

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

FIFTH SECTION

DECISION

Application no. 21563/09
Tatyana Nikolayevna RADCHENKO and Others
against Ukraine

The European Court of Human Rights (Fifth Section), sitting on 26 May 2015 as a Committee composed of:

Boštjan M. Zupančič, *President,*
Helena Jäderblom,
Aleš Pejchal, *judges,*
and Milan Blaško, *Deputy Section Registrar,*

Having regard to the above application lodged on 10 April 2009,

Having regard to the declaration submitted by the respondent Government on 13 March 2013 requesting the Court to strike the application out of the list of cases,

Having deliberated, decides as follows:

FACTS AND PROCEDURE

A list of the applicants is set out in the appendix.

The Ukrainian Government ("the Government") were represented by their Agent.

The applicants complained under Articles 6 § 1 and 13 of the Convention and Article 1 of Protocol No. 1 of the prolonged non-enforcement of the domestic judgments given in their favour.

The application was communicated to the Government together with other similar cases under the procedure covered by the pilot judgment *Yuriy Nikolayevich Ivanov v. Ukraine*, no. 40450/04, 15 October 2009.

THE LAW

The applicants complained about the non-execution of the judgments given in their favour. They relied on Articles 6 § 1 and 13 of the Convention and Article 1 of Protocol No. 1.

After the failure of attempts to reach a friendly settlement, by a letter of 13 March 2012 the Government informed the Court that they proposed to make a unilateral declaration with a view to resolving the issues raised by this and other similar applications. They further requested the Court to strike out the application in accordance with Article 37 of the Convention.

The declaration provided as follows:

> "The Government of Ukraine acknowledge the excessive duration of enforcement of the applicants' judgments and decisions specified in annex to this declaration.
>
> The Government of Ukraine are ready to pay the applicants the outstanding amounts according to the judgments and decisions, still belonging to them, and also the sums in euros in accordance with annex to this declaration, which are to cover obligations under the judgments on calculating and payment in favour of the applicants compensation of loss of part of the profit due to untimely payment of a debt, and also any pecuniary and non-pecuniary damage as well as costs and expenses.
>
> The Government 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 in euros, specified in annex, will be converted into the national currency of Ukraine at the rate applicable on the date of payment and will be free of any taxes that may be applicable. These sums 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. These payments will constitute the final resolution of the applicants' cases."

The Government's unilateral declaration was sent to the applicants, who were invited to submit their comments before 30 April 2012. The Court has not received any reply and therefore considers that the applicants do not accept the terms of the unilateral declaration.

The Court recalls 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 application".

It also recalls that in certain circumstances, it may strike out an application 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 case to be continued.

To this end, the Court will examine carefully the declaration in the light of the principles emerging from its case-law, in particular the *Tahsin Acar* judgment (*Tahsin Acar v. Turkey* [GC], no. 26307/95, §§ 75-77, ECHR 2003-VI; *WAZA Spółka z o.o. v. Poland* (dec.), no. 11602/02, 26 June 2007; and *Sulwińska v. Poland* (dec.), no. 28953/03, 18 September 2007).

The Court has established its practice concerning complaints about the lengthy non-enforcement of the decisions given in the applicants' favour in the *Yuriy Nikolayevich Ivanov* pilot judgment (cited above).

Having regard to the nature of the admissions contained in the Government's declaration, as well as the amounts of compensation proposed, listed in the annex to this decision – which are consistent with the amounts awarded in similar cases – the Court considers that it is no longer justified to continue the examination of the application (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 application (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 case out of the list.

For these reasons, the Court, unanimously,

Takes note of the terms of the respondent Government's declaration concerning the non-execution of the judgments given in the applicants' favour and of the modalities for ensuring compliance with the undertakings referred to therein;

Decides to strike the application out of its list of cases in accordance with Article 37 § 1 (c) of the Convention.

Done in English and notified in writing on 18 June 2015.

Milan Blaško
Deputy Registrar

Boštjan M. Zupančič
President

APPENDIX

N°.	**Applicant's name Date of birth**	**Final domestic decision details**	**Compensation offered by the Government (euro)**	**State of enforcement**
1.	Tatyana Nikolayevna RADCHENKO 20/01/1948	1) Kostiantynivska Court, 04/12/1997 2) Kostiantynivska Court, 21/02/2002	2535	Not enforced
2.	Oleg Mikhaylovich RADCHENKO 17/06/1947	1) Kostiantynivska Court, 04/12/1997 2) Kostiantynivska Court, 21/02/2002	2535	Not enforced
3.	Nikolay Grigoryevich TARAN 17/09/1949	Kostiantynivska Court, 05/10/2000	2025	Not enforced
4.	Vladimir Afanasyevich CHERDANTSEV 07/03/1954	Labour disputes commission of the State enterprise "Avtosklo", 12/02/2001	1965	Not enforced
5.	Nadezhda Fedorovna GVOZDEVA 01/09/1950	Kostiantynivska Court, 14/03/2001	1935	Not enforced
6.	Tatyana Nikolayevna ASTAPOVA 05/04/1957	Labour disputes commission of the State enterprise "Avtosklo", 26/02/2001	1950	Not enforced
7.	Nikolay Fedorovich NUZHNYY 24/09/1947	Kostiantynivskya Court, 08/11/2002	1635	Not enforced
8.	Mariya Vasilyevna SEROVA	Kostiantynivskya Court, 25/11/2003	1440	Not enforced

N°.	**Applicant's name Date of birth**	**Final domestic decision details**	**Compensation offered by the Government (euro)**	**State of enforcement**
	23/11/1953			
9.	Sergey Anatolyevich DULYA 09/08/1967	Kostiantynivskya Court, 08/10/2004	1290	Not enforced
10.	Lidiya Vasilyevna ZHUKOVA 28/03/1965	Kostiantynivskya Court, 01/12/2004	1260	Not enforced