



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

FIRST SECTION

**CASE OF EYDELMAN
AND OTHER “EMIGRANT PENSIONERS” v. RUSSIA**

*(Applications nos. 7319/05, 9992/07, 10359/07, 13476/07, 3565/08,
10628/08, 33904/08, 33918/08, 40058/08, 42112/08, 42115/08, and
60792/08)*

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 Eydelman and other “Emigrant pensioners” 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,

Dean Spielmann,

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 twelve applications (nos. 7319/05, 9992/07, 10359/07, 13476/07, 3565/08, 10628/08, 33904/08, 33918/08, 40058/08, 42112/08, 42115/08, and 60792/08) 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 eleven Israeli nationals. The applicants' names, years of birth and the dates of their applications to the Court appear in the table below.

2. All the applicants were represented by Mr R.A. Zarbeyeve, a lawyer practising in St Petersburg. The Russian Government (“the Government”) were represented by Ms V. Milinchuk, former Representative 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 in supervisory-review proceedings of binding and enforceable judgments delivered in their favour between 2004 and 2007.

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 FACTS

I. THE CIRCUMSTANCES OF THE CASE

5. The circumstances of the present case are similar to those in the case *Tarnopolskaya and Others v. Russia* (nos. 11093/07 et seq., §§ 6-13, 7 July 2009).

6. The applicants' names and other details are indicated in the appended table.

7. The applicants emigrated to Israel from the USSR in the 1980s and 1990s and obtained Israeli nationality. Before immigration they had been receiving old-age pensions from the Soviet authorities. However, once the applicants left the USSR, the payments were discontinued in accordance with the USSR pension law applicable at the material time. As they left the USSR prior to its collapse, they were not entitled to a pension under the new Russian legislation.

8. In early 2000 the applicants unsuccessfully applied to the regional departments of the Pension Fund of the Russian Federation (“the Pension Fund”) for the payment of their pensions to be restored. On unspecified dates they brought civil proceedings against the Pension Fund requesting restoration of the payment of their pensions.

9. By the final judgments listed in the appended table the applicants' claims were allowed and the Pension Fund was ordered to restore pension payments.

10. In the case of Ms Eydelman the final judgment of 5 July 2004 was being enforced from April 2005 until July 2006, when it was quashed.

11. In the case of Ms Margulis the applicant submitted to a State body responsible for enforcement, the required additional documents, including her bank account, by 30 June 2005. The final judgment in her favour in part of the periodical payments due in 1998-2005 was subsequently enforced on 20 January 2006. The judgment has not been enforced since then.

12. In the cases of Ms Shinkova and Ms Rogatskaya the judgments have never been enforced.

13. In the cases of Ms Itskovich and Ms Orlova the payments were restored and were stopped only after the subsequent quashing of the judgments in their favour.

14. In the case of Ms Lyalina the payments under the judgment were made in part.

15. In the cases of Ms Rozhnikovskaya and Ms Mnushkina the monthly payments were made in full until January 2008, that is one month before the judgment was quashed by way of supervisory review.

16. In the cases of Ms Soltanova and Ms Litvinova the payments were not made due to the applicants' alleged failure to provide the necessary documents.

17. In the case of Ms Vcherashnyaya the judgment in her favour was being enforced in full before the quashing via supervisory review.

18. Subsequently, earlier than 7 January 2008, the Pension Fund, as a party to the proceedings in the present case, lodged requests with the competent regional courts for supervisory review of the final judgments in the applicants' favour. The Presidia of the regional courts granted the requests, quashed the judgments and dismissed the applicants' claims.

19. The Presidia found that according to the relevant USSR legislation, under which the pensions had been awarded, there was no possibility to continue the payments to the applicants, as they had left the country. They considered that the payments were to be restored only if the pensions had been awarded in accordance with the legislation of the Russian Federation, not the USSR. The Presidia accordingly concluded that there was no basis under the domestic law for the payments to be awarded to the applicants.

20. The relevant data on the Presidia decisions is listed below.

II. RELEVANT DOMESTIC LAW

21. For the relevant domestic law see *Tarnopolskaya and Others*, cited above, §§ 15-26.

22. The new supervisory review procedure entered in force on 7 January 2008 (see *Martynets v. Russia* (dec.), no. 29612/09, ECHR 2009-...). All the applications for supervisory review lodged before that date should have been considered under the previous procedure.

THE LAW

I. JOINDER OF THE APPLICATIONS

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

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

24. The applicants complained that the quashing by way of supervisory review of the binding and enforceable judgments in their favour had violated their rights under Article 6. They also complained in substance that Article 1 of Protocol No. 1 had also been violated. The relevant provisions provide 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

25. The Court considers that the complaints 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

26. The applicants argued that the quashing of the binding and enforceable judgments delivered by domestic courts in their favour had violated the principle of legal certainty and, therefore, their right to a court.

27. The Government stated that in the present cases the supervisory review of the final judgments complied with the requirements of legality established by the Convention, namely, that the supervisory appeals were filed by a party to the proceedings; this party had exhausted the ordinary right of appeal in most of the cases; the applications for supervisory review were filed within one year from the date of adoption of the final judgments; the ground for the quashing was a material breach of law. The Government specified that the lower courts had made a fundamental error in applying the material law, in particular, abuse of authority, exceeding their limits of competence. Thus, the supervisory-review proceedings had been lawful and necessary to remedy a gross miscarriage of justice in the application of

material law by the lower courts. They concluded that the quashing of the judgments in the present case had been justified, well-founded and thus compatible with the principle of legal certainty and the applicants should accordingly have had no expectation of any benefit arising from the judgments in their favour.

28. 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).

29. 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 (see *Kot v. Russia*, no. 20887/03, § 29, 18 January 2007). Some of these violations were found in similar and, on certain occasions, virtually identical circumstances concerning benefits to the pensioners who had emigrated to Israel from the USSR (see *Tarnopolskaya and Others*, cited above, § 35). 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.

30. The arguments submitted by the Government in the present cases were addressed in detail and dismissed in previous similar cases. The alleged 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; *Tarnopolskaya and Others*, cited above, § 35).

31. 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.

32. 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

33. The applicants invoked Article 1 of Protocol No. 1 and Article 14, claiming that they had been initially unlawfully deprived of their pension and that this deprivation had occurred on political grounds because they had left the USSR for a “capitalist country”, while citizens who had left for a “socialist country” retained their pensions.

34. It should first be noted that the initial withdrawal of the applicants' pension rights was an instantaneous act, which did not give rise to any possible continuous situation of a violation of the Convention. This withdrawal was triggered by their emigration to Israel, which took place prior to 5 May 1998 when the Convention entered into force in respect of Russia. The Convention only governs facts subsequent to its entry into force with regard to that Party (see *Jovanović v. Croatia* (dec.), no. 59109/00, ECHR 2002-III). It follows that the complaints under Article 1 of Protocol No. 1 and Article 14 of the Convention are incompatible *ratione temporis* (see *Tarnopolskaya and Others*, cited above, § 39).

35. Ms Margulis and Ms Itskovich also complained under Article 6 of the Convention and Article 1 of Protocol No. 1 that the judgments in their favour had not been enforced during a lengthy period before its quashing.

36. As to the case of Ms Margulis, the Court finds it reasonable that the authorities requested the applicant to produce additional documents, such as bank details (see paragraph 11 above), to allow or speed up the execution of a judgment (see *Kosmidis and Kosmidou v. Greece*, no. 32141/04, §§ 24-26, 8 November 2007; and *Akashev v. Russia*, no. 30616/05, §§ 21-23, 12 June 2008), especially when the applicant is a citizen and a resident of another country. Indeed, it seems inappropriately demanding to require from the respondent State to ascertain a foreign citizen's bank account to enforce a judgment in his or her favour. Therefore under these special circumstances of the present case the State may be considered as responsible for the non-enforcement only from 30 June 2005 until 20 January 2006, which is not excessive.

37. As to the case of Ms Itskovich, she was paid the judgment debt on 6 December 2005, that is roughly five and a half months after the judgment became enforceable, which is a reasonable delay.

38. It follows that these complaints are inadmissible and must be rejected in accordance with Article 35 §§ 3 and 4 of the Convention.

IV. APPLICATION OF ARTICLE 41 OF THE CONVENTION

39. 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*

40. The applicants claimed in respect of pecuniary damage the sums of their pensions from the date indicated in the final judgments until and after the dates when these judgments were quashed. Where in some of the cases certain sums had been paid, these were excluded from the calculations.

41. They also asked for the payment of their pensions to be restored.

42. The applicants claimed 10,000 euros (EUR) each in respect of non-pecuniary damage as well.

43. The Government asserted that there were no arrears in payments to some of the applicants, whereas to the others the payments were not made as they had failed to provide the necessary documents. The Government made no specific comment on the methods of calculation of pecuniary damage by the applicants.

2. *The Court's assessment*

44. The Court recalls 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, *mutatis mutandis*, *Gençel v. Turkey*, no. 53431/99, § 27, 23 October 2003; also *Dovguchits*, cited above, § 48).

45. In the instant case the Court found a violation of Article 6 § 1 of the Convention and Article 1 of Protocol No. 1, in that the judgments in the applicants' favour had been quashed by way of supervisory review. Insofar as the applicants did not receive the money they had legitimately expected to receive under these final judgments in the period until they were quashed, there is a causal link between the violations found and the applicants' claims in respect of pecuniary damage. In the cases in which the payments were not made due to the alleged applicants' failure to provide necessary documents, this legitimate expectation remained, even if it was subject to compliance with some practical formalities.

46. The Government have not submitted any comment in respect of the methods used or suggested by the applicants for the calculation of such pecuniary damage. Nor have the Government provided the Court with any alternative calculations even as regards the pensions that they concede might not have been paid. Therefore the Court accepts the applicants' calculations and awards compensation for pecuniary damage for the periods from the dates indicated in the judgments until the dates when the judgments were quashed as follows:

Applicant's name	Amount of pension per month (RUB)	The dates from which the payments were not made despite the final judgments	The dates of the quashing of the final judgments	The period to be taken into account	The award to be made in respect of pecuniary damage in RUB (and EUR)
Margulis	3,000	01/01/2006	30/06/2006	Six months	18,000 (503)
Shinkova	5,701.08	01/12/2005	23/08/2007	One year and nine months	119,722 (2,672)
Rozhnikovskaya	3,423.63	01/01/2008	06/02/2008	One month	3,423.63 (76)
Mnushkina	7,597.49	01/01/2008	06/02/2008	One month	7,597.49 (170)
Soltanova	4,661.50	29/12/2002	06/02/2008	Five years and one month	284,351.50 (6,347)
Litvinova	4,549.01	10/11/2001	05/03/2008	Six years and four months	345,724.76 (7,717)
Rogatskaya	5,025	14/12/2003	05/03/2008	Four years and three months	256,275 (5,720)

47. In the case of Ms Lyalina Ira Davidovna the applicant provided the Court with a Pension Fund certificate and calculations substantiating a judgment debt of 128,959.77 Russian roubles (RUB) (EUR 2,933) before its quashing via supervisory review. The Court awards her this sum for pecuniary damage.

48. In the cases of Mr Eydelman, Ms Itskovich, Ms Orlova (see paragraphs 10 and 13 above) and Ms Vcherashnaya (see paragraph 17 above) the final judgments had been enforced at least until they were quashed. Therefore no awards are to be made in their cases.

49. As regards the applicants' claims in respect of their pecuniary loss after the judgments in their favour were quashed by way of supervisory review, the Court considers that given the many imponderables in evolving political and economic conditions that could affect future pension entitlements and calculations it would be a largely hypothetical exercise to attempt to predict in the long term the amounts of pension which would have been paid, if any, if the final judgments had not been quashed. The Court can only therefore award the sums which should have been paid until the final rejection of the applicants' claims made after the quashing by way of supervisory review (*Tarnopolskaya and Others*, cited above, § 51). Consequently, no pecuniary awards can be made for the periods after these decisions were taken.

50. The Court furthermore 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. The applicants have, in particular, suffered a certain loss of expectation. Having regard to the circumstances of the cases and making its assessment on an equitable basis, the Court awards to each applicant the sum of EUR 3,000 in respect of non-pecuniary damage, plus any tax that may be chargeable on that amount.

51. The sums awarded by the Court are to be paid in euros.

B. Costs and expenses

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

C. Default interest

53. 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:
 - (i) in respect of pecuniary damage:
EUR 503 (five hundred and three euros) to Margulis Rozaliya Borisovna;
EUR 2,933 (two thousand nine hundred and thirty-three euros) to Lyalina Ira Davidovna;
EUR 2,672 (two thousand six hundred and seventy-two euros) to Shinkova Alla Iosifovna;
EUR 76 (seventy-six euros) to Rozhnikovskaya Yelizaveta Aleksandrovna;
EUR 170 (one hundred and seventy euros) to Mnushkina Sofiya Vulfovna;
EUR 6,347 (six thousand three hundred and forty-seven euros) to Soltanova Evilena Aleksandrovna;
EUR 7,717 (seven thousand seven hundred and seventeen euros) to Litvinova Yelena Maksimovna;
EUR 5,720 (five thousand seven hundred and twenty euros) to Rogatskaya Elli Semenovna;
 - (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;
 - (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 4 November 2010, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Søren Nielsen
Registrar

Christos Rozakis
President

APPENDIX

APP. NO. DATE OF INTRODUCTION	APPLICANT YEAR OF BIRTH	JUDGMENT(S) COURT(S)/DATE(S)	SUPERVISORY REVIEW JUDGMENT COURT/DATE(S)
7319/05 23/02/2005	Eydelman Vladimir Lazarevich 1925	Zheleznodorozhnyi District Court of Novosibirsk, 05/07/2004	Presidium of the Novosibirsk Regional Court, 30/06/2006
9992/07 27/12/2006	Margulis Rozaliya Borisovna 1928	Zayeltsobskiy District Court of the Novosibirsk Region, 04/10/2004; enforceable on 23/12/2004	Presidium of the Novosibirsk Regional Court, 30/06/2006
10359/07 19/01/2007	Itskovich Mariya Iosifovna 1929	Zheleznodorozhnyi District Court of Novosibirsk, 10/06/2005; enforceable 21/07/2005	Presidium of the Novosibirsk Regional Court, 28/07/2006
13476/07 31/01/2007	Orlova Mayya Vasilyevna 1928	Zheleznodorozhnyj District Court of Novosibirsk, 03/05/2005; enforceable on 16/06/2005	Presidium of the Novosibirsk Regional Court, 08/09/2006
3565/08 03/12/2007	Lyalina Ira Davidovna 1933	Oktyabrskiy District Court of St Petersburg, 17/01/2006; enforceable on 27/01/2006	Presidium of the St Petersburg City Court, 03/06/2007
10628/08 22/01/2008	Shinkova Alla Iosifovna 1939	Oktyabrskiy District Court of Rostov-on-Don, 04/09/2006; enforceable on 15/09/2006	Presidium of the Rostov Regional Court, 23/08/2007
33904/08 11/06/2008	Rozhnikovskaya Yelizaveta Aleksandrovna 1930	Mytishchi Town Court of the Moscow Region, 20/02/2007; enforceable on 05/03/2007	Application forwarded to the Presidium on 28/12/2007; Presidium of the Moscow Regional Court, 06/02/2008
33918/08 11/06/2008	Mnushkina Sofiya Vulfovna 1939	Mytishchi Town Court of the Moscow Region, 09/01/2007; enforceable on 19/01/2007	Application of 05/03/2007; Presidium of the Moscow Regional Court, 06/02/2008
40058/08 16/06/2008	Soltanova Evilena Aleksandrovna 1933	Mytishchi Town Court of the Moscow Region, 09/01/2007; enforceable on 19/01/2007	Application forwarded to the Presidium on 28/12/2007; Presidium of the Moscow Regional Court, 06/02/2008
42112/08 24/08/2008	Litvinova Yelena Maksimovna 1923	Mytishchi Town Court of the Moscow Region 06/11/2007, enforceable on 16/11/2007	Application of 26/12/2007; Presidium of the Moscow Regional Court, 05/03/2008
42115/08 23/04/2008	Vcherashnyaya Etta Davydovna 1929	Vyborgskiy District Court of St Petersburg, 22/03/2006, enforceable on 19/05/2006	Presidium of the St Petersburg City Court, 24/12/2007
60792/08 14/08/2008	Rogatskaya Elli Semenovna 1932	Mytishchinskiy District Court of Moscow (no appeal was lodged) 22/05/2007; enforceable on 01/06/2007	Application of 24/09/2007; Presidium of the Moscow City Court 05/03/2008