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

SECOND SECTION

CASE OF KUTEPOV AND ANIKEYENKO v. RUSSIA

(Application no. 68029/01)

JUDGMENT

STRASBOURG

25 October 2005

FINAL

15/02/2006

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 Kutepov and Anikeyenko v. Russia,

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

Mr J.-P. COSTA, *President*,
Mr A.B. BAKA,
Mr I. CABRAL BARRETO,
Mr R. TÜRMEN,
Mr V. BUTKEVYCH,
Mr A. KOVLER,
Ms D. JOČIENĖ, *judges*,
and Mrs S. DOLLÉ, *Section Registrar*,

Having deliberated in private on 4 October 2005,

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

PROCEDURE

1. The case originated in an application (no. 68029/01) 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 two Russian nationals, Mr Petr Prokhorovich Kutepov and Mr Mikhail Ivanovich Anikeyenko, on 9 February 2001.

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

3. On 31 August 2004 the Court decided to communicate the complaint concerning the quashing of the judgment of 23 September 1999 to the Government. Under the provisions of Article 29 § 3 of the Convention, it decided to examine the merits of the application at the same time as its admissibility.

4. On 4 October 2005 the Court decided that a hearing in the case was unnecessary (Rule 59 § 3 of the Rules of Court).

THE FACTS

I. THE CIRCUMSTANCES OF THE CASE

5. The applicants were born in 1928 and 1930 respectively. The second applicant lives in Belgorod.

6. The applicants received old-age pensions.

1. Original court proceedings

7. In 1999 the applicants sued the Pension Fund Agency of Belgorod ("the Agency") alleging that their pensions had been calculated in breach of a scheme for the calculation of retirement benefits – the "Individual Pensioner Coefficient" ("IPC") – introduced by the Pensions Law of 1997. The applicants maintained that they were entitled to an IPC of 0.7, whilst the Agency only applied an IPC of 0.525.

8. On 27 May 1999 the Oktyabrskiy District Court of Belgorod ("the Oktyabrskiy District Court") dismissed the applicants' claims as unfounded.

9. On 27 July 1999 the Civil Section of the Belgorod Regional Court ("the Belgorod Regional Court") set aside the above judgment on appeal and remitted the case for a new examination.

10. On 23 September 1999 the Oktyabrskiy District Court found in the applicants' favour. It held that the Agency had misinterpreted the Pensions Law and that the IPC to be applied in the applicants' case should be 0.7. The court ordered the Agency to increase the applicants' pension by RUR 642.84 and awarded them arrears of RUR 3,222.6.

11. On 16 November 1999 the Belgorod Regional Court dismissed the defendant's appeal, and the judgment of 23 September 1999 became final.

2. Enforcement proceedings

12. On 3 December 1999 enforcement proceedings commenced.

13. On 13 January 2000 the Agency requested the court to suspend the enforcement pending the outcome of the proceedings before the Supreme Court of Russia concerning similar pension cases.

14. On 14 February 2000 the Western Circuit Court of Belgorod (*Федеральный суд Западного округа г. Белгорода,* "the Western Circuit Court") dismissed the request, having established no grounds for suspending the enforcement.

15. On an unspecified date the Agency filed a new request to postpone the execution of the judgment of 23 September 1999. On 17 March 2000 the Western Circuit Court granted the request.

16. On 18 April 2000, upon the order of the same court, the enforcement proceedings were resumed.

17. On an unspecified date the Agency again applied for a stay of the enforcement, referring to the lack of funds. On 19 June 2000 the Western Circuit Court rejected this request as groundless.

18. On 29 June 2000 the acting President of the Belgorod Regional Court ordered a stay of enforcement, as on an unspecified date an extraordinary appeal had been brought against the judgment of 23 September 1999.

19. On 29 September 2000 the President of the Belgorod Regional Court set aside the above order, following the withdrawal of the extraordinary appeal. The enforcement proceedings re-commenced.

3. Proceedings for review due to the discovery of new circumstances

20. On 19 May 2000 the Agency filed an application to re-consider the judgment of 23 September 1999 on account of newly-discovered circumstances. It stated that on 29 December 1999 the Ministry of Labour had passed an instruction clarifying the application of the Pensions Law which had gone against the interpretation of that law by the courts in the applicants' case. The Agency maintained that it had been unaware of these circumstances when the judgment of 23 September 1999 had been given and, therefore, the judgment should be re-considered.

21. On 15 June 2000 the Western Circuit Court of Belgorod disallowed the Agency's application, having noted that the instruction in question was not newly-discovered evidence within the meaning of the domestic law.

22. On 10 October 2000 the Belgorod Regional Court overturned the decision of 15 June 2000 on appeal and remitted the case for a new consideration.

23. On 2 November 2000 the Presidium of the Belgorod Regional Court set aside the decision of 10 October 2000, referring to a number of procedural irregularities and remitted the case to the appeal instance.

24. During a new examination, on 21 November 2000, the Belgorod Regional Court again quashed the decision of 15 June 2000 and ordered the first instance to consider the case afresh.

4. Supervisory review proceedings

25. On an unspecified date the President of the Belgorod Regional Court lodged an extraordinary appeal against the decision of 27 July 1999, the judgment of 23 September 1999, the decision of 16 November 1999 and the decision of 21 November 2000.

26. On 1 February 2001 the Presidium of the Belgorod Regional Court, having examined the extraordinary appeal in the supervisory review proceedings, quashed the aforementioned decisions and judgment and upheld the judgment of 27 May 1999 and the decision of 15 June 2000, thus reinstating the applicants' IPC at 0.525 and annulling the previously awarded increase as well as the arrears.

5. Proceedings against the bailiffs

27. On an unspecified date the applicants filed a claim against the Belgorod Regional Department of the Ministry of Justice, seeking compensation for pecuniary and non-pecuniary damage for the bailiffs'

failure to enforce the judgment of 23 September 1999 within a reasonable time.

28. On 5 April 2001 the Eastern Circuit Court of Belgorod (*Федеральный суд Восточного округа г. Белгорода*) rejected the action. The court found that the delays in the enforcement proceedings had not been imputable to the bailiffs.

29. On 5 June 2001 the Belgorod Regional Court upheld this judgment on appeal.

II. RELEVANT DOMESTIC LAW

30. Under the Code of Civil Procedure of 1964, which was in force at the material time, judgments became final as follows:

Article 208. Coming into force of judgments

> "Court judgments shall become legally binding on the expiration of the time-limit for lodging a cassation appeal if no such appeal has been lodged. If the judgment is not quashed following a cassation appeal, it shall become legally binding when the higher court delivers its decision..."

31. The only further means of recourse was the special supervisory-review procedure that enabled courts to reopen final judgments:

Article 319. Judgments, decisions and rulings amenable to supervisory review

> "Final judgments, decisions and rulings of all Russian courts shall be amenable to supervisory review on an application lodged by the officials listed in Article 320 of the Code."

32. The power of officials to lodge an application (*protest*) depended on their rank and territorial jurisdiction:

Article 320. Officials who may initiate supervisory review

> "Applications may be lodged by:
>
> 1. The Prosecutor General – against judgments, decisions and rulings of any court;
>
> 2. The President of the Supreme Court – against rulings of the Presidium of the Supreme Court and judgments and decisions of the Civil Chamber of the Supreme Court acting as a court of first instance;
>
> 3. Deputy Prosecutors General – against judgments, decisions and rulings of any court other than rulings of the Presidium of the Supreme Court;
>
> 4. Vice-Presidents of the Supreme Court – against judgments and decisions of the Civil Chamber of the Supreme Court acting as a court of first instance;

5. The Prosecutor General, Deputy Prosecutor General, the President and Vice-Presidents of the Supreme Court – against judgments, decisions and rulings of any court other than rulings of the Presidium of the Supreme Court;

6. The President of the Supreme Court of an autonomous republic, regional court, city court, court of an autonomous region or court of an autonomous district, the Public Prosecutor of an autonomous republic, region, city, autonomous region or an autonomous district – against judgments and decisions of district (city) people's courts and against decisions of civil chambers of, respectively, the Supreme Court of an autonomous republic, regional court, city court, court of an autonomous region or court of an autonomous district that examined the case on appeal."

33. The power to lodge such applications was discretionary, that is to say it was solely for the official concerned to decide whether or not a particular case warranted supervisory review.

34. Under Article 322 officials listed in Article 320 who considered that a case deserved closer examination could, in certain circumstances, obtain the case file in order to establish whether good grounds for lodging an application existed.

35. Article 323 of the Code empowered the relevant officials to stay the execution of the judgment, decision or ruling in question until the supervisory review proceedings had been completed.

36. Courts hearing applications for supervisory review had extensive jurisdiction in respect of final judgments:

Article 329. Powers of supervisory-review court

"The court that examines an application for supervisory review may:

1. Uphold the judgment, decision or ruling and dismiss the application;

2. Quash all or part of the judgment, decision or ruling and order a fresh examination of the case at first or cassation instance;

3. Quash all or part of the judgment, decision or ruling and terminate the proceedings or leave the claim undecided;

4. Uphold any of the previous judgments, decisions or rulings in the case;

5. Quash or vary the judgment of the court of first or cassation instance or of a court that has carried out supervisory review and deliver a new judgment without remitting the case for re-examination if substantive laws have been erroneously construed and applied."

41. The grounds for setting aside final judgments were as follows:

Article 330. Grounds for setting aside judgments on supervisory review

"...

1. wrongful application or interpretation of substantive laws;

2. significant breach of procedural rules which led to delivery of unlawful judgment, decision or ruling..."

37. There was no time-limit for lodging an application for supervisory review, and, in principle, such applications could be lodged at any time after a judgment had become final.

THE LAW

I. STRIKING OUT OF THE LIST

38. On 11 November 2004 the second applicant informed the Court that the first applicant had died in a car accident in 2003.

39. Regard being had to the absence of any heirs who wish to pursue the first applicant's application or any reasons which would require a continuation of the examination of the case (see, by way of contrast, *Karner v. Austria*, judgment of 24 July 2003, *Reports of Judgments and Decisions* 2003-IX, § 28), the Court, in so far as the first applicant's complaint is concerned, strikes the application out of its list, in accordance with Article 37 § 1 (c) of the Convention.

II. ALLEGED VIOLATION OF ARTICLE 6 OF THE CONVENTION AND ARTICLE 1 OF PROTOCOL NO. 1 TO THE CONVENTION

40. The second applicant complained about the quashing of a final judgment in his favour. The Court will examine this complaint under Article 6 of the Convention and Article 1 of Protocol No. 1 to the Convention. These provisions read as follows:

Article 6 § 1

"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

"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."

A. Admissibility

41. The Government contested the admissibility of the application as being incompatible *ratione materiae* with the provisions of the Convention. They referred to the cases of *Schouten and Meldrum v. Netherlands* (dec., nos. 19005/91 and 19006/91, 9 December 1994) and *Finkelberg v. Latvia* (dec., no. 55091/00, 18 October 2001) and argued that the second applicant's pension dispute had involved the interpretation of pension legislation rather than the determination of his right to pension benefits, and that the manner of the calculation of an old-age pension belonged to the public law domain.

42. The second applicant disagreed with the Government and maintained his complaint.

43. The Court firstly notes that a dispute as to the amount of an applicant's pension entitlement is of a pecuniary nature and undeniably concerns a civil right within the meaning of Article 6 § 1 (see *Schuler-Zgraggen v. Switzerland*, judgment of 24 June 1993, Series A no. 263, p. 17, § 46; *Massa v. Italy*, judgment of 24 August 1993, Series A no. 265-B, p. 20, § 26; *Süßmann v. Germany*, judgment of 16 September 1996, *Reports of Judgments and Decisions* 1996-IV, p. 1170, § 42 and, as a recent authority, *Tričković v. Slovenia*, no. 39914/98, § 40, 12 June 2001). As regards the case-law cited by the Government, it is not directly relevant to the case at issue as the *Finkelberg* case concerned tax and not pension matters, whilst *Schouten and Meldrum* related to the applicability of Article 6 § 1 to disputes over employers' contributions under social-security schemes, as distinct from entitlement to benefits under such schemes.

44. On the facts, the Court observes that when having brought the proceedings against the pension authority, the second applicant sought the increase in his old-age pension and did not attempt to challenge, as such, any legislative provision. This being so, the Court concludes that the second applicant's dispute was of a pecuniary nature and determined his civil rights within the meaning of Article 6 § 1. It also finds that the second applicant's "possessions", within the meaning of Article 1 of Protocol No. 1, were engaged. Accordingly, the Government's objection must be dismissed.

45. The Court notes 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.

B. Merits

Article 6 § 1 of the Convention

46. The Government alleged that the judgment in the second applicant's favour had been quashed by the Presidium of the Belgorod Regional Court with a view to correcting a judicial error. The Government referred to the fact that the second applicant's dispute about his pension increase had been a part of a complex general problem caused by the vagueness of the Federal Law on Calculating and Upgrading State Pensions. The ambiguity was eliminated by an instruction passed on 29 December 1999 by the Ministry of Labour and Social Development to clarify how this law should be interpreted and applied. All disputes similar to the second applicant's one were resolved in accordance with this instruction thereafter. Furthermore, the lawfulness of the instruction was later confirmed by the Supreme Court of Russia on 24 April, 25 May and 3 August 2000.

47. The second applicant contested the Government's allegations and maintained his complaint.

48. The Court observes that the issue in the present case is whether the supervisory review procedure permitting a final judgment to be quashed can be considered compatible with Article 6 § 1 and, in particular, whether on the facts of the present case the principle of legal certainty was respected.

49. The Court finds that this application is similar to the case of *Ryabykh v. Russia* (no. 52854/99, ECHR 2003-IX), where it was said, in so far as relevant for present purposes:

> "51. ... 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 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...
>
> 54. The Court notes that the supervisory review of the judgment ... was set in motion by the President of the Belgorod Regional Court – who was not party to the proceedings ... As with the situation under Romanian law examined in Brumărescu, the exercise of this power by the President was not subject to any time-limit, so that judgments were liable to challenge indefinitely.
>
> 55. The Court reiterates that Article 6 § 1 secures to everyone the right to have any claim relating to his civil rights and obligations brought before a court or tribunal. In

> this way it embodies the "right to a court", of which the right of access, that is the right to institute proceedings before courts in civil matters, constitutes one aspect. However, that right would be illusory if a Contracting State's domestic legal system allowed a final, binding judicial decision to remain inoperative to the detriment of one party. It would be inconceivable that Article 6 § 1 should describe in detail procedural guarantees afforded to litigants – proceedings that are fair, public and expeditious – without protecting the implementation of judicial decisions; to construe Article 6 as being concerned exclusively with access to a court and the conduct of proceedings would be likely to lead to situations incompatible with the principle of the rule of law which the Contracting States undertook to respect when they ratified the Convention (see *Hornsby v. Greece*, judgment of 19 March 1997, *Reports of Judgments and Decisions* 1997-II, p. 510, § 40).
>
> 56. The Court considers that the right of a litigant to a court would be equally illusory if a Contracting State's legal system allowed a judicial decision which had become final and binding to be quashed by a higher court on an application made by a State official."

50. Furthermore, the Court has found in this respect in the *Sovtransavto Holding v. Ukraine* case (judgment of 25 July 2002, *Reports of Judgments and Decisions* 2002-VII, § 77):

> "...judicial systems characterised by the objection (protest) procedure and, therefore, by the risk of final judgments being set aside repeatedly, as occurred in the instant case, are, as such, incompatible with the principle of legal certainty that is one of the fundamental aspects of the rule of law for the purposes of Article 6 § 1 of the Convention, read in the light of *Brumărescu* ..."

51. The Court notes that in the present case on an unspecified date the President of the Belgorod Regional Court filed an extraordinary appeal against the judgment of 23 September 1999 which had become final. On 1 February 2001 the Presidium of the Belgorod Regional Court quashed that judgment as erroneous and upheld the judgment of 27 May 1999 by which the second applicant's claims were dismissed.

52. The Court does not find any reason for departing from its aforementioned case-law. It considers that there has been a violation of Article 6 § 1 in respect of the quashing of the final and binding judgment given in the applicant's case.

Article 1 of Protocol No. 1 to the Convention

53. The Government contended that the second applicant had not acquired property since the judgment which conferred a title on him had been unlawful. They concluded that Article 1 of Protocol No. 1 had not been violated by the quashing of the judgment of 23 September 1999.

54. The applicant disagreed with the Government's arguments and maintained his complaint.

55. The Court reiterates that the Convention does not guarantee, as such, the right to an old-age pension or any social benefit in a particular amount (see, for example, *Aunola v. Finland* (dec.), no. 30517/96, 15 March 2001).

However a “claim” – even concerning a pension – can constitute a “possession” within the meaning of Article 1 of Protocol No. 1 where it has a sufficient basis in national law, for example where it is confirmed by a final court judgment (see *Pravednaya v. Russia*, no. 69529/01, § 38, 18 November 2004, and *Kopecký v. Slovakia* judgment, [GC], no. 44912/98, § 35, ECHR 2004-...).

56. The judgment of the Oktyabrskiy District Court of 23 September 1999 as upheld by the Belgorod Regional Court on 16 November 1999 provided the second applicant with an enforceable claim to receive an increased pension with an IPC of 0.7 and arrears of RUR 3,222.6. It became final and binding after it had been upheld on appeal, and enforcement proceedings were instituted. In the Court’s view, the applicant therefore had a “possession” for the purposes of Article 1 of Protocol No. 1.

57. The Court finds that the quashing on 1 February 2001 of the judgment of 23 September 1999 deprived the second applicant of his entitlement to the increased pension, and therefore constituted an interference with the applicant’s right to the peaceful enjoyment of possessions guaranteed by Article 1 of Protocol No. 1 (see *Brumărescu v. Romania* [GC], no. 28342/95, § 74, ECHR 1999-VII, and *Pravednaya*, cited above, § 39).

58. While the Court accepts that this measure was lawful and pursued the public interest (such as, for example, an efficient and harmonised State pension scheme), its compliance with the requirement of proportionality is open to question.

59. It is true that recalculation of a pension and its subsequent reduction does not, as such, violate Article 1 of Protocol No. 1 (*Skorkiewicz v Poland* (dec.), no. 39860/98, 1 June 1998). However, backdating the recalculation with the effect that the sums due were reduced involved an individual and excessive burden for the applicant and was incompatible with Article 1 of the Protocol. In this respect, the Court recalls the aforementioned *Pravednaya* judgment where it was said:

> “40. ... 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).”

60. The Court does not find it necessary to depart from its conclusions in that judgment and concludes that there has been a violation of Article 1 of Protocol No. 1 in the present case.

III. OTHER ALLEGED VIOLATIONS OF THE CONVENTION

61. The second applicant further relied on Article 2 of the Convention in that the present amount of his old-age pension was insufficient to maintain a proper living standard.

62. The Court recalls that the Convention does not guarantee, as such, the right to a certain living standard. It further notes that a complaint about a wholly insufficient amount of pension and the other social benefits may, in principle, raise an issue under Article 3 of the Convention which prohibits inhuman or degrading treatment. However, on the basis of the material in its possession, the Court finds no indication that the amount of the second applicant's pension has caused such damage to his physical or mental health capable of attaining the minimum level of severity falling within the ambit of Article 3 of the Convention, or that he faces any "real and immediate risk" either to his physical integrity or his life, which would warrant the application of Article 2 of the Convention in the present case (see, in a similar context, *Larioshina v. Russia* (dec.), no. 56869/00, 23 April 2002 or *Volkova v. Russia* (dec.), no. 48758/99, 18 November 2003).

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

IV. APPLICATION OF ARTICLE 41 OF THE CONVENTION

64. 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."

65. The applicant did not submit any claims for just satisfaction. Accordingly, the Court considers that there is no call to award him any sum on that account.

FOR THESE REASONS, THE COURT UNANIMOUSLY

1. *Decides* to strike the application out of its list of cases, in so far as the first applicant's complaint is concerned;

2. *Declares* the complaint concerning the quashing of the final judgment in the second applicant's favour admissible and the remainder of the application inadmissible;

3. *Holds* that there has been a violation of Article 6 of the Convention;

4. *Holds* that there has been a violation of Article 1 of Protocol No. 1 to the Convention.

Done in English, and notified in writing on 25 October 2005, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

S. DOLLÉ J.-P. COSTA
Registrar President