



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

FIRST SECTION

**CASE OF DAVLETKHANOV
and other “Chernobyl pensioners” v. RUSSIA**

(Applications nos. 7182/03, 10115/04, 21752/04, and 22963/04)

JUDGMENT

STRASBOURG

23 September 2010

FINAL

23/12/2010

This judgment has become final under Article 44 § 2 of the Convention. It may be subject to editorial revision.

In the case of Davletkhanov and other “Chernobyl pensioners”
v. Russia,

The European Court of Human Rights (First Section), sitting as a Chamber composed of:

Christos Rozakis, *President*,

Nina Vajić,

Anatoly Kovler,

Dean Spielmann,

Sverre Erik Jebens,

Giorgio Malinverni,

George Nicolaou, *judges*,

and Søren Nielsen, *Section Registrar*,

Having deliberated in private on 2 September 2010,

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

PROCEDURE

1. The case originated in four applications (nos. 7182/03, 10115/04, 21752/04 and 22963/04) 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 four Russian nationals (“the applicants”). The applicants' names and the dates of their applications to the Court appear in the table below.

2. The Russian Government (“the Government”) were represented by their Agents, Mr P. Laptev and Ms V. Milinchuk, former Representatives of the Russian Federation at the European Court of Human Rights; and Mr G. Matyushkin, Representative of the Russian Federation at the European Court of Human Rights.

3. The applicants complained *inter alia* of the quashing of binding and enforceable judgments by way of supervisory-review in 2002-2005.

4. On various dates the President of the First Section decided to communicate these complaints to the respondent Government. It was also decided in all cases to examine the merits of the applications at the same time as their admissibility (Article 29 § 1). The Government objected to the joint examination of the admissibility and merits in several cases, but the Court rejected this objection.

THE FACTS

I. THE CIRCUMSTANCES OF THE CASE

5. The applicants, whose names and years of birth are tabulated below, took part in the cleaning-up operation at the Chernobyl nuclear disaster site. They were subsequently registered disabled, becoming entitled to various social benefits.

6. On various dates the applicants successfully sued authorities for inflation adjustment of these benefits. The judgments became final.

7. On various dates the Presidiums of higher courts allowed the defendant authorities' applications for supervisory review (in the case of *Spivak* it was the applicant who initiated supervisory review of the judgment of 30 October 2003, asking reversal of its part unfavourable to him) and quashed the judgments, considering that the lower courts misapplied the material law (see details of the judgments in the table below).

II. RELEVANT DOMESTIC LAW

8. The relevant domestic law governing the supervisory review procedure before 2003 is summed up in the Court's judgment in the case of *Ryabykh v. Russia* (no. 52854/99, §§ 31-42, ECHR 2003-IX), from 2003 – in the Court's judgment in the case of *Kot v. Russia* (no. 20887/03, § 17, 18 January 2007).

THE LAW

I. JOINDER OF THE APPLICATIONS

9. Given that these four applications concern similar facts and complaints and raise almost identical issues under the Convention, the Court decides to consider them in a single judgment (see *Kazakevich and 9 other “Army Pensioners” cases v. Russia*, nos. 14290/03 et seq., § 15, 14 January 2010).

II. ALLEGED VIOLATION OF ARTICLE 6 AND ARTICLE 1 OF PROTOCOL No. 1 ON ACCOUNT OF THE QUASHING OF THE JUDGMENTS IN THE APPLICANTS' FAVOUR

10. All applicants complained of violations of Article 6 on account of the quashing of the binding and enforceable judgments in their favour by way of supervisory review. They also complained of violations of Article 1 of Protocol No. 1 in relation to the same facts. The Court will consider all the cases in the light of both provisions, which insofar as relevant, read as follows:

Article 6 § 1

“In the determination of his civil rights and obligations ..., everyone is entitled to a fair and public hearing within a reasonable time 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...”

A. Admissibility

11. The Court notes that the applicants' complaints are not manifestly ill-founded within the meaning of Article 35 § 3 of the Convention. It also notes that they are not inadmissible on any other grounds. They must therefore be declared admissible.

B. Merits

12. All applicants argued in substance that the quashing of the binding and enforceable judgments in their favour by way of supervisory review had violated the principle of legal certainty and therefore their right to a court under Article 6.

13. The Government argued that the supervisory review proceedings resulting in the quashing of the judgments at issue were lawful: they were initiated by the defendant authorities within the time-limits provided for by domestic law. The regional courts quashed lower courts' unlawful judgments, thus correcting flagrant injustice and erasing dangerous precedents. In respect of the case of *Spivak* the Government also noted that it was the applicant who initiated supervisory review of the final judgment of 30 October 2003.

14. The Court reiterates that legal certainty, which is one of the fundamental aspects of the rule of law, presupposes respect for the principle of *res judicata*, which is the principle of the finality of judgments. A departure from that principle is justified only when made necessary by circumstances of a substantial and compelling character, such as correction of fundamental defects or miscarriage of justice (see *Brumărescu v. Romania* [GC], no. 28342/95, § 61, ECHR 1999-VII; *Ryabykh v. Russia*, no. 52854/99, §§ 51-52, ECHR 2003-IX).

15. The Court further recalls that it has already found numerous violations of the Convention on account of the quashing of binding and enforceable judgments by way of supervisory review under the Code of Civil Procedure as in force at the material time (for supervisory review before 2003, see *Ryabykh*, cited above, §§ 52-58; for this procedure after 2003 – see *Kot*, cited above, § 29). Some of these violations were found in similar and, on certain occasions, virtually identical circumstances concerning benefits to the former participants in the cleaning-up operation at the Chernobyl nuclear disaster site (see, amongst many other authorities, *Androsov v. Russia*, no. 63973/00, 6 October 2005; *Kot*, cited above; *Finkov v. Russia*, no. 27440/03, 8 October 2009). In those cases the Court found that the quashing of final judgments in the applicants' favour was not justified by circumstances of compelling and exceptional character. The Court finds no reason to come to a different conclusion in the present cases.

16. The arguments submitted by the Government in the present cases were addressed in detail and dismissed in previous similar cases. Misapplication of material law by the first instance courts does not in itself justify the quashing of binding and enforceable judgments on supervisory review (*Kot*, cited above, § 29).

17. As to the fact that in the case of *Spivak* it was the applicant who asked for supervisory review of the judgment of 30 October 2003, the Court observes that the applicant asked to set aside only the part of the judgment unfavourable to him. However, the supervisory-review instance quashed the judgment in its entirety, thereby also destroying the part favourable to the applicant (see, by contrast, *Fadin v. Russia*, no. 58079/00, § 34, 27 July 2006).

18. The Court accordingly concludes that the quashing of the binding and enforceable judgments in the applicants' favour amounts to a breach of the principle of legal certainty in violation of Article 6 of the Convention.

19. The Court further reiterates that the binding and enforceable judgments created an established right to payment in the applicants' favour, which is considered as an asset within the meaning of Article 1 of Protocol No. 1 (see *Vasilopoulou v. Greece*, no. 47541/99, § 22, 21 March 2002). The quashing of these judgments in breach of the principle of legal certainty frustrated the applicants' reliance on the binding judicial decisions and deprived them of an opportunity to receive the judicial awards they had

legitimately expected to receive (see *Dovguchits v. Russia*, no. 2999/03, § 35, 7 June 2007). There has accordingly been also a violation of that Article 1 of Protocol No. 1.

III. OTHER ALLEGED VIOLATIONS OF THE CONVENTION

20. In the case of *Davletkhanov* the applicant complains under Article 6 about the length of the proceedings. In the case of *Kutsevalov* the applicant complains under the same Article about non-execution of the judgment of 2 February 2004; he also complains under Article 1 of Protocol No. 1 about the allegedly insufficient amount of social benefits; he also invokes Article 14 of the Convention. In the case of *Spivak* the applicant complains under Article 6 about conflicting rulings of the Constitutional Court and their non-enforcement.

21. However, in the light of all the material in its possession, and in so far as the matters complained of are within its competence, the Court finds that these complaints do not disclose any appearance of a violation of the rights and freedoms set out in the Convention or its Protocols. It follows that they are manifestly ill-founded and must be rejected in accordance with Article 35 §§ 1, 3 and 4 of the Convention.

IV. APPLICATION OF ARTICLE 41 OF THE CONVENTION

22. 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

1. *The parties' submissions*

23. The details of the applicants' claims appear in the table below.

24. The Government disagreed and asked the Court to reject the applicants' claims. As to pecuniary damage, the Government noted that the applicant failed to substantiate the claim for pecuniary damage or made wrong calculations. As to non-pecuniary damage, the Government considered the applicants' claims to be excessive and unreasonable.

2. *The Court's assessment*

(a) **Pecuniary damage**

25. The Court recalls that the most appropriate form of redress in respect of the violations found would be to put the applicants as far as possible in the position they would have been if the Convention requirements had not been disregarded (see *Piersack v. Belgium* (Article 50), 26 October 1984, Series A no. 85, p. 16, § 12, and, *mutatis mutandis*, *Gençel v. Turkey*, no. 53431/99, § 27, 23 October 2003). The Court considers that this principle should apply in the present cases as it did in numerous similar ones decided in the past (see *Dovguchits* cited above, § 48).

26. The Court therefore finds it appropriate to award the applicants the amounts they would have received under the domestic judgments in their favour. On the other hand, the Court cannot grant the applicants' claims in so far as they include the monthly payments allegedly due after the quashing of the domestic judgments on supervisory review and the ensuing dismissal of the applicants' claims by the domestic courts (*Tarnopolskaya and Others v. Russia*, nos. 11093/07 *et al.*, § 51, 7 July 2009).

27. The Court accordingly awards the following amounts:

400 euros (EUR) to Mr Davletkhanov;

EUR 2,380 to Mr Spivak;

EUR 1,010 to Mr Kutsevalov;

EUR 1,270 to Mr Puryatkin.

(b) **Non-pecuniary damage**

28. With reference to its established case-law in similar cases the Court finds that the applicants have suffered non-pecuniary damage as a result of the violations found which cannot be compensated by the mere finding of a violation. Having regard to the circumstances of the cases and making its assessment on an equitable basis, as required by Article 41 of the Convention, the Court awards to each applicant a sum of EUR 3,000 in respect of non-pecuniary damage, plus any tax that may be chargeable on that amount.

B. Costs and expenses

29. In three cases (*Davletkhanov*, *Puryatkin* and *Kutsevalov*) the applicants claimed certain amounts for costs and expenses (see details in the table below).

30. The Government found those claims unsubstantiated. In the case of *Davletkhanov* the Government conceded that the applicant substantiated a part of the claims.

31. The Court reiterates that an applicant is entitled to the reimbursement of costs and expenses only in so far as it has been shown that these have been actually and necessarily incurred and were reasonable as to quantum. Regard being had to the information in its possession and the above criteria, the Court decides to grant the applicants' claims in the cases of *Kutsevalov* and *Puryatkin*, and to grant them in part in the case of *Davletkhanov* (EUR 150).

C. Default interest

32. The Court considers it appropriate that the default interest 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. *Decides* to join the applications;
2. *Declares* the complaints concerning the quashing of the binding and enforceable judgments in supervisory-review proceedings admissible and the remainder of the applications inadmissible;
3. *Holds* that there has been a violation of Article 6 of the Convention and of Article 1 of Protocol No. 1 in all cases on account of the quashing of the judgments in the applicants' favour by way of supervisory review;
4. *Holds*
 - (a) that the respondent State is to pay the applicants, within three months from the date on which the judgment becomes final in accordance with Article 44 § 2 of the Convention, the following sums to be converted into Russian roubles at the rate applicable at the date of the settlement:
 - (i) in respect of pecuniary damage:
 - EUR 400 (four hundred euros) to Davletkhanov Mazit Zakiryanovich;
 - EUR 2,380 (two thousand three hundred and eighty euros) to Spivak Mikhail Aleksandrovich;
 - EUR 1,270 (one thousand two hundred and seventy euros) to Puryatkin Fedor Alekseyevich.
 - EUR 1,010 (one thousand and ten euros) to Kutsevalov Vyacheslav Ivanovich;

- (ii) EUR 3,000 (three thousand euros) to each applicant in respect of non-pecuniary damage plus any tax that may be chargeable on these amounts;
- (iii) in respect of costs and expenses:
 - EUR 150 (one hundred and fifty euros) to Davletkhanov Mazit Zakiryanovich;
 - EUR 30 (thirty euros) to Puryatkin Fedor Alekseyevich;
 - EUR 30 (thirty euros) to Kutsevalov Vyacheslav Ivanovich;
- (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;

5. *Dismisses* the remainder of the applicants' claim for just satisfaction.

Done in English, and notified in writing on 23 September 2010, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Søren Nielsen
Registrar

Christos Rozakis
President

APPENDIX

APP. N° (DATE)	APPLICANT (YEAR OF BIRTH)	JUDGMENT(S) COURT(S)/DATE(S)	AMOUNT(S) AWARDED (RUB)	SUPERVISORY REVIEW JUDGMENT COURT/DATE(S)	JUST SATISFACTION CLAIMS (ARTICLE 41)
7182/03 (30/01/2003)	Davletkhanov Mazit Zakiryanovich (1957)	Leninskiy District Court of Perm, 07/06/2001, enforceable on 2 April 2002	30,219.59 + 18,625.57	Presidium of the Perm Regional Court 29/11/2002	RUB 2,562,702.33 (pecuniary damage); 1,000,000 (non- pecuniary damage); 11,219.4 (costs and expenses)
10115/04 (16/02/2004)	Spivak Mikhail Aleksandrovich (1953)	Proletarskiy District Court of Rostov-on-Don, 25/02/2003, enforceable on 23/04/2003;	Extra monthly payments + 76,769.87 in arrears	Presidium of the Rostov Regional Court 04/09/2003	EUR 75,321.87 (pecuniary damage); EUR 6,000 (non-pecuniary damage)
		Proletarskiy District Court of Rostov-on-Don, 30/10/2003, enforceable on 26/11/2003	Extra monthly payments + 8,534.32 in arrears	Presidium of the Rostov Regional Court 03/11/2005 (the review initiated by the applicant)	
21752/04 (29/04/2004)	Puryatkin Fedor Aleksseyevich (1949)	Zernogradskiy District Court of the Rostov Region, 26/02/2003, enforceable on 02/04/2003	Extra monthly payments + 44,527.52 in arrears	Presidium of the Rostov Regional Court 30/10/2003	RUB 44,527.52 (pecuniary damage); EUR 50,000 (non-pecuniary damage); RUB 1,000 (costs and expenses)
22963/04 (27/04/2004)	Kutsevalov Vyacheslav Ivanovich (1960)	Zernogradskiy District Court of the Rostov Region, 18/03/2003, enforceable on 07/05/2003	Extra monthly payments + 35,383.25 in arrears	Presidium of the Rostov Regional Court 30/10/2003	EUR 50,000 (did not specify the nature); RUB 1,000 (costs and expenses)