

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

THIRD SECTION

DECISION

Application no. 46889/07
Fedor Konstantinovich POGORELOV
against Russia

The European Court of Human Rights (Third Section), sitting on 26 September 2017 as a Committee composed of:

Branko Lubarda, *President,*
Pere Pastor Vilanova,
Georgios A. Serghides, *judges,*
and Fatoş Aracı, *Deputy Section Registrar,*

Having regard to the above application lodged on 9 September 2007,

Having regard to the decision to apply the pilot-judgment procedure taken in the case of *Gerasimov and Others v. Russia* (nos. 29920/05 and 10 others, § 218, 1 July 2014),

Having regard to the rectified declaration submitted by the respondent Government on 5 June 2017 requesting the Court to strike the application out of the list of cases and the reply to that declaration submitted by the applicant's heir,

Having deliberated, decides as follows:

FACTS AND PROCEDURE

The applicant, Mr Fedor Konstantinovich Pogorelov, was a Russian national, who was born in 1947 and lived in Volgodonsk. On 9 November 2007 the applicant deceased.

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.

The applicant complained about non-enforcement of the judgment of the Volgodonskiy Town Court of the Rostov Region of 3 December 2004 ordering the municipality to grant him and his family an apartment.

The application was communicated to the Government.

On 5 June 2017 the Government submitted a rectified unilateral declaration, issued in the name of the applicant's legal heir, Ms Vera Petrovna Pogorelova.

In their declaration they acknowledged the lengthy enforcement of the judgment in the applicant's favour. The unilateral declaration further contained the dates of the judgment, its entry into force and its full enforcement, as well as an overall enforcement delay.

The authorities stated their readiness to pay to the applicant's heir, Ms Vera Petrovna Pogorelova, 6,500 euros as just satisfaction. The payment was to cover any pecuniary and non-pecuniary damage as well as costs and expenses, and would be free of any taxes that may be applicable. It would be payable within three months from the date of notification of the decision taken by the Court. In the event of failure to pay the sum within the said period, the Government undertook to pay simple interest on it, 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. The payment would constitute the final resolution of the case.

On 18 July 2017, the Court received a letter from the applicant's heir informing the Court that she had agreed to the terms of the Government's declaration.

THE LAW

The Court takes note of Mr Pogorelov's death and of the wish of his widow, Ms Pogorelova, to pursue 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; *Shiryayeva v. Russia*, no. 21417/04, §§ 8-9, 13 July 2006; and *Horváthová v. Slovakia*, no. 74456/01, § 26, 17 May 2005). Nothing suggests that the rights the applicant 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 Ms Pogorelova had no standing to pursue the case. Therefore, the Court considers that the applicant's widow has a legitimate interest in pursuing the application.

The Court attaches particular weight to Ms Pogorelova's express agreement to the terms of the declaration made by the Government. It finds

that such agreement shall be considered as a friendly settlement between the parties (see *Cēsnieks v. Latvia* (dec.), no. 9278/06, § 34, 6 March 2012, and *Bakal and Others v. Turkey* (dec.), no. 8243/08, 5 June 2012).

The Court therefore takes formal note of the friendly settlement reached between the parties. The Court further considers that the settlement is based on respect for human rights as defined in the Convention and its Protocols (Article 37 § 1 *in fine* of the Convention and Rule 62 § 3 of the Rules of Court).

In any event the Committee of Ministers remains competent to supervise the execution of the terms of the friendly settlement as set out in the present decision (Article 39 § 4 of the Convention and Rule 43 § 3 of the Rules of Court). Further, 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 application to its list of cases.

In view of the above, it is appropriate to strike the case out of the list in accordance with Article 39 of the Convention.

The Court considers that the amount proposed by the Government should be converted into the currency of the respondent State at the rate applicable on the date of payment.

For these reasons, the Court, unanimously,

Decides that Ms Vera Petrovna Pogorelova has standing to continue the proceedings in her late husband's stead;

Decides to strike the application out of its list of cases pursuant to Article 39 of the Convention.

Done in English and notified in writing on 19 October 2017.

Fatoş Aracı
Deputy Registrar

Branko Lubarda
President