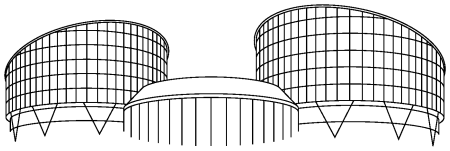

EUROPEAN COURT OF HUMAN RIGHTS
COUR EUROPÉENNE DES DROITS DE L'HOMME

FIRST SECTION

CASE OF YAKOVLEVA v. RUSSIA

(Application no. 43166/04)

JUDGMENT

STRASBOURG

10 July 2014

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

In the case of Yakovleva v. Russia,

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

Mirjana Lazarova Trajkovska, *President,*
Linos-Alexandre Sicilianos,
Ksenija Turković, *judges,*
and André Wampach, *Deputy Section Registrar,*

Having deliberated in private on 17 June 2014,

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

PROCEDURE

1. The case originated in an application (no. 43166/04) 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") on 19 October 2004 by a Russian national, Mrs Natalya Aleksandrovna Yakovleva, on behalf of her then underage daughter, Ms Yekaterina Vladimirovna Yakovleva, the applicant, born on 2 May 1989. By letter of 12 July 2007, Ms Yakovleva, having reached the majority, informed the Court that she intended to pursue the application.

2. The Russian Government ("the Government") were represented by Mrs V. Milinchuk, former Representative of the Russian Federation at the European Court of Human Rights, and subsequently by their Representative Mr G. Matyushkin.

3. On 9 March 2007 the application was communicated to the Government.

THE FACTS

I. THE CIRCUMSTANCES OF THE CASE

4. The applicant is a Russian national and lives in Saratov.

5. On 1 June 1994 the applicant's father, Mr Vladimir Dmitrievich Yakovlev, deposited an unspecified amount of money with the Savings Bank of the Russian Federation ("the Savings Bank") in her name. The deposit was to be kept for at least ten years and was redeemable after the applicant had reached the age of sixteen. The interest rate was fixed at 190 per cent per annum.

6. Later, the Savings Bank reduced the interest rate.

7. Considering the Savings Bank's unilateral decision unlawful, Mr Yakovlev brought a civil claim against it.

8. On 25 July 2001 the Frunzenskiy District Court of Saratov found that the terms of the deposit did not provide for unilateral changes in the interest rate and held that the Savings Bank should calculate interest at the rate of 190 per cent starting from 1 June 1994 and until the maturity of the deposit.

9. On 31 August 2001 the Saratov Regional Court upheld that judgment on appeal.

10. On 13 January 2003 Mr Yakovlev died.

11. On an unspecified date the Savings Bank lodged an application for supervisory review which was rejected by the Saratov Regional Court on 19 May 2003.

12. On 30 January 2004 the Savings Bank filed a new application for supervisory review with the Presidium of the Saratov Regional Court. It asserted that Mr Yakovlev's claim should have been dismissed as premature because the maturity date had not yet occurred.

13. On 26 April 2004 the Presidium of the Saratov Regional Court quashed the judgment of 25 July 2001, as upheld on 31 August 2001, and dismissed the claim lodged by the late Mr Yakovlev, holding that the interest could only be calculated after the terms of the deposit had been fulfilled. As regards the re-opening of the proceedings after the plaintiff's death, the Presidium found as follows:

> "The fact that Mr V. Yakovlev died does not preclude a new decision from being made in the case because his claim had been lodged on behalf of his underage daughter – Ms Ye. Yakovleva. At present she is represented by her mother, Mrs N. Yakovleva, who participated to the hearing before the Presidium."

14. On 2 May 2005 the applicant turned sixteen. On an unspecified date the Savings Bank offered to pay her 28,928 Russian roubles (RUB) (approximately 900 euros (EUR)). There is no information on whether she accepted this offer.

II. RELEVANT DOMESTIC LAW

15. Relevant domestic law provisions governing the supervisory review procedure at the material time are summarised in the Court's judgment in the case of *Kot v. Russia* (no. 20887/03, § 17, 18 January 2007).

THE LAW

I. ALLEGED VIOLATION OF ARTICLE 6 § 1 OF THE CONVENTION

16. The applicant complained about the quashing, by way of supervisory review, of the court final judgment of 25 July 2001, as upheld on 31 August 2001. Article 6 of the Convention, insofar as relevant, reads as follows:

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

17. The Government contested that argument. They stated that the supervisory-review proceedings had been lawful and necessary to remedy fundamental errors made by lower courts resulting from the wrong application of the substantive legislation. In the Government's view, a judicial decision could not be considered as equitable and lawful, and the judicial protection as effective, without judicial errors being corrected.

A. Admissibility

18. The Court notes that the application 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

19. According to the Court's case-law 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).

20. This principle insists that no party is entitled to seek re-opening of the proceedings merely for the purpose of a rehearing and a fresh decision of the case. Higher courts' power to quash or alter binding and enforceable judicial decisions should be exercised for the correction of fundamental defects. The mere possibility of 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*, cited above, § 24; and *Dovguchits v. Russia*, no. 2999/03, § 27, 7 June 2007).

21. Turning to the circumstances of the present case, the Court finds that the quashing of the judgment of 25 July 2001, as upheld on 31 August 2001, undermined the principle of legal certainty without being justified by a

fundamental defect. Indeed, the aforementioned final judgment was set aside three years after it became binding, on the ground that the Frunzenskiy District Court and the Saratov Regional Court had incorrectly applied the substantive domestic law, that ground not constituting a fundamental defect within the meaning of the Court's case-law (see *Luchkina v. Russia*, no. 3548/04, § 21, 10 April 2008). The Court has found on several occasions that a party's disagreement with the assessment made by the lower courts is not in itself a circumstance of a substantial and compelling character warranting the quashing of a binding and enforceable judgment and re-opening of the proceedings on the applicant's claim (see, among others, *Dovguchits v. Russia*, cited above, § 30, and *Kot v. Russia*, cited above, § 29).

22. The foregoing considerations are sufficient to enable the Court to conclude that there has been a violation of Article 6 § 1 of the Convention on account of the quashing of the judgment of 25 July 2001, as upheld on 31 August 2001, by way of supervisory-review.

II. APPLICATION OF ARTICLE 41 OF THE CONVENTION

23. 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

24. The applicant claimed 3,500,000 euros (EUR) in respect of pecuniary damage, which represents the sum that the Savings Bank would have paid her if the judgment of 25 July 2001, as upheld on 31 August 2001, ordering the Savings Bank to calculate interest at the rate of 190 per cent had not been quashed. The applicant also considered that she suffered distress and frustration because the quashing of these judgments took place shortly after her father's death. She consequently claimed EUR 20,000 as non-pecuniary damage.

25. The Government did not comment on the applicant's claim for just satisfaction as they considered that the quashing of the aforementioned judgments was lawful.

26. As regards the claim for pecuniary damage, the Court observes that it is unsubstantiated. Although the applicant provided a calculation, she did not itemize it nor did she provide relevant supporting documents, notably in order to demonstrate what initial amount was deposited by her father with the Savings Bank. Consequently, the Court rejects the applicant's claim in respect of pecuniary damage.

27. On the other hand, it finds that as a result of the violation found the applicant has suffered non-pecuniary damage which cannot be compensated 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 considers it reasonable to award the applicant EUR 2,000 in respect of non-pecuniary damage, plus any tax that may be chargeable on that amount.

B. Costs and expenses

28. The applicant did not make any claim in respect of costs and expenses.

29. Consequently, the Court does not award any sum under this head.

C. Default interest

30. 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 application admissible;

2. *Holds* that there has been a violation of Article 6 § 1 of the Convention;

3. *Holds*
   (a) that the respondent State is to pay the applicant, within three months, EUR 2,000 (two thousand euros) in respect of non-pecuniary damage, to be converted into national currency at the rate applicable at the date of settlement, plus any tax that may be chargeable;
   (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;

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

Done in English, and notified in writing on 10 July 2014, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

André Wampach	Mirjana Lazarova Trajkovsk
Deputy Registrar	President