



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

FIRST SECTION

DECISION

Application no. 18969/06
Yevgeniy Pavlovich ZEMLYANSKIY against Russia
and 4 other applications

The European Court of Human Rights (First Section), sitting on 13 March 2012 as a Committee composed of:

Peer Lorenzen, *President*,

Elisabeth Steiner,

Julia Laffranque, *judges*,

and André Wampach, *Deputy Section Registrar*,

Having regard to the above applications lodged on various dates,

Having regard to the declarations submitted by the respondent Government on 18 August 2011 requesting the Court to strike the applications out of the list of cases and the applicants' reply to those declarations,

Having deliberated, decides as follows:

THE FACTS

The applicants are five Russian nationals living in Novochoerkassk, the Rostov Region. Their names and dates of birth are listed in the Appendix below.

They were represented before the Court by Mr P.V. Sedlyar, a lawyer practising in Novochoerkassk. 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 cases, as submitted by the parties, may be summarised as follows.

A. Common facts in respect of the five applications

The applicants, five retired military officers, sued the military commissariats of Novocherkassk and the Rostov Region for recalculation of their pensions. All applicants sought adjustment of the pension to the minimum wage and claimed arrears for 1995-1998 in line with the increase in the latter. The applicants in all cases except for the case of *Bondarev* also claimed recalculation of their pensions on account of the increase of the monetary compensation paid in respect of the food allowance.

By separate judgments of 30 August 2004 the Novocherkassk Town Court of the Rostov Region found in the applicants' favour. The court ordered in respect of the first type of the claims that the pensions be adjusted to the minimum wage and that the arrears be paid to the applicants. As concerns the second type of the claims, the court held that the pensions should be increased in line with the increase of the daily food allowance and awarded the applicants the respective lump sums in arrears. The amounts of the awards are specified in the Appendix. The awards were made against the Military Commissariat of the Rostov Region, while the respective claims against the commissariat of Novocherkassk were dismissed.

B. Further developments specific to each application

On various dates the respondent commissariat applied for the supervisory review of some of the judgments in the applicants' favour. Further developments in each case are summarised below, as well as in the Appendix.

1. Application by Mr Zemlyanskiy (no. 18969/06)

On 5 February 2007 both judgments of 30 August 2004 (nos. 2-1618/04 and 2-1522/04) in the applicant's favour were enforced in full.

On 29 March 2007 the Presidium of the Rostov Regional Court quashed the judgment of 30 August 2004 no. 2-1522/04 by way of supervisory review and referred the case for a fresh examination by a different court.

On 28 May 2007 the Oktyabrskiy District Court of Rostov examined the applicant's claim against the commissariat and rejected it as having no basis in domestic law.

2. Application by Mr Pakhomov (no. 27707/06)

(a) First round of the pension dispute (minimum wage)

On 5 February 2007 the judgment of 30 August 2004 (no. 2-1648/04) concerning index-linking in line with the increase of the minimum wage in 1995-1998 was executed in full.

(b) Second round of the pension proceedings (food allowance)

The judgment of 30 August 2004 (no. 2-1491/04) concerning recalculation of the applicant's pension on account of the increase of the monetary compensation paid in respect of the food allowance remained unenforced.

On 10 November 2005 the Presidium of the Rostov Regional Court quashed by way of supervisory review and referred the case for a fresh examination by a different court. The applicant was not present at the hearing and received a copy of the judgment on 2 December 2005.

On 9 December 2005 the Oktyabrskiy District Court of Rostov examined the applicant's claim against the commissariat and rejected it as having no basis in domestic law. In the text of the judgment the district court referred to the claim concerning recalculation of the pension on account of the increase of the minimum wage, and not the food allowance. In a hand-written note on the copy of the judgment of the judgment, made by the registry of the Town Court, the case was referred to as "no. 2-1648/04", apparently by mistake.

On 11 December 2008 the Rostov Regional Court annulled the decision of 9 December 2005 on appeal, as erroneously issued in respect of the different set of proceedings and concerning a wrong subject-matter, and remitted the case for a new examination by the first instance court.

On 15 December 2008 the Oktyabrskiy District Court again examined the applicant's claim against the commissariat concerning the index-linking of the pension and discontinued the proceedings.

3. Application by Mr Popkov (no. 29771/06)**(a) First round of the pension dispute (food allowance)**

The judgment of 30 August 2004 (no. 2-1492/04) concerning recalculation of the applicant's pension on account of the increase of the monetary compensation paid in respect of the food allowance was not enforced.

On 2 February 2009 the Novocherkassk Town Court index-linked the initial judgment debt and ordered that the commissariat should pay the applicant 81,973.95 Russian roubles (RUB). On 7 October 2009 the Novocherkassk Town Court rectified the judgment of 2 February 2009 and increased the sum due to the applicant to RUB 114,725.44. On 22 December 2009 the judgment of 2 February 2009, as further modified on 7 October 2009, was executed in full.

The award of 30 August 2004 has remained outstanding to date.

(b) Second round of the pension dispute (minimum wage)

The judgment of 30 August 2004 (no. 2-1636/04) concerning recalculation of the applicant's pension in line with the increase of the minimum wage remained unenforced.

On 15 December 2005 the Presidium of the Rostov Regional Court quashed the judgment by way of supervisory review and referred the case for a fresh examination by a different court. The applicant was not present at the hearing and received a copy of the judgment on 20 January 2006.

On 21 February 2006 the Oktyabrskiy District Court of Rostov examined the applicant's claim against the commissariat and discontinued the proceedings.

4. Application by Mr Mukovoz (no. 29902/06)

(a) First round of the pension dispute (minimum wage)

On 15 May 2007 the judgment of 30 August 2004 (no. 2-1655/04) ordering index-linking of the applicant's pension in line with the increase of the minimum wage, as well as payment of the respective arrears, was executed in full.

On 27 July 2007 the Presidium of the Rostov Regional Court quashed the judgment of 30 August 2004 no. 2-1655/04 by way of supervisory review and referred the case for a fresh examination by a different court.

On 20 September 2007 the Oktyabrskiy District Court of Rostov discontinued the examination of the claim.

(b) Second round of the pension dispute (food allowance)

The judgment of 30 August 2004 no.2-1531/04 concerning recalculation of the applicant's pension on account of the increase of the food allowance remained unenforced.

On 1 December 2005 the Presidium of the Rostov Regional Court quashed the judgment of 30 August 2004 no. 2-1531/04 by way of supervisory review and referred the case for a fresh examination by a different court. The applicant was not present at the hearing.

On 14 December 2006 the registry of the Regional Court issued a copy of the judgment and sent it to the applicant by ordinary mail. The applicant submits that he received the copy on 16 December 2005.

On 2 February 2006 the Oktyabrskiy District Court of Rostov examined the applicant's claim against the commissariat and rejected it as having no basis in domestic law.

5. Application by Mr Bondarev (no. 32493/06)

On 5 February 2007 the judgment of 30 August 2004 (no. 2-1631-04) in the applicant's favour was enforced in full.

On 26 July 2007 the Presidium of the Rostov Regional Court quashed the judgment by way of supervisory review and referred the case for a fresh examination by a different court.

On 20 September 2007 the Oktyabrskiy District Court of Rostov discontinued the examination of the claim.

COMPLAINTS

The applicants complained under Article 6 of the Convention and Article 1 of Protocol No. 1 that the judgments in their favour remained unenforced and some of them were quashed by way of the supervisory review, as specified in the Appendix.

The applicants in all cases except for the case of Mr Bondarev (no. 32493/06) further complained under Article 13 about the lack of an effective domestic remedy in respect of the non-enforcement and the supervisory review complaints.

THE LAW

A. Joinder of the applications

Given that the applications at hand concern similar complaints and raise identical issues under the Convention, the Court decides to consider them in a single decision.

B. Complaints about non-enforcement and supervisory review

The applicants complained under Article 6 of the Convention and Article 1 of Protocol No. 1 about non-enforcement of the judgment in their favour and subsequent quashing of several judgments listed in the Appendix by way of supervisory review. These provisions, in so far as relevant, read as follows:

Article 6

“In the determination of his civil rights and obligations ... everyone is entitled to a fair ... hearing ... by [a] ... tribunal ...”

Article 1 of Protocol No. 1

“Every natural or legal person is entitled to the peaceful enjoyment of his possessions. No one shall be deprived of his possessions except in the public interest

and subject to the conditions provided for by law and by the general principles of international law.

The preceding provisions shall not, however, in any way impair the right of a State to enforce such laws as it deems necessary to control the use of property in accordance with the general interest or to secure the payment of taxes or other contributions or penalties.”

1. The Government’s unilateral declarations and the applicants’ position

By separate letters dated 18 August 2011 the Government informed the Court that they proposed to make unilateral declarations with a view to resolving the issues raised by the applications.

(a) Violations of the applicants’ Convention rights acknowledged by the Government

By the above declarations the Russian authorities acknowledged the following violations of the applicants’ rights:

(i) Application by Mr Zemlyanskiy (no. 18969/06)

By the unilateral declaration in case of *Zemlyanskiy* the Russian authorities acknowledged a violation of the applicant’s rights as a result of the delayed enforcement of the judgment of the Novocherkassk Town Court of 30 August 2004 no. 2-1522/04 and its quashing by way of supervisory review, as well as delayed execution of the judgment by the same court of 30 August 2004 no. 2-1618/04.

By the same declaration they confirmed that both judgments had been executed in full on 5 February 2007.

(ii) Application by Mr Pakhomov (no. 27707/06)

By the unilateral declaration in case of *Pakhomov* the Russian authorities acknowledged a violation of the applicant’s rights as a result of the delayed enforcement of the judgment of 30 August 2004 no. 2-1491/04 and its quashing by way of supervisory review, as well as delayed enforcement of the judgment of 30 August 2004 no. 2-1648/04.

(iii) Application by Mr Popkov (no. 29771/06)

By the unilateral declaration in case of *Popkov* the Russian authorities acknowledged a violation of the applicant’s rights as a result of the delayed enforcement of the judgment of the Novocherkassk Town Court of 30 August 2004 no. 2-1636/04 and its quashing by way of supervisory review, as well as non-enforcement of the judgment of 30 August 2004 no. 2-1492/04.

(iv) *Application by Mr Mukovoz (no. 29902/06)*

By the unilateral declaration in case of *Mukovoz* the Russian authorities acknowledged a violation of the applicant's rights as a result of the quashing of the two judgments of 30 August 2004 in the applicant's favour by way of supervisory review.

By the same declaration they submitted that the judgment of 30 August 2004 no. 2-1655/04 had been fully enforced on 15 May 2007, that is before the date of the quashing by way of the supervisory review procedure. The applicant had been paid RUB 303,998.01 in pension arrears pursuant to that judgment, and he had not been ordered to reimburse that amount as a result of the quashing of the initial award in his favour.

(v) *Application by Mr Bondarev (no. 32493/06)*

By the unilateral declaration in case of *Bondarev* the Russian authorities acknowledged a violation of the applicant's rights as a result of the quashing of the judgment of 30 August 2004 in the applicant's favour by way of supervisory review.

By the same declaration they submitted that the judgment of 30 August 2004 had been fully enforced on 5 February 2007, that is before the date of the quashing by way of the supervisory review procedure. Mr Bondarev had been paid RUB 374,220.26 in pension arrears, and he had not been ordered to reimburse that amount pursuant to the quashing of the initial award in his favour.

(b) Amounts of compensation proposed by the respondent Government

The declarations in all the cases further read as follows:

“With reference to the European Court's case-law in the similar case of *Streltsov and other “Novocherkassk military pensioners” cases v. Russia*, the authorities of the Russian Federation are ready to pay [the applicant] *ex gratia* the sum of 2,000 euros in respect of non-pecuniary damage, as in *Streltsov and other “Novocherkassk military pensioners” cases v. Russia*, nos. 8549/06 et al., 29 July 2010.”

Furthermore, in cases of *Pakhomov*, *Popkov* and *Mukovoz* the Russian authorities submitted that they were ready to make the following payments to these applicants, in addition to the above amount:

(i) *Application by Mr Pakhomov (no. 27707/06)*

In case of *Pakhomov*, the Government expressed their readiness to pay the applicant RUB 104,642.85 of pecuniary arrears under the judgment of the Novocherkassk Town Court of 30 August 2004 no. 2-1491/04, plus any tax that may be chargeable on that amount.

(ii) Application by Mr Popkov (no. 29771/06)

In case of *Popkov*, the Government submitted that they were ready to pay the applicant RUB 390,584.33 of pecuniary arrears under the judgments of 30 August 2004 nos. 2-1636/04 and 2-1492/04, plus any tax that may be chargeable on that amount.

(iii) Application by Mr Mukovoz (no. 29902/06)

In case of *Mukovoz*, the Government expressed their readiness to pay the applicant RUB 130,706.83 of pecuniary arrears under the judgment of 30 August 2004 no. 2-1531/04, plus any tax that may be chargeable on that amount.

(c) Remainder of the declarations

The remainder of the declarations in each case 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.”

By separate letters dated 24 September 2011 the applicants submitted that they accepted the terms of the declarations.

2. The Court’s assessment

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.

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).

Turning to the application by *Mr Mukovoz*, the Court observes that, according to the declaration in respect of his case, the Government explicitly acknowledged a violation of the applicant's rights in respect of the supervisory review complaint only. No explicit acknowledgment was made in respect of the non-enforcement grievance raised by the applicant. However, it transpires from the terms of the declaration that the Government expressed their readiness to pay the applicant the amount of the initial unenforced judgment debt under the domestic judgment no. 2-1531/04.

Similarly, as regards the application by *Mr Bondarev*, the Court notes that the Government acknowledged a violation of the applicant's rights on account of the supervisory review only. At the same time, the Court observes that the same declaration, as well as an information note accompanying it, contains information on the two years and six months' delay of enforcement of the judgment in the applicant's favour.

In any event, in these two cases the terms of the respective declarations were accepted by the applicants without any objections to their wording.

In these circumstances, and bearing in mind that the applicants in all cases accepted the terms of the declarations, the Court is satisfied that the alleged violations of the Convention and its Protocol on account of both supervisory review and non-enforcement in the present five cases are acknowledged by the Government either explicitly or in substance. The Court also notes that the compensation offered in respect of these alleged violations is comparable with Court awards in similar cases (see, for example, *Streltsov and other "Novocherkassk military pensioners" cases v. Russia*, nos. 8549/06 et al., §§ 84-98, 29 July 2010).

The Court therefore considers that it is no longer justified to continue the examination of the applications in this part. Moreover, in light of the above considerations, and in particular given the clear and extensive case-law on the topic (see *Streltsov and other "Novocherkassk military pensioners" cases*, cited above), it is also satisfied that respect for human rights as defined in the Convention (Article 37 § 1 *in fine*) and the protocols thereto does not require it to continue the examination of the application in this part. Accordingly, the applications in the part concerning the complaints of non-enforcement and supervisory review should be struck out of the list.

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)).

In view of the above, it is appropriate to strike the cases out of the list in the part concerning the complaints of non-enforcement of the judgments

referred to in the Appendix and subsequent quashing of some of these judgments by way of supervisory review, as specified in the Appendix.

C. Other complaints raised by the applicants

The applicants in all cases further complained under Article 13 about the lack of an effective domestic remedy in respect of the non-enforcement and the supervisory review complaints.

As regards the alleged lack of an effective remedy in respect of the non-enforcement complaint, the Court takes cognisance of the existence of a new remedy against excessive length of proceedings introduced by the federal laws No. 68-Φ3 and No. 69-Φ3 on 4 May 2010 in the wake of the pilot judgment adopted in the case of *Burdov v. Russia (no. 2)* (no. 33509/04, ECHR 2009-...). On 23 September 2010 the Court decided that all new cases introduced after the *Burdov* pilot judgment and falling within the scope of the new domestic remedy had to be submitted in the first place to the national courts (see *Fakhretdinov and Others v. Russia (dec.)*, no. 26716/09 et al., §§ 31-32, 23 September 2010). The Court also stated that its position may be subject to review in the future, depending in particular on the domestic courts' capacity to establish consistent practice under the new law in line with the Convention requirements (*ibid*, § 33). Finally, the Court notes that the applicants will in any event receive pecuniary compensation in respect of the non-enforcement grievance in accordance with the Government's declarations examined above.

Having regard to these special circumstances, the Court does not find it necessary to continue a separate examination of the applicants' complaint under Article 13 in the present cases (see also *Pobudilina and Others v. Russia*, nos. 7142/05 et al., 29 March 2011).

As regards the complaint about the lack of an effective domestic remedy against the quashing by way of supervisory review of judgments in the applicants' favour, the Court notes that Article 13 of the Convention does not, as such, guarantee the right to appellate remedies in respect of a decision taken by way of supervisory review (see *Murtazin v. Russia*, no. 26338/06, § 46, 27 March 2008). It follows that the complaint under Article 13 in this part is incompatible *ratione materiae* with the provisions of the Convention within the meaning of Article 35 § 3 (a) and must be rejected in accordance with Article 35 § 4 thereof.

For these reasons, the Court unanimously

Decides to join the applications;

Takes note of the terms of the respondent Government's declaration under Article 6 § 1 of the Convention and Article 1 of Protocol No. 1 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 complaints of non-enforcement and supervisory review of the judgments in the applicants' favour referred to in the Appendix;

Decides that there is no need for a separate examination of the applicants' complaint under Article 13 about the lack of an effective remedy against the non-enforcement;

Declares the remainder of the applications inadmissible.

André Wampach
Deputy Registrar

Peer Lorenzen
President

APPENDIX

The applicants' names and summary of the details of the pension proceedings

	Application number, date of lodging	Name of the applicant, year of birth	Judgment by the Novochoerkassk Town Court	Sum awarded (RUB), nature of the payment <i>(adjustment to the increase of minimum wage or food allowance, other)</i>	Enforcement status	Quashing (date), Presidium judgment received by the applicant (date, if relevant)	Subsequent developments <i>(proceedings before the Oktyabrskiy District Court of Rostov-On-Don, the Rostov Region)</i>
1.	18969/06 20/04/06	Zemlyanskiy Yevgeniy Pavlovich (1937)	30 August 2004 No. 2-1618/04	108,657.68, adjustment to the minimum wage	Enforced on 5 February 2007	Not applicable, Supervisory-review proceedings discontinued	Not applicable
			30 August 2004 No. 2-1522/04	109,706.21, food allowance	Enforced on 5 February 2007	29 March 2007	28 May 2007, claim rejected
2.	27707/06 01/06/2006	Pakhomov Sergey Olegovich (1957)	30 August 2004 No. 2-1618/04	202,832.39, adjustment to the minimum wage	Enforced on 5 February 2007	Not applicable, Supervisory-review proceedings discontinued	Not applicable
			30 August 2004 No. 2-1491/04	104,642.85, Food allowance	Not enforced	10 November 2005, copy of the judgment received by the applicant on 2 December 2005	15 December 2008, proceedings discontinued

3.	29771/06 09/06/2006	Popkov Nikolay Vasilyevich (1949)	30 August 2004 No. 2-1492/04	114,725.44 food allowance (as further index-linked on 9 February and 7 October 2009, see below)	Not enforced to date	Not applicable, Supervisory-review proceedings discontinued	Not applicable
			30 August 2004 (no. 2-1636/04)	275,858.89, adjustment to the minimum wage	Not enforced	15 December 2005, copy of the judgment received by the applicant on 20 January 2006	21 February 2006, proceedings discontinued
			2 February 2009, as rectified on 7 October 2009	114,725.44 index-linking of the award of 30 August 2004 as regards adjustment of the pension to the minimum wage	Enforced on 22 December 2009	Not applicable	Not applicable
4.	29902/06 15/06/2006	Mukovoz Vasiliy Ivanovich (1944)	30 August 2004 No. 2-1655/04	309,988.01 adjustment to the minimum wage	Enforced on 15 May 2007	27 July 2007	20 September 2007, proceedings discontinued
			30 August 2004 No. 2-1531/04	130,706.83 food allowance	Not enforced	1 December 2005, copy of the judgment received by the applicant on 16 December 2005	2 February 2006, claims rejected
5.	32493/06 26/06/2006	Bondarev Petr Aleksandrovich (1944)	30 August 2004 No. 2-1631/04	374,220.26 adjustment to the minimum wage	Enforced on 5 February 2007	26 July 2007	20 September 2007, proceedings discontinued