

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

THIRD SECTION

DECISION

Application no. 52119/08
Akhmed Karim-Sultanovich KOKURKHAYEV
against Russia

The European Court of Human Rights (Third Section), sitting on 5 September 2017 as a Committee composed of:

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

and Fatoş Aracı, *Deputy Section Registrar,*

Having regard to the above application lodged on 30 July 2008,

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, Mr Akhmed Karim-Sultanovich Kokurkhayev, is a Russian national, who was born in 1963 and lives in Nesterovskaya.

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

A. The circumstances of the case

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

1. First judgment in the applicant's favour and its subsequent quashing

The applicant is a military pensioner. By the final judgment of 21 February 2007 by the Nazran District Court of the Republic of Ingushetia (as modified on 5 April 2007 by the Supreme Court of Ingushetia) he was awarded 2,790,786.68 Russian roubles (RUB) in respect of compensation for service during the period of the regime of a state of emergency based on the rate available at the material time. The District Court found that the applicant had been eligible for new privileged regime as a result of the retrospective application of the relevant domestic provisions and in the absence of the necessary documents ascertaining that he indeed fall under this privilege.

The judgment was not enforced.

On 22 January 2009 the Supreme Court of the Russia quashed the judgment by way of supervisory review and rejected the applicant's claims, referring to incorrect interpretation of the domestic law by the lower courts.

2. Second judgment in the applicant's favour

On 22 November 2007 the Nazran District Court of Ingushetia ordered the Prosecutor's Office of the Republic of Ingushetia to pay the applicant RUB 987,702 as pension arrears. It appears that the Prosecutor's Office received the judgment on 18 December 2007 that is after the time-limits for appeal had passed. The judgment became final but remained unenforced.

On 19 October 2011 the Presidium of the Supreme Court of the Republic of Ingushetia granted the request of the Prosecutor's Office and extended the time-limits for appeal against the judgment of 22 November 2007. The court in particular found that the judgment of 22 November 2007 was received by a person, Mr. Kh., who had not been authorised to represent the Prosecutor's Office before the court.

On 9 February 2011 the Supreme Court of Ingushetia quashed the judgment of 22 November 2007 upon the appeal lodged by the Prosecutor's Office and remitted the case for examination anew.

On 17 April 2012 the Nazran District Court granted the applicant's claims in part of RUB 529,200 and indexation. The Prosecutor's Office appealed against.

On 14 June 2012 the applicant withdrew his claims.

On 21 June 2012 the Supreme Court of Ingushetia accepted the withdrawal and discontinued proceedings.

B. Relevant domestic law

The relevant domestic law in respect of the additional social benefits is summed up in the Court's decision in the case of *Cherbizhev v. Russia* (dec.) (no. 53155/09, §§ 23-27, 21 February 2017).

COMPLAINTS

The applicant complained under Article 6 of the Convention and Article 1 of Protocol No. 1 to the Convention about non-enforcement of the final judgments in his favour. He further complained under the same Articles about the quashing by way of supervisory review of the judgment of 21 February 2007 as modified on 5 April 2007.

THE LAW

A. Complaint about non-enforcement

The applicant complained that the non-enforcement of the judgments in his favour had violated his property rights. He relied on Article 1 of Protocol No. 1 to the Convention, which provides, insofar as relevant:

> "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 Court notes at the outset that it has already addressed similar issue in the identical cases *Cherbizhev* (cited above) and *Kokurkhayev and Kokurkhayev v. Russia* (dec.) (nos. 8647/09 and 8653/09, 23 May 2017). It thus does not see any ground to depart from the findings in that cases.

The Court recalls that Article 1 of Protocol No. 1 to the Convention does not guarantee, as such, any right to a social benefit of a particular amount (see *Kjartan Ásmundsson v. Iceland*, no. 60669/00, § 39, ECHR 2004-IX). The Court further notes that where the person concerned did not satisfy the legal conditions laid down in domestic law for the grant of any particular form of benefits or pension (see *Bellet, Huertas and Vialatte v. France* (dec.), nos. 40832/98 and 2 others, 27 April 1999), there is no interference with the rights under Article 1 of Protocol No. 1 to the Convention (see *Rasmussen v. Poland*, no. 38886/05, § 71, 28 April 2009).

The Court attaches importance to the fact that additional compensation sought by the applicant originated from a special advantageous scheme to which other retired persons were not entitled to. It further notes that the applicant retained all the rights attaching to his ordinary pension under general regime. Hence, it cannot be said that in the circumstances of this case the applicant was totally divested of his only means of subsistence (see *Da Silva Carvalho Rico v. Portugal* (dec.), no. 13341/14, § 42, 1 September 2015, and *Iwaszkiewicz v. Poland*, no. 30614/06, § 57, 26 July 2011).

In these circumstances, the Court does not consider that the applicant's claim to additional compensation scheme was denied in a manner contrary to Article 1 of Protocol No. 1 to the Convention.

It follows that this complaint is manifestly ill-founded within the meaning of Article 35 § 3 (a) and should be rejected in accordance with Article 35 § 4 of the Convention.

Having regard to its finding above, the Court considers that the applicants' complaint under Article 6 § 1 of the Convention does not require a separate examination.

As regards the applicant's complaint in respect of the non-enforcement of the judgment of 22 November 2007 the Court recalls that individual perceptions encompass not only the monetary aspect of a violation, but also the applicant's general interest in pursuing the case or a fundamental question of principle (see *Shefer v. Russia* (dec.), no. 45175/04, §§ 21 and 23, 13 March 2012). Thus the applicant's behaviour must be consistent with that importance (ibid., §§ 24–26). The Court hence cannot but note that in the instant case the applicant withdrew his application notwithstanding the fact that his claims were partially granted after the quashing of the judgment of 22 November 2007. The Court thus concludes that it was of marginal importance to him.

In addition, the Court notes that respect for human rights is not engaged and that the case has been duly examined by the domestic courts.

Accordingly, this complaint must be declared inadmissible and rejected in accordance with Article 35 §§ 3 (b) and 4 of the Convention.

B. Other complaints

Referring to Article 13 of the Convention the applicant complained about lack of an effective domestic remedy against non-enforcement.

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.

Accordingly, this part of the application is 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,

Declares the application inadmissible.

Done in English and notified in writing on 28 September 2017.

Fatoş Aracı
Deputy Registrar

Luis López Guerra
President