



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

1959 · 50 · 2009

FIRST SECTION

CASE OF MOLODYKA AND OTHERS v. RUSSIA

(Applications nos. 3447/05, 15560/05 and 21613/05)

JUDGMENT

STRASBOURG

23 July 2009

FINAL

23/10/2009

This judgment may be subject to editorial revision.

In the case of Molodyka 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 Hajiyev,

Dean Spielmann,

Sverre Erik Jebens, *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 three applications (nos. 3447/05, 15560/05 and 21613/05) 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”) by three Russian nationals (“the applicants”). The applicants’ names and the dates of their applications to the Court appear in the appended table.

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

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 their admissibility (Article 29 § 3).

4. The Government objected to the joint examination of the admissibility and merits of the application no. 21613/05, but the Court rejected this objection.

THE FACTS

THE CIRCUMSTANCES OF THE CASE

5. The applicants live in the towns of Udachnuyy and Mirnyy of the Sakha (Yakutiya) Republic. Their names and dates of birth are indicated in the appended table.

6. The applicants brought court actions against the authorities, seeking to recover the monetary value of the State promissory notes for purchasing of Russian-made cars. On the dates listed in the Appendix the Mirninskiy District Court of the Sakha (Yakutiya) Republic upheld their actions and awarded each of them 138,967 Russian roubles (RUB) in compensation, payable by the Ministry of Finance. The judgments were upheld on appeal by the Supreme Court of the Sakha (Yakutiya) Republic and became final on the dates listed below. They remained unenforced.

7. On various dates the Presidium of the Supreme Court of the Sakha (Yakutiya) Republic, upon applications from the Ministry of Finance and by way of supervisory-review proceedings, quashed the first-instance and the appeal judgments in the applicants' favour, re-examined the cases and dismissed the applicants' respective actions, having found that the lower courts had incorrectly interpreted and applied the domestic law.

8. On 27 May 2007 the Ministry of Finance paid to Mrs Molodyka (case no. 3447/05) RUB 23,264.85 in compensation of a car's value.

THE LAW

I. JOINDER OF THE APPLICATIONS

9. Given that the three 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 QUASHING OF THE JUDGMENTS IN THE APPLICANTS' FAVOUR

10. The applicants complained under Article 6 that the judgments in their favour had been quashed on supervisory review and that they had been deprived of their property as a result of the quashing. Some of them also

refer to Article 1 of Protocol No.1 in respect of their complaint. These Articles, in their relevant parts, 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...”

11. The Government argued that the supervisory review of the judgments had not breached the Convention. In each case it had been initiated by a party to the proceedings within less than one year from the respective judgments’ entry into force. The quashing had been justified because the judgments had been based on a misapplication of law and hence had contained a fundamental defect. Annulment of binding judgments had been legitimate in a democratic society and known to such countries as Germany, Austria, and Switzerland. Besides, the Council of Europe had been satisfied with reforms of the supervisory-review procedure in Russia. Furthermore, in the cases at hand, the supervisory review had not breached Article 1 of Protocol No. 1, since the Presidium had found that the applicants’ claims had been unfounded and therefore the applicants had not had a “possession” within the meaning of Article 1 of Protocol No. 1. Besides, the applicant in case no. 3447/05 in 2007 received compensation from the Ministry of Finance in the amount prescribed by the domestic law, while the applicants in cases nos. 15560/05 and 21613/05 had failed to apply for redemption of the promissory notes.

12. The applicants maintained their complaints.

A. Admissibility

13. The Court 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

1. Article 6 § 1 of the Convention

14. 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 *Protsenko v. Russia*, no. 13151/04, §§ 25-34, 31 July 2008).

15. 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*, no. 20887/03, § 29, 18 January 2007). The Government did not put forward any arguments which would enable the Court to reach a different conclusion in the present three cases. There has been, accordingly, a violation of Article 6 § 1 of the Convention.

2. Article 1 of Protocol No. 1

16. 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).

17. 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 respect of the present three applications.

III. APPLICATION OF ARTICLE 41 OF THE CONVENTION

18. 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.”

19. The applicants did not submit a claim for just satisfaction within the time-limits established for this purpose. Accordingly, the Court considers that there is no call to award them any sum on that account.

FOR THESE REASONS, THE COURT UNANIMOUSLY

1. *Decides* to join the applications;
2. *Declares* the applications admissible;
3. *Holds* that there has been a violation of Article 6 of the Convention and Article 1 of Protocol No. 1;
4. *Holds* that no award should be made under Article 41 of the Convention.

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, YEAR OF BIRTH	JUDGMENT IN THE APPLICANT'S FAVOUR (DATE)	JUDGMENT UPHELD ON APPEAL (DATE)	QUASHING ON SUPERVISORY REVIEW (DATE)
3447/05 (10/12/2004)	Lyudmila Mikhaylovna Molodyka (1954)	29 July 2003	15 September 2003	28 October 2004
15560/05 (31/03/2005)	Olga Nikolayevna Kuznyayeva (1956)	10 September 2003	22 October 2003	16 December 2004
21613/05 (21/04/2005)	Larisa Vladimirovna Manko (1956)	5 December 2002	23 December 2002	21 October 2004