



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

FIRST SECTION

DECISION

Application no. 35230/07
Nikolay Fedorovich CHEBOTAREV against Russia
and 2 other applications
(see list appended)

The European Court of Human Rights (First Section), sitting on 27 March 2012 as a Committee composed of:

Peer Lorenzen, *President*,

Elisabeth Steiner,

Khanlar Hajiyeu, *judges*,

and André Wampach, *Deputy Section Registrar*,

Having regard to the above applications,

Having regard to the decision to apply the pilot-judgment procedure taken in the case of *Burdov v. Russia (no. 2)* (no. 33509/04, ECHR 2009 (extracts)),

Having regard to the declarations submitted by the respondent Government on 8 December 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 Russian nationals whose names and dates of birth are listed in the appendix. They were represented before the Court by Mr A. Rossikhin, a lawyer practising in Izhevsk, Republic of Udmurtiya. The Russian Government ("the Government") were represented by

Mr G. Matyushkin, the Representative of the Russian Federation at the European Court of Human Rights.

A. The circumstances of the case

The facts of the cases, as submitted by the parties, may be summarised as follows.

The applicants are disabled as a result of participation in the emergency clean-up operations at the site of the nuclear plant disaster in Chernobyl.

In 2004 and 2005 the Oktyabrskiy District Court of Izhevsk (“the District Court”) awarded them various monetary amounts for purchase of housing. The dates of the judgments and the amounts awarded are listed in the appendix. Following continuing non-enforcement of those judgments and adoption of the new law on compensation for non-pecuniary damage resulting from unreasonable delay in the enforcement of judicial decisions (see the “Compensation Act” below), on 17 March 2011 the first two applicants obtained compensation from the Supreme Court of the Republic of Udmurtiya in the amount of 65,000 Russian roubles (RUB) and RUB 60,000, respectively (approximately 1,640 and 1,500 euros (EUR)). It is not clear from the parties’ submissions if these judgments have been enforced.

By a decision of 28 July 2011 the District Court granted the application of the Ministry of Finance for change of the enforcement method of the original judgments and ordered that the awards be paid by the Ministry of Finance from the funds of the State Treasury.

In October 2011 the awards pursuant to the judgments delivered in 2004 and 2005 were paid to the applicants.

B. Relevant domestic law

1. Compensation Act

Federal Law № 68-ФЗ “On Compensation for Violation of the Right to a Trial within a Reasonable Time or the Right to Enforcement of a Judgment within a Reasonable Time” of 30 April 2010 (in force as of 4 May 2010) provides that in case of a violation of the right to trial within a reasonable time or of the right to enforcement of a final judgment, the Russian citizens are entitled to seek compensation of the non-pecuniary damage.

2. Code of Civil Procedure

Article 208 of the Code of Civil Procedure provides for “indexation” of judicial awards: the court which made the award may upgrade it upon a party’s request in line with the increase in the official retail price index until

the date of effective payment. Default interest and other compensation for pecuniary damage may in addition be recovered from the debtor for non-compliance with a monetary obligation and use of another person's funds (Article 395 of the Civil Code).

COMPLAINTS

The applicants complained under Article 6 of the Convention and Article 1 of Protocol No. 1 about the delayed enforcement of the judgments in their favour.

THE LAW

1. Given that the applications at hand concern similar facts and complaints and raise identical issues under the Convention, the Court decides to join them.

2. Following the *Burdov* (no. 2) pilot judgment cited above, the Government informed the Court of the payment of the domestic court awards in the applicants' favour and submitted unilateral declarations aimed at resolving the issues raised by the applications. By these declarations the Russian authorities acknowledged the lengthy enforcement of the judgments in the applicants' favour. They also declared that they were ready to pay the applicants the sums listed in the appendix. The remainder of the declarations 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."

In their comments to the above declarations the applicants appeared to insist that they were also entitled to payment of pecuniary damage that they had sustained due to the inflation and rise in the cost of housing in the years

that had passed since adoption of the judgments in their favour. They also presented their own calculations for the amounts of non-pecuniary damage allegedly due to them.

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”.

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.”

The Court recalls that in its pilot judgment cited above it ordered the Russian Federation to

“grant [adequate and sufficient] redress, within one year from the date on which the judgment [became] final, to all victims of non-payment or unreasonably delayed payment by State authorities of a judgment debt in their favour who [had] lodged their applications with the Court before the delivery of the present judgment and whose applications [had been] communicated to the Government under Rule 54 § 2 (b) of the Rules of the Court.”

In the same judgment the Court also held that:

“pending the adoption of the above measures, the Court [would] adjourn, for one year from the date on which the judgment [became] final, the proceedings in all cases concerning solely the non-enforcement and/or delayed enforcement of domestic judgments ordering monetary payments by the State authorities, without prejudice to the Court’s power at any moment to declare inadmissible any such case or to strike it out of its list following a friendly settlement between the parties or the resolution of the matter by other means in accordance with Articles 37 or 39 of the Convention.”

Having examined the terms of the Government’s declarations, the Court understands them as intending to give the applicants redress in line with the pilot judgment (see *Burdov (no. 2)*, cited above, §§ 127 and 145 and point 7 of the operative part).

The Court is satisfied that the excessive length of the execution of judgments in the applicants’ favour is explicitly acknowledged by the Government. The Court also notes that the compensations offered are comparable with Court awards in similar cases, taking account, *inter alia*, of the specific delays in each particular case (see *Burdov (no. 2)*, cited above, §§ 99 and 154).

As to the applicants’ objections, the Court accepts that the pecuniary damage which they sustained was not fully redressed by the payment of the judgment debts by the State. However, it notes that it is open to the applicants to claim index-linking of the original awards at the domestic

courts, pursuant to Article 208 of the Russian Code of Civil Procedure (see above).

The Court therefore considers that it is no longer justified to continue the examination of the applications, nor is it required by respect for human rights as defined in the Convention and the protocols thereto. Accordingly, the applications should be struck out of the list.

As regards the question of implementation of the Government's undertakings, the Committee of Ministers remains competent to supervise this matter in accordance with Article 46 of the Convention (see the Committee's decisions of 14-15 September 2009 (CM/Del/Dec(2009)1065) and Interim Resolution CM/ResDH(2009)1 58 concerning the implementation of the *Burdov (no. 2)* judgment). 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)).

For these reasons, the Court unanimously

Takes note of the terms of the respondent Government's declarations under Article 6 § 1 of the Convention and of the modalities for ensuring compliance with the undertakings referred to therein;

Decides to join the applications;

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

André Wampach
Deputy Registrar

Peer Lorenzen
President

APPENDIX

No	Application No	Lodged on	Applicant's name and date of birth	Date of the judgment by the Oktyabrskiy District Court of Izhevsk	Amount awarded by the domestic court (RUB)	Compensation offered (EUR)
1.	35230/07	23/07/2007	Nikolay Fedorovich CHEBOTAREV 14/09/1949	05/11/2004	610,000	4,304.71
2.	51346/07	26/09/2007	Vladimir Vasilyevich KOZLOV 08/05/1951	30/05/2005	417,181	3,969.86
3.	17410/08	26/02/2008	Aleksandr Fedorovich SIDOROV 21/06/1957	24/03/2005	750,000	4,126.93