



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

FIRST SECTION

CASE OF SHCHUROV v. RUSSIA

(Application no. 40713/04)

JUDGMENT

STRASBOURG

29 March 2011

FINAL

29/06/2011

This judgment has become final under Article 44 § 2 of the Convention. It may be subject to editorial revision.

In the case of Shchurov v. Russia,

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

Nina Vajić, *President*,
Anatoly Kovler,
Peer Lorenzen,
Khanlar Hajiyeu,
George Nicolaou,
Mirjana Lazarova Trajkovska,
Julia Laffranque, *judges*,

and Søren Nielsen, *Section Registrar*,

Having deliberated in private on 8 March 2011,

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

PROCEDURE

1. The case originated in an application (no. 40713/04) 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 Nikolay Nikonorovich Shchurov (“the applicant”), on 20 September 2004.

2. The Russian Government (“the Government”) were represented by Mr P. Laptev, their former Representative at the European Court of Human Rights.

3. The applicant alleged, in particular, that his right to a court had been violated.

4. On 11 January 2006 the President of the First Section decided to give notice of the application to the Government. It was also decided to rule on the admissibility and merits of the application at the same time.

THE FACTS

I. THE CIRCUMSTANCES OF THE CASE

5. The applicant was born in 1933 and lives in Volgograd. He is a retiree.

A. The judgment in the applicant's favour

6. On 13 May 2003 the Kirovskiy District Court of Volgograd (“the District Court”) allowed the applicant's claim against his former employer and regional health care authority. It ruled that the applicant's illnesses should be considered occupational diseases. That finding entitled the applicant to receive additional social security payments.

7. The judgment of 13 May 2003 was not appealed against and became final and enforceable ten days after its delivery.

B. Quashing by way of supervisory review

8. The health care authority lodged an application for supervisory review of the judgment of 13 May 2003 with the Volgograd Regional Court (“the Regional Court”).

9. On 3 September 2004 the Presidium of the Regional Court (“the Presidium”) examined the case by way of supervisory review and set aside the judgment of 13 May 2003.

10. The Presidium noted that the District Court had erred in finding for the applicant as recognition of a certain illness as occupational disease was within “the prerogative” of the competent health care authorities. The case was remitted back to the District Court.

11. Following determination *de novo*, the applicant's claim was dismissed in the final instance by the Regional Court on 17 March 2005.

II. RELEVANT DOMESTIC LAW

12. Relevant domestic law on supervisory review is summarized in *Denisov v. Russia* (dec.), no. 33408/03, 6 May 2004.

13. Under Russian law on civil procedure all decisions and acts of State bodies and officials allegedly infringing upon citizens' rights and freedoms are subject to judicial review upon an interested person's complaint to a competent court, that is generally a district court (Article 254 of the Russian Code of Civil Procedure).

THE LAW

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

14. The applicant complained, primarily, about violation of his right to a court through setting aside of the final and enforceable judgment in his favour by way of supervisory review.

15. Article 6 § 1 of the Convention, in so far as relevant, reads as following:

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

16. The Government averred that the setting aside of the judgment of 13 May 2003 by way of supervisory review had been necessary in view of “a mistake” committed by the District Court in the applicant's case.

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

18. The Court reiterates that the right to a fair hearing before a tribunal as guaranteed by Article 6 § 1 of the Convention must be interpreted in the light of its Preamble which declares the rule of law to be part of the common heritage of the Contracting States. Principles of the rule of law must be accepted by every member of the Council of Europe pursuant to Article 3 of its Statute which has been ratified by all High Contracting Parties to the Convention. One of the aspects of the rule of law is the principle of legal certainty which presupposes respect for the principle of *res judicata*. This principle underlines that no party is entitled to seek a review of a final and binding judgment merely for the purpose of obtaining a rehearing and a fresh determination of the case. The review should not be treated as an appeal in disguise, and the mere possibility of there being two views on the subject is not a ground for re-examination (see *Ryabykh v. Russia*, no. 52854/99, §§ 51-52, ECHR 2003-IX).

19. The Court further notes that departures from the above-described principle of *res judicata* are justified only when made necessary by circumstances of a substantial and compelling character (see *Kot v. Russia*, no. 20887/03, § 24, 18 January 2007). In particular, higher courts' power to quash binding and enforceable judicial decisions should be used only for correction of fundamental defects committed by the lower courts (see *Protsenko v. Russia*, no. 13151/04, § 26, 31 July 2008).

20. In particular, the Court concluded that there had been a “fundamental defect” justifying supervisory review 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*, cited above, §§ 29-34) 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).

21. Legitimate setting aside of a final and binding judgment by way of supervisory review entails departure from the principle of legal certainty. That departure would be compatible with requirements of Article 6 § 1 of the Convention only if it is justified by the considerations of a pressing social need as opposed to merely legal purism (see *Sutyazhnik v. Russia*, no. 8269/02, § 38, 23 July 2009). In other words, the judgment in question shall be quashed exclusively in order to rectify an error of truly fundamental importance to the judicial system (*ibid.*).

22. Turning to the present case, the Court observes that the Government did not advance any argument to the effect that the District Court's judgment of 13 May 2003 had been based on the fundamental defect rather than on a trivial mistake. The Court does not find that the proceedings in question had been tarnished by a fundamental defect; the judgment in the applicant's favour was set aside merely on the ground that the District Court had incorrectly applied the pertinent substantive domestic law on occupational diseases, 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). There was, further, no pressing social need shown for setting aside the judgment in question.

23. The Presidium's argument as to the exclusive "prerogative" of the health care authorities in so far as occupational diseases are concerned is untenable as under domestic law (see paragraph 13 above) decisions and acts of all State bodies, including health care authorities, are reviewable by courts.

24. The Court is therefore of opinion that departure from the principle of legal certainty was unjustified in the case *sub judice*.

25. Furthermore, the Court sees no reason why the alleged mistake could not have been corrected by ordinary means, in particular, by the Regional Court acting as an appellate court which was not even seized by the health care authority which nonetheless decided, one year later, to lodge an application for supervisory review, thus frustrating the applicant's legitimate reliance on *res judicata* (see *Kulkov and Others v. Russia*, nos. 25114/03, 11512/03, 9794/05, 37403/05, 13110/06, 19469/06, 42608/06, 44928/06, 44972/06 and 45022/06, § 27, 8 January 2009).

26. Having regard to the above considerations, the Court finds that by quashing the judgment of 13 May 2003 by way of supervisory review the Presidium infringed the principle of legal certainty and the applicant's "right to a court" within the meaning of Article 6 § 1 of the Convention.

27. There has accordingly been a violation of that Article.

II. OTHER ALLEGED VIOLATIONS OF THE CONVENTION

28. The applicant also raised a number of auxiliary complaints under various provisions of the Convention. In the light of all the material in its possession, and in so far as the matters complained of are within its competence, the Court finds that they do not disclose any appearance of a violation of the rights and freedoms set out in the Convention and must be declared inadmissible pursuant to Article 35 § 4 of the Convention.

III. APPLICATION OF ARTICLE 41 OF THE CONVENTION

29. 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

30. The applicant claimed compensation of approximately 3,500 euros (EUR) in social security payments that he had not received after setting aside of the judgment of 13 May 2003 by way of supervisory review. He further claimed EUR 500,000 in compensation of non-pecuniary damage allegedly suffered.

31. The Government responded that they had seen no legal basis for granting the applicant any compensation.

32. As regards the claim of pecuniary damage, the Court observes that the applicant failed to substantiate it. In particular, he failed to furnish any evidence justifying his entitlement to any social security payment on the basis of his occupational diseases, less their amount. Accordingly, the Court decides to make no award under this head.

33. The Court further considers that the applicant suffered distress and frustration resulting from the setting aside of the final and binding judicial decision in his favour by way of supervisory review. However, it finds the amount claimed by the applicant excessive. Making its assessment on an equitable basis, the Court awards the applicant EUR 3,000 in respect of non-pecuniary damage, plus any tax that may be chargeable on this amount.

B. Costs and expenses

34. The applicant requested compensation of his costs and expenses without any further elaboration. The Government did not comment on this point. In absence of any supporting documents the Court sees no reason to

grant the applicant's request for award of the costs and expenses pursuant to Rule 60 of the Rules of Court (see *Paksas v. Lithuania* [GC], no. 34932/04, § 122, 6 January 2011).

C. Default interest

35. The Court considers it appropriate that the default interest 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 the setting aside of the judgment of 13 May 2003 by way of supervisory review admissible and the remainder of the application inadmissible;
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 from the date on which the judgment becomes final in accordance with Article 44 § 2 of the Convention, EUR 3,000 (three thousand euros) in respect of non-pecuniary damage, to be converted into Russian roubles 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 29 March 2011, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Søren Nielsen
Registrar

Nina Vajić
President