



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

Communicated on 1 October 2014

FIRST SECTION

Application no. 28480/13
Aslan Betalovich KEREOFV against Russia
and 13 other applications
(see list appended)

STATEMENT OF FACTS

The applicants are 28 Russian nationals listed in Appendix 1. They are residents of various towns in the Republic of Kabardino-Balkaria and are represented before the Court by Mr Z. Geshev and Mr M. Abubakarov, lawyers practicing in Baksan and Nalchik.

The sixteenth applicant, Ms Lidiya Vasilyevna Agibalova, is the widow of Mr Viktor Ivanovich Shvetsov, who died on 24 November 2011. She lodged the application before the Court after the death of her husband on 26 August 2013.

The facts of the case, as submitted by the applicants, may be summarised as follows.

A. The circumstances of the cases

The applicants were clean-up workers at the site of the Chernobyl nuclear plant accident. As a result they suffered from extensive exposure to radioactive emissions which later led to their disability.

In late 2010 the sixteenth applicant's deceased husband, Mr Shvetsov, and the remaining applicants (for the sake of convenience referred to below as "the applicants") lodged a complaint with the Nalchik Town Court of the Republic of Kabardino-Balkaria ("the Town Court") against the Russian Ministry of Finance seeking compensation of non-pecuniary damage in the above connection.

In the period between February and April 2011 (see Appendix 2, column no. 2) the Town Court allowed the claims in part and awarded the claimants compensation in amounts ranging between 1,200,000 and 1,600,000 Russian roubles (RUB) (approximately 30,000 - 37,000 euros) (see Appendix 3).

The judgments above have not been appealed against and became final and enforceable (Appendix 2, column no. 2).

In early June 2011 the Department of the Federal Treasury Fund in the Republic of Kabardino-Balkaria (“the FTF”) on behalf of the Russian Ministry of Finance lodged through the Town Court an appeal with the Supreme Court of Kabardino-Balkaria against the final judgments in the applicants’ favour. They also requested that the statutory ten-day time-limit for lodging such an appeal against the judgments be restored.

The Town Court refused to restore the time-limit for appealing against the main judgments, finding that the FTF had provided no valid reasons for having exceeded it (Appendix 2, column no. 3). The latter decisions were not appealed against and became final.

In the meantime most of the applicants received the awarded amounts while the others were waiting (see Appendix 3).

In the period between October and November 2012 the FTF lodged an appeal with the Town Court against the previous refusals (Appendix 2, column no. 3). They also requested that the ten-day statutory time-limit for appealing against those decisions be restored on the grounds that their copies had not been forwarded to the FTF.

In the same period (Appendix 2, column no. 4), the Town Court ordered that the time-limit for appeal be extended, on the grounds that there was no evidence that the FTF had received the refusals in due course.

In November 2012 the applicants and Mr Shvetsov appealed against the latter decisions before the Supreme Court on the grounds that according to the domestic law the court should forward a copy of its decision only to those parties, who were not present at the court hearings. However, according to the applicants, since the FTF’s representative participated in the proceedings, the court had not been required to forward them a copy of the decision.

On 26 and 27 December 2012 (Appendix 2, column no. 4) the Supreme Court of Kabardino-Balkaria found that the Town Court had lawfully extended the time-limit for appeals but held that the grounds for the extensions were incorrect. The Supreme Court in particular held that the Russian Ministry of Finance could not be said to have been duly represented in those proceedings as the relevant hearing transcript did not provide the details regarding the power of attorney of Ms B., who had acted as a representative of the Russian Ministry of Finance. In such circumstances the Town Court should have forwarded a copy of the decision to the respondent but it had failed to do so. Accordingly, the Supreme Court held that the Russian Ministry of Finance had a valid excuse in missing the statutory time-limit for appealing against the Town Court’s decisions taken in June 2011 (Appendix 2, column no. 3).

On 27 and 28 February 2013 (Appendix 2, column no. 5) the Supreme Court quashed the Town Court’s refusals (Appendix 2, column no. 3) and restored the time-limit for appealing against the main judgments (Appendix 2, column no. 2). It noted, in particular, as follows:

“... As it transpires from the case materials the defendant [the Russian Ministry of Finance] was represented by Ms B. ... who participated in the first instance court hearing on examination of the case on the merits and, accordingly, was aware of the delivered judgment [Town Court’s judgment in the applicants’ favour].

Therefore the submission of an appeal against that judgment [Town Court] within the time-limit provided by Article 338 of the Russian Code of Civil Procedure depended on the representative's good faith ... Accordingly, the failure to comply with the time-limit by the respondent evidently was a consequence of improper fulfillment of the obligations by the representative, which obviously led to a substantial violation of the Russian Federation's rights in supporting its position before the court of appeal."

On 27 and 28 February 2013 (Appendix 2, column no. 6) the Supreme Court quashed the Town Court's main judgment and dismissed the applicants' claims in full. It noted that the domestic law concerning compensation for non-pecuniary damage had been introduced on 31 May 1991 after the Chernobyl nuclear accident had occurred; therefore the claimants had not been entitled to any compensation. The Supreme Court further ordered them to return the money which they had received pursuant to the Town Court's judgments taken between January and April 2011 (Appendix 2, column no. 2).

In the period between July and October 2013 the Supreme Court upheld its earlier decision in relation to the main findings but quashed the reversal of awards as having been based on an incorrect application of the relevant legal provisions (Appendix 2, column no. 7).

B. Relevant domestic law and practice

Article 112 of the Russian Code of Civil Procedure ("CCP") provides that a competent court may extend a time-limit for procedural actions, such as lodging an appeal, if the court finds that a party has a valid excuse for a failure to comply with that time-limit.

Article 227 of the CCP stipulates that a copy of a decision concerning termination of proceedings shall be forwarded to the parties to the proceedings if they were not present at the hearing within three days after its delivery.

Under Article 338 of the CCP, in force before 1 January 2012, an appeal in a civil case could be lodged within ten days after the delivery of a first-instance judgment in its final form. After 1 January 2012 the time-limit for lodging an appeal has been extended to one month under Article 321 of the CCP.

Under Article 392 of the CCP a final judgment in a case may be reviewed, *inter alia*, on the ground that the European Court of Human Rights found a violation of the Convention on account of the domestic judicial proceedings or decisions taken in that case. Articles 393-94 set out a procedure for reopening of domestic judicial proceedings in any such case.

Article 1109 § 3 of the CCP stipulates that, if a decision to grant compensations for damages to health to a person in the absence of a bad faith and miscalculations on his or her part is quashed on appeal or by way of supervisory review, the compensation itself cannot be claimed back.

COMPLAINTS

The applicants complain under Article 6 § 1 of the Convention that the restoration of the time-limit for an appeal which had resulted in the quashing of the final judgment, that had previously been rendered in their favour, violated the principle of legal certainty. The applicants further complain under Article 1 of Protocol No. 1 that the reversal of the compensations awards made by the Town Court, which had already been paid to the applicants, violated their right to property.

QUESTIONS TO THE PARTIES

1. Does the second applicant have *locus standi*, satisfying the requirements of Article 34 of the Convention, to file the application on behalf of Mr Viktor Shvetsov? If so, does this standing extend to all the complaints raised in the application (see *Centre for Legal Resources on behalf of Valentin Câmpeanu v. Romania* [GC], no. 47848/08, §§ 97-100, 17 July 2014)?

2. In the light of the decisions of the Supreme Court of the Republic of Kabardino-Balkaria listed in column no. 7 of Appendix 2, in so far as they quashed the reversal of the awards, may the applicants still claim to be victims within the meaning of Article 34 of a violation of Article 6 § 1 of the Convention and Article 1 of Protocol No. 1?

3. Regard being had to the decisions listed in columns nos. 5 and 6 of Appendix 2, by which the Supreme Court of the Republic of Kabardino-Balkaria restored at the request of the Russian Ministry of Finance the time-limit for appealing against the decisions listed in columns nos. 3 and 2 of Appendix 2 respectively, were the guarantees of Article 6 § 1 of the Convention, and in particular the principle of legal certainty, respected (see *Bezrukovy v. Russia*, no. 34616/02, §§ 32-36, 10 May 2012)?

4. Have there been any other examples, not stemming from the facts as described in the present cases, where a time-limit for an appeal was restored on similar grounds? The Government are invited to submit their reply with references to domestic practice, if any.

5. Did the quashing of the final judgments that had been delivered in the applicants' favour constitute an interference with their right to peaceful enjoyment of their possessions, in the form of a judgment debt? If so, was the interference justified for the purposes of Article 1 of Protocol No. 1?

APPENDIX 1

1. Application no. 28480/13 lodged on 8 April 2013:

1. Aslan Betalovich KEREFOV, born on 10/11/1954;

2. Application no. 28481/13 lodged on 8 April 2013:

2. Algis Kazio STASHYALIS, born on 04/03/1963;

3. Application no. 28494/13 lodged on 18 April 2013:

3. Aleksandr Nikolayevich MARCHENKO, born on 28/02/1946;
4. Viktor Khamusovich SANSHOKOV, born on 13/09/1952;

4. Application no. 28506/13 lodged on 8 April 2013:

5. Anatoliy Aleksandrovich KRAVTSOV, born on 25/06/1948;
6. Mukhsin Amdulcherimovich KUMYSHEV, born on 29/04/1968;

5. Application no. 58068/13 lodged on 27 August 2013:

7. Aleksandr Alekseyevich SAMOYLENKO, born on 21/01/1956;

6. Application no. 58078/13 lodged on 26 August 2013:

8. Ali Alikayevich KUCHMEZOV, born on 31/05/1940;
9. Marat Borisovich CHECHENOV, born on 06/04/1967;

7. Application no. 58425/13 lodged on 26 August 2013:

10. Viktor Mikhaylovich KOSTROMSKOY, born on 18/10/1955;

8. Application no. 58429/13 lodged on 26 August 2013:

11. Vladimir Nikolayevich OVCHAROV, born on 01/01/1945;

9. Application no. 58433/13 lodged on 26 August 2013:

12. Aleksandr Fedorovich KARPENKO, born on 07/06/1953;
13. Mikhail Yakovlevich BEZRODNOV, born on 06/06/1953;

10. Application no. 58441/13 lodged on 26 August 2013:

14. Viktor Valentinovich PETRENKO, born on 22/11/1951;
15. Aleksandr Vasilyevich RASTVOROV, born on 25/10/1955;
16. Lidiya Vasilyevna AGIBALOVA, born on 18/01/1947;

11. Application no. 58490/13 lodged on 26 August 2013:

17. Anatoliy Petrovich CHERNOV, born on 01/03/1950;
18. Aleksandr Ivanovich PARTAYEV, born on 04/09/1952;

12. Application no. 58580/13 lodged on 26 August 2013:

19. Aleksey Sergeyevich VERESOV, born on 19/03/1954;
20. Viktor Viktorovich VOLOTSKIY, born on 16/08/1946;
21. Sergey Pavlovich NIKITENKO, born on 20/04/1954;
22. Aleksandr Vasilyevich ZAICHENKO, born on 05/12/1950;

13. Application no. 58588/13 lodged on 26 August 2013:

23. Georgiy Vasilyevich KAZANTSEV, born on 18/11/1949;
24. Viktor Pavlovich BABENKO, born on 16/10/1947;
25. Vyacheslav Sergeyevich KOVALENKO, born on 08/09/1954;

26. Aleksandr Petrovich CHEKAN, born on 22/05/1952;

14. Application no. 58606/13 lodged on 26 August 2013:

27. Viktor Nikolayevich SIBAROV, born on 21/10/1948;

Sergey Nikolayevich TSELOVALNIKOV, born on 24/08/1955.

APPENDIX 2

No.	Application no. Case title <i>Column no. 1</i>	Main judgment taken on (final on) <i>Column no. 2</i>	Refusal to restore time-limit for appealing against the main judgment <i>Column no. 3</i>	Decision to grant restoration of time-limit for appealing against refusal to restore time-limit (final on) <i>Column no. 4</i>	Decision to grant restoration of time-limit for appealing against the main judgment <i>Column no. 5</i>	Decision to quash main judgment <i>Column no. 6</i>	Decision to quash reversal of awards <i>Column no. 7</i>
1.	28480/13 KEREOFV v. Russia	18/02/11 (01/03/11)	08/06/11	16/11/12 (26/12/12)	28/02/13	28/02/13	11/07/13
2.	28481/13 STASHYALIS v. Russia	16/02/11 (01/03/11)	06/06/11	16/11/12 (26/12/12)	28/02/13	28/02/13	11/07/13
3.	28494/13 MARCHENKO AND SANSHOKOV v. Russia	14/02/11 (01/03/11)	06/06/11	15/11/12 (27/12/12)	28/02/13	28/02/13	11/07/13
4.	28506/13 KRAVTSOV AND KUMYSHEV v. Russia	05/04/11 (18/04/11)	07/06/11	16/11/12 (27/12/12)	28/02/13	28/02/13	29/08/13
5.	58068/13 SAMOYLENKO v. Russia	12/04/11 (22/04/11)	07/06/11	15/11/12 (26/12/12)	28/02/13	28/02/13	29/08/13
6.	58078/13 KUCHMEZOV AND CHECHENOV v. Russia	15/02/11 (28/02/11)	06/06/11	16/11/12 (27/12/12)	28/02/13	28/02/13	29/08/13

7.	58425/13 KOSTROMSKOY v. Russia	12/04/11 (22/04/11)	06/06/11	16/11/12 (26/12/12)	28/02/13	28/02/13	17/07/13
8.	58429/13 OVCHAROV v. Russia	14/02/11 (28/02/11)	06/06/11	15/11/12 (27/12/12)	28/02/13	28/02/13	11/07/13
9.	58433/13 KARPENKO AND BEZRODNOV v. Russia	14/02/11 (28/02/11)	06/06/11	16/11/12 (26/12/12)	27/02/13	27/02/13	26/09/13
10.	58441/13 PETRENKO AND OTHERS v. Russia	18/02/11 (01/03/11)	08/06/11	16/11/12 (26/12/12)	28/02/13	28/02/13	11/07/13
11.	58490/13 CHERNOV AND PARTAYEV v. Russia	14/02/11 (28/02/11)	06/06/11	15/11/12 (27/12/12)	28/02/13	28/02/13	11/07/13
12.	58580/13 VERESOV AND OTHERS v. Russia	14/02/11 (28/02/11)	07/06/11	15/11/12 (27/12/12)	28/02/13	28/02/13	10/10/13
13.	58588/13 KAZANTSEV AND OTHERS v. Russia	14/02/11 (28/02/11)	06/06/11	15/11/12 (27/12/12)	28/02/13	28/02/13	29/08/13
14.	58606/13 SIBAROV AND TSELOVALNIKOV v. Russia	05/04/11 (15/04/11)	07/06/11	23/10/12 (27/12/12)	28/02/13	28/02/13	29/08/13

APPENDIX 3

No.	Applicants	Amount of awarded compensation (RUB)	Compensation paid: ☑ - “yes” ☐ - “no”
1.	Aslan Betalovich KEREFOV	1,500,000	☑
2.	Algis Kazio STASHYALIS	1,500,000	☑
3.	Aleksandr Nikolayevich MARCHENKO	1,500,000	☑
4.	Viktor Khamusovich SANSHOKOV	1,300,000	☑
5.	Anatoliy Aleksandrovich KRAVTSOV	1,500,000	☑
6.	Mukhsin Amdulcherimovich KUMYSHEV	1,500,000	☑
7.	Aleksandr Alekseyevich SAMOYLENKO	1,300,000	☑
8.	Ali Alikayevich KUCHMEZOV	1,600,000	☑
9.	Marat Borisovich CHECHENOV	1,600,000	☑
10.	Viktor Mikhaylovich KOSTROMSKOY	1,300,000	☑
11.	Vladimir Nikolayevich OVCHAROV	1,500,000	☑
12.	Aleksandr Fedorovich KARPENKO	1,500,000	☑
13.	Mikhail Yakovlevich BEZRODNOV	1,500,000	☑
14.	Viktor Valentinovich PETRENKO	1,200,000	☑
15.	Aleksandr Vasilyevich RASTVOROV	1,500,000	☑
16.	Lidiya Vasilyevna AGIBALOVA	1,600,000	☑
17.	Anatoliy Petrovich CHERNOV	1,500,000	☑
18.	Aleksandr Ivanovich PARTAYEV	1,500,000	☑
19.	Aleksey Sergeyevich VERESOV	1,500,000	☑
20.	Viktor Viktorovich VOLOTSKIY	1,500,000	☑
21.	Sergey Pavlovich NIKITENKO	1,300,000	☑
22.	Aleksandr Vasilyevich ZAICHENKO	1,300,000	☑
23.	Georgiy Vasilyevich KAZANTSEV	1,500,000	☑
24.	Viktor Pavlovich BABENKO	1,500,000	☑
25.	Vyacheslav Sergeyevich KOVALENKO	1,500,000	☑
26.	Aleksandr Petrovich CHEKAN	1,500,000	☑
27.	Viktor Nikolayevich SIBAROV	1,500,000	☑
28.	Sergey Nikolayevich TSELOVALNIKOV	1,500,000	☑