

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

THIRD SECTION

DECISION

Applications nos. 52166/08 and 8526/09
Aleksandr Mikhaylovich RYABKIN against Russia
and Aleksey Nikolayevich VOLOKITIN against Russia

The European Court of Human Rights (Third Section), sitting on 28 June 2016 as a Chamber composed of:

Luis López Guerra, *President,*
Helena Jäderblom,
Helen Keller,
Johannes Silvis,
Dmitry Dedov,
Branko Lubarda,
Pere Pastor Vilanova, *judges,*

and Stephen Phillips, Section Registrar,

Having regard to the above applications lodged on 26 July 2008 and 31 December 2008, respectively,

Having regard to the declarations submitted by the respondent Government on 7 July 2011 requesting the Court to strike the applications out of the list of cases and the applicants' replies to those declarations,

Having deliberated, decides as follows:

THE FACTS

1. The case originated in two applications (nos. 52166/08 and 8526/09) 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 two Russian nationals, Mr Aleksandr Mikhaylovich Ryabkin and Mr Aleksey Nikolayevich Volokitin.

2. The Russian Government ("the Government") were represented by Mr G. Matyushkin, Representative of the Russian Federation to the European Court of Human Rights.

A. The circumstances of the case

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

1. Application no. 52166/08, Ryabkin v. Russia

4. The applicant, Mr Aleksandr Mikhaylovich Ryabkin, is a Russian national who was born in 1941 and lives in Sertolovo, Leningrad Region.

5. The applicant is entitled to various social benefits as a result of his previous involvement in emergency operations at the site of the Chernobyl nuclear plant disaster.

6. On 19 February 2007 the applicant sued the military commissioner of the Leningrad Region. He claimed that there had been shortfalls in the payment of his social benefits and sought an adjustment in the regular payments to be made to him in the future.

7. On 10 April 2007 the court awarded the applicant 67,115.35 Russian roubles (RUB) in arrears. It also awarded him RUB 1,798.85 to be paid monthly and RUB 2,998.10 to be paid annually. Both sums were to be adjusted in line with inflation (index linked). The judgment was not appealed against and became legally binding and enforceable on 21 April 2007.

8. On 1 May 2007 the sum of RUB 69,937.68 was transferred to the applicant's bank account and a monthly payment in the amount of RUB 1,635.13 was instituted.

9. On 27 February 2008 the Presidium of the St Petersburg City Court modified the judgment of 10 April 2007 and decreased the sums awarded to the applicant to RUB 61,013.95 for arrears and to RUB 1,635.32 and RUB 2,725.55 to be paid monthly and annually respectively and adjusted in line with inflation.

2. Application no. 8526/09, Volokitin v. Russia

10. The applicant, Aleksey Nikolayevich Volokitin, is a Russian national who was born in 1956 and lives in St Petersburg.

11. The applicant sold a plot of land to A. but the latter allegedly failed to pay the full price agreed upon by both parties. The applicant applied to the Lomonosovskiy District Court of the Leningrad Region, seeking to have the sale contract declared null and void.

12. On 27 February 2007 the court dismissed the claim.

13. On 7 June 2007 the Leningrad Regional Court quashed the judgment on appeal and sent it back to the same court for fresh consideration.

14. On 5 May 2008, the Lomonosovskiy District Court granted the applicant's claim, declaring the contract null and void.

15. On 17 July 2008 the judgment was upheld on appeal by the Leningrad Regional Court and became final.

16. On an unspecified date the defendant lodged a supervisory review application with the Leningrad Regional Court.

17. On 3 October 2008 the Presidium of the Leningrad Regional Court quashed the judgment on the grounds that the lower court had breached the substantive law and dismissed all the applicant's claims. The applicant submitted that he had not been informed of the supervisory review proceedings.

18. On 26 November 2008 the Supreme Court dismissed the applicant's supervisory review application against the judgment of 3 October 2008. In the Supreme Court's view, the Presidium of the Regional Court had rightly quashed the lower court's judgment on the grounds of significant violations of the substantive law. Referring to the principle of legal certainty, the Supreme Court found no exceptional circumstances warranting review of the Presidium's judgment.

19. On an unspecified date the Krasnogvardeyskiy District Court of Saint Petersburg ordered Mr A. to pay the applicant sums corresponding to the price of the plot of land, the interest for the use of another person's funds and other costs and expenses, totalling RUB 1,181.220.

20. On 29 July, 7 September and 28 September 2010 those sums were transferred to the applicant's bank account.

21. The plot of land currently has two different owners: Mr A. and his ex-wife.

B. Relevant domestic law and practice

1. Domestic provisions on supervisory review

22. The relevant domestic law governing the supervisory review procedure between 1 February 2003 and 7 January 2008 is summed up in the Court's judgment in the case of *Kot v. Russia* (no. 20887/03, § 17, 18 January 2007). At that time, a supervisory review application could be lodged within one year since the challenged judgments became binding and enforceable.

23. As regards the supervisory review procedure in force since 7 January 2008, the relevant domestic provisions are summed up in the Court's decision in the case of *Martynets v. Russia* ((dec.), no. 29612/09, 5 November 2009). In particular, the new provisions reduced the time-limit for challenging of binding and enforceable judgments by way of supervisory review from one year to six months.

2. Domestic provisions and practice on reopening of proceedings following the establishment of a violation of the Convention by the Court

24. The relevant domestic law and practice governing the reopening of proceedings following the establishment by the Court of a violation of the Convention are summarised in the judgment of *Davydov v. Russia,* no. 18967/07, §§ 10-15, 30 October 2014.

25. On 15 March 2013 the Supreme Court of the Russian Federation examined a request submitted by Mr Malikov and Mr Oshchepkov on the basis of newly discovered circumstances, that is after the Court had struck their application out of its list of cases following a unilateral declaration submitted by the Russian Government (*Alov and other applications v. Russia* (dec.), no. 27127/05, 18 September 2012). In its decision no. 25-КГ13-1, the Supreme Court considered that it was not necessary to reopen the applicants' case because, on the one hand, as a result of the decision to strike the application from the Court's list of cases the awards made to the applicants under the domestic judgment had been paid to them prior to the judgment being quashed and, on the other hand, the Court did not find that the judgment delivered by the supervisory review court was as such contrary to the Convention.

C. Relevant Council of Europe documents

26. On 19 February 2010 the High Level Conference held in Interlaken at the initiative of the Swiss Chairmanship of the Committee of Ministers of the Council of Europe adopted the Interlaken Declaration, the relevant parts of which read as follows:

> "PP 7 Noting with deep concern that the number of applications brought before the Court and the deficit between applications introduced and applications disposed of continues to grow;
>
> PP 8 Considering that this situation causes damage to the effectiveness and credibility of the Convention and its supervisory mechanism and represents a threat to the quality and the consistency of the case-law and the authority of the Court;...
>
> The Conference ...
>
> (6) Stresses the need for effective measures to reduce the number of clearly inadmissible applications, the need for effective filtering of these applications and the need to find solutions for dealing with repetitive applications;..."

27. The relevant parts of the Action Plan appended to the Interlaken Declaration provided as follows:

> "D. Repetitive applications
>
> 7. The Conference:
>
> a) calls upon States Parties to:

i) facilitate, where appropriate, within the guarantees provided for the Court and, as necessary, with the support of the Court, the adoption of friendly settlements and unilateral declarations".

28. The same principles were reiterated at the High Level Conference on the "Implementation of the European Convention on Human Rights, our shared responsibility" held in Brussels on 26 and 27 March 2015 at the initiative of the Belgian Chairmanship of the Committee of Ministers. In particular, the Conference encouraged States Parties to give priority to alternative procedures to litigation, such as friendly settlements and unilateral declarations.

29. On 5 and 6 October 2015 the Council of Europe (Department of the Execution of Judgments) organised a Round Table in Strasbourg dedicated to the reopening of proceedings following a judgment of the Court. The conclusions adopted as a result of the Round Table provide, *inter alia*, as follows:

"- *as regards civil proceedings,* the range of systems established, some states having broadly accepted the possibility of reopening, some others in a more *ad hoc* manner, some others relying on others means than reopening to address the consequences of the violations;

- the utility of the exchange of views in order to inspire states to ensure there are, in all situations where reopening is not provided for by the law, or is excluded for other reasons (legal certainty, respect of *res judicata* or the interests of *bona fide* third parties), alternative possibilities to obtain the *restitutio in integrum*;

- the particular interest in these situations of the possibility to get compensation for loss of opportunity;

- the close link between the findings of the Court under Article 41 and the necessity of reopening; ..."

D. Relevant international law and practice

30. Articles 35 and 36 of the Draft Articles of the International Law Commission on Responsibility of States for Internationally Wrongful Acts (adopted by the General Assembly of the United Nations at its 53rd session (2001), and reproduced in Official Records of the General Assembly, 56th Session, Supplement No. 10 (A/56/10)) is worded as follows:

Article 35: Restitution

"A State responsible for an internationally wrongful act is under an obligation to make restitution, that is, to re-establish the situation which existed before the wrongful act was committed, provided and to the extent that restitution:

(a) is not materially impossible;

(b) does not involve a burden out of all proportion to the benefit deriving from restitution instead of compensation."

Article 36: Compensation

"1. The State responsible for an internationally wrongful act is under an obligation to compensate for the damage caused thereby, insofar as such damage is not made good by restitution.

2. The compensation shall cover any financially assessable damage including loss of profits insofar as it is established".

COMPLAINTS

31. The applicants complained, under Article 6 of the Convention and Article 1 of Protocol No. 1 to the Convention, that final domestic judgments in their favour had been quashed by way of supervisory review.

THE LAW

A. Joinder of the applications

32. Given that these two applications concern similar facts and complaints and raise almost identical issues under the Convention, the Court decides to consider them in a single decision (see *Kazakevich and 9 other "Army Pensioners" cases v. Russia*, nos. 14290/03, 19089/04, 27800/04, 42059/04, 43505/04, 43538/04, 3614/05, 30906/05, 39901/05 and 524/06, § 15, 14 January 2010).

B. Complaints concerning the quashing of final domestic judgments in the applicants' favour by way of supervisory review

33. The applicants complained that final judgments in their favour had been quashed by way of supervisory review. They relied on Article 6 § 1 of the Convention and Article 1 of Protocol No. 1 to the Convention. Mr Volokitin also complained that he had not been properly informed about the supervisory review proceedings before the Presidium of the Leningrad Regional Court. The Court considers that this complaint falls to be examined together with the complaint about the quashing of the final domestic judgment.

34. The Government informed the Court by letter of 7 July 2011 that they proposed to make unilateral declarations with a view to resolving the issues raised by the applications. They asked the Court to strike out the applications in accordance with Article 37 of the Convention.

35. In their declarations, the Government acknowledged the violation of the applicants' rights on account of the quashing of the final domestic judgments in their favour by way of supervisory review. In the case of Mr Ryabkin, the Government undertook to pay the applicant the sum of RUB 19,639.5 as compensation for pecuniary damage corresponding to the outstanding judgment debts under the quashed judgments, after indexation. They submitted detailed calculations and documents from the relevant authorities in support of the amounts proposed. In the case of Mr Volokitin, the Government indicated that no pecuniary damage had been sustained by the applicant as a result of the quashing of the final domestic judgment in his favour because he had subsequently recovered from his opponent the sums due together with interest. Consequently, they limited their offer to the payment of non-pecuniary damage.

36. The Government further undertook to pay each applicant 3,000 euros (EUR) as compensation for non-pecuniary damage resulting from the violations mentioned above.

37. The remainder of their declarations, formulated in similar terms, provided as follows:

> "The sum referred to above, which is to cover any pecuniary and non-pecuniary damage as well as costs and expenses, will be free of any taxes that may be applicable. It will be payable within three months from the date of notification of the decision taken by the Court pursuant to Article 37 § 1 of the European Convention on Human Rights. In the event of failure to pay this sum within the said three-month period, the Government undertake to pay simple interest on it from expiry of that period until settlement, at a rate equal to the marginal lending rate of the European Central Bank during the default period plus three percentage points.
>
> This payment will constitute the final resolution of the case."

38. The applicants disagreed with the Government's suggestion that their applications should be struck out of the Court's list of cases, notably because they disagreed with the amounts of compensation for non-pecuniary damage. Mr Ryabkin also disagreed with the amount suggested by the Government as compensation for pecuniary damage, without however submitting any documents in support of his position. He considered that his rights could not be restored only by the payment of compensation; he sought in addition the restoration of his right to regular payments in the amount established by the judgment of 10 April 2007 of the Leninskiy District Court, which had been quashed by the Presidium of the St Petersburg City Court. The applicant submitted that that could be achieved only by the Court examining his application on the merits and finding violations of the Convention. The Court's judgment would then constitute a legal basis for reopening the proceedings at the domestic level. Mr Volokitin indicated that restitution of the disputed plot of land was no longer possible since it now had two different owners, Mr A. and his

ex-wife, thus depriving him of the opportunity to sell it for a better price. He consequently claimed additional non-pecuniary damage in that respect.

39. The Court reiterates that Article 37 of the Convention provides that it may at any stage of the proceedings decide to strike an application out of its list of cases where the circumstances lead to one of the conclusions specified under (a), (b) or (c) of paragraph 1 of that Article. Article 37 § 1 (c) enables the Court in particular to strike a case out of its list if "for any other reason established by the Court, it is no longer justified to continue the examination of the applications".

40. The Court also reiterates that in certain circumstances, it may strike out an application under Article 37 § 1 (c) of the Convention on the basis of a unilateral declaration by a respondent Government, even if the applicant wishes the examination of the case to be continued.

41. To this end, the Court has examined the Government's declaration carefully in the light of the principles emerging from its case-law (see *Tahsin Acar v. Turkey* [GC], no. 26307/95, §§ 75-77, ECHR 2003-VI; *WAZA Spółka z o.o. v. Poland* (dec.), no. 11602/02, 26 June 2007; and *Sulwińska v. Poland* (dec.), no. 28953/03, 18 September 2007).

42. The Court notes at the outset that since its first judgment concerning a violation of the principle of legal certainty on account of the quashing of a final domestic judgment by way of the supervisory review procedure (see *Ryabykh v. Russia*, no. 52854/99, ECHR 2003-IX), it has continued to find similar violations on account of the same structural deficiency.

43. Turning next to the nature of the admissions contained in the Government's declarations, the Court is satisfied that the quashing by way of supervisory review of the final judgments in the applicants' favour has been explicitly acknowledged by the Government as violating the Convention.

44. As to the redress to be provided to the applicants, the Government have undertaken to pay them compensation in respect of pecuniary and/or non-pecuniary damage in line with the Court's practice in similar cases. In particular, the Government indicated that Mr Volokitin had been compensated for his pecuniary losses resulting from the quashing of the judgment in his favour in subsequent proceedings (see paragraphs 19-21 above). This is not disputed by the applicant, who did not claim either the reopening of the proceedings or compensation for any additional pecuniary damage, but limited his claims only to compensation for non-pecuniary damage (see, by contrast, *Almeida Santos v. Portugal* (just satisfaction), no. 50812/06, §§ 7-8, 27 July 2010).

45. As regards Mr Ryabkin, the Government explicitly undertook to make the outstanding payments due under the quashed judgment and presented detailed calculations to that effect. The applicant, however, considered that the amount suggested by the Government did not cover all of the losses he had sustained as a result of the violation of his rights under

the Convention, in particular those suffered after the domestic judgment in his favour had been quashed. In this context, he referred to his inability to request a retrial should the Court decide to strike his application out of its list of cases on the basis of a unilateral declaration by the Government and accordingly to obtain the restoration of the regular payments in his favour in the amount established by the Leninskiy District Court's judgment of 10 April 2007.

46. As indicated above, the Court has already found violations of the Convention in similar and, on certain occasions, virtually identical circumstances concerning the quashing of final domestic judgments awarding benefits to former participants in the cleaning-up operation at the Chernobyl nuclear disaster site (see, amongst many other authorities, *Androsov v. Russia*, no. 63973/00, 6 October 2005; *Finkov v. Russia*, no. 27440/03, 8 October 2009; and *Davletkhanov and other "Chernobyl pensioners" v. Russia*, nos. 7182/03, 10115/04, 21752/04 and 22963/04, 23 September 2010). In those cases, it considered that the most appropriate form of redress in respect of such violations was to ensure that the applicants were put as far as possible in the position they would have been in, had the requirements of the Convention not been disregarded (see *Tarnopolskaya and Others v. Russia*, nos. 11093/07 and 18 others, §§ 49-51, 7 July 2009 with further references).

47. However, it is only exceptionally that a violation, by its very nature, does not leave any real choice as to the measures required to remedy it (see *Assanidze v. Georgia* [GC], no. 71503/01, § 202, ECHR 2004-II). This is particularly true in civil cases where the Contracting States dispose of a variety of means to ensure redress to an aggrieved party (see *Kudeshkina (no. 2) v. Russia* (dec.), no. 28727/11, § 77, 17 February 2014). Moreover, such means would frequently be preferable to the reopening of proceedings in view of other equally important considerations, such as the principle of legal certainty, respect of *res judicata* or the interests of *bona fide* third parties (see *Almeida Santos*, cited above, § 12; and *Bochan v. Ukraine (no. 2)* [GC], no. 22251/08, § 57, ECHR 2015). Those considerations would in particular prevail over an applicant's interest in having proceedings reopened when the violation of the Convention results from a general problem generating repetitive applications rather than from the specific circumstances of an individual case (see *Davydov*, cited above, § 29; *Henryk Urban and Ryszard Urban v. Poland*, no. 23614/08, § 64, 30 November 2010; *Golubowski v. Poland* (dec.), no. 21506/08, 5 July 2011; and, by contrast and compare with *Mirosław Garlicki v. Poland*, no. 36921/07, § 154, 14 June 2011).

48. In any event, if the internal law allows only partial reparation to be made, Article 41 of the Convention gives the Court the power to award compensation to the party injured by the act or omission that has led to the finding of a violation of the Convention (see *Papamichalopoulos and*

Others v. Greece (Article 50), judgment of 31 October 1995, Series A no. 330-B, pp. 58-59, § 34, and *Brumărescu v. Romania* (just satisfaction) [GC], no. 28342/95, § 20, ECHR 2001-I). The same considerations apply in the context of the Court's examination of the adequacy and sufficiency of the redress offered by the Government in a unilateral declaration (see *Megadat.com SRL v. Moldova* (just satisfaction – striking out), no. 21151/04, § 10, ECHR 2011).

49. Turning to the specific circumstances complained of by Mr Ryabkin, the Court notes that it is not disputed by the parties that the Leninskiy District Court's judgment of 10 April 2007 was executed prior to the quashing, except as regards the payment of the food allowance, for which he received an amount lower than that established by the Leninskiy District Court. The Government consequently offered in its unilateral declaration to compensate the applicant for the difference between the sums he should have received under the quashed judgment and those effectively transferred to him prior to the quashing (see, in virtually identical circumstances concerning the future decrease of the applicants' periodical payments, *Androsov*, cited above, § 71; *Yuriy Romanov v. Russia*, no. 69341/01, § 49, 25 October 2005; and *Naydenkov v. Russia*, no. 43282/02, § 43, 7 June 2007, all with further references). Although the applicant disagreed with the amount suggested by the Government, he did not submit any details or calculations in support of his position.

50. The Court accepts that in certain situations it may be difficult to calculate precisely one or more heads of damage or to distinguish between pecuniary and non-pecuniary damage. The Court may then decide to make a global assessment (see *Comingersoll S.A. v. Portugal* [GC], no. 35382/97, § 29, ECHR 2000-IV). Thus, considering the Government's offer as a whole and having particular regard to the sum proposed in respect of non-pecuniary damage (compare and contrast with *Ryabov and 151 other "Privileged pensioners" cases v. Russia*, nos. 4563/07 and 151 others., § 23, 17 December 2009, and *Streltsov and other "Novocherkassk military pensioners" cases v. Russia*, nos. 8549/06 and 86 others, § 96, 29 July 2010), the Court finds no reason to consider that the compensation offered to Mr Ryabkin constitutes inadequate or otherwise unreasonable redress for the violations of his Convention rights. In these circumstances, it is not necessary to examine whether the acceptance of the Government's unilateral declaration would indeed prevent the applicant from requesting the reopening of the proceedings in his case (see *Sayganov and other applications v. Russia* (dec.), no. 30432/06, 14 February 2012; *Alov and other applications* (dec.), cited above; and *Vlasova and other applications v. Russia* (dec.), no. 30351/06, 18 September 2012). In any event, it has not been demonstrated that the reopening of proceedings would lead to a result substantially different from what the Government have undertaken to pay in

terms of compensation (compare and contrast *Šarić and Others v. Croatia*, nos. 38767/07 and 24 others, § 28, 18 October 2011).

51. Having regard to the above considerations, the nature of the admission of the violation contained in the Government's declaration, and the amounts of compensation proposed, the Court considers that it is no longer justified to continue the examination of the application (Article 37 § 1 (c) of the Convention). Moreover, in the light of the clear and extensive case-law on this subject, the Court is satisfied that respect for human rights as defined in the Convention and the Protocols thereto does not require it to continue the examination of the application (Article 37 § 1 *in fine* of the Convention).

52. In any event, the Court's decision is without prejudice to any decision it might take to restore, pursuant to Article 37 § 2 of the Convention, the applications to its list of cases, should circumstances arise justifying such a course of action (see *Aleksentseva and Others v. Russia*, nos. 75025/01 et al., § 15, 17 January 2008).

C. Other complaints made by the applicants

53. As for the applicants' accessory complaints referring to other Articles of the Convention, in the light of all the material in its possession, and in so far as it has jurisdiction to examine the allegations, the Court has not found any appearance of a breach of the rights and freedoms guaranteed by the Convention or its Protocols.

54. It follows that this part of the applications is manifestly ill-founded and must be rejected in accordance with Article 35 §§ 3 and 4 of the Convention.

For these reasons, the Court, unanimously,

Decides to join the applications;

Takes note of the terms of the respondent Government's declarations under Article 6 § 1 of the Convention and Article 1 of Protocol No. 1 to the Convention and of the modalities for ensuring compliance with the undertakings referred to therein;

Decides to strike the applications out of its list of cases in so far as they relate to the complaints under Article 6 of the Convention and Article 1 of Protocol No. 1 to the Convention about the quashing by way of supervisory review of final domestic judgments in the applicants' favour in accordance with Article 37 § 1 (c) of the Convention;

Declares the remainder of the applications inadmissible.

Done in English and notified in writing on 21 July 2016.

Stephen Phillips
Registrar

Luis López Guerra
President