



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

THIRD SECTION

CASE OF FEDORENKO AND OTHERS v. RUSSIA

*(Applications nos. 522/06 and 5 others –
see appended list)*

JUDGMENT

STRASBOURG

12 October 2017

This judgment is final but it may be subject to editorial revision.

In the case of Fedorenko and Others v. Russia,

The European Court of Human Rights (Third Section), sitting as a Committee composed of:

Luis López Guerra, *President*,

Dmitry Dedov,

Jolien Schukking, *judges*,

and Liv Tiggerstedt, *Acting Deputy Section Registrar*,

Having deliberated in private on 21 September 2017,

Delivers the following judgment, which was adopted on that date:

PROCEDURE

1. The case originated in applications against Russia lodged with the Court under Article 34 of the Convention for the Protection of Human Rights and Fundamental Freedoms (“the Convention”) on the various dates indicated in the appended table.

2. The applications were communicated to the Russian Government (“the Government”).

THE FACTS

3. The list of applicants and the relevant details of the applications are set out in the appended table.

4. The applicants complained of the non-enforcement or delayed enforcement of domestic decisions and of the lack of any effective remedy in domestic law.

THE LAW**I. JOINDER OF THE APPLICATIONS**

5. Having regard to the similar subject matter of the applications, the Court finds it appropriate to examine them jointly in a single judgment.

II. ALLEGED VIOLATION OF ARTICLE 6 § 1 AND ARTICLE 13 OF THE CONVENTION AND OF ARTICLE 1 OF PROTOCOL No. 1

6. The applicants complained of the non-enforcement or delayed enforcement of domestic decisions given in their favour and of the lack of

any effective remedy in domestic law. They relied, expressly or in substance, on Article 6 § 1 and Article 13 of the Convention and on Article 1 of Protocol No. 1, which read as follows:

Article 6 § 1

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

Article 13

“Everyone whose rights and freedoms as set forth in [the] Convention are violated shall have an effective remedy before a national authority notwithstanding that the violation has been committed by persons acting in an official capacity.”

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.”

7. The Court reiterates that the execution of a judgment given by any court must be regarded as an integral part of a “hearing” for the purposes of Article 6. It also refers to its case-law concerning the non-enforcement or delayed enforcement of final domestic judgments (see *Hornsby v. Greece*, no. 18357/91, § 40, *Reports of Judgments and Decisions* 1997-II).

8. In the leading case of *Gerasimov and Others v. Russia*, no. 29920/05 and 10 others, 1 July 2014, the Court already found a violation in respect of issues similar to those in the present case.

9. Having regard to the nature of the judicial awards in the applicants’ favour (see the appended table for details of court orders), the Court considers that the applicants had, by virtue of these judgments, a “legitimate expectation” to acquire a pecuniary asset, which was sufficiently established to constitute a “possession” within the meaning of Article 1 of Protocol No. 1.

10. Having examined all the material submitted to it, the Court has not found any fact or argument capable of persuading it to reach a different conclusion on the admissibility and merits of these complaints. Having regard to its case-law on the subject, the Court considers that in the instant case the authorities did not deploy all necessary efforts to enforce fully and in due time the decisions in the applicants’ favour.

11. These complaints are therefore admissible and disclose a breach of Article 6 § 1 of the Convention and Article 1 of Protocol No. 1 to the Convention.

12. The applicants also complained under Article 13 of the Convention about the lack of an effective domestic remedy in respect of the non-enforcement. The Court has already noted the existence of a new domestic remedy against the non-enforcement of domestic judgments imposing obligations of a pecuniary and non-pecuniary nature on the Russian authorities, introduced in the wake of the pilot judgment, which enables those concerned to seek compensation for damage sustained as a result of excessive delays in the enforcement of court judgments (see *Kamneva and Others v. Russia* (dec.), no. 35555/05 and 6 others, 2 May 2017). Even though the remedy was – or still is – available to the applicants, the Court reiterates that it would be unfair to request the applicants whose cases have already been pending for many years in the domestic system and who have come to seek relief at the Court, to bring again their claims before domestic tribunals (see *Gerasimov and Others*, cited above, § 230).

13. However, in the light of the adoption of the new domestic remedy, the Court, as in its previous decisions, considers that it is not necessary to examine separately the admissibility and merits of the applicants' complaint under Article 13 in the present cases (see, for a similar approach, *Korotyayeva and Others v. Russia*, nos. 13122/11 and 2 others, §§ 36-40, 27 June 2017; *Kamneva and Others*, cited above, and, *mutatis mutandis*, *Tkhyegepso and Others v. Russia*, no. 44387/04 and 11 others, §§ 21-24, 25 October 2011). This ruling is without prejudice to the Court's future assessment of the new remedy.

III. APPLICATION OF ARTICLE 41 OF THE CONVENTION

14. Article 41 of the Convention provides:

“If the Court finds that there has been a violation of the Convention or the Protocols thereto, and if the internal law of the High Contracting Party concerned allows only partial reparation to be made, the Court shall, if necessary, afford just satisfaction to the injured party.”

15. Regard being had to the documents in its possession and to its case-law), and insofar as claims for just satisfaction were lodged by the applicants (see, in particular, *Gerasimov and Others v. Russia*, nos. 29920/05 and 10 others, §§ 187-200, 1 July 2014; and *Korotyayeva and Others*, cited above), the Court considers it reasonable to award the sums indicated in the appended table.

16. The Court considers it appropriate that the default interest rate should be based on the marginal lending rate of the European Central Bank, to which should be added three percentage points.

17. The Court further notes from the Government's submissions that the domestic judgments in certain applications have remained unenforced to date (see the appended table). The State's obligation to enforce those judgments is not in dispute. The Court considers that the respondent State

has an outstanding obligation to secure, by appropriate means, enforcement of the judgment in the applicants' favour (see *Pridatchenko and Others v. Russia*, nos. 2191/03 and 3 others, § 68, 21 June 2007, and *Salikova v. Russia*, no. 25270/06, § 83, 15 July 2010).

REASONS, THE COURT, UNANIMOUSLY,

1. *Decides* to join the applications;
2. *Declares* the complaints concerning the non-enforcement or delayed enforcement of domestic decisions admissible;
3. *Holds* that these complaints disclose a breach of Article 6 § 1 of the Convention and Article 1 of Protocol No. 1 concerning the non-enforcement or delayed enforcement of domestic decisions;
4. *Decides* that it is not necessary to examine the admissibility and merits of the applicants' complaint under Article 13 of the Convention;
5. *Holds* that the respondent State shall ensure, by appropriate means, within three months, the enforcement of the pending domestic decisions referred to in the appended table;
6. *Holds*
 - (a) that the respondent State is to pay the applicants, within three months, the amounts indicated in the appended table, to be converted into the currency of the respondent State at the rate applicable at the date of settlement;
 - (b) that from the expiry of the above-mentioned three months until settlement simple interest shall be payable on the above amounts at a rate equal to the marginal lending rate of the European Central Bank during the default period plus three percentage points.
7. *Dismisses* the remainder of the applicants' claim for just satisfaction.

Done in English, and notified in writing on 12 October 2017, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Liv Tigerstedt
Acting Deputy Registrar

Luis López Guerra
President

APPENDIX

List of applications raising complaints under Article 6 § 1 and Article 13 of the Convention and Article 1 of the Protocol No. 1
(non-enforcement or delayed enforcement of domestic decisions and lack of any effective remedy in domestic law)

No.	Application no. Date of introduction	Applicant name Date of birth	Representative name and location	Relevant domestic decision	Start date of non-enforcement period	End date of non-enforcement period Length of enforcement proceedings	Domestic order	Amount awarded for pecuniary and non-pecuniary damage and costs and expenses per applicant (in euros) ¹
1.	522/06 12/10/2005	Sergey Vladimirovich Fedorenko 24/08/1976		the Military Court of Znamenskiy Garrison, 26/10/2005	08/11/2005	30/08/2015 9 year(s) and 9 month(s) and 23 day(s)	"... to provide [the applicant] with service housing in accordance with the domestic law ..."	6,000
2.	12975/06 06/02/2006	Yuliya Mikhaylovna Sidorova 26/02/1931		the Military Court of 235th Garrison, 04/11/2003	17/11/2003	pending More than 13 year(s) and 8 month(s) and 30 day(s)	"... to grant [the applicant's daughter] and her family [in particular the applicant] housing in accordance with the standards as provided by domestic law in force ..."	0
3.	18927/06 31/03/2006	Aleksandr Ivanovich Ilyin 13/10/1945		Oktyabrskiy District Court of Omsk, 05/12/2003	16/12/2003	10/10/2006 2 year(s) and 9 month(s) and 25 day(s)	"... return seized documents to the applicant ..."	2,500
4.	38818/06 13/07/2006	Sergey Viktorovich Pecherskikh 25/02/1962		Military Court of the Rostov-on-Don Garrison, 28/12/2000	10/01/2001	pending More than 16 year(s) and 7 month(s) and 6 day(s)	"... annul the order whereby the [applicant] was excluded from the list of staff and make monetary payments ..."	6,000
5.	42364/10 10/06/2010	Tatyana Filosofovna Imovskaya 10/03/1930		the Tulun City Court, 10/04/2008	01/08/2008	pending More than 9 year(s) and 15 day(s)	"... carry out renovation works at the address indicated [by the court, of the house in which the applicant owns a flat]... and to pay a certain amount of compensation for damage"	6,000
6.	42379/11 24/06/2011	Sergey Leonidovich Levchenko 15/08/1963	Maroz Raman Moscow	the Military Court of Timonovskiyy Garrison, 10/04/2006	21/04/2006	25/01/2016 9 year(s) and 9 month(s) and 5 day(s)	"... to grant accommodation [to the applicant], before his dismissal, in accordance with the standards established by domestic law ..."	6,940

¹. Plus any tax that may be chargeable to the applicants.