

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

FIRST SECTION

DECISION

This version was rectified on 16 August 2011
under Rule 81 of the Rules of Court

Application no. 19463/04 and other applications
Vitaliy Sergeyevich KOLKHIYEV and Others
against Russia
(see annex for other applications)

The European Court of Human Rights (First Section), sitting on 24 May 2011 as a Chamber composed of:

Nina Vajić, *President,*
Anatoly Kovler,
Peer Lorenzen,
Elisabeth Steiner,
Khanlar Hajiyev,
George Nicolaou,
Julia Laffranque, *judges,*

and Søren Nielsen, *Section Registrar,*

Having regard to the above applications,

Having regard to the decision to apply the pilot-judgment procedure taken in the case of *Burdov (no. 2) v. Russia* (no. 33509/04, ECHR 2009-...),

Having regard to the declarations submitted by the respondent Government requesting the Court to strike the applications out of the list of cases and the applicants' reply to that declaration,

Having deliberated, decides as follows:

THE FACTS

The applicants are Russian nationals whose names and dates of birth are tabulated below.

Mr M. Makarov, Mr T. Botsiyev and Mr I. Gagiyev died after lodging their applications under Article 34 of the Convention. Their successors, Ms Z. Makarova, Ms G. Chipirova and Mr S. Gagiyev respectively indicated their interest in pursuing the proceedings.

The Russian Government ("the Government") were represented by Mr G. Matyushkin, the Representative of the Russian Federation at the European Court of Human Rights.

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

The applicants sued the State authorities in domestic courts for payment of various monetary sums due under the Russian law. The courts held for the applicants and ordered the authorities to pay various amounts in the form of lump sums and/or of periodic payments to be upgraded in line with the inflation in the country. These judgments became binding but the authorities delayed their enforcement.

COMPLAINTS

The applicants complained about the delayed enforcement of the judgments in their favour and, in certain cases, of assorted faults that allegedly accompanied the judicial or enforcement proceedings.

THE LAW

I. LOCUS STANDI

The Court takes note of certain applicants' death and of the interest of their successors in pursuing the proceedings.

The Court reiterates that where an applicant dies during the examination of a case his or her heirs may in principle pursue the application on his or her behalf (see *Ječius v. Lithuania*, no. 34578/97, § 41, ECHR 2000-IX). Furthermore, in some cases concerning non-enforcement of court judgments, the Court recognised the right of the relatives of the deceased applicant to pursue the application (see *Shiryayeva v. Russia*, no. 21417/04, §§ 8-9, 13 July 2006).

The Court notes that the rights at stake in the present case are very similar to those at the heart of the cases referred to above. Nothing suggests that the rights the applicants sought to protect through the Convention mechanism were eminently personal and non-transferable (see *Malhous v. the Czech Republic* [GC], no. 33071/96, § 1, 12 July 2001). The Government did not contend that any of the successors mentioned above had no standing to pursue the cases. Therefore, the Court considers that the applicants' successors have a legitimate interest in pursuing the applications.

II. COMPLAINTS OF NON-ENFORCEMENT

Following the *Burdov (no. 2)* pilot judgment cited above the Government informed the Court of the payment of the domestic court awards in the applicants' favour and submitted unilateral declarations aimed at resolving the issues raised by the applications. By these declarations the Russian authorities acknowledged in various but very similar terms that judgments in the applicants' favour were not enforced in a timely manner (*e.g.* "the excessive duration of the enforcement", "the delay in the enforcement" or "the lengthy enforcement"). They also declared that they were ready to pay the applicants *ex gratia* the sums tabulated below. The remainder of the declarations read as follows:

> "The authorities therefore invite the Court to strike [the applications] out of the list of cases. They suggest that the present declaration might be accepted by the Court as "any other reason" justifying the striking out of the case of the Court's list of cases, as referred to in Article 37 § 1 (c) of the Convention.
>
> The [sums tabulated below], which [are] to cover any pecuniary and non-pecuniary damage as well as costs and expenses, will be free of any taxes that may be applicable. [They] will be payable within three months from the date of notification of the decision taken by the Court pursuant to Article 37 § 1 of the European Convention on Human Rights. In the event of failure to pay [these sums] within the said three-month period, the Government undertake to pay simple interest on [them] from 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.
>
> This payment will constitute the final resolution of the case."

Some applicants agreed to the terms of the Government's declarations. Others failed to reply. A majority disagreed on various grounds, considering most often that the compensation amounts offered by the Government were insufficient.

The Court reiterates that under Article 37 of the Convention it may at any stage of the proceedings strike an application out of its list of cases where the circumstances lead to 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 recalls that in its pilot judgment (*Burdov v. Russia (no. 2)*, cited above) it ordered the Russian Federation to

> "grant [adequate and sufficient] redress, within one year from the date on which the judgment [became] final, to all victims of non-payment or unreasonably delayed payment by State authorities of a judgment debt in their favour who [had] lodged their applications with the Court before the delivery of the present judgment and whose applications [had been] communicated to the Government under Rule 54 § 2 (b) of the Rules of the Court."

In the same judgment the Court also held that:

> "pending the adoption of the above measures, the Court [would] adjourn, for one year from the date on which the judgment [became] final, the proceedings in all cases concerning solely the non-enforcement and/or delayed enforcement of domestic judgments ordering monetary payments by the State authorities, without prejudice to the Court's power at any moment to declare inadmissible any such case or to strike it out of its list following a friendly settlement between the parties or the resolution of the matter by other means in accordance with Articles 37 or 39 of the Convention."

Having examined the terms of the Government's declarations, the Court understands them as intending to give the applicants redress in line with the pilot judgment (see *Burdov (no. 2)*, cited above, §§ 127 and 145 and point 7 of the operative part).

The Court is satisfied that the excessive length of the execution of judgments in the applicants' favour is acknowledged by the Government either explicitly or in substance. The Court also notes that the compensations offered are comparable with Court awards in similar cases, taking account, *inter alia*, of the specific delays in each particular case (see *Burdov (no. 2)*, cited above, §§ 99 and 154).

The Court therefore considers that it is no longer justified to continue the examination of the applications. It is also 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.

Accordingly, in so far as the complaints about delayed enforcement of the judgments in the applicants' favour are concerned, the applications should be struck out of the list.

As regards the question of implementation of the Government's undertakings, the Committee of Ministers of the Council of Europe remains competent to supervise this matter in accordance with Article 46 of the Convention (see the Committee of Ministers' decisions of 14-15 September 2009 (CM/Del/Dec(2009)1065) and Interim Resolution CM/ResDH(2009)1 58 concerning the implementation of the *Burdov (no. 2)*

judgment). In any event the Court's present ruling is without prejudice to any decision it might take to restore, pursuant to Article 37 § 2 of the Convention, the present applications to the list of cases (see *E.G. v. Poland* (dec.), no. 50425/99, § 29, ECHR 2008-... (extracts)).

III. OTHER COMPLAINTS

Some applicants made accessory complaints referring to assorted Articles of the Convention. 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. It follows that the applications in this part are manifestly ill-founded and must be rejected in accordance with Article 35 §§ 3 (a) and 4 of the Convention.

In view of the above, it is appropriate to strike the case out of the list.

For these reasons, the Court unanimously

Takes note of the terms of the respondent Government's declarations under Article 6 § 1 of the Convention and of the modalities for ensuring compliance with the undertakings referred to therein;

Decides to join the applications;

Decides to strike the applications in respect of non-enforcement of the judgments in the applicants' favour out of its list of cases in accordance with Article 37 § 1 (c) of the Convention;

Declares the remainder of the applications inadmissible.

Søren Nielsen	Nina Vajić
Registrar	President

No	Application No	Lodged on	Applicant name and date of birth	Compensation offered (euros)
1.	19463/04	24/04/2004	**Vitaliy Sergeyevich KOLKHIYEV** 04/04/1959	1,567
			Tamerlan Viktorovich BOTSIYEV (succeeded by Galina Astemirovna CHIPIROVA) 15/07/1951	1,662
			Magomedkerim Abdulzhalilovich VALIMAGOMEDOV 01/01/1955	1,620
			Stanislav Yevgenyevich VLASOV 18/06/1966	1,484
			Ruslan Savelyevich GIOYEV 17/03/1965	1,532
			Khairbek Bechirbekovich DZABOLOV 30/04/1955	1,622
			Robert Asanovich KACHLAYEV 23/01/1972	1,712
			Oleg Aleksandrovich KOKAYEV 25/12/1954	1,731
			Andrey Grigoryevich KOKOYEV 09/01/1975	1,810
			Tatyana Nikolayevna KUZNETSOVA 07/08/1946	1,242
			Igor Viktorovich MESHCHERYAKOV 13/05/1955	1,632
			Soslan Archilovich MUZAYEV 18/06/1954	1,755
			Robert Sergeyevich MURADYANTS 18/07/1966	1,653
			Konstantin Petrovich SANAKOYEV 26/04/1971	1,636
			Alan Borisovich SLANOV	

			19/03/1970	1,641
			Vladimir Kantemirovich KHADARTSEV 15/08/1960	1,429
			Ruslan Krimgeriyevich KHUTOV 01/05/1957	1,672
			Iosif Ivanovich GAGIYEV **(succeeded by Soslan Iosifovich GAGIYEV)** 17/02/1960	1,420
			Kazbek Mikhaylovich DZIDAKHANOV 10/02/1953	1,413
			Svetlana Grigoryevna DUDAROVA 12/08/1957	1,715
			Elbrus Aslanbekovich YEDZIYEV 30/09/1960	1,567
			Oleg Viktorovich KIRGUYEV 19/11/1964	1,648
			Kazbek Temirbolatovich KULOV 30/11/1966	1,505
			German Vladimirovich GIGOLAYEV 13/10/1966	1,650
			Viktor Sergeyevich ZHILKIN 25/06/1973	1,394
			Givi Grigoryevich PLIYEV 27/09/1945	1,560
			Marina Mairbekovna TOLPAROVA 08/03/1967	1,513
			Murad Mukhtarovich VANEYEV 25/01/1969	1,425

2.	38634/05	13/09/2005	**Raisa Semenovna STRELTSOVA** 12/10/1935	2,750
3.	42720/05	28/09/2005	**Viktor Mikhaylovich YEFREMOV** 26/10/1961	950
4.	3465/06	19/11/2005	**Yuliya Grigoryevna NOVIKOVA** 05/03/1938	2,750
5.	19658/07	13/03/2007	**Nikolay Ivanovich POPOV** 18/05/1958	800
6.	22093/07	24/04/2007	**Viktor Magometovich TSORIYEV** 10/10/1961	917
7.	28431/07	13/06/2007	**Aleksandr Anatolyevich VOLCHOK** 29/12/1969	1,458
8	51347/07	15/09/2007	**Galina Mefodyevna SOROVETS** 07/11/1942	2,500
9.	52278/07	06/11/2007	**Mikhail Nikolayevich MAKAROV (succeeded by Zinaida Ivanovna MAKAROVA),** 21/11/1949	900
10.	1427/08	30/11/2007	**Ivan Pavlovich MELESHKIN** 05/01/1951	900
11.	34803/08	22/04/2008	**Valeriy Viktorovich DEYEV** 25/05/1969	3,200[1]
12.	35032/08	05/05/2008	**Alikhan Bamatgireyevich DUDAROV** 25/10/1944	2,700
13.	3072/09	18/12/2008	**Vladimir Alekseyevich SAFONOV** 25/12/1946	2,680

1. Rectified on 16 August 2011 : the text was “3,299”