



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

FIRST SECTION

CASE OF LENCHENKOV AND OTHERS v. RUSSIA

(Applications nos. 16076/06, 42096/06, 44466/06 and 25182/07)

JUDGMENT

STRASBOURG

21 October 2010

FINAL

21/02/2011

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

In the case of Lenchenkov and Others v. Russia,

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

Christos Rozakis, *President*,

Nina Vajić,

Anatoly Kovler,

Elisabeth Steiner,

Khanlar Hajiyeu,

Giorgio Malinverni,

George Nicolaou, *judges*,

and André Wampach, *Deputy Section Registrar*,

Having deliberated in private on 30 September 2010,

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

PROCEDURE

1. The case originated in four applications (nos. 16076/06, 42096/06, 44466/06 and 25182/07) 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, their years of birth and the dates of their applications to the Court appear in the table below.

2. The Russian Government (“the Government”) were represented by their Agent, 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 2006-2007.

4. On 17 October 2009 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 FACTS

I. THE CIRCUMSTANCES OF THE CASE

5. The applicants are Russian citizens whose names and years of birth are tabulated below.

6. The fact of the cases, as submitted by the parties, may be summarized as follows.

7. The applicants were claimants in civil proceedings concluded by judgments in their favour.

8. Subsequently, on the defendants' initiatives, Presidia of regional courts concerned quashed these final judgments by way of supervisory review on the grounds that the inferior courts had incorrectly applied the domestic law or wrongly assessed the evidence.

9. The judgments' particulars are tabulated below.

10. In the case of Mr Bobarykin subsequently, on 16 March 2007, the applicant signed an agreement under which the local authorities allocated him a place for a new garage and paid a compensation for demolition of the old one.

11. In the case of Ms Kolesnikova the regular payments were made under the final judgment up until it was quashed via supervisory review.

II. RELEVANT DOMESTIC LAW

12. The relevant domestic law governing the supervisory review procedure in 2003-2007 is summed up 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

13. 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

14. 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

15. In the case of Mr Bobarykin the Government asserted that the applicant has lost his victim status as he had been allocated a land plot for a new garage and paid compensation for the old one which had been demolished.

16. In the application no. 25182/07 the Government asserted that only one of the applicants, Yevgeniy Zaytsev, was a party to the domestic proceedings. Therefore if these proceedings did not concern the other applicants' rights, the complaints in their respect were incompatible *ratione personae*. If they did, these complaints failed for non-exhaustion, as the other applicants had not raised the relevant issues before the domestic courts.

17. As to the case of Mr Bobarykin, the Court reiterates that a decision favourable to the applicant is not in principle sufficient to deprive him of his status as a 'victim' unless the national authorities have acknowledged, and afforded redress for, the breach of the Convention (see, amongst many other authorities, *Dalban v. Romania* [GC], no. 28114/95, § 44, ECHR 1999-VI). In the present case, however, there is nothing to suggest that the authorities acknowledged that the applicant's rights had been violated by the quashing of the judgment of 21 October 2005 on 6 April 2006. Therefore the applicant has retained his victim status.

18. As to application no. 25182/07, the Court finds the Government's arguments are well-founded and concludes that the complaints lodged by Ms Irina Zaytseva and Mr Yaroslav Zaytsev are to be rejected in accordance with Article 35 §§ 1, 3 and 4.

19. As to the rest of the cases, the Court observes 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

20. 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 supervisory-review instance corrected a fundamental error by reinterpreting the relevant domestic law provisions or by reassessing the evidence. The applicants maintained their claims.

21. 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).

22. 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. The Court finds no reason to come to a different conclusion in the present cases. The arguments submitted by the Government in the present cases were addressed in detail and dismissed in previous similar cases. The fact that the Presidia disagreed with the assessment made by the first-instance and appeal courts is not, in itself, an exceptional circumstance warranting the quashing of a binding and enforceable judgment (*Kot*, cited above, § 29).

23. 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.

24. 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

25. The applicants also lodged several other complaints concerning the above proceedings, referring to Articles 6 and 8 of the Convention.

26. 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 they do not disclose any appearance of a violation of the rights and freedoms set out in the Convention or its Protocols. It follows that this part of the applications is 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

27. 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

28. Mr Lenchenkov claimed the sums awarded by the quashed judgment, which was 110,532.45 Russian roubles (RUB), adjusted to an index rate in accordance with the Court's case-law, in respect of pecuniary damage. He submitted no calculation explaining that claimed adjustment. He also claimed 5,000 euros (EUR) in respect of non-pecuniary damage.

29. Mr Bobarykin claimed EUR 10,000 in respect of pecuniary and EUR 15,000 in respect of non-pecuniary damage.

30. Ms Kolesnikova claimed RUB 475,074.86 in respect of pecuniary damage. She also asked for the monthly payments to be restored. She finally claimed EUR 100,000 in respect of non-pecuniary damage.

31. Mr Zaytsev claimed RUB 507,946,347 in respect of pecuniary damage, which he allegedly would have received from the respondent bank had the final judgment in his favour not been quashed. He also claimed EUR 100,000 in respect of non-pecuniary damage.

32. The Government considered the claims excessive and unsubstantiated. In the case of Mr Zaytsev they contested the method of calculation.

33. The Court reiterates that in general the most appropriate form of redress in respect of violations found is to put applicants as far as possible in the position they would have been in if the Convention requirements had not been disregarded (see *Piersack v. Belgium* (Article 50), 26 October 1984, § 12, Series A no. 85, and, *Dovguchits*, cited above, § 48).

34. Therefore in the case of Mr Lenchenkov the Court grants the claim of the sum which had been awarded by the quashed judgment, that is RUB 110,532.45 (EUR 2,821). As to the adjustment claimed by Mr Lenchenkov, it observes that he failed to make the relevant calculations.

The Court notes that it is ill-equipped to make the relevant calculations for the applicant. Therefore the claim for the adjustment is rejected.

35. In the case of Mr Bobarykin the Court does not discern any causal link between the violation found and the pecuniary damage alleged. Moreover, the applicant was paid a compensation for the demolished garage (see paragraph 10 above). Therefore the claim should be rejected.

36. In the case of Ms Kolesnikova the Court does not discern any causal link between the violation found and the pecuniary damage alleged, either. The judgment in her favour was being enforced until its quashing via supervisory review (see paragraph 12 above). As to the claim for restoration of the payments, no pecuniary awards can be made for the periods after the final judgment has been quashed (see *Tarnopolskaya and Others v. Russia*, nos. 11093/07 et seq., § 51, 7 July 2009).

37. As to the case of Mr Zaytsev, the final judgment did not award the applicant any specific sum and the Court cannot assume the role of the national authorities in calculating the sums due as a result of the judgment. As regards the calculations submitted by the applicant, the Court, like the Government, doubts the correctness of the method used as the ensuing amount claimed by the applicant (some EUR 13,000,000) is excessive and unreasonable. In these circumstances it rejects the applicant's claim for pecuniary damage.

38. As to non-pecuniary damage in all the above cases, the Court considers that the applicants must have suffered distress and frustration resulting from quashing of the final judgments. However, the amount claimed appears excessive. Making its assessment on an equitable basis, the Court awards Mr Lenchenkov, Mr Bobarykin, Ms Kolesnikova and Mr Zaytsev Yevgeniy EUR 3,000 each, in respect of non-pecuniary damage, plus any tax that may be chargeable to the applicant.

B. Costs and expenses

39. The applicant made no claims under this head. Accordingly, the Court will make no award under this head.

C. Default interest

40. 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 lodged by Lenchenkov Vladimir, Bobarykin Viktor, Kolesnikova Tamara and Zaytsev Yevgeniy concerning supervisory review of final judgments in their favour 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 settlement:
 - (i) EUR 2,821 (two thousand eight hundred and twenty-one euro) in respect of pecuniary damage - to Lenchenkov Vladimir Vladimirovich;
 - (ii) EUR 3,000 (three thousand euros) in respect of non-pecuniary damage, to each of the following applicants: Lenchenkov Vladimir, Bobarykin Viktor, Kolesnikova Tamara and Zaytsev Yevgeniy, plus any tax that may be chargeable on these amounts;
 - (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 21 October 2010, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

André Wampach
Deputy Registrar

Christos Rozakis
President

ANNEX

Appl. number and date of introduction	Name of applicant, year of birth	Final judgment (date and decision body)	Outcome of the dispute according to the final judgment	Supervisory review (date and decision body)
16076/06 17/03/2006	Lenchenkov Vladimir Vladimirovich, 1959	20/06/2005, Leninskiy District Court of Voronezh, enforceable on 22/09/2005	Labour dispute; the applicant reinstated in his post and awarded damages of RUB 110,532.45	01/02/2006, Presidium of the Voronezh Regional Court
42096/06 05/10/2006	Bobarykin Viktor Vasilyevich, 1949	21/10/2005, Sormovskiy District Court of Nizhniy Novgorod, enforceable on the same date	The applicant awarded a title to a garage	06/04/2006, Presidium of the Nizhegorodskiy Regional Court
44466/06 25/09/2006	Kolesnikova Tamara Vladimirovna, 1938	24/05/2005, Shakhtinskiy Town Court of the Rostov Region, enforceable on 03/06/2005	The applicant awarded compensation for health damage; the payments were made up until the quashing of the judgment	03/08/2006, Presidium of the Rostov Regional Court
25182/07 14/05/2007	Zaytsev Yevgeniy Mikhaylovich, 1950 Zaytsev Yaroslav Yevgenyevich, 1989 Zaytseva Irina Vasilyevna, 1959	05/04/2005, Primorskiy District Court of St. Petersburg, enforceable on 03/05/2005	Bank deposit dispute to which only Yevgeniy Zaytsev, but not members of his family, was a party; the bank was ordered to calculate interest rate in accordance with the initial agreement's conditions; sums for payment were not indicated in the judgment	31/01/2007, Presidium of the St. Petersburg Regional Court