



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

Communicated on 27 August 2014

FIRST SECTION

Applications nos 76648/12 and 19156/13
Vladimir Gazizovich VOROKOV against Russia
and Serezha Sharapiyevich ZHOLAYEV and others against Russia
lodged on 10 November 2012 and 22 February 2013 respectively

STATEMENT OF FACTS

The applicants are 13 Russian nationals listed in Appendix 1. They are residents of various towns in the Republic of Kabardino-Balkaria and represented before the Court by Mr I. Timishev and Mr M. Abubakarov, lawyers practicing in Nalchik.

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 early 2011 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 12 April 2011 the Town Court allowed the applicants’ claims in part and awarded the applicants compensations between 1,300,000 Russian roubles (RUB) (approximately 30,000 euros (EUR)) and RUB 1,600,000 (approximately EUR 37,000) (see Appendix 2).

The judgment above has not been appealed against and became final and enforceable.

Meantime some of the applicants received the awarded compensations while the others were waiting (see Appendix 2).

On 17 August 2012 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 the Republic of Kabardino-Balkaria (“the Supreme Court of Kabardino-Balkaria”) against the final judgments in the applicants’ favour through the Town Court. They also requested that the statutory ten-day time-limit for lodging such an appeal against the judgments be restored.

On 24 August 2012 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 copy of the judgment in due course.

The applicants appealed against the latter decision before the Supreme Court of Kabardino-Balkaria on the grounds that according to the domestic law the court should forward a copy of its decision only to those parties, which were not present at the court hearings. However, according to the applicants, since the FTF’s representative participated in the proceedings, the court was not required to forward them a copy of the decision.

On 27 September 2012 the Supreme Court of Kabardino-Balkaria found that the Town Court lawfully extended the time-limits for appeals but held that the grounds for the extensions were incorrect. The Supreme Court of Kabardino-Balkaria in particular held that the Russian Ministry of Finance could not be said to have been duly represented in those proceedings as the transcript of a hearing 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 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 24 August 2012.

On 10 October 2012 the Supreme Court of Kabardino-Balkaria quashed the Town Court’s judgment of 12 April 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 also found that Mr Zavgorodny, the ninth applicant, had not in fact taken part in the clean-up work in Chernobyl but in that relating to an earlier accident of the Mayak plant that had occurred in 1957. The Supreme Court accordingly ordered the applicants to return the money they had received pursuant to the Town Court’s judgment of 12 April 2011.

On 16 May 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.

The fifth and seventh applicants, Mr Kazbekov and Mr Nastuyev died on 29 April and 27 February 2013 respectively, after they filed their applications with the Court. By letter of 17 April 2014 the applicants’ wives informed the Court about their husbands’ decease and expressed the intention to continue proceedings.

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

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 within the meaning of Article 34 of the Convention of a violation of Article 6 § 1 of the Convention and Article 1 of Protocol No. 1?
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.
4. Did the quashing of the final judgments in the applicants' favour constitute an interference with the applicants' right to the peaceful enjoyment of the possession in the form of the judgment debt? If so, was such interference justified in terms of Article 1 of Protocol No. 1?

APPENDIX

1. Application no.76648/12 lodged on 10 November 2012:

1. Vladimir Gazizovich VOROKOV, born on 12/11/1942;

2. Application no. 19156/13 lodged on 22 February 2013:

2. Serezha Sharapiyevich ZHOLAYEV, born on 05/11/1952;
3. Zaurbi Bilyalovich KARDANOV, born on 11/11/1964;
4. Valeriy Mukhazhidovich KHAGOV, born on 08/11/1951;
5. Mukhamed Mukhametovich KAZBEKOV, born on 13/02/1948;
6. Mukhamed Matsovich SHABAZOV, born on 20/07/1946;
7. Boris Sufiyanovich NASTUYEV, born on 17/04/1953;
8. Khasan Safarbiyevich GERGOV, born on 10/06/1959;
9. Anatoliy Semenovich ZAVGORODNIY, born on 10/05/1935;
10. Gennadiy Mukhamedovich SHKHANUKOV, born on 08/09/1954;
11. Khashaua Anibalovich YEMKUZHEV, born on 18/12/1955;
12. Vladimir Petrovich YEPISHIN, born on 27/09/1954;
13. Gissa Machrailovich APIKOV, born on 01/11/1966.

APPENDIX 2

| No. | Applicants | Amount of awarded compensation (RUB) | Compensation paid: ☑ - “yes” ☐ - “no” |
|------------|-----------------------------------|---|--|
| 1. | Vladimir Gazizovich VOROKOV | 1,500,000 | ☑ |
| 2. | Serezha Sharapiyevich ZHOLAYEV | 1,500,000 | ☑ |
| 3. | Zaurbi Bilyalovich KARDANOV | 1,500,000 | ☑ |
| 4. | Valeriy Mukhazhidovich KHAGOV | 1,500,000 | ☑ |
| 5. | Mukhamed Mukhametovich KAZBEKOV | 1,500,000 | ☑ |
| 6. | Mukhamed Matsovich SHABAZOV | 1,300,000 | ☑ |
| 7. | Boris Sufiyanovich NASTUYEV | 1,500,000 | ☑ |
| 8. | Khasan Safarbiyevich GERGOV | 1,500,000 | ☑ |
| 9. | Anatoliy Semenovich ZAVGORODNIY | 1,300,000 | ☑ |
| 10. | Gennadiy Mukhamedovich SHKHANUKOV | 1,600,000 | ☑ |
| 11. | Khashaua Anibalovich YEMKUZHEV | 1,500,000 | ☑ |
| 12. | Vladimir Petrovich YEPISHIN | 1,500,000 | ☑ |
| 13. | Gissa Machrailovich APIKOV | 1,500,000 | ☑ |