



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

1959 · 50 · 2009

FIRST SECTION

**CASE OF BOTSKALEV AND ROSTOVTSEVA
and 42 other “Privileged pensioners” cases v. RUSSIA**

(Applications nos. 22666/08, 22673/08, 22675/08, 22677/08, 22683/08, 22686/08, 22688/08, 22691/08, 22699/08, 22709/08, 39366/08, 39414/08, 39460/08, 39492/08, 39514/08, 39522/08, 40477/08, 40482/08, 40495/08, 42002/08, 42004/08, 42026/08, 43817/08, 43827/08, 43834/08, 43844/08, 43861/08, 44339/08, 44343/08, 44344/08, 44348/08, 44364/08, 45346/08, 46204/08, 46214/08, 59620/08, 59622/08, 59630/08, 59691/08, 59692/08, 59695/08, 59696/08 and 59701/08)

JUDGMENT

STRASBOURG

26 November 2009

FINAL

26/02/2010

This judgment will become final in the circumstances set out in Article 44 § 2 of the Convention. It may be subject to editorial revision.

In the case of Botskalev and Rostovtseva and 42 other “Privileged pensioners” cases 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,

Giorgio Malinverni,

George Nicolaou, *judges*,

and Søren Nielsen, *Section Registrar*,

Having deliberated in private on 5 November 2009,

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

PROCEDURE

1. The case originated in 43 applications (nos. 22666/08, 22673/08, 22675/08, 22677/08, 22683/08, 22686/08, 22688/08, 22691/08, 22699/08, 22709/08, 39366/08, 39414/08, 39460/08, 39492/08, 39514/08, 39522/08, 40477/08, 40482/08, 40495/08, 42002/08, 42004/08, 42026/08, 43817/08, 43827/08, 43834/08, 43844/08, 43861/08, 44339/08, 44343/08, 44344/08, 44348/08, 44364/08, 45346/08, 46204/08, 46214/08, 59620/08, 59622/08, 59630/08, 59691/08, 59692/08, 59695/08, 59696/08 and 59701/08) 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 56 Russian citizens whose names and dates of birth are tabulated in the Annex (“the applicants”). The applications' dates of introduction are also tabulated in the Annex.

2. The applicants were represented, respectively, by Mr M. Antonov, Mr I. Fedotov, Mr V. Glukhov, Mr G. Migay, Mr. Y. Pakin, and Ms L. Yerokhina, consultants from the Moscow Region. The Russian Government (“the Government”) were represented by Mr G. Matyushkin, Representative of the Russian Federation at the European Court of Human Rights.

3. In September 2008–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 § 3). The Government objected to the joint examination of the admissibility and merits, but the Court rejected this objection.

THE FACTS¹

4. The applicants are pensioners who live in the Moscow Region. Before retirement they used to work in hazardous industries. They had a dispute with a pension authority about the scope of their privileged pensions and appealed to the Region's district and town courts.

5. In May 2005–November 2006 the courts held for the applicants and ordered the pension authority to recalculate the pensions. The courts based their findings on the Law on Labour Pensions. In May 2005–February 2007 these judgments became binding and were executed.

6. On the pension authority's request, in November 2007–April 2008 the district and town courts quashed their judgments due to discovery of new circumstances. The courts found, in particular, that the judgments had ignored the interpretation of the Law on Labour Pensions given by the Supreme Court in December 2005 and March 2007.

7. The applicants' cases were remitted for a rehearing and subsequently dismissed.

THE LAW

I. JOINDER OF THE APPLICATIONS

8. As the applications are similar in terms of both fact and law, the Court decides to join them.

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

9. The applicants complained under Article 6 of the Convention and Article 1 of Protocol No. 1 that the quashing of the binding judgments was unjustified. Insofar as relevant, these Articles 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...”

1. Factual details concerning individual applications are given in the Annex.

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

10. The Government argued that the applications were inadmissible. The Supreme Court's interpretations of the Law on Labour Pensions revealed fundamental errors in the district and town courts' reasoning, and hence those judgments had had to be quashed. The quashing had been legitimate, lawful, and compliant with the principle of legal certainty. The quashing was meant to ensure a uniform and coherent functioning of the State pension scheme and to protect the public purse from undue depletion.

11. The applicants argued that their applications were admissible. The quashing had been unjustified because the district and town courts did take into account the interpretation of 2005, and because the interpretation of 2007 had been given after the judgments. In any event, a legislative interpretation of laws might come only from a lawmaker, not from a court. Besides, the pension authority had missed the statutory time-limit for the quashing, and the courts had extended that limit without good reason.

12. 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

13. The Court reiterates that for the sake of legal certainty implicitly required by Article 6, final judgments should generally be left intact. They may be disturbed only to correct fundamental defects (see *Ryabykh v. Russia*, no. 52854/99, §§ 51–52, ECHR 2003-IX). Quashing of judgments because of newly-discovered circumstances is not by itself incompatible with this requirement, but the manner of its application may be (see *Pravednaya v. Russia*, no. 69529/01, §§ 27–34, 18 November 2004).

14. In the case in hand, the domestic courts justified the quashing with the Supreme Court's two interpretations of the Law on Labour Pensions.

As to the interpretation of 2005, the Court considers that differing judicial interpretations of a law represent a ground for an ordinary appeal, rather than a discovery warranting a quashing of a binding judgment (see *Yerogova v. Russia*, no. 77478/01, § 34, 19 June 2008).

As to the interpretation of 2007, the Court reiterates that newly-discovered circumstances are circumstances that exist during the trial, remain hidden from the court, and become known after trial. Since the interpretation of 2007 was posterior to the Town Court's judgments, it did not justify the quashing either (see *Yerogova*, cited above, § 33).

15. It follows that the quashing of the applicants' judgments was unjustified, and that there has, accordingly, been a violation of Article 6 § 1 of the Convention and Article 1 of Protocol No. 1.

III. APPLICATION OF ARTICLE 41 OF THE CONVENTION

16. 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, costs, and expenses

17. In respect of pecuniary damage, the applicants claimed sums ranging from 209 euros (EUR) to EUR 9,507. According to the applicants, these sums represented the difference between the pensions they had been receiving after the quashing and the pensions they would have received in their lifetime if there had been no quashing. The Government contested the applicants' method of calculation as having no basis in domestic law. They stressed that before their quashing, the judgments had been duly enforced.

18. The Court rejects this claim in view of its speculative character (see *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, 9 July 2009).

19. In respect of non-pecuniary damage, the applicants claimed from EUR 2,000 to EUR 10,000. The Government contested this claim as ill-founded.

20. In respect of costs and expenses incurred before the Court, the applicants claimed sums ranging from EUR 5 to EUR 1,640. The Government noted that any possible award should cover only proven expenses.

21. The Court reiterates that it is an international judicial authority contingent on the consent of the States signatory to the Convention, and that its principal task is to secure the respect for human rights, rather than compensate applicants' losses minutely and exhaustively. Unlike in national jurisdictions, the emphasis of the Court's activity is on passing public judgments that set human-rights standards across Europe.

22. For this reason, in cases involving many similarly situated victims a unified approach may be called for. This approach will ensure that the applicants remain aggregated since no disparity in the level of the awards will have a divisive effect on them.

23. In view of the above, making its assessment on equitable and reasonable bases, the Court awards each applicant EUR 2,000 in respect of non-pecuniary damage, and costs and expenses.

B. Default interest

24. 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 applications admissible;
3. *Holds* that there has been a violation of Article 6 § 1 of the Convention and Article 1 of Protocol No. 1;
4. *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 2,000 (two thousand euros), plus any tax that may be chargeable, in respect of non-pecuniary damage, and costs and expenses, 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 amount 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 26 November 2009, 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	Judgment of	Binding on	Quashed on
22666/08	03/05/08	Botskalev Oleg Alekseyevich	1947	06/06/06	04/08/06	06/11/07
		Rostovskaya Olga Petrovna	1951	06/06/06	04/08/06	06/11/07
22673/08	03/05/08	Izotova Valentina Aleksandrovna	1947	16/06/06	27/06/06	09/11/07
22675/08	03/05/08	Zharinova Maria Ivanovna	1939	14/07/06	25/07/06	09/11/07
22677/08	03/05/08	Zhadalin Vladimir Vasilyevich	1940	14/07/06	25/07/06	20/11/07
22683/08	03/05/08	Kiryanov Anatoliy Vasilyevich	1937	01/06/06	26/07/06	12/11/07
		Kiryanova Tamara Grigoryevna	1939	01/06/06	26/07/06	12/11/07
22686/08	03/05/08	Kiryanov Vladimir Vasilyevich	1940	20/07/06	04/08/06	12/11/07
22688/08	03/05/08	Bazhenova Olga Alekseyevna	1952	14/07/06	24/07/06	12/11/07
22691/08	03/05/08	Yemelicheva Natalya Alekseyevna	1951	08/06/06	04/08/06	14/11/07
		Yeremina Lyudmila Anatolyevna	1956	08/06/06	04/08/06	14/11/07
		Kuznetsova Nadezhda Fyodorovna	1953	08/06/06	04/08/06	14/11/07
		Streltsova Tatyana Pavlovna	1956	08/06/06	04/08/06	14/11/07

Application no.	Introduced on	Applicant	Born in	Judgment of	Binding on	Quashed on
		Kuropatkin Sergey Petrovich	1953	08/06/06	04/08/06	14/11/07
		Fomina Irina Ivanovna	1957	08/06/06	04/08/06	14/11/07
22699/08	03/05/08	Vystavkina Yelena Fyodorovna	1959	31/05/06	04/08/06	20/11/07
		Gorshunova Olga Petrovna	1949	31/05/06	04/08/06	20/11/07
		Ivanova Taisiya Petrovna	1927	31/05/06	04/08/06	20/11/07
		Solovykh Tatyana Fyodorovna	1954	31/05/06	04/08/06	20/11/07
		Trukhina Klavdiya Sergeyevna	1947	31/05/06	04/08/06	20/11/07
		Shchegolkova Lyubov Aleksandrovna	1946	31/05/06	04/08/06	20/11/07
		Chernopyatov Anatoliy Kirillovich	1941	31/05/06	04/08/06	20/11/07
22709/08	03/05/08	Videneyeva Lyudmila Georgiyevna	1942	01/08/06	22/09/06	12/11/07
39366/08	22/07/08	Shvyryayeva Lyudmila Pavlovna	1939	26/09/06	28/12/06	11/03/08
39414/08	15/07/08	Afanasyeva Raisa Petrovna	1926	13/09/06	28/12/06	11/02/08
39460/08	30/07/08	Susaykova Galina Ivanovna	1946	14/09/06	28/12/06	26/03/08
39492/08	15/07/08	Meshcheryakova Aleksandra Dmitriyevna	1934	28/09/06	21/12/06	18/02/08
39514/08	22/07/08	Shvyryayev Vladimir Alekseyevich	1940	26/09/06	28/12/06	11/03/08
39522/08	18/07/08	Belyayev Mikhail Borisovich	1947	06/10/06	28/12/06	28/02/08

Application no.	Introduced on	Applicant	Born in	Judgment of	Binding on	Quashed on
40477/08	23/07/08	Bolshakova Liliya Aleksandrovna	1944	29/09/06	28/12/06	27/03/08
40482/08	01/08/08	Shmeleva Tamara Nikolayevna	1939	19/10/06	26/01/07	19/03/08
40495/08	23/07/08	Bobrova Tatyana Panteleymonovna	1945	21/09/06	28/12/06	21/03/08
42002/08	31/07/08	Yefanova Tamara Petrovna	1922	23/08/06	08/12/06	21/03/08
42004/08	23/07/08	Bobkova Lidiya Nikolayevna	1931	16/08/06	08/12/06	25/03/08
42026/08	31/07/08	Klenina Lybov Anatolyevna	1954	26/09/06	28/12/06	05/02/08
43817/08	26/08/08	Starokurov Igor Aleksandrovich	1933	20/11/06	28/12/06	26/03/08
43827/08	14/08/08	Doroshenko Nadezhda Ivanovna	1951	14/11/06	28/12/06	13/03/08
43834/08	26/08/08	Karpuzikova Vera Sergeyevna	1958	20/11/06	28/12/06	26/03/08
43844/08	14/08/08	Arkhipova Zinaida Ivanovna	1944	14/11/06	28/12/06	13/03/08
43861/08	25/08/08	Taratynova Olga Petrovna	1955	24/08/06	22/12/06	26/02/08
44339/08	20/08/08	Chichkanova Tatyana Viktorovna	1955	09/10/06	21/12/06	26/03/08
44343/08	07/08/08	Nikolayeva Lidiya Vasilyevna	1947	15/11/06	02/02/07	28/03/08
44344/08	21/08/08	Alekseyeva Zinaida Stepanovna	1934	21/09/06	28/12/06	21/03/08
44348/08	14/08/08	Makshanova Aleksandra Ivanovna	1933	27/10/06	21/12/06	02/04/08
44364/08	27/08/08	Bocharov Igor Aleksandrovich	1955	20/11/06	28/12/06	26/03/08

10 BOTSKALEV AND ROSTOVTSEVA AND 42 OTHER “PRIVILEGED PENSIONERS” CASES v. RUSSIA JUDGMENT

Application no.	Introduced on	Applicant	Born in	Judgment of	Binding on	Quashed on
45346/08	29/08/08	Mishchenko Vyacheslav Aleksandrovich	1950	04/10/06	21/12/06	28/03/08
46204/08	20/08/08	Antonova Fagemya Khebulovna	1941	15/09/06	28/12/06	26/03/08
46214/08	19/08/08	Antonov Aleksandr Sergeyevich	1929	15/09/06	28/12/06	26/03/08
59620/08	02/08/08	Khromchenko Yekaterina Nikiforovna	1939	13/09/06	28/12/06	18/02/08
59622/08	02/08/08	Stakanchikov Nikolay Aleksandrovich	1949	06/10/06	21/12/06	22/02/08
59630/08	23/08/08	Zenina Valentina Alekseyevna	1941	03/05/05	17/05/05	26/02/08
59691/08	25/07/08	Konyushkova Anastasiya Vasilyevna	1935	18/09/06	03/11/06	12/02/08
59692/08	02/08/08	Kholodkov Nikolay Konstantinovich	1948	29/06/05	12/07/05	05/02/08
59695/08	19/07/08	Alekseyeva Olga Nikolayevna	1946	12/10/06	02/02/07	31/01/08
59696/08	16/08/08	Anisimova Antonina Fyodorovna	1932	19/10/06	21/12/06	28/03/08
59701/08	20/08/08	Ivanyugo Zinaida Mikhaylovna	1928	12/10/06	21/12/06	19/03/08