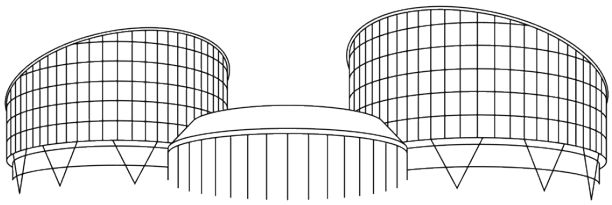

EUROPEAN COURT OF HUMAN RIGHTS
COUR EUROPÉENNE DES DROITS DE L'HOMME

FIRST SECTION

DECISION

Application no. 4352/09
Ismail Abdul-Karimovich KOKURKHOYEV
against Russia

The European Court of Human Rights (First Section), sitting on 20 March 2012 as a Chamber composed of:

Nina Vajić, *President,*
Anatoly Kovler,
Elisabeth Steiner,
Mirjana Lazarova Trajkovska,
Julia Laffranque,
Linos-Alexandre Sicilianos,
Erik Møse, *judges,*

and Søren Nielsen, *Section Registrar,*

Having regard to the above application lodged on 10 December 2008,

Having regard to the decision to grant priority to the above application under Rule 41 of the Rules of Court,

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

Having deliberated, decides as follows:

THE FACTS

The applicant, Mr Ismail Abdul-Karimovich Kokurkhoyev, is a Russian national who was born in 1953 and lives in Ordzhonikidzevskaya, Ingushetia. He acted pro se before the Court. 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 case, as submitted by the parties, may be summarised as follows.

In 2005 the applicant sued the State authorities in a domestic court for payment of supplementary allowances due under domestic law. On 11 March 2005 the Karabulakskiy District Court of the Republic of Ingushetia held for the applicant and ordered the authorities to pay the applicant a certain amount. On 22 March 2005 this judgment became binding and the authorities executed it in August 2007, that is with a delay.

In 2008 the applicant lodged proceedings with the domestic court asking for indexation of the judicial award due to the delayed execution of the judgment mentioned above. The domestic court rejected his claim.

COMPLAINT

The applicant complained under Article 1 of Protocol No. 1 about allegedly unlawful refusal by domestic courts to index-link the judicial award due to delayed execution of the judgment delivered in his favour.

THE LAW

The applicant maintained that the refusal by domestic courts to index-link the judicial award was arbitrary and unlawful, thus violating his right to the peaceful enjoyment of his possessions guaranteed by Article 1 of Protocol No. 1, the relevant part of which reads as follows:

> "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. "

By letter dated 17 January 2011 the Government provided the Court with unilateral declaration with a view to resolving the issue raised by the application and requested the Court to strike out the application in accordance with Article 37 of the Convention. The applicant objected to the declaration, noting in particular that it did not offer adequate compensation for pecuniary damage. On 21 October 2011 the Government withdrew their declaration of 17 January 2011 and made a revised unilateral declaration offering increased compensation amounts.

In that declaration, the Government acknowledged the violation of the applicant's rights under the Convention on account of the failure to index-link the judicial award in the applicant's favour. In their written

submissions accompanying the unilateral declaration, the Government notably stated that such refusal was inconsistent with the well-established domestic case-law requiring automatic and systematic indexation of monetary awards. They referred in this regard to the relevant findings of the European Court in *Burdov v. Russia (no. 2)*, no. 33509/04, §§ 93, 107, ECHR 2009 and a decision of the Constitutional Court of Russia of 20 March 2008. The Government declared their intention to pay the applicant 1,500 euros and 314,465 Russian roubles (RUB) as just satisfaction for both pecuniary and non-pecuniary damage. The remainder of their declaration reads as follows:

> "The sums referred to above, 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. 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 these sums 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."

In a letter of 24 November 2011, the applicant did not agree with the sums proposed in the revised unilateral declaration, claiming RUB 743,368 for pecuniary damage instead of RUB 314,465 proposed by the Government.

The Court reiterates that under Article 37 of the Convention it may at any stage of the proceedings strike an application out of its list of cases where the circumstances lead to the conclusions specified under (a), (b), or (c) 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."

Article 37 § 1 *in fine* states:

> "However, the Court shall continue the examination of the application if respect for human rights as defined in the Convention and the Protocols thereto so requires."

Having regard to the acknowledgement of a violation of the applicant's rights under Article 1 of Protocol No. 1 contained in the declaration together with the amounts of compensation proposed, the Court considers that it is no longer justified to continue the examination of the present application. Moreover, 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 (see, for the relevant principles, *Tahsin Acar v. Turkey* (preliminary issue) [GC], no. 26307/95, §§ 75-77, ECHR 2003-VI). The Court notes in this respect that the violations at issue

clearly resulted from a breach of domestic law and established practice as acknowledged by the Government. As to the applicant's objection, in the Court's view, the sums proposed by the Government cannot be considered as being unreasonable. To the contrary, the compensation offered by the Government appears consistent with the principles governing the Court's awards in respect of both pecuniary and non-pecuniary damage in similar cases. The Court does not therefore see any compelling reason of public order to warrant the examination of the application on the merits.

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 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.

Søren Nielsen	Nina Vajić
Registrar	President