



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

Communicated on 21 March 2014

FIRST SECTION

Application no. 23199/13
Vladimir Yakovlevich BUGAYEV and others
against Russia
lodged on 25 March 2013

STATEMENT OF FACTS

The applicants are four Russian nationals. They are:

1. Mr Vladimir Yakovlevich Bugayev, born in 1950;
2. Mr Nikolay Ivanovich Andreichev, born in 1951;
3. Mr Viktor Petrovich Kirizliyev, born in 1951;
4. Mr Viktor Vasilyevich Mazhar, born in 1953.

The applicants are residents of various towns in the Republic of Kabardino-Balkaria and represented before the Court by Mr Z. Geshev, a lawyer practicing in Baksan.

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

A. The circumstances of the case

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 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.

On 17 January 2011 the Town Court allowed the applicants’ claims in part and awarded each of the first and second applicants 1,300,000 Russian roubles (RUB) (approximately 30,000 euros (EUR), and each of the third and fourth applicants RUB 1,100,000 (approximately EUR 25,500). On the same day the Russian Ministry of Finance appealed against the judgment before the Supreme Court of the Republic of Kabardino-Balkaria (“the Supreme Court of Kabardino-Balkaria”).

On 16 March 2011 Mr U., acting on behalf of the Russian Ministry of Finance, retracted the appeal and the judgment of 17 January 2011 became final and enforceable.

On 1 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 an appeal with the Supreme Court of Kabardino-Balkaria against the judgment of 17 January 2011 through the Town Court. They also requested that the statutory ten-day time-limit for lodging such an appeal against the judgment be restored.

On 6 June 2011 the Town Court refused to restore the time-limit, stating that the FTF provided no valid reasons for missing it. The latter decision was not appealed against and became final.

On 5 July 2011 the judgment of 17 January 2011 was enforced and the applicants received the awarded sums.

On 23 October 2012 the FTF lodged an appeal against the decision of 6 June 2011 with the Town Court. They also requested that the ten-day statutory time-limit for appealing against that decision be restored on the ground that its copy had not been forwarded to them in due course.

On 15 November 2012 the Town Court refused to restore the time-limit for appeal mainly on the grounds that the FTF had already used their right to appeal as they had submitted complaint against the judgment of 17 January 2011, but later retracted it on their own initiative.

In November 2012 the FTF appealed against the decision of the Town Court of 15 November 2012 before the Supreme Court of Kabardino-Balkaria.

On 26 December 2012 the Supreme Court of Kabardino-Balkaria quashed the latter decision and restored the time-limit for appeal against the decision of 6 June 2011 as requested by the FTF. The Supreme Court of Kabardino-Balkaria found that the Russian Ministry of Finance could not be said to have been represented in those court proceedings as the transcript of a hearing did not indicate the details of the power of attorney of Ms B., who had acted as a representative of the Russian Ministry of Finance and in such circumstances the Town Court should have forwarded a copy of the decision to the defendant but had failed to do so. Accordingly the Supreme Court held that the Russian Ministry of Finance had valid excuse in missing the statutory time-limit for appealing against the Town Court’s decision of 6 June 2011.

On 28 February 2013 the Supreme Court of Kabardino-Balkaria quashed the decision of 6 June 2011 and restored the time-limit for appealing against the judgment of 17 January 2011. It noted, in particular that:

“... On 14 March 2011 ... the Supreme Court of Kabardino-Balkaria received a request from the FTF signed by Mr U., which indicated his intention to withdraw an appeal against the judgment of 17 January 2011.

... the case materials contain no information of Mr U.’s authority allowing him to challenge the court’s decisions on behalf of the Russian Ministry of Finance.

Accordingly, the court finds unsubstantiated the [applicants’] representative’s arguments that the defendant submitted an appeal against the court’s decision, and subsequently retracted it.

... It follows from the case materials, that in violation of the abovementioned norms [Article 214 of the CCP] a copy of the Town Court’s judgment [of 17 January 2011] was not forwarded to the defendant (the Russian Ministry of Finance).

Besides, the defendant’s interests in the Town Court were 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 that judgment [of 17 January 2011].

In such circumstances, submission of an appeal against the Town Court’s judgment [of 17 January 2011] within the time-limit provided by Article 338 of the Code of Civil Procedure depended on the representative’s good faith ...

Accordingly, failure to comply with the time-limit by the defendant evidently was a consequence of improper fulfillment of the obligations by the representative ... and non-compliance of the court of the first instance with the requirements of Article 214 of the Code of Civil Procedure ...”

On 28 February the Supreme Court of Kabardino-Balkaria quashed the Town Court’s judgment of 17 January 2011 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 applicants were not entitled to any compensation. The Supreme Court further ordered the applicants to return the money they had received pursuant to the judgment of 17 January 2011.

On 29 August 2013 the Supreme Court of Kabardino-Balkaria upheld its earlier decision in relation to the main findings but quashed reversal of awards as based on an incorrect application of the relevant legal provisions.

B. Relevant domestic law

Article 112 of the Code of Civil Procedure (“CCP”) provides that a competent court may extend an expired 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 restoration of the time-limit for an appeal resulting in quashing of the final judgment in their favour violated the principle of legal certainty.

QUESTIONS TO THE PARTIES

1. In the light of the decision of the Supreme Court of the Republic of Kabardino-Balkaria of 29 August 2013, in so far as it quashed the reversal of the awards, may the applicants still claim to be victims of a violation of Article 6 § 1 of the Convention, within the meaning of Article 34 of the Convention?
2. Regard being had to the decisions of 26 December 2012 and 28 February 2013 by which the Supreme Court of the Republic of Kabardino-Balkaria, upon the Russian Ministry of Finance requests, restored a time-limit for appealing against decisions of 6 June 2011 and 17 January 2011 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)?
3. Have there been any other examples, not stemming from the facts as described in the present case, 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.