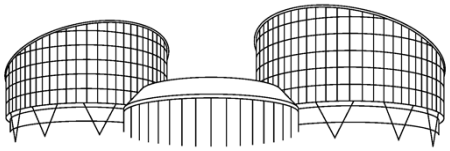

EUROPEAN COURT OF HUMAN RIGHTS
COUR EUROPÉENNE DES DROITS DE L'HOMME

FIRST SECTION

CASE OF KHANUSTARANOV v. RUSSIA

(Application no. 2173/04)

JUDGMENT

STRASBOURG

28 May 2014

This judgment is final but it may be subject to editorial revision.

COUNCIL OF EUROPE
CONSEIL DE L'EUROPE

In the case of Khanustaranov v. Russia,

The European Court of Human Rights (First Section), sitting as a Committee composed of:

Khanlar Hajiyev, *President,*
Julia Laffranque,
Dmitry Dedov, *judges,*

and André Wampach, *Deputy Section Registrar,*

Having deliberated in private on 6 May 2014,

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

PROCEDURE

1. The case originated in an application (no. 2173/04) 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 a Russian national, Mr Khanustaran Amanullayevich Khanustaranov ("the applicant"), on 15 December 2003.

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

3. On 5 July 2010 the application was communicated to the Government.

THE FACTS

I. THE CIRCUMSTANCES OF THE CASE

4. The applicant was born in 1956 and lives in Achisu, the Republic of Dagestan.

A. Quashing by way of supervisory review

5. On 31 January 2005 the applicant applied to the district court for readjustment of compensation for damage to his son's health awarded by judgments of 13 August and 4 December 2002 against OAO Dagenergo, an open joint-stock company ("the company"), in line with new legislation.

6. On 19 April 2005 the Sovetskiy District Court of Makhachkala allowed his claim. The court awarded the applicant 61,607 Russian roubles (RUB) in readjustment. The court also ordered the company to pay monthly amounts equal to the living cost for the employable population from

15 December 2004. On 20 May 2005 the Supreme Court of the Dagestan Republic upheld that judgment on appeal.

7. On an unspecified date the company initiated supervisory review proceedings.

8. On 6 October 2005 the Presidium of the Supreme Court of the Dagestan Republic quashed the judgments of 19 April and 20 May 2005 and remitted the case for a fresh examination. The Presidium established that the courts had erred in the application of the domestic law, namely that they had applied the new legislation retrospectively and had failed to reflect the correct adjustment method in their judgments.

9. On 22 November 2005 the Sovetskiy District Court of Makhachkala ruled against the applicant, finding that the new legislation was inapplicable to the case at hand.

10. On 10 February 2006 the Supreme Court of the Dagestan Republic upheld that judgment on appeal.

B. Other proceedings

11. The applicant was a party to several sets of civil proceedings.

12. In 1999 he brought an action in connection with an injury sustained by his son. On 13 August 2002 the district court allowed the applicant's claim in part and ordered the defendant company to pay him pecuniary and non-pecuniary damages. On 19 December 2002 the district court issued a writ of enforcement. The enforcement proceedings were ended on 14 September 2004.

13. On 25 April 2006 the applicant sued the Department of Education of Izberbash at the Izberbash Town Court on a work-related matter. The applicant sought reinstatement in his job and work-related benefits. On 16 August 2006 the town court rejected the applicant's action in full. He did not lodge an appeal.

14. The applicant was also engaged in a housing dispute. On 27 January 2003 the Izberbash Town Council refused to provide him with housing. It does not appear that the applicant challenged the refusal before a court.

II. RELEVANT DOMESTIC LAW

15. For relevant provisions on supervisory review see *Murtazin v. Russia* (no. 26338/06, § 14, 27 March 2008).

16. For relevant provisions of the Federal Law "On Compensation for Violation of the Right to a Trial within a Reasonable Time or the Right to Enforcement of a Judgment within a Reasonable Time" ("the Compensation Act") see *Nagovitsyn and Nalgiyev v. Russia*, (nos. 27451/09 and 60650/09, §§ 15-20, 23 September 2010).

THE LAW

I. ALLEGED VIOLATION OF ARTICLE 6 § 1 OF THE CONVENTION AND ARTICLE 1 OF PROTOCOL No. 1 ON ACCOUNT OF THE QUASHING OF THE JUDGMENT OF 19 APRIL 2005

17. The applicant complained under Article 6 of the Convention and Article 1 of Protocol No. 1 about the quashing, by way of supervisory review, of the final court decision of 19 April 2005.

Article 6 of the Convention reads as follows:

> "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 provides:

> "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 ..."

18. The Government asserted that the quashing of the judgment in applicant's favour did not contravene the principle of legal certainty, as the supervisory review court should have remedied any "fundamental defect" in the decisions of the lower courts. In particular, the lower courts allowed a retrospective application of the law. The Government also stated that the defendant in the proceedings in question was a private company rather than a state body.

19. The applicant maintained his complaint.

A. Admissibility

20. The Court notes that this complaint is not manifestly ill-founded within the meaning of Article 35 § 3 (a) of the Convention. It further notes that it is not inadmissible on any other grounds. It must therefore be declared admissible.

B. Merits

21. The Court reiterates that one of the fundamental aspects of the rule of law is the principle of legal certainty, which requires, among other things, that where the courts have finally determined an issue, their ruling should, in principle, not be called into question (see *Brumărescu v. Romania* [GC], no. 28342/95, § 61, ECHR 1999-VII).

22. This principle insists that no party is entitled to seek reopening of proceedings merely for the purpose of securing a rehearing and a fresh decision in the case. Higher courts' powers to quash or alter binding and

enforceable judicial decisions should be exercised for correction of fundamental defects. The mere possibility of there being two conflicting views on the subject is not a ground for re-examination. Departures from that principle are justified only when made necessary by circumstances of a substantial and compelling character (see *Ryabykh v. Russia*, no. 52854/99, § 52, ECHR 2003-IX; *Kot v. Russia*, no. 20887/03, § 24, 18 January 2007; and *Dovguchits v. Russia*, no. 2999/03, § 27, 7 June 2007).

23. The Court has to assess whether in the present case the quashing of the final judgment in the applicant's favour by way of supervisory review was justified by the circumstances, namely, whether it was necessary due to fundamental defects in proceedings in the lower courts, and whether a fair balance between the interests of the applicant and the need to ensure the proper administration of justice has been achieved.

24. In the present case the judgment of 19 April 2005 in the applicant's favour was set aside by way of supervisory review on the ground that the lower courts had applied the domestic law incorrectly, the main concern of the supervisory review court being erroneous retrospective application of the new legislation on social benefits.

25. The Court notes that the according to its well-established case-law, only exceptional circumstances warrant the quashing of a final judicial decision by way of supervisory review. In particular, the Court concluded that there had been a "fundamental defect" if the impugned judgments had affected the rights and legal interests of a person which had not been a party to the proceedings in question (see *Protsenko v. Russia*, no. 13151/04, §§ 29 – 34, 31 July 2008) or which had been unable to participate in them effectively (see *Tishkevich v. Russia*, no. 2202/05, §§ 25 – 27, 4 December 2008, and *Tolstobrov v. Russia*, no. 11612/05, §§ 18 – 20, 4 March 2010).

26. The present case differs from the above mentioned exceptions. According to the Court's well-established case-law incorrect application of legislation in general (see *Sutyazhnik v. Russia*, no. 8269/02, § 38, 23 July 2009; *Prisyazhnikova and Dolgopolov v. Russia*, no. 24247/04, § 24, 28 September 2006; *Kot*, cited above, § 27; *Shchurov v. Russia*, no. 40713/04, § 10, 22, 29 March 2011) and in particular the incorrect retrospective application of the law in relation to social benefits (see *Smarygin v. Russia*, no. 73203/01, §§ 14, 23, 1 December 2005) is not a fundamental defect which would justify the departure from the principle of legal certainty. The supervisory review court did not refer to any other violations committed by the lower courts which could be fundamental in the sense of the Court's case-law.

27. Thus, in the Court's opinion the fact that the Presidium disagreed with the assessment made by the first-instance and appeal courts was not, in itself, an exceptional circumstance warranting the quashing of a binding and enforceable judgment and reopening of the proceedings on the applicant's claim (see *Dovguchits,* cited above, § 30, and *Kot*, cited above, § 29).

28. The Court is not persuaded by the Government's argument that the defendant in the civil proceedings in question was a private party which lodged the supervisory-review application. The Court reiterates that this distinction is not of crucial importance for its analysis (see *Kot*, cited above, § 28, and *Nelyubin v. Russia*, no. 14502/04, § 27, 2 November 2006).

29. The foregoing considerations are sufficient to enable the Court to conclude that there has been a violation of Article 6 § 1 of the Convention and 1 Article of Protocol No. 1 on account of the quashing of the judgments given in the applicant's case by way of supervisory review proceedings.

II. ALLEGED VIOLATION OF ARTICLE 6 OF THE CONVENTION ON ACCOUNT OF THE LENGTH OF CIVIL PROCEEDINGS WHICH ENDED ON 4 DECEMBER 2002

30. The applicant complained under Article 6 of the Convention about the length of the proceedings which ended on 4 December 2002. Article 6 of the Convention reads as follows:

> "In the determination of his civil rights and obligations ... everyone is entitled to a fair ... hearing ... by [a] ... tribunal ..."

31. The Government submitted in their observations that the proceedings had lasted too long because of the complexity of the case, and that the applicant's procrastination was responsible for the delay. Furthermore, the applicant had not exhausted the domestic remedies, as he had had the opportunity to bring an action under the Compensation Act but had not done so.

32. The applicant maintained his complaint.

33. The Court first notes that the applicant submitted his application long before the new remedy introduced in compliance with the Burdov pilot judgment was available (see *Burdov v. Russia (no. 2)*, no. 33509/04, ECHR 2009).

34. The Court may exceptionally decide, for the sake of fairness and effectiveness, to conclude its proceedings by a judgment in certain cases of this kind which remain on its list for a long time or have already reached an advanced stage of proceedings (see *Nagovitsyn and Nalgiyev*, cited above, § 41). In the Court's view, it would be unfair if the applicant in the present case was compelled yet again to resubmit his grievances to the domestic authorities, be it on the grounds of a new remedy or otherwise (see *Burdov,* cited above, § 144; *Krasnov v. Russia*, no. 18892/04, § 34, 22 November 2011; and *Tkhyegepso and Others v. Russia*, nos. 44387/04 et al., § 23, 25 October 2011).

35. The Court thus rejects the Government's objection in respect of non-exhaustion of domestic remedies.

36. The Court must further determine whether the applicant has complied with the six-month time-limit established by Article 35 § 1 of the Convention.

37. The Court is aware that in the present case the Government did not raise in their observations any objection to the application on the basis of the six-month rule established by Article 35 § 1 of the Convention. In this respect the Court is mindful that the six-month rule is a public policy rule and that, consequently, it has jurisdiction to apply it of its own motion (see *Assanidze v. Georgia* [GC], no. 71503/01, § 160, ECHR 2004‑II), even if the Government have not raised that objection (see *Walker v. the United Kingdom* (dec.), no. 34979/97, ECHR 2000‑I).

38. In the case at hand the applicant first raised his complaint about the length of civil proceedings in question on 15 December 2003. The proceedings ended on 4 December 2002, which is more than six months before the date of introduction of the application.

39. It follows that the complaint regarding the length of civil proceedings in question was submitted outside the six-month time-limit and must be rejected in accordance with Article 35 § 1 of the Convention.

III. ALLEGED VIOLATION OF ARTICLE 6 OF THE CONVENTION ON ACCOUNT OF NON-ENFORCEMENT OF THE JUDGMENT OF 13 AUGUST 2002

40. The applicant further complained about non-enforcement of the final judgement of 13 August 2002 in his favour. He relied on Article 6 of the Convention and Article 1 of Protocol No. 1.

41. The Government first stated in their observations that the judgment of 13 August 2002 was issued against a private actor. Thus the State could not be liable for its debts. Furthermore, the applicant did not use the remedies provided by the Compensation Act. They further submitted that the judgement of 13 August 2002 had been enforced on 14 September 2004. The length of time before enforcement was in compliance with the Convention's provisions.

42. The applicant maintained his complaint.

43. The Court notes at the outset that the judgment of 13 August 2002 was against a private company. Thus the State is not liable for its debts (see *Anokhin v. Russia* (dec.), no. 25867/02, 31 May 2007).

44. The Court reiterates that where there is a private debtor there is a positive obligation incumbent on the State to act diligently when assisting a creditor to enforce a judgment (see *Anokhin,* cited above). The Court's task in such cases is to ascertain whether the measures applied by the State were adequate and sufficient (see *Kunashko v. Russia*, no. 36337/03, §§ 38-40, 17 December 2009).

45. The Court notes that the applicant does not complain of any specific failures, but rather is generally dissatisfied with delays and failure to pay. It has not been alleged that the authorities hindered the enforcement proceedings. Finally, the applicant failed to bring any proceedings against the bailiffs in connection with his complaints (see *Anokhin*, cited above). In these circumstances the Court does not find that the respondent State has failed in any of its obligations in respect of the enforcement of the judgment in question.

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

IV. ALLEGED VIOLATION OF ARTICLE 13 OF THE CONVENTION

47. The applicant complained under Article 13 that he had not had any effective remedy in respect of unreasonable length of the proceedings which ended on 4 December 2002 and non-enforcement of the judgment of 13 August 2002. Article 13 reads as follows:

> "Everyone whose rights and freedoms as set forth in this Convention are violated shall have an effective remedy before a national authority notwithstanding that the violation has been committed by persons acting in an official capacity."

48. The Government submitted in their observations that the applicant had had an effective remedy to rectify the violation of his right to fair proceedings due to procrastination and non-enforcement, namely the remedy prescribed by the Compensation Act.

49. The applicant maintained his complaint.

50. The Court reiterates that Article 13 has been consistently interpreted by the Court as requiring a remedy in domestic law only in respect of grievances which can be regarded as "arguable" in terms of the Convention. In view of its findings above, the Court considers that the applicant has no "arguable claim" of a breach of the Convention or its Protocols which would have warranted a remedy under Article 13.

51. Accordingly, this complaint is incompatible *ratione materiae* with the provisions of the Convention within the meaning of Article 35 § 3 (a) and must be rejected, pursuant to Article 35 § 4 of the Convention.

V. OTHER ALLEGED VIOLATIONS OF THE CONVENTION

52. As regards the applicant's other complaints, having regard to all the material in its possession and in so far as these complaints come within its competence, the Court finds that these complaints do not disclose any appearance of a violation of the rights and freedoms set out in the Convention or its Protocols. It follows that this part of the application must

be rejected as manifestly ill-founded, pursuant to Article 35 §§ 3 and 4 of the Convention.

VI. APPLICATION OF ARTICLE 41 OF THE CONVENTION

53. 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

54. The applicant claimed 424,714 Russian roubles (RUB) in respect of pecuniary damage. In his opinion the pecuniary damage should be calculated for the period from 2002 to 2010 and should be based on consumer price indices, the minimum living cost for the employable population, and the statutory minimum wage. He also claimed RUB 5,000,000 for non-pecuniary damage.

55. The Government submitted that the applicant's claims were excessive and ill-founded, and disagreed with the applicant's method of calculation of pecuniary damages. The Government stated that the amount awarded included a lump sum (RUB 61,607) and monthly payments to be calculated from 20 May 2005, when the judgment of 19 April 2005 entered into force, to 6 October 2005, when it was quashed, as follows:

The date from which the payments should have been started	**Payment periods**	**Amount of payment (in RUB)**	**Date of quashing**
20/05/2005	May 2005 (11 days)	1,167	06/10/2005
	June 2005	3,290	
	July 2005	3,288	
	August 2005	3,288	
	September 2005	3,288	
	October 2005 (6 days)	660	

Thus, according to the Government, the aggregate sum of pecuniary damage shall be determined as follows: 1,167 + 3,290 + 3,288 x 3 + 660 + 61,607 = RUB 76,588.

56. The Court reiterates that in general the most appropriate form of redress in respect of violations found is to put applicants as far as possible in the position they would have been in if the Convention requirements had

not been disregarded (see *Piersack v. Belgium* (Article 50), 26 October 1984, § 12, Series A no. 85).

57. In the instant case the Court found a violation of Article 6 § 1 of the Convention and Article 1 of Protocol No. 1, in that the judgment in the applicant's favour had been quashed by way of supervisory review. In so far as the applicant did not receive the money he had legitimately expected to receive under this final judgment in the period until it was quashed, there is a causal link between the violations found and the applicant's claim in respect of pecuniary damage (see *Tarnopolskaya and Others v. Russia*, nos. 11093/07 et al., § 50, 7 July 2009).

58. As regards the applicant's claim in respect of his future pecuniary loss, however, the Court notes that after the final judgment was quashed it ceased to exist under domestic law; it cannot restore the power of this judgment nor assume the role of the national authorities in awarding social benefits for the future (see *Tarnopolskaya and Others v. Russia*, cited above, § 51).

59. The Court considers that the applicant should be awarded a lump sum in the amount of RUB 61,607. The monthly payments should be calculated for the period from 15 December 2004, the date indicated in the quashed judgment, to 6 October 2005, the date of quashing, on the basis of official statistical data relating to the minimum living cost for the employable population, as follows:

The date from which the payments should have been started	**Payment periods**	**Amount of payment (in RUB)**	**Date of quashing**
15/12/2004	December 2004 (16 days)	1,388	06/10/2005
	January 2005	3,138	
	February 2005	3,138	
	March 2005	3,138	
	April 2005	3,290	
	May 2005	3,290	
	June 2005	3,290	
	July 2005	3,288	
	August 2005	3,288	
	September 2005	3,288	
	October 2005 (6 days)	639	

60. Thus the aggregate sum of the pecuniary damage should be calculated as follows: 1,388 + 3,138 x 3 + 3,290 x 3 + 3,288 x 3 + 639 + 61,607 = RUB 92,782.

61. Therefore, the Court awards the applicant the equivalent of RUB 92,782, namely 2,274 euros (EUR) in respect of pecuniary damage.

62. As far as non-pecuniary damage is concerned, the Court notes that the applicant must have suffered non-pecuniary damage as a result of the violation found which cannot be compensated for by the mere finding of a violation. Having regard to the circumstances of the case, and making its assessment on an equitable basis, the Court awards the applicant the sum of EUR 3,000 in respect of non-pecuniary damage, plus any tax that may be chargeable on that amount (see *Tarnopolskaya and Others*, cited above, § 57, and *Gorfunkel v. Russia*, no. 42974/07, § 47, 19 September 2013).

B. Costs and expenses

63. The applicant also claimed RUB 65,600 for legal and postal costs and expenses.

64. The Government stated that the applicant had failed to substantiate his costs with appropriate evidence.

65. According to the Court's case-law, an applicant is entitled to reimbursement of his or her costs and expenses only in so far as it has been shown that these have been actually and necessarily incurred and are reasonable as to quantum. In the present case, the applicant did not submit any documents confirming his claims. Regard being had to the documents in its possession and to its case-law, the Court rejects the claim for costs and expenses.

C. Default interest

66. The Court considers it appropriate that the default interest rate 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. *Declares* the complaint concerning quashing of the decision in the applicant's favour by way of supervisory review admissible and the remainder of the application inadmissible;

2. *Holds* that there has been a violation of Article 6 of the Convention and Article 1 of Protocol No. 1 as to the quashing of the decision in the applicant's favour by way of supervisory review;

3. *Holds*

(a) that the respondent State is to pay the applicant, within three months, the following amounts, to be converted into Russian roubles at the rate applicable at the date of settlement:

(i) EUR 2,274 (two thousand two hundred and seventy-four euros), plus any tax that may be chargeable, in respect of pecuniary damage;

(ii) EUR 3,000 (three thousand euros), plus any tax that may be chargeable, in respect of non-pecuniary damage;

(b) that from the expiry of the above-mentioned three months until settlement simple interest shall be payable on the above amounts at a rate equal to the marginal lending rate of the European Central Bank during the default period plus three percentage points;

4. *Dismisses* the remainder of the applicant's claim for just satisfaction.

Done in English, and notified in writing on 28 May 2014, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

André Wampach
Deputy Registrar

Khanlar Hajiyev
President