



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

1959 · 50 · 2009

FIRST SECTION

CASE OF MARKOVTSI AND SELIVANOV v. RUSSIA

(Applications nos. 756/05 and 25761/05)

JUDGMENT

*This version was rectified on 4 February 2010
under Rule 81 of the Rules of the Court*

STRASBOURG

23 July 2009

FINAL

23/10/2009

This judgment may be subject to editorial revision.

In the case of Markovtsi and Selivanov v. Russia,

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

Christos Rozakis, *President*,

Anatoly Kovler,

Elisabeth Steiner,

Dean Spielmann,

Sverre Erik Jebens,

Giorgio Malinverni,

George Nicolaou, *judges*,

and Søren Nielsen, *Section Registrar*,

Having deliberated in private on 2 July 2009,

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

PROCEDURE

1. The case originated in two applications (nos. 756/05 and 25761/05) 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”). Application no. 756/05 was lodged by a Ukrainian national, Mr Aleksandr Aleksandrovich Markovtsi (“the first applicant”), on 6 December 2004. Application no. 25761/05 was introduced by a Russian national, Mr Yevgeniy Fedorovich Selivanov (“the second applicant”) on 20 April 2005.

2. The first applicant was not represented by a lawyer before the Court. The second applicant was represented by Ms V.L. Demidova, a lawyer practicing in Mirnyy, the Sakha (Yakutiya) Republic. The Russian Government (“the Government”) were represented by Ms V. Milinchuk, the former Representative of the Russian Federation at the European Court of Human Rights.

3. On various dates 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 its admissibility (Article 29 § 3).

4. As regards the application no. 756/05, the Ukrainian Government did not exercise their right to intervene in the proceedings (Article 36 § 1 of the Convention).

5. The Government objected to the joint examination of the admissibility and merits of the application no. 25761/05, but the Court rejected this objection.

THE FACTS

I. THE CIRCUMSTANCES OF THE CASES

6. The first applicant was born in 1970 and lives in Ilnitsa, Ukraine. The second applicant was born in 1955 and lives in Lensk, the Republic of Sakha (Yakutiya).

7. In the 1990s the applicants subscribed to a State savings scheme for buying Russian-made cars. The State failed to fulfil its obligation to provide them with cars. The applicants brought court actions against the authorities, seeking to recover the monetary value of the State promissory notes for purchasing of a Russian-made car.

8. On the dates listed in the Appendix the domestic courts of the Sakha (Yakutiya) Republic upheld their actions and awarded them compensation in the amounts specified below, payable by the Ministry of Finance. On the dates listed in the Appendix the judgments were upheld on appeal by the Supreme Court of the Sakha (Yakutiya) Republic and became final. The enforcement proceedings were opened.

9. The awards remained unenforced.

10. On the dates cited in the Appendix the Presidium of the Supreme Court of the Sakha (Yakutiya) Republic, upon an application from the Ministry of Finance and by way of supervisory-review proceedings, quashed the judgments in the applicants' favour, re-examined the cases and dismissed the applicants' actions, having found that the lower courts had incorrectly interpreted and applied the domestic law.

11. The first applicant submitted that he had not been timeously notified of the session of the Presidium of the Supreme Court of the Republic of Sakha (Yakutiya) and therefore could not attend it. He received a copy of the judgment several months after the hearing at the Presidium.

12. On 26 November 2004 the first applicant received 49,259.70 Russian roubles (RUB) of compensation in respect of a part of the promissory note value.

II. RELEVANT DOMESTIC LAW

13. Under section 9 of the Federal Law on Enforcement Proceedings of 21 July 1997, a bailiff must enforce a judgment within two months. Under section 242.2.6 of the Budget Code of 31 July 1998, the Ministry of Finance must enforce a judgment within three months.

THE LAW

I. JOINDER OF THE APPLICATIONS

14. Given that the two applications at hand 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 OF THE CONVENTION AND ARTICLE 1 OF PROTOCOL No. 1 ON ACCOUNT OF SUPERVISORY REVIEW

15. The applicants complained, notably, under Article 6 of the Convention and Article 1 of Protocol No. 1 about the supervisory review of the judgments. The first applicant complained under Article 6 that he was deprived of his right to effectively participate at the supervisory review hearing. These Articles, insofar as relevant, provide 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...”

16. The Government argued that the supervisory review had not breached the principle of legal certainty: it had been preceded by an ordinary appeal, only one supervisory-review instance had been engaged, the request for the quashing had been lodged within six months, it had been initiated by a party to the proceedings and it had been meant to correct a misapplication of material law. The applicants' rights under Article 1 of Protocol No. 1 had not been prejudiced: the first applicant had received compensation for the car before the litigation, while the second applicant had failed to apply for redemption of the promissory notes.

17. The first applicant argued in reply that the supervisory review had deprived him of the final award in his favour and had been unfair. The only ground for quashing was the alleged misapplication of the domestic law by the lower courts. The compensation he received had been smaller than the initial award. The second applicant maintained his claims.

A. Admissibility

18. The Court notes that the 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.

B. Merits

1. Article 6 of the Convention

(a) Supervisory review procedure: legal certainty

19. The Court reiterates that the quashing by way of supervisory review of a judicial decision which has become final and binding may render the litigant's right to a court illusory and infringe the principle of legal certainty (see, among many other authorities, *Brumărescu v. Romania* [GC], no. 28342/95, § 62, ECHR 1999-VII; *Ryabykh v. Russia*, no. 52854/99, §§ 56-58, 24 July 2003). 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).

20. The Court observes that in the cases at hand the judgments were set aside by way of a supervisory review solely on the ground that the lower courts had incorrectly applied the substantive law. The Court reiterates its constant approach that in the absence of a fundamental defect in the previous proceedings a party's disagreement with the assessment made by the first-instance and appeal courts is not a circumstance of a substantial and compelling character warranting the quashing of a binding and enforceable judgment and re-opening of the proceedings on the applicant's claim (see *Dovguchits v. Russia*, no. 2999/03, § 30, 7 June 2007; and *Kot v. Russia*, cited above, § 29). The Government did not put forward any arguments which would enable the Court to reach a different conclusion in the present two cases. There has been, accordingly, a violation of Article 6 § 1 of the Convention.

(b) Supervisory review procedure: procedural issues

21. With regard to the complaint about the procedural defects of the hearing before the Presidium of the Supreme Court of the Republic of Sakha (Yakutiya), the Court finds that, having concluded that there had been an infringement of the applicant's "right to a court" by the very use of the supervisory review procedure, it is not necessary to consider whether the

procedural guarantees of Article 6 of the Convention were available in those proceedings (cf. *Volkova v. Russia*, no. 48758/99, § 39, 5 April 2005).

2. Article 1 of Protocol No. 1

22. 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. (see, among other authorities, *Androsov v. Russia*, no. 63973/00, § 69, 6 October 2005).

23. The Court has found in many cases that the quashing of the enforceable judgments frustrated the applicants' reliance on the binding judicial decision and deprived them of an opportunity to receive the money they had legitimately expected to receive (see, among others, *Ivanova v. Russia*, no. 11697/05, § 23, 24 April 2008, *Dmitriyeva v. Russia*, no. 27101/04, § 32, 3 April 2008). In these circumstances, even assuming that the interference was lawful and pursued a legitimate aim, the Court considers that the quashing of the enforceable judgment in the applicants' favour by way of supervisory review placed an excessive burden on them and was incompatible with Article 1 of the Protocol No. 1. There has therefore been a violation of that Article in the present two cases.

III. ALLEGED VIOLATION OF ARTICLE 6 OF THE CONVENTION AND ARTICLE 1 OF PROTOCOL No. 1 ON ACCOUNT OF NON-ENFORCEMENT

24. The applicants complained under Article 6 of the Convention and Article 1 of Protocol No. 1 about the non-enforcement of the judgments.

25. The Government argued that the first applicant's complaint was inadmissible. First, the applicant had failed to exhaust the domestic remedies, such as a claim for damages, an adjustment for the cost of living, and a negligence action. Second, he had submitted enforcement papers to bailiffs instead of the Ministry of Finance, received the writ of execution from the first instance court with a three months' delay and recalled the writ from the Ministry one month before quashing. The Government did not make submissions on the second applicant's non-enforcement complaint.

26. The applicants maintained their claims. In particular, the first applicant submitted that the authorities had taken no steps to execute the judgment and that he had unsuccessfully complained about the non-enforcement to various authorities, in particular to the Ministry of Finance.

A. Admissibility

27. As regards exhaustion, the Court has already found that the suggested remedies were ineffective (see, among others, *Burdov v. Russia*

(*no. 2*), no. 33509/04, §§ 103 and 106-116, 15 January 2009, and *Moroko v. Russia*, no. 20937/07, §§ 25-30, 12 June 2008).

28. The Court further notes that the applicants' non-enforcement complaint is not manifestly ill-founded within the meaning of Article 35 § 3 of the Convention and is not inadmissible on any other grounds. It must therefore be declared admissible.

B. Merits

29. The Court reiterates that an unreasonably long delay in the enforcement of a binding judgment may breach the Convention (see *Burdov v. Russia*, no. 59498/00, ECHR 2002-III). The Court further reiterates that the quashing of a judgment in a manner which has been found to have been incompatible with the principle of legal certainty and the applicant's "right to a court" cannot be accepted as justification for the failure to enforce that judgment (see *Sukhobokov v. Russia*, no. 75470/01, § 26, 13 April 2006). In the present cases the judgments in the applicants' favour were enforceable until at least the respective dates of quashing and it was incumbent on the State to abide by their terms (see *Velskaya v. Russia*, no. 21769/03, § 18, 5 October 2006). However, in each case the State avoided paying the judgment debt for more than one year.

30. As regards the objection concerning the first applicant's failure to submit the enforcement papers in good time, the Court reiterates that where a judgment is against the State, the State must take the initiative to enforce it (see *Akashev v. Russia*, no. 30616/05, §§ 21–23, 12 June 2008). The complexity of the domestic enforcement procedure cannot relieve the State of its obligation to enforce a binding judicial decision within a reasonable time (see *Burdov (no. 2)*, cited above, § 70).

31. There has, accordingly, been a violation of Article 6 § 1 of the Convention and Article 1 of Protocol No. 1.

IV. OTHER ALLEGED VIOLATIONS OF THE CONVENTION

32. The first applicant complained under Article 13 of the Convention that he had no effective domestic remedy in respect of the decision of the Presidium to quash on supervisory review the final judgment in his favour.

33. The Court notes that Article 13 of the Convention does not, as such, guarantee the right to appellate remedies in respect of a decision taken by way of supervisory review, and the mere fact that the judgment of the highest judicial body is not subject to further judicial review does not infringe in itself the said provision (see *Sitkov v. Russia* (dec.), no. 55531/00, 9 November 2004). It follows that the complaint is incompatible *ratione materiae* with the provisions of the Convention within

the meaning of Article 35 § 3 and must be rejected in accordance with Article 35 § 4 thereof.

34. The applicants also complained under Articles 14 and 17 of the Convention and Article 1 of Protocol No. 1 about the domestic courts' findings and overall unfairness of the State bonds redemption program.

35. 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 application is manifestly ill-founded and must be rejected in accordance with Article 35 §§ 3 and 4 of the Convention.

V. APPLICATION OF ARTICLE 41 OF THE CONVENTION

36. 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

37. The first applicant claimed the amount awarded to him by the final judgment in his favour, i.e. 102,056 Russian roubles (RUB), in respect of pecuniary damage and 5,000 euros (EUR) in respect of non-pecuniary damage. The second applicant claimed RUB 194,553.80 representing the present-day value of a Russian-made passenger car in respect of pecuniary damage. He further stated that he had suffered non-pecuniary damage without specifying the amount claimed under this head.

38. The Government argued that the applicants' claims for pecuniary damage were unreasonable, since the applicants had no right to receive a full value of the car under the domestic law. They pointed out that in November 2004 the first applicant received compensation in extra-judicial proceedings. The claim for non-pecuniary damage was unsubstantiated.

39. The Court reiterates that the best redress of a violation of Article 6 is to put the applicant as far as possible in the position he would have been if Article 6 had been respected (see *Piersack v. Belgium* (Article 50), judgment of 26 October 1984, Series A no. 85, § 12). The Court finds that in the present case this principle applies as well, having regard to the violations found (cf. *Abdulmanova v. Russia*, no. 41564/05, § 25, 16 October 2008).

40. Applied to the second applicant's case, this principle would mean that the State must pay to the applicant the amount he should have received

under the initial judgment in his favour. As regards the remainder of his claims, the Court notes that the applicant did not explain his method of calculation of the present-day car value or produce any documents he had used for calculations. Accordingly, the Court awards to Mr Selivanov EUR 3,978 under this head and dismisses the remainder of his claims in respect of pecuniary damage.

41. As regards the first applicant, the Court notes that in November 2004 he received the partial compensation of the promissory note value, although in a lower amount than provided for by the initial judgment. Deducting the sum which the Ministry of Finance has already paid to the applicant on 26 November 2004, the Court considers that the Government should pay the remaining part of the judgment award made by the domestic courts under the judgment of 18 March 2003, (see, *mutatis mutandis*, *Almayeva v. Russia*, no. 966/03, § 42, 25 October 2007, and *Kudrina v. Russia*, no. 27790/03, § 37, 21 June 2007) which was equivalent to approximately EUR 1,460 on the date when the applicant submitted his claims. The remainder of his claims in respect of pecuniary damage should be dismissed.

42. The Court further considers that the applicants must have suffered distress from the non-enforcement and quashing of the judgments. Making its assessment on an equitable basis, the Court awards each of the applicants EUR 3,000 under this head.

B. Costs and expenses

43. The Court reiterates that, according to its case-law, 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.

1. The first applicant

44. The first applicant claimed RUB 187 of postal expenses. The Government argued that the applicant only substantiated his claim in respect of RUB 107.

45. In the present case, regard being had to the information in its possession and the above criteria, the Court considers it reasonable to award the sum of EUR 5 in respect of costs and expenses.

2. The second applicant

46. The second applicant claimed reimbursement of costs and expenses without specifying the amount and or submitting any evidence in support of the claim. The Government argued that the claim was unsubstantiated.

47. The Court points out that under Rule 60 of the Rules of Court any claim for just satisfaction must be itemised and submitted in writing together with the relevant supporting documents or vouchers, “failing which the Chamber may reject the claim in whole or in part”. The applicant did not submit a detailed claim in respect of costs and expenses. Accordingly, the Court makes no award under this head.

C. Default interest

48. 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 non-enforcement and supervisory review 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 in each case on account of non-enforcement and quashing by way of supervisory review;
4. *Holds* in respect of all applications,
 - (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 plus any tax that may be chargeable on these amounts, to be converted into Russian roubles at the rate applicable at the date of the settlement:
 - (i) in respect of pecuniary damage:
EUR 1,460 (one thousand four hundred and sixty euros)¹ to Mr Markovtsi;
EUR 3,978 (three thousand nine hundred and seventy-eight euros)² to Mr Selivanov;
 - (ii) in respect of non-pecuniary damage:
EUR 3,000 (three thousand euros) to Mr Markovtsi;
EUR 3,000 (three thousand euros) to Mr Selivanov;

¹ Rectified on 4 February 2010: the text was “EUR 3,978 (three thousand nine hundred and seventy-eight to euros)”

² Rectified on 4 February 2010: the text was “EUR 1,460 (one thousand four hundred and sixty euros)”

(iii) in respect of costs and expenses, EUR 5 (five euros) to Mr Markovtsi;

(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' claims for just satisfaction.

Done in English, and notified in writing on 23 July 2009, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Søren Nielsen
Registrar

Christos Rozakis
President

APPENDIX

APPLICATION NUMBER, DATE OF LODGING	APPLICANT'S NAME	JUDGMENT IN THE APPLICANT'S FAVOUR (DATE, COURT)	AWARD UPHELD ON APPEAL (DATE)	AWARD (RUB)	QUASHING ON SUPERVISORY REVIEW (DATE)
756/05 6 December 2004	MARKOVTSI Aleksandr Aleksandrovich	18 March 2003, the Ust-Yanskiy District Court	23 April 2003	102,056.00	14 October 2004
25761/05 20 April 2005	SELIVANOV Yevgeniy Fedorovich	17 February 2003, the Mirninskiy District Court	26 March 2003	138,967.00	16 December 2004