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The right to be tried within a reasonable time – developments in Russia

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The Supreme Court of the Russian Federation (RF) has come up with a legislative initiative – to pass a Federal Constitutional Law 'On compensation for harm caused by a violation of the right to be tried within a reasonable time and of the right to timely execution of court judgments that have taken legal effect.'¹

At a meeting with President Putin, V.M. Lebedev, President of the Supreme Court of the RF, presented a proposal for this law accompanied by the following argument: we must help our colleagues at the ECtHR, or they will be unable to keep up with the flood of complaints. At the end of 2007, 103,850 cases were pending before the ECtHR, of which 26% were against Russia.²

It would be possible to considerably accelerate the review of these appeals if Protocol 14 to the ECHR were ratified, leading to a significant improvement in the mechanics of Court proceedings, and also the introduction of new procedures for verifying that ECtHR decisions are executed by respondent states. The only state that has yet to ratify Protocol 14 is Russia.

In the proposal of the Supreme Court of the RF, instead of eradicating the reasons themselves for judicial delay, a supplementary procedure would be established (to be implemented by the same judges), which would allow a citizen the possibility of initiating further proceedings, but in this case against the courts themselves on account of delays

caused by the courts. As the proposed law states:

"The burden of proving that there has been a violation of a reasonable period for trial and that such violation has caused harm is imposed on the individual who has filed the claim in court (Art. 10(1))."

The ECtHR is flooded with complaints against Russia for its failure to execute domestic court judgments regarding such issues as the payment of pensions, teachers' allowances and other financial obligations of the State. More than half of these are cases of failure to execute judgments regarding negligible sums – between three and ten thousand roubles (60 – 200 GBP). Furthermore, this is where a court has held a citizen entitled to receive such a sum, but where the court bailiffs have not been able to collect it, being given such excuses as "this sum has not been provided for in the federal/regional/local budget."

The ECtHR has held such appeals to be admissible (starting with *Kalashnikov v Russia* (No. 47095/99) 15/7/02), and awarded compensation for moral harm.

Para 2, Art. 14 of the proposed law states:

"When a court has found a violation of a reasonable time-period, along with liability on the part of State agencies for such a violation, it may, while taking account of the demands of the person bringing the complaint, limit itself to declaring that there has been a violation of that person's right to a trial within a reasonable time and/or the right to execution of a court judgment within a reasonable time."

Moreover, the Supreme Court apparently does not want to take notice of the simple fact that in present-day Russia, the

judicial authorities cannot make the State fulfil its obligations if the State itself does not want to do so, whereas the ECtHR can do so.

The proposed law also provides for the possibility of exacting monetary sums in compensation for harm (if a court finds a violation of the right to be tried within a reasonable time, or of the right to the execution of a court judgment within a reasonable time, along with liability on the part of State agencies for such a violation). Certainly, the amount of compensation for harm will be determined by the court, taking account of the particular circumstances and the requirements of justice. In such a case, a pensioner should not count on being awarded thousand-euro sums (or their equivalent in roubles).

More likely than not, the amount of compensation will never exceed the amount owed, or even half that amount, where small sums are concerned (otherwise, the amount of compensation would probably be determined on the basis of the inflation index). Thus, in addition to the three thousand roubles that our pensioner has not received, he will also receive, after a couple more years of litigation, yet another judgment, for a fraction of the original sum, which cannot be executed.

1 *Vremya Novosti*, 4 October 2007, No. 181. *Samosud*, [Online]. Available at: <http://www.vremya.ru/print/188467.html> [accessed 13 March 2008].

2 Registry of the European Court of Human Rights, 2008, *Survey of Activities 2007*.

