in the light of all the material in its possession and in so far as the matters complained of are within its competence, this complaint either does not meet the admissibility criteria set out in Articles 34 and 35 of the Convention or does not disclose any appearance of a violation of the rights and freedoms enshrined in the Convention or the Protocols thereto.

It follows that this part of the application must be rejected in accordance with Article 35 § 4 of the Convention.

For these reasons, the Court, unanimously,

*Decides* to join the applications;

*Takes note* of the terms of the respondent Government's declarations in so far as they concern the non-enforcement or delayed enforcement of domestic decisions and the lack of any effective remedy in domestic law, and of the arrangements for ensuring compliance with the undertakings referred to therein;

*Decides* to strike this part of the applications out of its list of cases in accordance with Article 37 § 1 (c) of the Convention;

*Declares* the remainder of the application no. 6494/05 inadmissible.

Done in English and notified in writing on 11 January 2018.

Liv Tigerstedt
Acting Deputy Registrar

Luis López Guerra
President

# APPENDIX

| No. | Application no.<br>Date of introduction | Applicant name<br>Date of birth | Date of receipt of Government's declaration | Date of receipt of applicant's comments, if any | Amount awarded for pecuniary and non-pecuniary damage and costs and expenses per applicant /household (in euros)[i] |
|---|---|---|---|---|---|
| 1. | 6494/05<br>17/01/2005 | **Alla Alekseyevna Borisenko**<br>14/05/1947 | 03/08/2016 | 10/10/2016 | 1,330 |
| 2. | 8064/06<br>21/01/2006 | **Vladimir Aleksandrovich Tyurin**<br>31/01/1952 | 09/12/2015 | 04/02/2016 | 1,490 |
| 3. | 58317/08<br>17/10/2008<br>(3 applicants) | Household<br><br>**Galina Petrovna Shepeleva**<br>05/07/1952<br>**Sergey Vyacheslavovich Shepelev**<br>30/01/1973<br>**Marina Vyacheslavovna Shepeleva**<br>30/10/1977 | 29/09/2016 | | 3,440 |
| 4. | 54463/10<br>05/09/2010 | **Aleksandr Valentinovich Kiselev**<br>25/01/1959 | 16/12/2015 | 22/02/2016 | 3,200 |
| 5. | 7364/11<br>26/01/2011 | **Vecheslav Nikolayevich Kapustnikov**<br>14/02/1959 | 30/09/2016 | | 6,500 |
| 6. | 11007/11<br>12/01/2011 | **Igor Vasilyevich Baburin**<br>18/09/1968 | 16/12/2015 | | 4,480 |
| 7. | 11216/11<br>16/01/2011 | **Vladimir Leonidovich Matveyev**<br>30/01/1963 | 30/09/2016 | | 4,530 |
| 8. | 35179/11<br>19/04/2011 | **Aleksandr Vasilyevich Gusinskiy**<br>05/05/1964 | 30/09/2016 | | 4,810 |
| 9. | 36022/11<br>27/04/2011 | **Sergey Aleksandrovich Kotin**<br>30/04/1962 | 16/12/2015 | 03/02/2016 | 3,790 |

[i]. Plus any tax that may be chargeable to the applicants.