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

Press Release
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ECHR 307 (2017)
12.10.2017

Strike-out and transmission to the Committee of Ministers of more than 12,000 Ukrainian cases

These cases concerned the prolonged non-enforcement of final judicial decisions, and raised issues similar to those assessed in the *Ivanov* pilot judgment, which noted the existence of a structural problem which amounted to a breach of Article 6 § 1 (right to a fair hearing within a reasonable time) and Article 13 (right to an effective remedy) of the European Convention on Human Rights and Article 1 of Protocol No. 1 (protection of property) to the European Convention.

In today's **Grand Chamber** judgment[1] in the case of ***Burmych and Others v. Ukraine*** (applications nos. 46852/13 *et al.*), the European Court of Human Rights:

declared, by majority, **the five applications admissible**;

decided, by ten votes to seven, **to join those five applications and 12,143 applications pending before the Court,** lists of which are appended to the judgment;

held, by thirteen votes to four, that the **five applications and the 12,143 applications joined should be dealt with in compliance with the obligation set out in the pilot judgment delivered on 15 October 2009 in the case of *Ivanov v. Ukraine***;

and decided, by ten votes to seven, to **strike those applications out of the list of cases pursuant to Article 37 § 1 (c) of the Convention and to transmit them to the Committee of Ministers of the Council of Europe in order to be dealt with in the framework of the general enforcement measures set out in the *Ivanov* pilot judgment**.

In accordance with the principle of subsidiarity, which underlay the whole Convention and not only the pilot judgment procedure, the matter treated by the *Ivanov* pilot judgment, including the provision of redress for victims of the systemic violation of the Convention found in *Ivanov*, was a question of execution under Article 46 of the Convention.

The present cases, and all 12,143 similar applications currently pending as well as all potential future similar applications were part and parcel of the execution procedure set out in the pilot judgment. The settlement of all those cases should necessarily be encompassed under the general execution measures to be implemented by the respondent State under the supervision of the Committee of Ministers.

All these cases should be considered in the framework of the execution procedure for the *Ivanov* judgment and be transmitted to the Committee of Ministers in its capacity as the body responsible for ensuring that all persons affected by the systemic problem found in the pilot judgment obtain justice and compensation, including the applicants in the present cases.

Having regard to the fact that the interests of the actual and potential victims of the impugned systemic problem were more appropriately protected in the framework of the execution procedure, the Court held that the aims of the Convention were not best served if it continued to deal with *Ivanov*-type cases. It therefore concluded that there was no justification for continuing to examine the cases before it.

1. Grand Chamber judgments are final (Article 44 of the Convention).
All final judgments are transmitted to the Committee of Ministers of the Council of Europe for supervision of their execution. Further information about the execution process can be found here: www.coe.int/t/dghl/monitoring/execution.

COUNCIL OF EUROPE
CONSEIL DE L'EUROPE

Principal facts

The applicants, Ms Lidiya Burmych, Mr Grygoriy Yaremchuk, Mr Oleg Varava and Mr Yuriy Neborachko, are Ukrainian nationals. The applicant Izolyatsiya, PAT, is a private joint-stock company based in Donetsk, Ukraine.

The applicants had all obtained a final judgment in their favour, which remained unenforced.

Complaints, procedure and composition of the Court

Relying on Articles 6 § 1 (right to a fair hearing within a reasonable time), 13 (right to an effective remedy) and Article 1 of Protocol No. 1 (protection of property), the applicants complained about the non-enforcement or delayed enforcement of the domestic judicial decisions delivered in their favour and of the lack of an effective domestic remedy for their complaints under the Convention.

The applications were lodged with the European Court of Human Rights respectively on 9 July 2013, 16 July 2013, 8 August 2013, 16 August 2013 and 11 December 2013.

On 8 December 2015 the Chamber relinquished jurisdiction in favour of the Grand Chamber.

Judgment was given by the Grand Chamber of 17 judges, composed as follows:

Guido **Raimondi** (Italy), *President*,
Angelika **Nußberger** (Germany),
Ganna **Yudkivska** (Ukraine),
Helena **Jäderblom** (Sweden),
Luis **López Guerra** (Spain),
András **Sajó** (Hungary),
Ledi **Bianku** (Albania),
Işıl **Karakaş** (Turkey),
Vincent A. **De Gaetano** (Malta),
Julia **Laffranque** (Estonia),
André **Potocki** (France),
Paul **Mahoney** (United Kingdom),
Aleš **Pejchal** (the Czech Republic),
Johannes **Silvis** (Netherlands),
Valeriu **Griţco** (the Republic of Moldova),
Iulia **Motoc** (Romania),
Georges **Ravarani** (Luxembourg),

and also Roderick **Liddell**, *Registrar.*

Decision of the Court

Joinder and admissibility of the applications

The Court decided to join the applications pursuant to Rule 42 § 1 of the Rules of Court given the common origin of the present applications in the systemic violation of the Convention found in the *Ivanov* judgment.

Articles 6 and 13 and Article 1 of Protocol No. 1

The Court considered that at the heart of the applications under review lay the division of competence between, on the one hand, the Court, whose function was to “ensure the observance of the engagements undertaken by the High Contracting Parties in the Convention and the Protocols thereto” (Article 19) and, on the other, the Committee of Ministers “which shall supervise [the]

execution" of the final judgments of the Court (Article 46). The understanding of that division of responsibility had developed with regard to changing circumstances, and notably the proliferation of structural and systemic violations of the Convention. The introduction of the pilot-judgment procedure by the Court in order to deal with the phenomenon of repetitive cases[2] had added a new dimension to the Court's and the Committee of Ministers' respective roles under the Convention. It had become necessary to clarify where the responsibilities lay in addressing issues arising out of a failure to execute a pilot judgment.

Applications pending before the Court and the* Ivanov *judgment

The present applications form part of a group of some 12,143 similar applications currently pending before the Court. They all originated in the same systemic problem identified in the *Ivanov* pilot judgment, namely the series of dysfunctions in the Ukrainian judicial system which hinder the enforcement of final judgments, thus entailing a systemic problem of non-enforcement or delayed enforcement of domestic court decisions, combined with the absence of effective domestic remedies in respect of such shortcomings.

The Court pointed to its findings in the *Ivanov* pilot judgment, where it had held that the structural problems with which it was dealing were large-scale and complex in nature and that they required the implementation of comprehensive and complex measures, possibly of a legislative and administrative character, involving various domestic authorities. It had also observed that the Committee of Ministers was better placed and equipped than the Court to monitor the measures to be adopted by Ukraine in that respect. The Court had acknowledged that it fell to the Committee of Ministers to determine what would be the most appropriate way to tackle the problems and indicate any general measures to be taken by the respondent State. It had also stressed that specific reforms in Ukraine's legislation and administrative practice should be implemented without delay in order to bring them into line with the Court's conclusions and to comply with the requirements of Article 46 of the Convention.

However, despite the significant lapse of time since the delivery of the *Ivanov* pilot judgment, the Ukrainian Government had so far failed to implement the requisite general measures capable of addressing the root causes of the systemic problem identified by the Court and to provide an effective remedy securing redress to all victims at national level. As acknowledged on many occasions by the authorities themselves and recognised by the Committee of Ministers in the 2008 Interim Resolution, adopted before the *Ivanov* judgment, the problem of non-enforcement or delayed enforcement of judicial decisions at that time had already existed in Ukraine for more than a decade. It remained unresolved, notwithstanding the additional guidance given to the respondent State by the Committee of Ministers over the years by means of its six subsequent interim resolutions.

Since the lodging of the first applications in 1999 the Court had received some 29,000 *Ivanov*-type applications, of which 14,430 had been examined by various judicial formations of the Court. However, some 12,143 of those applications, the majority of which had been lodged between 2013 and 2017, were still awaiting judicial examination.

The impact of the failure to implement the* Ivanov *pilot judgment

The continuing failure by Ukraine to execute the *Ivanov* judgment had left unresolved the systemic problem of non-enforcement of domestic judicial decisions. The continued failure to take appropriate general measures had led the Court to adopt a practice of dealing with the *Ivanov* follow-up cases under an accelerated, simplified summary procedure for grouped judgments and strike-out decisions, essentially limited to a statement of a violation and award of just satisfaction. This had allowed the applicants to obtain swiftly a decision affording them financial redress.

2. See Grand Chamber judgment *Broniowski v. Poland* [GC], no. 31443/96, ECHR 2004 V.

However, that judicial policy had not had any meaningful impact on the overall systemic problem identified in *Ivanov*. Nor had it resulted in any apparent progress in the execution process. Every year growing numbers of applicants, instead of receiving appropriate redress at domestic level, had applied to the Court in order to obtain financial relief under Article 41 of the Convention. Some new applications concerned non-enforcement of domestic decisions which had already been the subject of the Court's judgments finding a violation of the Convention.

On adoption of the *Ivanov* judgment in September 2009 1,400 follow-up cases had been pending before the Court. At present, even though the Court had already dealt with 14,430 such cases, 12,143 were still pending. If the Court examined the present cases and all the other follow-up cases in the same or a similar manner, it would face the inevitable prospect that growing numbers of applicants in Ukraine would turn to it for redress in the future. The Court would still be at risk of receiving new applications as long as the root cause of the problem was not addressed.

The Court ran the risk of operating as part of the Ukrainian legal enforcement system and substituting itself for the Ukrainian authorities. That task was not compatible with the subsidiary role which the Court was supposed to play in relation to the High Contracting Parties under Articles 1 and 19 of the Convention, and ran directly counter to the logic of the pilot-judgment procedure developed by the Court.

The Court had therefore to consider how this situation could best be addressed in a way which respected the rationale of the pilot-judgment procedure as conceived in the *Broniowski* judgment, in accordance with the principle of subsidiarity underpinning that rationale. In particular, it had to examine whether it should act as a mechanism for awarding compensation in respect of the large numbers of repetitive applications which followed pilot or leading judgments whose execution was to be supervised by the Committee of Ministers.

According to the rationale of the pilot judgment, under the umbrella of the general measures required of the respondent State, all the other victims are absorbed into the process of execution.

Bearing in mind its efforts in examining *Ivanov*-type cases for over 16 years, the Court concluded that nothing was to be gained, nor would justice be best served, by the repetition of its findings in a lengthy series of comparable cases, which would place a significant burden on its own resources, with a consequent impact on its considerable caseload. It followed that the value for Convention purposes of the continued examination of *Ivanov*-type applications was clearly in issue. Accordingly the question arose as to whether it was justified to continue to examine the post-*Ivanov* applications, having regard to Articles 19 and 46 of the Convention and to the Court's power under Article 37 § 1 (c) to strike an application out of its list when no such justification exists.

Articles 19 and 46 – question of the continuation of* Ivanov*-type cases

The legal issues concerning prolonged non-enforcement of domestic decisions in Ukraine had already been resolved in the *Ivanov* pilot judgment. The Court had identified the systemic shortcoming, had held there to be a violation of the Convention by reason of this shortcoming, and had given guidance as to the general measures to be taken for the satisfactory execution of the pilot judgment so as to ensure relief and redress for all victims, past, present and future, of the systemic violation found. The Court had thereby discharged its function under Article 19 of the Convention. In accordance with the principle of subsidiarity, which underlay the whole Convention and not only the pilot judgment procedure, the matter treated by the *Ivanov* pilot judgment, including the provision of redress for victims of the systemic violation of the Convention found in *Ivanov*, was a question of execution under Article 46 of the Convention.

The present case and all 12,143 similar cases pending before the Court, as well as any future similar cases to be submitted to it, were part and parcel of the process of execution of the pilot judgment. Their resolution must necessarily be encompassed by the general measures of execution to be put in place by the respondent State under the supervision of the Committee of Ministers.

Consequently, all such cases fell to be dealt with under the execution process and should be notified to the Committee of Ministers in its capacity as the body which, under the Convention system, had the responsibility to oversee redress and justice for all the victims affected by the systemic problem found in a pilot judgment, including the applicants in the present case.

Having regard to the respective competences of the Court and the Committee of Ministers under Articles 19 and 46 of the Convention, the Court concluded that no useful purpose was served in terms of the Convention's aims in its continuing to deal with these cases. It therefore had to consider whether in these circumstances it should exercise its power under Article 37 § 1 (c) to strike the applications out of its list.

Article 37 § 1 (c)

The Court reiterated that the pilot-judgment procedure was designed to assist the Contracting States in fulfilling their role in the Convention system by resolving such problems at national level, thereby securing to all actual and potential victims of the systemic problem the Convention rights and freedoms as required by the Convention, offering to them more rapid redress while, at the same time, easing the burden on the Court.

In view of the fact that the interests of the present and potential victims of the systemic problem in question were more appropriately protected in the framework of the execution process, the Court found that the Convention aims were not best served by continuing to deal with post-*Ivanov* cases. It therefore concluded that the continued examination of the cases was not justified. It remained to be determined whether "respect for human rights" required it nonetheless to continue that examination.

In all cases in which a systemic problem had been identified and on which a pilot judgment had been delivered, every applicant is a "victim" entitled to have the pilot judgment fully executed at domestic level and to obtain "adequate and sufficient redress". Such redress should include enforcement of domestic judgments in their favour. The Court reiterated that, as it has repeatedly held in numerous *Ivanov*-type cases, the Ukrainian State had an outstanding obligation to enforce domestic judgments which remained enforceable.

The grievances raised in these applications therefore had to be resolved in the context of the general measures required by the execution of the *Ivanov* pilot judgment, including the provision of appropriate and sufficient redress for the Convention violations found in that judgment. Those measures were subject to the supervision of the Committee of Ministers.

Consequently, respect for human rights within the meaning of Article 37 § 1 (c) did not require such continued examination of the applications in question from the point of view of individual redress. Nor did it find that the case raised important issues other than those already clarified under the pilot-judgment procedure as would require it to continue its examination of the cases. On the contrary, the overall interest of the proper and effective functioning of the Convention system militated in favour of the approach adopted.

The Court therefore found no circumstances which required the continued examination of the present case and other *Ivanov*-type applications. That conclusion was without prejudice to its power to restore the present, or any other similar application, to the list of cases if the circumstances justified such a course.

The Court accordingly decided to strike out the applications in question under Article 37 § 1 (c) of the Convention.

The issue of similar applications pending

The Court considered that the similar applications pending should be joined (see Appendices I and II to the judgment) to the present applications, and found that the 7,641 communicated applications listed in Annex I and the 4,502 or so new applications listed in Annex II to the judgment should be

struck out of its list of cases. As regards future similar applications, the Court stated that it was open to it to strike them out of the list of its cases and to transmit them directly to the Committee of Ministers, apart from those applications which were found to be inadmissible. Moreover, the Committee of Ministers and the respondent State would be provided with the Court's judgments and decisions listing such applications, which should then be dealt with in the framework of the general measures of execution of the pilot judgment at national level, in such a way as to ensure appropriate relief for all applicants in those cases.

The decision to strike *Ivanov* follow-up applications out of the Court's list of cases was without any prejudice to its power to restore to the list of cases, the applications listed in the annexes to the judgment, or any other similar future applications, if the circumstances justified such a course.

Separate opinions

Judges Yudkivska, Sajó, Bianku, Karakaş, De Gaetano, Laffranque and Motoc expressed a joint dissenting opinion. Judge Sajó expressed a dissenting opinion. These opinions are annexed to the judgment.

The judgment is available in English and French.

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