THIRD SECTION

**CASE OF KONSTANTINOVA AND OTHERS v. RUSSIA**

*(Application no. 60708/13)*

JUDGMENT

STRASBOURG

5 February 2019

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

In the case of Konstantinova and Others v. Russia,

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

 Branko Lubarda, *President,* Pere Pastor Vilanova, Georgios A. Serghides, *judges,*
and Fatoş Aracı, *Deputy Section Registrar,*

Having deliberated in private on 15 January 2019,

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

PROCEDURE

1.  The case originated in an application (no. 60708/13) against the Russian Federation lodged with the Court under Article 34 of the Convention for the Protection of Human Rights and Fundamental Freedoms (“the Convention”) by five Russian nationals (“the applicants”), on 15 July 2013.

2.  The Russian Government (“the Government”) were represented initially by Mr G. Matyushkin, the Representative of the Russian Federation to the European Court of Human Rights, and then by his successor in that office, Mr M. Galperin.

3.  In the wake of the pilot judgment in the case of *Gerasimov and Others v. Russia*, on 24 November 2014 the application was communicated to the Government for settlement or resolution (see *Gerasimov and Others* v. Russia, nos. 29920/05 and 10 others, §§ 230-31 and point 13 of the operative part, 1 July 2014). The Court adjourned for two years, that is until 1 October 2016, the proceedings in all cases concerning non-enforcement or delayed enforcement of domestic judgments imposing obligations in kind on the State authorities (ibid., § 232 and point 14 of the operative part).

4.  On 29 September 2016 the Government advised the Court that they were unable to settle the application within the above time-limit, as the domestic judgments in the applicants’ favour had remained unenforced.

5.  Having regard to the expiry of the above-mentioned adjournment period, the Court has decided to resume the examination of the application. The Court informed the parties at the communication stage that the case, subject to settled case-law, would be allocated to the Committee.

THE FACTS

I.  THE CIRCUMSTANCES OF THE CASE

6.  The applicants are five Russian nationals. Their personal details are set out in the Appendix. They are members of one family.

7.  Since 1981 the applicants have lived in a flat in an apartment block provided to them under a social tenancy agreement by the Ministry of Defence of the Russian Federation. The landlord was under obligation to perform a major overhaul of the apartment block, and the applicants had to make regular payments for the major overhaul. They paid the amounts due. The overhaul had never been performed, allegedly since 1935.

8.  On the dates listed in the Appendix the Orenburgskiy District Court of the Orenburg Region granted their claims, having noted from expert reports that the apartment block was “64%‒dilapidated” and its state was “unsatisfactory”, and that the flat was 64%‒dilapidated. The court found that the applicants’ living premises, as well as the common property of the apartment block required a major overhaul. The court ordered the Federal State Institution of the Privolzhsko-Uralskiy Military Circuit to perform the major overhaul of the applicants’ flat, as well as of the common property of the apartment block and of the “devices situated in the living premises and serving for provision of communal services” in the apartment block, and to pay each applicant 3,000 Russian roubles (RUB) in respect of non‑pecuniary damage.

9.  According to the applicants’ observations, on 9 November 2011 the Orenburgskiy District Court awarded the claimants RUB 490,155.43 (approximately 11.681 euros) of compensation of losses. They did not enclose a copy of the judgment or further details as to either the defendant, or the exact list of claimants, the scope of the judgment or its subsequent challenge on appeal by any of the parties.

10.  In 2012 Federal State Treasury Department (*Управление*) of the Privolzhsko-Uralskiy Military Circuit became a legal successor of the debtor institution.

11.  In 2012 the applicants sued various authorities for penalties for several years of the non-enforcement. By the final judgment of 5 February 2013 the Orenburg Regional Court rejected their claims in full, having found that they were based on an incorrect interpretation of the domestic law and that the applicants had failed to submit a calculation of the penalty.

12.  According to the Government, in December 2013 the applicant’s house was included in a regional housing overhaul assistance program. The authorities prepared a project and the budget documentation, which were approved by the experts.

13.  On 13 April 2015 Ms Konstantinova privatized the flat and acquired a title to it.

14.  According to the Government’s latest observations of 31 May 2017, the judgments had remained unenforced at the material time.

II.  RELEVANT DOMESTIC LAW AND PRACTICE

15.  Article 210 of the Civil Code of the Russian Federation (The Burden of Maintaining the Property) provides that the owner bears the burden of maintaining the property in his ownership, unless otherwise stipulated by the law or by the contract.

16.  Article 158 of the Housing Code of the Russian Federation (Expenses of the owners of living premises in apartment blocks) sets out the modalities of the flats’ owners’ participation in major overhaul of the apartment blocks.

17.  Article 16 of the Privatisation of Housing Act (Law no. 1541-I of 4 July 1991, as in force at the material time) provided that privatisation of living premises requiring a major overhaul (*требующих капитального ремонта*) was conducted in accordance with the Act. The former landlord remained under obligation to perform the major overhaul of a house in accordance with the norms on maintenance, exploitation and overhaul of the housing fund.

18.  Article 30 of the Privatisation of Housing Act provides that the burden of maintenance of the living premises is on its owner.

19.  In the Review of Legislation and Courts’ Practice for II Quarter 2007 the Supreme Court of Russia clarified that, in line with a systematic interpretation of Article 16 of the Privatisation of Housing Act, Article 210 of the Civil Code and Article 158 of the Housing Code of Russia, once a landlord (a State or municipal authority) discharges of its obligation to perform a major overhaul of living premises and common property in an apartment block, the owners of the flats (including citizens who had privatized the flats) bear responsibility for subsequent major overhauls.

20.  The Constitutional Court of the Russian Federation dealt with the question of constitutionality of Article 16 of the Privatisation of Housing Act in its decisions on inadmissibility No. 1334-O-O of 19 October 2010, No. 886‑O‑O of 14 July 2011 and No. 389-О-О of 1 March 2012, and ruled, in particular, as follows. In order to provide additional guarantees of the right to privatisation for citizens residing in housing requiring a major overhaul, the federal legislator set out a former landlord’s obligation to perform major overhaul of a house in line with the maintenance, exploitation and overhaul norms (Article 16 of the Act). This provision aimed at protection of the property and housing rights of the citizens. It applied to all former landlords of the housing subject to privatisation and requiring major overhaul, without any exception, irrespectively of the State or municipalities’ previous ownership of the housing concerned.

THE LAW

I.  ALLEGED VIOLATION OF ARTICLE 6 OF THE CONVENTION AND ARTICLE 1 No. 1 THERETO ON ACCOUNT OF NON‑ENFORCMENT

21.  The applicants complained about the non-enforcement of the judgments in their favour referring to Article 6 of the Convention and Article 1 of Protocol No. 1, which read as follows:

Article 6

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

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.”

22.  The Government submitted that the judgments in the applicants’ favour had remained unenforced. They acknowledged their obligations under the *Gerasimov and Others* pilot judgment and stated that they would deploy all means to enforce the judgments which had remained without execution or resolve the issues by any appropriate means. In their further observations they noted that since 13 April 2015 Ms Konstantinova had been responsible for the overhaul of the flat as the flat owner (see paragraph 18 above), and that the authorities were taking all possible measures to enforce the judgments in the remaining parts (see paragraph 12 above).

23.  The applicants maintained their complaints. They argued, in particular, that the authorities were under obligation to perform the major overhaul in accordance with Article 16 of the Privatisation of Housing Act (see paragraph 17 above).

A.  Article 6 of the Convention

1.  Admissibility

24.  The Court notes that this complaint is not manifestly ill-founded within the meaning of Article 35 § 3 (a) of the Convention. It further notes that it is not inadmissible on any other grounds. It must therefore be declared admissible.

2.  Merits

25.  The Government advised the Court that the domestic judgments in the applicants’ favour had remained unenforced by 31 March 2017. In the absence of any subsequent comments from the parties, the Court considers that the judgments have not been executed to date, that is for more than ten years.

26.  The Court further notes the Government’s comment to the effect that in April 2015 the burden to conduct a major overhaul of the flat had been transferred to Ms Konstantinova as a result of the privatisation of the flat. The Court is not convinced by this argument. It appears from the relevant domestic law as interpreted by the Supreme Court of Russia that such obligation is indeed transferred to the owner, but only once the former landlord performs its obligation to conduct the major overhaul of the living premises and the common property (see paragraph 19 above) It is not disputed by the parties that the need for a major overhaul of both the flat and the common property was established by the domestic court on the basis of the expert reports and had not been discharged by the landlord by the time of privatisation (see paragraphs 8, 12 and 14 above). Further, it appears that the initial judgment in the applicant’s favour ordering major overhaul of both the common property and the flat has never been modified and remains in force as issued in 2008. In the absence of any relevant domestic proceedings or further clarifications from the parties, the Court cannot accept that the scope of the initial judgment had been affected by the privatisation of the flat, and considers that the State has remained under obligation to comply with the judgment in favour of Ms Konstantinova in full. In any event, the Court cannot but note that by April 2015 the judgment in the applicant’s favour had already remained unenforced for seven years.

27.  Having regard to its case-law on the matter, the periods of non‑enforcement and the nature of the obligation in kind at stake the present case (see *Gerasimov and Others*, cited above, §§ 167-74), the Court considers that the delays in enforcement of the binding judgments in the applicants’ favour fell short of the Convention requirements. By failing to comply, for years, with the enforceable judgments in the applicants’ favour, the authorities breached the applicants’ right to a court.

28.  There has accordingly been a violation of Article 6 of the Convention.

B.  Article 1 of Protocol No. 1

29.  The applicants further referred to Article 1 of Protocol No. 1 in respect of the non-enforcement complaint. Given its findings under Article 6 above, as well as having regard to the nature of the domestic award made by national courts in the present case, the Court considers that there is no need for a separate examination of the admissibility and merits of the complaints under Article 1 of Protocol No. 1 (see, *mutatis mutandis*, *Lyubov Stetsenko v. Russia*, no. 26216/07, § 92, 17 April 2014).

II.  ALLEGED VIOLATION OF ARTICLE 13 OF THE CONVENTION

30.  The applicants may be understood to complain about the lack of an effective domestic remedy in respect of the non-enforcement. Relevant Convention provision reads as follows:

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.”

31.  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 *Gerasimov and Others* pilot judgment by Federal Law No. 450-FZ amending the Compensation Act of 2010. That statute, which entered into force on 1 January 2017, enables those concerned to seek compensation for damage sustained as a result of excessive delays in the enforcement of court judgments ordering the domestic authorities to fulfil various obligations in kind (see *Kamneva and Others v. Russia* (dec.), nos. 35555/05 and 6 others, 2 May 2017). The Court has found that the amended Compensation Act in principle meets the criteria set out in the *Gerasimov and Others* pilot judgment and provides the applicants with a potentially effective remedy for their non-enforcement complaint (see *Shtolts and Others v. Russia* (dec.), nos. 77056/14 and 2 others, §§ 87-116 and § 123, 30 January 2018).

32.  Even though the remedy was – and 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).

33.  On the other hand, 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 case (see, *mutatis mutandis*, *Korotyayeva and Others*, nos. 13122/11 and 2 others, § 40, 18 July 2017, and *Tkhyegepso and Others v. Russia,* nos. 44387/04 and 11 others, §§ 21-24, 25 October 2011).

III.  OTHER ALLEGED VIOLATIONS OF THE CONVENTION

34.  In their letter of 24 December 2014 Ms Konstantinova and Ms Lebedeva mentioned, for the first time, two other allegedly unenforced judgments in their favour dated 5 May 2001 and 5 December 2011 respectively, and complained about an allegedly insufficient amount of compensation awarded in subsequent domestic proceedings. The Court does not find it appropriate to examine any new matters raised by the applicants after communication of the application to the Government, as long as they do not constitute an elaboration upon the applicants’ original complaints to the Court (see *Yefimova v. Russia*, no. 39786/09, § 177, 19 February 2013, with further references). Given that no complaints in connection with those judgments were raised before the communication of the application and the decision to examine its merits at the same time as its admissibility, the scope of the present case is limited to the facts as they stood at the time of the communication. However, Ms Konstantinova has the opportunity to lodge a new application in respect of the above complaint (see *Rafig Aliyev v. Azerbaijan*, no. 45875/06, § 70, 6 December 2011).

35.  Lastly, the applicants alleged a violation of Article 14 of the Convention on account of the non-enforcement. Having regard to all the material in its possession and in so far as it falls within its competence, the Court finds that there is no appearance of a violation of the rights and freedoms set out in the Convention or its Protocols. It follows that this part of the application must be rejected as being manifestly ill-founded, pursuant to Article 35 §§ 3 (a) and 4 of the Convention.

IV.  APPLICATION OF ARTICLE 41 OF THE CONVENTION

36.  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.”

A.  Damage

37.  The applicants claimed 22,520 euros (EUR) in respect of penalty and a fine, calculated by them on the basis of the consumer price index and converted into euros “at an average rate of 50 Russian roubles for 1 euro”, and EUR 1,815.53 recovered from the applicants in mandatory payments for capital repair since 1996, in respect of pecuniary damage. They argued, in particular, that a domestic award of 9 November 2011 in respect of compensation of losses (see paragraph 9 above) did not absolve the defendant from an obligation to pay the penalty and the fine, as well as to enforce the initial judgment. They further claimed the amounts ranging between EUR 14,000 and EUR 35,000 per applicant in respect of non‑pecuniary damage.

38.  The Government argued that the claims for pecuniary damage were unreasonable as the authorities had been taking all possible measures to enforce the judgments and, in any event, were unsubstantiated. The Government further disputed the claims for non-pecuniary damage as excessive and having no basis in the Court’s case-law.

39.  The Court notes from the Government’s submissions that the domestic judgment in the above case has remained unenforced to date (see paragraph 22 above). The Court considers that the respondent State has an outstanding obligation to secure, by appropriate means, enforcement of the unenforced judgments 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).

40.  As regards the claims in respect of pecuniary damage, the Court takes note of the applicants’ submissions concerning the compensation proceedings of 9 November 2011 (see paragraph 9). In any event, the Court agrees with the Government and considers that the applicants failed to substantiate their claims by making itemised calculations and producing invoices or other documentary evidence of the material loss they had allegedly sustained, and rejects their claims under this head.

41.  On the other hand, the Court considers that the applicants must have suffered non‑pecuniary damage on account of the violation found. It awards them jointly, on an equitable basis, EUR 7,800 in respect of non-pecuniary damage, plus any tax that may be chargeable, and rejects the remainder of the claims under this head.

B.  Costs and expenses

42.  The applicants also claimed EUR 4,484.4 for the costs and expenses incurred before the Court, arguing that they had paid that amount to Mr V.V. Timoshenko, apparently a lawyer, for assistance in lodging their initial application and additional correspondence with the Court prior to the communication stage. They submitted a sub-section of their claims for costs and expenses subtitled “act” and referring to 15 July 2013 as the date of the agreement but integrated in the text of their just satisfaction claims of 8 December 2016. The act contained signatures of Mr V.V. Timoshenko and the applicants, as well as Mr Timoshenko’s timesheets which indicated that the latter has spent 8 hours to discuss and examine the case file and 100 hours to complete the application form, at the hourly rate of EUR 41.5 per hour. The price included, *inter alia*, the translation services. The act stated that the applicants had paid Mr Timoshenko’s services in two instalments in 2013 and 2014.

43.  The Government submitted that the applicants failed to provide any evidence confirming that those expenses had been actually incurred.

44.  The Court notes that the applicants in this straightforward case were not represented in the proceedings before the Court and were granted leave for self-representation pursuant to their own request of December 2016. The initial application was lodged in Russian, so no translation was required. The case file contains neither an authority form in respect of Mr Timoshenko nor any other evidence of, or reference to his assistance in either the domestic proceedings or the proceedings before the Court, apart from the above-mentioned “act”. Further, they have not submitted a copy of the original agreement dated 15 July 2013, or any receipts or payment orders to prove that they had incurred those expenses. Regard being had to these considerations and to its case-law, the Court agrees with the Government and rejects the claim for costs and expenses in full.

C.  Default interest

45.  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.

FOR THESE REASONS, THE COURT, UNANIMOUSLY,

1.  *Declares* the non-enforcement complaint under Article 6 of the Convention admissible and the remainder of the complaints under this Convention provision inadmissible;

2.  *Holds* that there has been a violation of Article 6 of the Convention;

3.  *Holds* that there is no need to examine the admissibility and merits of the complaints under Article 1 of Protocol No. 1 and under Article 13 of the Convention;

4.  *Declares* the remainder of the application inadmissible;

5.  *Holds* that the respondent State has an outstanding obligation to secure, by appropriate means, within three months, the enforcement of the pending domestic judgments in the applicants’ favour referred to in the appended table;

6.  *Holds*

(a)  that the respondent State is to pay the applicants, jointly, within three months, EUR 7,800 (seven thousand eight hundred euros), to be converted into the currency of the respondent State at the rate applicable at the date of settlement, plus any tax that may be chargeable, in respect of non‑pecuniary damage;

(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 5 February 2019, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

 Fatoş Aracı Branko Lubarda
 Deputy Registrar President

APPENDIX

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| The applicants’ names,Dates of birth and residence | Domestic judgments’ dates, entry into force, notes |
| **Vera Dmitriyevna KONSTANTINOVA**24/05/1945Pervomayskiy | 12/03/200801/04/2008;The third applicant is referred to in the judgment as Aleksey Viktorovich Skred |
| **Yevgeniy Viktorovich SKRED**29/01/1987Pervomayskiy |
| **Aleksey Viktorovich TUMEL (SKRED)[[1]](#footnote-1)**20/03/1988Pervomayskiy |  |
| **Konstantin Andreyevich LEBEDEV**14/07/1988Pervomayskiy | 11/04/200829/04/2008 |
| **Yelena Aleksandrovna LEBEDEVA**07/12/1966Donguzskaya |  |

1. .  As in the application form [↑](#footnote-ref-1)