



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

FIRST SECTION

DECISION

Application no. 14543/06
Petr Fillipovich KHODAR against Russia
and two other applications
(see list appended)

The European Court of Human Rights (First Section), sitting on 1 October 2013 as a Committee composed of:

Khanlar Hajiyeu, *President*,

Julia Laffranque,

Erik Møse, *judges*,

and André Wampach, *Deputy Section Registrar*,

Having regard to the above applications lodged on the dates set out below,

Having deliberated, decides as follows:

THE FACTS

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

A. Application no. 14543/06 lodged on 28 March 2006

2. The applicant, Mr Petr Filippovich Khodar, is a Russian national who was born in 1950 and now lives in Minsk, Belarus.

3. The applicant was a party to several sets of civil proceedings.

4. In 2006, he brought a claim for compensation against the Russian Federation before the Supreme Court of the Russian Federation, seeking damages incurred on account of various procedural deficiencies in the previous proceedings, including in particular, their excessive duration.

5. On 5 July 2006 a judge of the Supreme Court refused to consider his claim, finding that “presently the law does not provide for a possibility to recover damages caused by judges in the administration of justice”.

6. On 14 September 2006 the Appeals Panel of the Supreme Court upheld the above decision in a summary fashion.

7. After one set of the proceedings had lasted more than four years, the applicant brought a civil claim against the Ministry of Finance and the Ministry of Justice for compensation for non-pecuniary damage incurred in connection with a breach of his right to a trial within a reasonable time.

8. On 14 May 2007 the Tverskoy District Court of Moscow declined to examine his claim, indicating that Parliament had not yet adopted a law determining jurisdiction over claims concerning State liability for the damage caused by a court's failure to adjudicate a case within a reasonable time.

9. On 27 September 2007 the Moscow City Court upheld the District Court's decision on appeal.

B. Application no. 27049/06 lodged on 12 May 2006

10. The applicants, Mr Viktor Georgievich Masko and Ms Tatyana Yuryevna Kozlova, are Russian nationals who were born in 1958 and 1962, respectively, and live in Moscow. The first applicant is a lawyer representing the second applicant.

11. In 2003, the applicants sued the liquidation commission of their former employer for damages. The action was filed with the Babushkinskiy District Court of Moscow.

12. On 8 June 2005 the District Court rejected the applicants' claim on the merits. On 15 November 2005 the City Court upheld its judgment.

13. The applicants brought a civil claim against the Ministry of Finance for compensation for non-pecuniary damage incurred in connection with the District Court's unlawful rejection of their claim and other procedural breaches.

14. On 3 October 2006 the Tverskoy District Court of Moscow declined to examine the claim on the ground that no federal law had stipulated that courts of general jurisdiction were competent to examine such claims.

15. On 29 March 2007 the Moscow City Court upheld the District Court's decision in a summary fashion.

C. Application no. 32849/06 lodged on 5 July 2006

16. The applicant, Mr Sergey Aleksandrovich Vystavkin, is a Russian national living in Yekaterinburg. He is represented before the Court by Mr R. Zyamilov, a lawyer practising in Yekaterinburg.

17. Following discontinuation of criminal proceedings against the applicant, on 5 August 1998 he sued the Ministry of Finance for damages. The final decision on his claim was given on 29 April 2003 by the Yekaterinburg Regional Court.

18. The applicant brought a civil claim against the Ministry of Finance for compensation for non-pecuniary damage incurred in connection with an excessive duration of the compensation proceedings.

19. On 14 October 2005 the Tverskoy District Court of Moscow declined to examine the claim on the ground that no federal law had stipulated that courts of general jurisdiction were competent to examine such claims.

20. On 28 February 2006 the Moscow City Court upheld the District Court's decision in a summary fashion.

THE LAW

A. Joinder of the applications

21. Having regard to the similarity of the main issues under the Convention in the above cases, the Court decides to join the applications and consider them in a single decision.

B. The complaints concerning the applicants' right of access to a court

22. The applicants' main grievance related to the fact that the Russian courts had refused to consider their claims for compensation. They submitted that it undermined their right of access to a court under Article 6 of the Convention which provides, in the relevant part, as follows:

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

23. By letters dated 14 January 2013, the Government informed the Court that they proposed to make a unilateral declaration with a view to resolving the main issue raised by the applications. They acknowledged that there had been a violation of the applicants' right of access to a court relating to the domestic courts' refusal to examine their claims for compensation, and stated their readiness to pay compensation to each applicant as just satisfaction.

24. The remainder of the declaration in each case read as follows:

“The authorities therefore invite the Court to strike the present case 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 of the case out of the Court's list of cases, as referred to in Article 37 § 1 (c) of the Convention.

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 Convention. 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.”

25. By letters of 11 and 17 March 2013, the applicants Mr Masko, Ms Kozlova and Mr Vystavkin informed the Court that they accepted the Government’s offer in so far as it concerned the facts described above.

26. The applicant Mr Khodar did not reply to the Court’s request for his comments on the Government’s declaration. On 24 May 2013 he was notified by registered mail that the period allowed for his submissions had expired and that no extension of time had been requested. Mr Khodar’s attention was drawn to Article 37 § 1 (a) of the Convention, which provides that the Court may strike a case out of its list of cases where the circumstances lead to the conclusion that the applicant does not intend to pursue the application. No further correspondence from Mr Khodar’s was received and the Court’s letter was returned unclaimed.

27. The Court reiterates 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:

“1. The Court may at any stage of the proceedings decide to strike an application out of its list of cases where the circumstances lead to the conclusion that

(a) the applicant does not intend to pursue his application; or

(b) the matter has been resolved; or

(c) for any other reason established by the Court, it is no longer justified to continue the examination of the application.

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.”

28. As regards the application lodged by Mr Khodar, the Court considers that, in the circumstances, he may be regarded as no longer wishing to pursue his application, within the meaning of Article 37 § 1 (a) of the Convention.

29. As regards the two other applications, the Court 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 that end, the Court has to examine carefully the declaration in the light of the principles established in its case-law, in particular the *Tahsin Acar* judgment (see *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).

30. The Court notes that since its first judgment concerning the denial of access to a court because of a defective legislative framework (see *Chernichkin v. Russia*, no. 39874/03, 16 September 2010), it has found a violation of Article 6 § 1 on account of a similar set of circumstances in three other cases raising those issues. It may therefore be considered that the complaints raised in the present applications are based on the established case-law of the Court.

31. Turning next to the admissions contained in the Government's declarations, the Court is satisfied that the Government did not dispute the allegations made by the applicants and explicitly acknowledged that the rejection of their claims had been in breach of Article 6 of the Convention.

32. As to the intended redress to be provided to the applicants, the Government have undertaken to pay them certain amounts of compensation in respect of pecuniary and non-pecuniary damages, as well as costs and expenses. Even if the amounts were not the exact match of the awards made by the Court in previous similar cases, what is important is that the proposed sums are not unreasonable in comparison with those awards (see *Cocchiarella v. Italy* [GC], no. 64886/01, § 105, ECHR 2006-V). The Government have committed themselves to effecting the payment of those sums within three months of the Court's decision, with default interest to be payable in case of delay of settlement.

33. Finally, the Court notes that on 30 April 2010 the Russian Parliament adopted two federal laws which introduced a new domestic remedy in respect of an excessive duration of court proceedings and delayed enforcement of domestic judgments against the State (see, for more details, *Nagovitsyn and Nalgiyev* (dec.), nos. 27451/09 and 60650/09, §§ 9-20, 23 September 2010). The introduction of the remedy was designed to eliminate the legislative lacuna which had been at the origin of the instant applications. Accordingly, the Court is satisfied that respect for human rights as defined in the Convention (Article 37 § 1 *in fine*) does not require it to continue the examination of this part of the case.

34. In view of the above, the Court decides to strike Mr Khodar's application out of the list of cases in accordance with Article 37 § 1 (a) of the Convention and the remaining two applications in accordance with Article 37 § 1 (c) of the Convention. The latter decision is without prejudice to any decision the Court might take to restore, pursuant to Article 37 § 2 of the Convention, the applications to its list of cases, should the Government fail to comply with the terms of their unilateral declaration (see *Josipović v. Serbia* (dec.), no. 18369/07, 4 March 2008, and *Aleksentseva and 28 Others v. Russia* (dec.), nos. 75025/01 et al., 23 March 2006).

C. The other complaints

35. The applicants Mr Masko and Ms Kozlova also raised additional complaints about other sets of proceedings.

36. Having regard to all the material in its possession, and in so far as it has jurisdiction to examine the allegations, the Court has not found any appearance of a breach of the rights and freedoms guaranteed by the Convention or its Protocols in that part of their applications.

37. It follows that their application in this part must be rejected in accordance with Article 35 §§ 3 and 4 of the Convention.

For these reasons, the Court unanimously

Decides to join the applications;

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

Decides to strike Mr Khodar's application out of its list of cases in accordance with Article 37 § 1 (a) of the Convention;

Decides to strike the applications by Mr Masko, Ms Kozlova and Mr Vystavkin out of its list of cases in accordance with Article 37 § 1 (c) of the Convention in so far as they concerned the complaints about denial of access to a court;

Declares the remainder of the case inadmissible.

André Wampach
Deputy Registrar

Khanlar Hajiyev
President

APPENDIX

| No | Application No | Lodged on | Applicant Date of birth Place of residence | Represented by |
|-----------|-----------------------|------------------|---|-------------------------------|
| 1. | 14543/06 | 28/03/2006 | Petr Phillipovich KHODAR 08/07/1950 Minsk | |
| 2. | 24079/06 | 12/05/2006 | Viktor Georgiyevich MASKO 28/11/1958 Moscow Tatyana Yuryevna KOZLOVA 02/09/1962 Moscow | |
| 3. | 32849/06 | 05/07/2006 | Sergey Aleksandrovich VYSTAVKIN | Rinat Vasilyevich ZYAMILOV |