



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

FIRST SECTION

CASE OF PUGACH AND OTHERS v. RUSSIA

*(Applications nos. 31799/08, 53657/08, 53661/08, 53666/08, 53670/08,
53671/08, 53672/08 and 53673/08)*

JUDGMENT

STRASBOURG

4 November 2010

FINAL

04/02/2011

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

In the case of Pugach 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 Søren Nielsen, *Section Registrar*,

Having deliberated in private on 14 October 2010,

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

PROCEDURE

1. The case originated in eight applications (nos. 31799/08, 53657/08, 53661/08, 53666/08, 53670/08, 53671/08, 53672/08 and 53673/08) 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 eight Russian nationals (“the applicants”) whose names, years of birth and the dates of their applications to the Court appear in the appended table.

2. The applicants were represented by Mr V. Zavyalov, a lawyer practising in Yessentuki, the Stavropol Region. The Russian Government (“the Government”) were represented by Mr G. Matyushkin, the Representative of the Russian Federation at the European Court of Human Rights.

3. On 26 January 2009 the President of the First Section decided to give notice of the applications to the Government. It was also decided 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

4. The applicants took part in the cleaning-up operation at the Chernobyl nuclear disaster site. They were registered disabled and became entitled to various social benefits, including food allowance.

5. On unspecified dates they sued the competent authorities for adjustment of the monthly food allowance in line with the inflation rate.

6. By two separate judgments of 4 June 2007, one in favour of Mr Pavlenko and another in favour of the remaining applicants, the Mineralniye Vody Town Court of the Stavropol Region upheld their actions in part. The court ordered the local department of the State Treasury to pay 1,283.86 RUB Russian roubles (RUB) to Mr Pavlenko and RUB 1,925.45 to each of the remaining applicants in monthly disability pension payments, to be adjusted in accordance with legal requirements. The court further ordered the local welfare authority to provide monthly the Treasury with the documents necessary to make the payments. It also awarded RUB 67,616.22 to Mr Pavlenko and RUB 104,405.82 to each of the seven other applicants in respect of the outstanding benefits, to be paid by the Ministry of Finance of the Russian Federation.

7. The judgments were not appealed against and became final on 19 June 2007.

8. The enforcement proceedings were opened and the lump sums and the monthly payments were made in accordance with these judgments. Thus, as from July 2007 all the applicants were receiving the monthly payments in good time. On 24 September 2007 the applicants (except for Mr Pavlenko) received RUB 104,405.82 each. On 1 October 2007 Mr Pavlenko received RUB 67,616.22 due to him under the judgment of 4 June 2007.

9. On 10 October 2007 the Ministry of Finance applied to the Stavropol Regional Court requesting to institute supervisory-review proceedings in respect of the judgments in the applicants' favour.

10. On 29 November 2007 the Presidium of the Stavropol Regional Court, by two separate judgments, quashed the awards of 4 June 2007 and remitted the cases for a fresh examination. The Presidium found that the lower court had erred in applying the provisions of the Law No. 1244-1 "On Social Protection of Citizens Exposed to Radiation as a Result of the Chernobyl Nuclear Power Station Explosion" ("the Chernobyl Law") and, as a result, incorrectly determined the defendant authority in the case. The Presidium had not specified a due defendant.

11. In December 2007 the State Treasury discontinued the monthly payments in respect of food allowance due to the applicants under the quashed judgments. Instead, the authorities started to pay the applicants monthly disability benefits in accordance with the relevant legislation.

12. On 15 February 2008 the Town Court discontinued the proceedings in all cases except for that of Mr Pavlenko, due to the applicants' failure to appear before the first instance court. On 19 February 2008 the proceedings in Mr Pavlenko's case were discontinued by the Town Court on the same ground.

13. In February 2009 the Ministry of Finance of the Russian Federation brought proceedings against all applicants claiming repayment of the lump

sums they had received pursuant to the quashed judgments. On 4 March 2009 the Town Court rejected the claim. It appears that the judgment was not appealed against and became final.

II. RELEVANT DOMESTIC LAW

14. The relevant domestic law governing the supervisory review procedure at the material time 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

15. Given that these applications concern similar facts and complaints and raise identical issues under the Convention, the Court decides to consider them in a single judgment.

II. ALLEGED VIOLATION OF ARTICLE 6 § 1 OF THE CONVENTION AND ARTICLE 1 OF PROTOCOL NO.1

16. The applicants in all cases complained under Article 6 of the Convention and Article 1 of Protocol No.1 that the final judgments of 4 June 2007 had been quashed by way of supervisory review on 29 November 2007. In so far as relevant, this Article 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 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.”

A. Admissibility

17. The Government argued that the applications were inadmissible as the applicants had lost interest in maintaining their cases in the domestic proceedings which followed the quashing. The applicants confirmed in reply that they wished to pursue the applications before the Court.

18. The Court notes that it may proceed to strike a case from its list under Article 37 of the Convention where the applicant lost interest in pursuing the case before the Court, but not before the national authorities.

19. There is nothing in the case files to suggest that the applicants in the present case lost interest in pursuing this case before the Court. Accordingly, the objection must be rejected.

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

B. Merits

21. The Government asserted that the final judgments were quashed to correct a fundamental judicial error, because the lower courts had awarded the payments against a wrong State authority. The domestic law of procedure did not provide for any other way to correct the miscarriage of justice apart from the supervisory-review proceedings. In any event, there was no interference with the applicants' property rights, because the judgments had been enforced and the sums paid pursuant to them had never been claimed back from the applicants.

22. The applicants maintained their claims. They submitted, in particular, that the respondent authority could have made use of the replacement of the defendant procedure instead of applying for the supervisory review of the judgments. In any event, the initial judgments had been issued in accordance with substantive and procedural law. As a result of the quashing, monthly payments due to them had been reduced by RUB 1,283.86 in case of Mr Pavlenko and RUB 1,925 in case of the remaining applicants.

1. Article 6 of the Convention

23. The Court reiterates that for the sake of legal certainty implicitly required by Article 6, final judgments should generally be left intact. Departures from that principle are justified only when made necessary by circumstances of a substantial and compelling character (see *Kot v. Russia*, no. 20887/03, § 24, 18 January 2007, and *Protsenko v. Russia*, no. 13151/04, §§ 25-34, 31 July 2008).

24. The Court observes that in the present cases the final and binding judgments were set aside since the Presidium disagreed with the lower court's interpretation of the provisions of the Chernobyl Law, namely with the way the court determined the defendant in the cases at hand. In the Court's view, the fact that the Presidium disagreed with the assessment made by the first-instance court was not, in itself, an exceptional circumstance warranting the quashing of the judgment (see *Kot*, cited above, § 29).

25. Turning to the Government's argument concerning the respondent authority's alleged lack of means to protect its rights, the Court observes that the purported defects in the present group of cases could have been cured in the appeal proceedings. A situation where the final judgments in the applicants' favour were called into question could have been avoided, had the respondent authority lodged an ordinary appeal within the statutory ten-day time-limit (see *Borshchevskiy v. Russia*, no. 14853/03, § 48, 21 September 2006, and *Nelyubin v. Russia*, no. 14502/04, § 27, 2 November 2006). The Government did not point to any exceptional circumstances that would have prevented the Ministry of Finance from making use of an ordinary appeal, and the Court does not detect a specific reason which would justify the departure from the principle of legal certainty in the present eight cases.

26. Accordingly, there has been a violation of Article 6 § 1 of the Convention in the present eight cases.

2. Article 1 of Protocol No. 1

27. The Court reiterates that the existence of a debt confirmed by a binding and enforceable judgment constitutes the beneficiary's "possession" within the meaning of Article 1 of Protocol No. 1. Quashing of such a judgment amounts to an interference with his or her right to peaceful enjoyment of possessions (see, among other authorities, *Androsov v. Russia*, no. 63973/00, § 69, 6 October 2005).

28. In so far as the Government submitted that the applicants had failed to appear before the court in a new round of the proceedings before the Town Court, the Court observes that the core issue before it is the quashing of the final and binding judgments given in the applicants' favour. Such a quashing is regarded in the case-law as an instantaneous act (see *Sitokhova v. Russia* (dec.), no. 55609/00, 2 September 2004). Thus, the eventual outcome of the post-quashing proceedings is not directly relevant for the Court's analysis of the complaint about the annulment of the judgments in the applicants' favour (see *Ivanova v. Ukraine*, no. 74104/01, §§ 35-38, 13 September 2005), unless, as a result of the subsequent proceedings, the applicants obtained more than they had had before the supervisory review (see, among others, *Gavrilenko v. Russia*, no. 30674/03, § 40, 15 February 2007), which is clearly not the case.

29. The Court further observes that by virtue of the judgments of 4 June 2007 the applicants' pensions were considerably increased. The annulment of the enforceable judgments frustrated the applicants' reliance on a binding judicial decision and deprived them of an opportunity to receive the money they had legitimately expected to receive. In these circumstances, even assuming that the interference was lawful and pursued a legitimate aim, the Court considers that the quashing of the enforceable judgments in the applicants' favour by way of supervisory review placed an excessive burden on the applicants and was incompatible with Article 1 of the Protocol No. 1.

30. There has therefore been a violation of that Article.

III. ALLEGED VIOLATION OF ARTICLE 13 OF THE CONVENTION

31. The applicants also complained under Article 13 about the lack of effective domestic remedies against the quashing of the final judgment in their favour.

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

33. However, having found above that the supervisory review breached the applicants' substantive rights under Article 6 § 1 of the Convention, the Court considers that it is not necessary to examine separately the complaint about the absence of effective remedies with regard to the proceedings engendered by that supervisory review (see *Sitkov v. Russia*, no. 55531/00, § 39, 18 January 2007).

IV. APPLICATION OF ARTICLE 41 OF THE CONVENTION

34. 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*

35. As regards pecuniary damage, the applicants claimed that the quashed judgments be enforced in the part awarding the monthly payments. Each applicant also claimed 4,000 euros (EUR) in respect of non-pecuniary damage.

36. The Government contested the claims, arguing that the applicants had lost interest in pursuing their applications. They also asserted that the quashed judgments in the applicants' favour had been executed. As regards the claims for non-pecuniary damage, they submitted that these claims were excessive and unreasonable.

2. The Court's assessment

37. As regards the applicants' claims in respect of enforcement of the quashed judgments of 4 June 2007, the Court notes that the applicants have been receiving the judicial awards in their favour until the moment when the relevant judgments were quashed via supervisory review. Consequently, they had suffered no pecuniary damage until that moment. The Court further observes that, once quashed, the judgments ceased to exist under domestic law. The Court cannot restore the power of these judgments nor assume the role of the national authorities in awarding social benefits for the future (see, among others, *Tarnopolskaya and Others v. Russia*, nos. 11093/07, 14558/07, 19660/07, 30166/07, 46736/07, 52681/07, 52985/07, 10633/08, 10652/08, 12694/08, 15437/08, 16691/08, 19447/07, 19457/08, 20857/08, 20872/08, 22546/08, 25820/08, 25839/08 and 25845/08, § 51, 7 July 2009). The Court also observes that after the judgments of 4 June 2007 had been quashed, the authorities started to pay the applicants monthly disability benefits in accordance with the relevant legislation.

38. Consequently, the Court makes no award in respect of the pecuniary damage in the present eight cases.

39. The Court furthermore finds that the applicants have suffered non-pecuniary damage as a result of the violation found which cannot be compensated by the mere finding of a violation. Making its assessment on an equitable basis, the Court awards each applicant EUR 3,000 in respect of non-pecuniary damage, plus any tax that may be chargeable, and dismisses the remainder of the claims under this head.

B. Costs and expenses

40. The applicants did not claim any costs or expenses. Accordingly, the Court does not make any award under this head.

C. Default interest

41. 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 complaint under Articles 6 and 13 of the Convention and Article 1 of Protocol No.1 concerning the quashing of the final judgments in the applicants' favour admissible and the remainder of the applications inadmissible;
3. *Holds* that there has been a violation of Article 6 of the Convention and Article 1 of Protocol No.1 to the Convention on account of the quashing of the judgments in the applicants' favour by way of supervisory review;
4. *Holds* that there is no need to examine the complaint under Article 13 of the Convention;
5. *Holds*
 - (a) that the respondent State is to pay each applicant, within three months from the date on which the judgment becomes final in accordance with Article 44 § 2 of the Convention, EUR 3,000 (three thousand euros), plus any tax that may be chargeable, in respect of non-pecuniary damage, to be converted into Russian roubles at the rate applicable at the date of settlement;
 - (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;
6. *Dismisses* the remainder of the applicants' claim for just satisfaction.

Done in English, and notified in writing on 4 November 2010, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Søren Nielsen
Registrar

Christos Rozakis
President

ANNEX

Application no.	Introduced on	Applicant	Born in
31799/08	22/05/2008	PUGACH Svyatoslav Fedorovich	1944
53657/08	22/05/2008	PAVLENKO Vladimir Nikolayevich	1938
53661/08	22/05/2008	PUTILIN Ivan Mikhailovich	1942
53666/08	22/05/2008	KARTASHOV Petr Petrovich	1951
53670/08	22/05/2008	BARYGIN Petr Viktorovich	1950
53671/08	22/05/2008	ANDREAS Vladimir Viktorovich	1957
53672/08	22/05/2008	REUTOV Viktor Ivanovich	1947
53673/08	22/05/2008	TOKARCHUK Viktor Alekseyevich	1951