



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

FIRST SECTION

CASE OF PRAVEDNAYA v. RUSSIA

(Application no. 69529/01)

JUDGMENT

STRASBOURG

18 November 2004

FINAL

30/03/2005

This judgment will become final in the circumstances set out in Article 44 § 2 of the Convention. It may be subject to editorial revision.

In the case of Pravednaya v. Russia,

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

Mr C.L. ROZAKIS, *President*,

Mrs F. TULKENS,

Mrs N. VAJIĆ,

Mrs S. BOTOUCHAROVA,

Mr A. KOVLER,

Mr V. ZAGREBELSKY,

Mr K. HAJIYEV, *judges*,

and Mr S. NIELSEN, *Section Registrar*,

Having deliberated in private on 28 October 2004,

Delivers the following judgment, which was adopted on the last-mentioned date:

PROCEDURE

1. The case originated in an application (no. 69529/01) 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, Ms Lidiya Andreyevna Pravednaya, (“the applicant”), on 21 April 2001.

2. The applicant was represented by Mr I. V. Novikov, a lawyer practising in Novosibirsk. The Russian Government (“the Government”) were represented by Mr P. A. Laptev, the Representative of the Russian Federation at the European Court of Human Rights.

3. The applicant alleged, in particular, that the domestic judicial authorities had re-considered a judgment given in her favour having misused the procedure for re-considering judgments on discovery of new evidence.

4. The application was allocated to the First Section of the Court (Rule 52 § 1 of the Rules of Court). Within that Section, the Chamber that would consider the case (Article 27 § 1 of the Convention) was constituted as provided in Rule 26 § 1.

5. By a decision of 25 September 2003, the Court declared the application partly admissible.

6. The Government, but not the applicant, filed observations on the merits (Rule 59 § 1). The Chamber having decided, after consulting the parties, that no hearing on the merits was required (Rule 59 § 3 *in fine*), the applicant replied in writing to the Government’s observations.

THE FACTS

I. THE CIRCUMSTANCES OF THE CASE

7. The applicant was born in 1936 and lives in Novosibirsk.

8. Since 1991 the applicant has been receiving an old-age pension. From 1 February 1998 the amount of her pension was to be determined by the Law on Calculating and Upgrading State Pensions (the “Pensions Law”). The Pensions Law introduced a new method of upgrading retirement benefits—“Individual Pensioner Coefficient” (“the IPC”). The IPC, established for the purpose of calculating individual pensions, was the ratio between the individual’s final wages at retirement and the national average wage, and was meant to maintain a link between a person’s pension and previous earnings.

9. The authority in charge of the applicant’s pension—the Pension Fund Agency of the Zayeltsovskiy District of Novosibirsk (“the Agency”)—decided that the IPC to be applied to her should be 0.525. The applicant considered this decision arbitrary as it conflicted, in her opinion, with the Pensions Law. On 12 April 1999 she brought an action against the Agency.

10. On 21 October 1999, the Zayeltsovskiy District Court of Novosibirsk (“the District Court”) found in the applicant’s favour. It held that since the defendant had misinterpreted the Pensions Law, the applicant’s pension should be recalculated with an IPC of 0.7. The Agency appealed against the judgment to the Novosibirsk Regional Court (“the Regional Court”). It alleged that the District Court had misinterpreted the Pensions Law.

11. While the appeal was pending before the Regional Court, on 24 January 2000 the Agency requested the District Court to re-consider its judgment of 21 October 1999 due to discovery of new circumstances. The Agency claimed that on 29 December 1999 the Ministry of Labour and Social Development (“the Ministry of Labour”) had passed the Instruction on the Application of Limitations established by the Pensions Law (“the Instruction”). The Instruction specified how the Pensions Law should be applied. The Agency contended that since it had been unaware of these circumstances at the moment when the judgment was passed, the judgment should be re-considered.

12. On 30 January 2000 the Agency withdrew its application because the judgment of 21 October 1999 had not by that moment come into force, having been appealed against to the Regional Court.

13. On 15 February 2000 the Regional Court upheld the judgment having agreed with the interpretation of the relevant laws given by the District Court. The decision of the Regional Court contained no reference to

the Instruction. The judgment of 21 October 1999 accordingly came into force as from 15 February 2000.

14. On 21 August 2000 the Agency submitted a new application for re-consideration of the judgment of 21 October 1999 due to discovery of new circumstances. This time the Agency claimed, in addition, that on 24 April and 25 May 2000 the Supreme Court had confirmed the lawfulness of the Instruction.

15. On 16 January 2001 the District Court granted the Agency's application. The court applied Article 333 of the Code of Civil Procedure according to which judgments could be re-considered in case of discovery of significant circumstances which were not and could not have been known to the party concerned. The court found that the Instruction, as upheld by the Supreme Court, could serve as such a circumstance. No appeal lay against this decision.

16. After a fresh examination on 12 February 2001, the District Court rejected the applicant's claims in full having applied the Instruction. On 27 March 2001 the Regional Court upheld the judgment on appeal.

II. RELEVANT DOMESTIC LAW

17. The Code of Civil Procedure of 1964 ("CCivP") in force at the material time:

Article 294. Scope of review of cases by a court of cassation instance

"The court of cassation instance shall verify the lawfulness and validity of the judgment of the first-instance court in the scope of the cassation appeal. It may examine new evidence and establish new facts. The court shall examine newly submitted evidence if it considers that the evidence could not have been submitted to the first-instance court..."

Article 333. Grounds for re-consideration

"[Judgments] which have come into force may be re-considered on the basis of newly-discovered circumstances. The grounds for re-consideration ... shall be:

1. significant circumstances which were not and could not have been known to the party who applies for re-consideration;...

4. cancellation of a court [judgment] or of another authority's decision which served as legal basis for the [judgment] in question."

Article 334. Making of application

"... [An application for re-consideration of a [judgment] due to discovery of new circumstances] is to be made within three months after the discovery of the circumstances."

18. On 24 April 2000 the Supreme Court dismissed a complaint lodged by a number of individuals against the Instruction. The Supreme Court found that, contrary to the complaint, the Ministry of Labour had not trespassed its authority when it issued the Instruction, and that the Ministry's interpretation of the Pensions Law had been correct. On 25 May 2000 the Cassation Section of the Supreme Court upheld this judgment on appeal.

THE LAW

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

19. The applicant complained that the re-consideration of the judgment of 21 October 1999, as upheld by the Novosibirsk Regional Court on 15 February 2000, was abusive because the legal acts which occurred after the judgment should not have been considered as newly-discovered circumstances. The Court will first examine this complaint under Article 6 § 1 of the Convention which, in so far as relevant, reads as follows:

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

A. Arguments of the parties

1. The applicant

20. The applicant averred that the Instruction and the Supreme Court's judgments of 24 April and 25 May 2000 should not have been considered as newly-discovered evidence. She argued that these instruments had only come into being after the judgment of 21 October 1999 had been passed, and could not therefore call the original findings into question.

21. Furthermore, the Agency filed its application for re-consideration of the case out of time. Whereas under Article 334 of the CCivP such applications could be made no later than three months after the new circumstances were discovered, the agency filed its application on 21 August 2000, i.e. eight months after the Instruction had been passed.

2. The Government

22. The Government submitted that the Agency only became aware of the substantial circumstances relevant for the case after the judgment had become final. Therefore, the court had a solid reason to re-consider the case.

23. Furthermore, the Agency filed its application for re-consideration of the case on 24 January 2000, i.e. within the relevant time-limit, and only 24 days after the Instruction had been registered by the Ministry of Justice.

B. The Court's assessment

1. General principles

24. 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 the Preamble to the Convention, which declares, in its relevant part, the rule of law to be part of the common heritage of the Contracting States. 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 not be called into question (see *Brumărescu v. Romania*, judgment of 28 October 1999, *Reports of Judgments and Decisions* 1999-VII, § 61).

25. This principle insists that no party is entitled to seek a review of a final and binding judgment merely for the purpose of a rehearing and a fresh decision of the case. Higher courts' power of review should be exercised for correction of judicial mistakes, miscarriages of justice, and not to substitute a review. The review cannot be treated as an appeal in disguise, and the mere possibility of two 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-X).

26. The Court should be especially mindful of the dangers inherent in the use of retrospective legislation which has the effect of influencing the judicial determination of a dispute to which the State is a party. Respect for the rule of law and the notion of a fair trial require that any reasons adduced to justify such measures be treated with the greatest possible degree of circumspection (see *The National & Provincial Building Society, the Leeds Permanent Building Society and the Yorkshire Building Society v. the United Kingdom*, judgment of 23 October 1997, *Reports* 1997-VII, § 112; *Zielinski and Pradal & Gonzalez and Others v. France* [GC], nos. 24846/94 and 34165/96 to 34173/96, § 57, ECHR 1999-VII).

2. Application to the present case

27. The procedure for quashing of a final judgment presupposes that there is evidence not previously available through the exercise of due diligence that would lead to a different outcome of the proceedings. The person applying for rescission should show that there was no opportunity to present the item of evidence at the final hearing and that the evidence is

decisive. Such a procedure is defined in Article 333 of the CCivP and is common to the legal systems of many member States.

28. This procedure does not by itself contradict the principle of legal certainty in so far as it is used to correct miscarriages of justice. The Court's task is to determine whether in the present case the procedure was applied in a manner which is compatible with Article 6.

29. The judgment of 21 October 1999, given in the applicant's favour, was set aside 15 months later because it did not take account of the Instruction.

30. It was on 24 January 2000 that the Agency first requested the District Court to re-examine its judgment due to the new circumstances. It follows that by that moment the Agency had been aware of the Instruction. Since the judgment of the Regional Court of 15 February 2000 contained no reference to the Instruction, nothing suggests that the Agency had relied on it in the appeal proceedings.

31. In these circumstances, the Agency's second request of 21 August 2000 to re-open the case due to the discovery of the new circumstances was in essence an attempt to re-argue the case on points which the Agency could have, but apparently failed, to raise on appeal.

32. This being so, the Court considers the Agency's request to be an "appeal in disguise" rather than a conscientious effort to make good a miscarriage of justice.

33. By granting the Agency's belated (see § 14 above) request to set aside the final judgment of 21 October 1999 the District Court thus infringed the principle of legal certainty and the applicant's "right to a court" under Article 6 § 1 of the Convention. (see, *mutatis mutandis*, *Ryabykh*, cited above, § 56)

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

II. ALLEGED VIOLATION OF ARTICLE 1 OF PROTOCOL NO. 1

35. The Court will next examine the applicant's complaint under Article 1 of Protocol No. 1 to the Convention which reads as follows:

"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.

The preceding provisions shall not, however, in any way impair the right of a State to enforce such laws as it deems necessary to control the use of property in accordance with the general interest or to secure the payment of taxes or other contributions or penalties."

36. The parties made no specific arguments in respect of this Article.

37. The Court reiterates first that the right to an old-age pension or any social benefit in a particular amount is not included as such among the rights and freedoms guaranteed by the Convention (see, for example, *Aunola v. Finland* (dec.), no. 30517/96, 15 March 2001).

38. However a “claim”—even concerning a pension—can constitute a “possession” within the meaning of Article 1 of Protocol No. 1 if it is sufficiently established to be enforceable (see *Stran Greek Refineries v. Greece*, judgment of 9 December 1994, Series A no. 301, § 59).

39. The judgment of the Zayeltsovskiy District Court of 21 October 1999 as upheld by the Novosibirsk Regional Court on 15 February 2000 provided the applicant with an enforceable claim to receive a pension with the IPC of 0.7. This judgment became final after it had been upheld on appeal. In consequence of the decision of 16 January 2001, by which the application for re-consideration was granted the applicant was deprived of the right to receive the pension in the desired amount. The Court finds that the effect of the re-consideration in the circumstances of the present case was that the applicant was deprived of her possessions within the meaning of the second sentence of the first paragraph of Article 1 of Protocol No. 1 (see, *mutatis mutandis*, *Brumărescu*, cited above, § 77).

40. A taking of property within this second rule can only be justified if it is shown, *inter alia*, to be “in the public interest” and “subject to the conditions provided for by law” (see, *Brumărescu*, cited above, § 78). The “public interest” may admittedly include an efficient and harmonised State pension scheme, for the sake of which the State may adjust its legislation.

41. However, the State’s possible interest in ensuring a uniform application of the Pensions Law should not have brought about the retrospective recalculation of the judicial award already made. The Court considers that by depriving the applicant of the right to benefit from the pension in the amount secured in a final judgment, the State upset a fair balance between the interests at stake (see, *mutatis mutandis* *Pressos Compania Naviera S.A. and Others v. Belgium*, judgment of 20 November 1995, Series A no. 332, § 43).

42. There has, accordingly, been a violation of Article 1 of Protocol No. 1.

III. APPLICATION OF ARTICLE 41 OF THE CONVENTION

43. 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.”

44. The Court points out that under Rule 60 of the Rules of Court any claim for just satisfaction must be itemised and submitted in writing

together with the relevant supporting documents or vouchers, “failing which the Chamber may reject the claim in whole or in part”.

45. On 1 October 2003, after the present application had been declared admissible, the Court invited the applicant to submit her claims for just satisfaction. She did not submit any such claims within the required time-limits.

46. In these circumstances, the Court makes no award under Article 41 of the Convention (see, for example, *Ryabykh v. Russia*, no. 52854/99, §§ 67–68, ECHR 2003-X, *Timofeyev v. Russia*, no. 58263/00, §§ 51–52, 23 October 2003).

FOR THESE REASONS, THE COURT UNANIMOUSLY

1. *Holds* unanimously that there has been a violation of Article 6 § 1 of the Convention;
2. *Holds* unanimously that there has been a violation of Article 1 of Protocol No. 1 to the Convention;
3. *Decides* to make no award under Article 41 of the Convention.

Done in English, and notified in writing on 18 November 2004, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Søren NIELSEN
Registrar

Christos ROZAKIS
President