



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

FIRST SECTION

DECISION

Application no. 30354/06
Olga Mikhaylovna SMIRNOVA and others against Russia
and 2 other applications
(see list appended)

The European Court of Human Rights (First Section), sitting on 18 December 2012 as a Chamber composed of:

Isabelle Berro-Lefèvre, *President*,
Elisabeth Steiner,
Nina Vajić,
Anatoly Kovler,
Khanlar Hajiyeu,
Linos-Alexandre Sicilianos,
Erik Møse, *judges*,

and Søren Nielsen, *Section Registrar*,

Having regard to the above applications,

Having regard to the declaration submitted by the respondent Government on 22 September 2010 requesting the Court to strike the applications out of the list of cases and the applicants' reply to that declaration,

Having deliberated, decides as follows:

FACTS AND PROCEDURE

1. The applicants are 21 Russian nationals whose names and dates of birth are tabulated in the appendix below. They are represented by Mr I.V. Novikov, a lawyer practising in Novosibirsk. The Russian Government ("the Government") were represented by Mr G. Matyushkin,

the Representative of the Russian Federation at the European Court of Human Rights.

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

3. All the applicants are pensioners. They successfully sued the pension authorities for miscalculating their pensions. Subsequently, on the authorities' initiative, the Presidium of the Supreme Court of Yakutiya quashed the final judgments by way of supervisory review to the applicants' detriment on the ground of misinterpretation of the material law.

4. On 28 August 2012 the Chamber recognised standing to continue proceedings for the following heirs of the deceased applicants:

- Ms Buranova Marina Alekseyevna (in place of Ms Karyukina Valentina Grigoryevna), Ms Ragulina Zinaida Yakovlevna (in place of Mr Ragulin Anatoliy Fedorovich) and Mr Voronin Aleksey Yevlampiyevich (in place of Ms Voronina Valentina Fedorovna) in the case *Smirnova and Others v. Russia*, no. 30354/06;

- Ms Yelena Aleksandrovna Korobova (in place of Mr Aleksandr Dmitriyevich Korobov) in the case *Zimina and Others v. Russia*, no. 47937/06;

- Ms Podpletneva Nina Vyacheslavovna (in place of Ms Podpletneva Galina Ivanovna) in the case *Podpletneva v. Russia*, no. 11918/07.

COMPLAINTS

5. The applicants complained under Article 6 of the Convention and Article 1 of Protocol No. 1 about quashing of judgments in their favour by way of supervisory review.

THE LAW

6. The applicants complained about quashing of final and enforceable judgments in their favour by way of supervisory review. They relied on Article 6 § 1 of the Convention and Article 1 of Protocol No. 1 which, in so far as relevant, provide as follows:

Article 6 § 1 of the Convention

“In the determination of his (or her) civil rights and obligations (...), everyone is entitled to a fair and public hearing within a reasonable time by an independent and impartial tribunal established by law (...)”

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.”

7. By a letter of 22 September 2010 the Government informed the Court that they proposed to make a unilateral declaration with a view to resolving the issue raised by the applications. They further requested the Court to strike out the applications in accordance with Article 37 of the Convention.

8. In that declaration, the Government acknowledged the violation of the applicants’ rights under the Convention on account of the quashing of the binding judgments on the grounds of misinterpretation of substantial law by way of supervisory review. The Government mentioned that the judgments in the applicants’ favour had been fully complied with prior to their quashing by way of supervisory review. The Government undertook to pay each applicant concerned 1,400 euros as compensation for damage resulting from the violations mentioned above.

9. The remainder of their declaration provided as follows:

“The sum referred to above, which is 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 this sum 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.”

10. By a letter of 2 December 2010, the applicants indicated that they were not satisfied with the terms of the unilateral declaration and they insisted on examination of their complaints. They considered unlawful the termination of payment of pensions at a rate fixed by the judgments in their favour. They pointed out that arrears on payment amounted to around 80 000 Russian roubles with regard to each applicant, without submitting documents in support of this sum. In addition, they contested the amounts proposed by the Government for non-pecuniary damage.

11. 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 applications”.

12. 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 cases to be continued.

13. 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 v. Turkey* (preliminary issue) [GC], no. 26307/95, §§ 75-77, ECHR 2003-VI, and *Sulwinska v. Poland* (dec.) no. 28953/03, 18 September 2007.

14. Turning to the Government's unilateral declarations, the Court observes that the judgments providing the applicants with an enforceable claim were quashed by way of supervisory review. The Court is satisfied that the quashing of binding and enforceable judgments in the applicants' favour is explicitly acknowledged by the Government as violating the Convention.

15. As regards the pecuniary damage sustained by the applicants, the Court notes that according to the Government, the judgments in the applicants' favour were fully executed prior to their quashing. The Government provided documents supporting those payments. As far as the applicants' replies to the declaration can be understood as contesting the fact of those payments, the Court cannot accept this argument as they did not provide any documentary evidence. Thus it accepts that the judgments in the applicants' favour were fully enforced by the Russian authorities until the moment of their quashing.

16. The Court recalls that after the final judgments were quashed they ceased to exist under domestic law. It cannot restore the power of these judgments nor assume the role of the national authorities in awarding social benefits for the future (see, among other authorities, *Tarnopolskaya and Others v. Russia*, nos. 11093/07 et al., § 51, 7 July 2009). Consequently, no pecuniary awards for the periods after the quashing could be legitimately claimed by the applicants before the Court.

17. As far as compensation for the non-pecuniary damage is concerned, the Court notes that the relevant sums offered by the Government are comparable with the Court's awards in similar cases (see *Ryabov and 151 other "Privileged pensioners" cases v. Russia*, nos. 4563/07 et al., § 23, 17 December 2009, and *Streltsov and other "Novocherkassk military pensioners" cases v. Russia*, nos. 8549/06 et al., § 96, 29 July 2010).

18. Having regard to the nature of the admissions contained in the Government's declaration, as well as the amount of compensation proposed – which is consistent with the amounts awarded in similar cases – the Court considers that it is no longer justified to continue the examination of the applications (Article 37 § 1(c)).

19. Moreover, in light of the above considerations, and in particular given the clear and extensive case-law on the topic (see, for example,

Kulkov and Others v. Russia, nos. 25114/03 et al., 8 January 2009, and *Pugach and Others v. Russia*, nos. 31799/08 et al., 4 November 2010), 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 applications (Article 37 § 1 *in fine*).

20. Finally, the Court emphasises that, should the Government fail to comply with the terms of their unilateral declaration, the applications could be restored to the list in accordance with Article 37 § 2 of the Convention (*Josipovic v. Serbia* (dec.), no. 18369/07, 4 March 2008).

In view of the above, it is appropriate to strike the cases out of the list.

For these reasons, the Court unanimously

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 with regard to all applicants;

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.

Søren Nielsen
Registrar

Isabelle Berro-Lefèvre
President

APPENDIX

No	Application no.	Lodged on	Applicant Date of birth Place of residence	Represented by
1.	30354/06	17/06/2006	<p>Olga Mikhaylovna SMIRNOVA 01/05/1941 Neryungri</p> <p>Valentina Eduardovna DANILOVA 01/07/1951 Neryungri</p> <p>Vitaliy Alekseyevich DANILOV 12/09/1946 Neryungri</p> <p>Tatyana Nikolayevna BASHINSKAYA 23/04/1954 Neryungri</p> <p>Valentina Fedorovna VORONINA 26/11/1926 Neryungri</p> <p>Aleksey Yevlampiyevich VORONIN 15/04/1927 Neryungri</p> <p>Yekaterina Ivanovna KOZLOVA 06/01/1954 Neryungri</p> <p>Yevgeniya Nikitichna IVANOVA 08/01/1942 Neryungri</p>	Igor Vladimirovich NOVIKOV

No	Application no.	Lodged on	Applicant Date of birth Place of residence	Represented by
			<p>Zinaida Yakovlevna RAGULINA 04/11/1941 Neryungri</p> <p>Raisa Vasilyevna TSIRENOVA 17/07/1949 Neryungri</p> <p>Valentina Ivanovna PIRNAZAROVA 26/06/1946 Neryungri</p> <p>Galina Vasilyevna POPRAVKINA 25/07/1947 Neryungri</p> <p>Lidiya Ivanovna CHIGRIDOVA 01/03/1932 Neryungri</p> <p>Valentina Grigoryevna KARYUKINA 05/12/1932 Neryungri</p> <p>Lyudmila Gavrilovna PLEMYANNIK 20/04/1949 Neryungri</p> <p>Anatoliy Fedorovich RAGULIN 06/04/1947 Neryungri</p> <p>Vitaliy Petrovich TSIRENOV 20/06/1939 Neryungri</p>	

No	Application no.	Lodged on	Applicant Date of birth Place of residence	Represented by
2.	47937/06	28/10/2006	<p>Valentina Semenovna ZIMINA 12/10/1938 Neryungri</p> <p>Aleksandr Dmitriyevich KOROBOV 15/10/1947 Neryungri</p> <p>Galina Anatolyevna KOROBOVA 16/08/1953 Neryungri</p>	Igor Vladimirovich NOVIKOV
3.	11918/07	08/02/2007	<p>Galina Ivanovna PODPLETNEVA 13/09/1938 Neryungri</p>	Igor Vladimirovich NOVIKOV