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

THIRD SECTION

DECISION

Applications nos 30949/06 and 49965/06
Ivan Korneyevich PRISEKIN against Russia
and Anna Ivanovna PRISEKINA and Inga Ivanovna PRISEKINA 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 applications lodged on 4 July 2006 and 30 October 2006 respectively,

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, 1 July 2014),

Having regard to the declaration submitted by the respondent Government on 22 March 2017 requesting the Court to strike the applications out of the list of cases,

Having deliberated, decides as follows:

FACTS AND PROCEDURE

The applicant in the first case, Mr Ivan Korneyevich Prisekin, was born in 1945.The applicants in the second case, Ms Anna Ivanovna Prisekina and Ms Inga Ivanovna Prisekina, were born in 1979 and 1984 respectively. All applicants are Russian nationals and live in Vladivostok. The applicants are members of one family. Mr Prisekin, the applicant in case no. 30949/06, is the father of two applicants in case no. 49965/06.

The Russian Government ("the Government") were represented initially by Mr G. Matyushkin, Representative of the Russian Federation to the

European Court of Human Rights, and then by his successor in that office, Mr M. Galperin.

By judgment of 29 December 2003 the Leninskiy District Court of Vladivostok ordered the town administration to provide the applicants with a flat having particular characteristics. The judgment entered into force on 9 January 2004 and was enforced in full on 19 August 2008. The applicants complained, notably, under Article 6 of the Convention and Article 1 of Protocol No. 1 thereto about the non-enforcement of that judgment.

The applications had been communicated to the Government.

THE LAW

A. Joinder of the applications

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

B. Complaint about non-enforcement of the judgment in the applicants' favour

By a letter of 22 March 2017 the Government informed the Court that they proposed to make a unilateral declaration with a view to resolving the issue raised by the two present applications. They further requested the Court to strike out the applications in accordance with Article 37 of the Convention. The declaration read as follows:

> "... the Russian authorities acknowledge the lengthy enforcement of the judgment of the Leninskiy District Court pf Vladivostok of 29 December 2003. The judgment became final on 30 March 2004 and was enforced on 19 August 2008. The delay in enforcement constituted 4 years 4 months and 20 days.
>
> The authorities are ready to pay the applicants jointly EUR 4,300 as just satisfaction.
>
> They also declare that they are ready to pay the applicants the sums listed in the appendix in respect of non-pecuniary and, where appropriate, pecuniary damage."
>
> 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 sum referred to above, which is to cover any pecuniary and non-pecuniary damage as well as costs and expenses, will be free of any taxes that may be applicable and will be converted into the national currency of the Russian Federation at the rate applicable at the date of payment. It 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 the sum within the said three-month period, the Government undertake 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.
>
> This payment will constitute the final resolution of the case."

The applicants, who were invited to comment on the Government's unilateral declaration, did not submit any comments.

The Court reiterates 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 paragraph 1 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 applications."

The Court also reiterates that in certain circumstances, 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).

Having regard to the nature of the admissions contained in the Government's declaration, 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)).

Moreover, in light of the above considerations, and in particular given the clear and extensive case-law on the topic, 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 declaration, the application could 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, in so far as they concern the complaint under Article 6 of the Convention and Article 1 of Protocol No. 1 to the Convention about the delayed enforcement of the domestic judgment in the applicants' favour.

C. Complaint about the lack of an effective remedy

The applicants in case no. 49965/06 may be understood to further complain under Article 13 of the Convention about the lack of an effective domestic remedy in respect of the non-enforcement complaints.

The Court reiterates that by the pilot judgment in *Gerasimov and Others* it ordered the State, in cooperation with the Committee of Ministers, to set up an effective domestic remedy or combination of such remedies which secured adequate and sufficient redress for non-enforcement or delayed enforcement of domestic judgments imposing obligations in kind on the State's authorities in line with the Convention principles as established in the Court's case-law (see *Gerasimov and Others,* cited above, §§ 223-26 and point 12 of the operative part).

The Court has already noted the existence of a new domestic remedy against the non-enforcement of domestic judgments imposing obligations of a pecuniary and/or non-pecuniary nature on the domestic authorities, introduced in the wake of the pilot judgment by Federal Law No. 450-FZ amending the Compensation Act of 2010. That statute, which entered into force on 1 January 2017, enables those concerned to seek compensation for damage sustained as a result of excessive delays in the enforcement of court judgments ordering the domestic authorities to fulfil various obligations in kind (see, for a summary of the relevant domestic provisions, *Kamneva and Others v. Russia* (dec.), nos. 35555/05 and 6 others, §§ 6-15, 2 May 2017).

The Court has not yet assessed the quality of the new remedy in force as of January 2017 and will examine this question in other cases that are more suitable for such analysis. It further notes that the present applications were lodged before the above-mentioned amendments to the Compensation Act entered into force.

However, the light of the adoption of the new domestic remedy, the Court, as in its previous decisions, considers that it is not necessary to examine separately the admissibility and merits of the applicants' complaint under Article 13 in the present cases (see *Kamneva and Others (dec*.), cited above, §§ 34-37; see further, *mutatis mutandis*, *Pobudilina and Others v. Russia* (dec.), nos. 7142/05 and 29 others, 29 March 2011; *Zemlyanskiy and Others v. Russia* (dec.), nos. 18969/06 and 4 others, 13 March 2012; and several other cases). This ruling is without prejudice to the Court's future assessment of the new remedy.

For these reasons, the Court, unanimously,

Decides to join the applications;

Takes note of the terms of the respondent Government's declaration and of the modalities for ensuring compliance with the undertakings referred to therein;

Decides to strike the applications out of its list of cases in accordance with Article 37 § 1 (c) of the Convention, in so far as they concern the complaint under Article 6 of the Convention and Article 1 of Protocol No. 1 to the Convention about the delayed enforcement of the domestic judgments in the applicants' favour;

Decides that it is not necessary to examine the admissibility and merits of the complaint under Article 13 of the Convention.

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

Fatoş Aracı	Branko Lubarda
Deputy Registrar	President