THIRD SECTION

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

*(Application no. 2403/06 and 7 others -*

*see appended list*)

JUDGMENT

STRASBOURG

8 February 2018

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

In the case of Yushin 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 Tigerstedt *Acting* *Deputy Section Registrar,*

Having deliberated in private on 18 January 2018,

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, *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.  The Court notes that the applicants did not submit any claims for just satisfaction in due time. It therefore does not find it necessary to make any award. At the same time it observes that the respondent State has an outstanding obligation to enforce the judgments which remain enforceable.

FOR THESE 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 to the Convention 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.

Done in English, and notified in writing on 8 February 2018, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

 Liv Tigerstedt Luis López Guerra
 Acting Deputy Registrar 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 nameDate of birth | Relevant domestic decision | Start date of non-enforcement period | End date ofnon-enforcement periodLength of enforcement proceedings | Domestic order  |
|  | 2403/0603/11/2005 | **Nikolay Ivanovich Yushin**01/09/1934 | Arsenyevsk Town Court of the Primorye Region, 20/07/2000 | 28/08/2000 | pendingMore than 17 years and 1 day | “To oblige the local council ... within a year to carry out works for evacuation of rain water and prevention of flooding of the land plot of [the applicant]” |
|  | 44360/0718/09/2007 | Household**Roman Vladimirovich Gunin**25/09/1980**Irina Vasilyevna Gunina**17/08/1945 | The Justice of the Peace of the 2nd Court Circuit of the Oktyabrskiy District of Ivanovo, 30/05/2006 | 16/11/2006 | 27/10/20092 years and 11 months and 12 days | “... to oblige MPZhKh of Ivanovo to replace the lining and to plaster the ... room, to reinforce and to plaster the wall between the kitchen and toilet in apartment 162 building 47, prospect Lenina... to order MPZhKh of Ivanovo to pay [the applicants] 500 Russian roubles of non-pecuniary damage ...” |
|  | 34128/0904/06/2009 | **Luiza Akhtyamovna Bakhtizina**02/06/1939 | Vakhitovskiy District Court of Kazan, 05/09/1995 | 05/05/1998 | pendingMore than 19 years and 3 months and 24 days | to perform repair works in the applicant’s apartment |
|  | 56597/1213/08/2012(5 applicants) | Household**Yelena Borisovna Aleshina**20/08/1976**Boris Nikolayevich Aleshin**14/09/2002**Dmitriy Nikolayevich Aleshin**07/01/1999**Ilya Nikolayevich Aleshin**06/07/1997**Anastasiya Nikolayevna Aleshina**02/07/2008 | Yakutsk Town Court, 12/04/2006 | 22/04/2006 | pendingMore than 11 years and 4 months and 7 days | “...the Ministry of Youth Policy and ... ZhSK ‘Molodezhnye zhilye kompleksy’ should put [the applicants] on the list of the subprogramme ‘Provision of housing for young families’ ...” |
|  | 63752/1218/09/2012 | **Pavel Valeryevich Stsepuro**08/07/1975**Ustin Valeryevich Stsepuro**22/05/1977 | Yakutsk Town Court, 21/11/2005 | 26/12/2005 | 24/07/20159 years and 7 months and 2 days |  to provide with housing |
|  | 78214/1314/11/2013 | **Sergey Ivanovich Davydov-Orlov**22/11/1960 | Oktyabrskiy District Court of Tomsk, 09/11/2012 | 14/05/2013 | pendingMore than 4 years and 3 months and 15 days | “... the Administration of Tomsk to provide [the applicant] with [residential room] after his eviction from [previous address] ... ” |
|  | 2844/1428/12/2013 | **Lyudmila Grigoryevna Firsova**30/10/1946 | Simonovskiy District Court of Moscow, 22/04/2011 | 20/02/2012 | pendingMore than 5 years and 6 months and 9 days | “... to return a metallic tent [belonging to the applicant] to its previous location” |
|  | 40484/1412/05/2014 | **Arina Nikolayevna Pulkina**22/12/1969 | Kondopoga Town Court of the Republic of Karelia, 03/10/2012 | 25/01/2013 | pendingMore than 4 years and 7 months and 4 days | “... the Administration of Kondopoga to carry out reparation works in the [applicant’s] block of flats, in particular of the roof, isolation, water supply, and sewerage system, by 01/07/2013 ... ” |