



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

FIRST SECTION

CASE OF SMARYGIN v. RUSSIA

(Application no. 73203/01)

JUDGMENT

STRASBOURG

1 December 2005

FINAL

01/03/2006

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 Smarygin v. Russia,

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

Mr C.L. ROZAKIS, *President*,

Mrs N. VAJIĆ,

Mrs S. BOTOCHAROVA,

Mr A. KOVLER,

Mrs E. STEINER,

Mr D. SPIELMANN,

Mr S.E. JEBENS, *judges*,

and Mr S. NIELSEN, *Section Registrar*,

Having deliberated in private on 10 November 2005,

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

PROCEDURE

1. The case originated in an application (no. 73203/01) 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, Mr Oleg Trofimovich Smarygin (“the applicant”), on 26 January 2001.

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

3. The applicant alleged, in particular, that the judgment of 21 September 1999 by the Chernyshevskiy District Court in his favour was later quashed by way of supervisory review.

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 2 September 2004, the Court declared the application admissible.

6. The applicant, but not the Government, filed observations on the merits (Rule 59 § 1).

7. On 1 November 2004 the Court changed the composition of its Sections (Rule 25 § 1). This case was assigned to the newly composed First Section (Rule 52 § 1).

THE FACTS

I. THE CIRCUMSTANCES OF THE CASE

8. The applicant in was born in 1931 and lives in the Chita Region.

9. In 1973 the applicant, then a miner, was injured at work. In 1999 the applicant filed with the Chernyshevskiy District Court of the Chita Region two actions against his former employer, a private company. He claimed compensation for non-pecuniary damage (*возмещение морального вреда*) caused to him by the injury, and payment of a “lump-sum allowance” (*единовременное пособие*). This allowance pertained to victims of industrial accidents.

10. On 21 September 1999 the Chernyshevskiy District Court delivered two judgments in the applicant’s favour. The Court granted RUR 11,582.80 for non-pecuniary damage and RUR 30,000 as the lump-sum allowance. The judgments were not appealed against and became final. Bailiffs instituted enforcement proceedings in this respect.

11. On an unspecified date the defendant applied to the President of the Chita Regional Court for “supervisory review” of the case (see the “Relevant Domestic Law” part below).

12. On 13 July 2000 the President of the Chita Regional Court lodged with the Regional Court an extraordinary appeal (*протест в порядке надзора*) against the judgments of 21 September 1999. A copy of the appeal was sent to the applicant. The President stated that the relevant provisions concerning compensation for non-pecuniary damage and payment of a “lump-sum allowance” had entered into force in 1992, while the injury had been inflicted in 1973. The President concluded that the lower court had erroneously applied the legislation retroactively.

13. On 10 August 2000 the Presidium of the Chita Regional Court examined the appeal under the presidency of the Court’s President. The applicant, who was not present, submitted his objections in writing.

14. The Presidium found that the Chernyshevskiy District Court of the Chita Region had erroneously applied the legislation of 1992 to the facts which had taken place in 1973. As a result the Presidium quashed the two judgments of 21 September 1999 and adopted two new judgments, dismissing the applicant’s claims in full.

II. RELEVANT DOMESTIC LAW

15. Article 11 of the Code of Civil Procedure of 1964 then in force provided that regional and higher courts may conduct “supervisory review” of the decisions of the lower courts. This means, according to Articles 319, 320 and 327, that specific senior judicial officers may, at any time, on the

request by a party or of their own motion, lodge with a higher court an “extraordinary appeal” (*npomecm*) against the final decision on all questions of fact and law. If an “extraordinary appeal” is lodged, the proceedings recommence and execution of the final judgment may be adjourned (Article 323). The “supervisory review” procedure is separate from proceedings for review on the basis of new facts (Articles 333 -337).

16. For further details concerning the supervisory review proceedings see the case *Ryabykh v. Russia*, no. 52854/99, §§31-42, ECHR 2003-IX.

THE LAW

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

17. The applicant complains that the award made in his favour was subsequently quashed by way of supervisory review upon the appeal of the President of the Chita Regional Court. This complaint falls to be examined under Article 6 and Article 1 of Protocol No. 1 to the Convention.

Article 6 of the Convention, in so far as relevant, provides as follows:

“1. In the determination of his civil rights and obligations ... everyone is entitled to a fair and public hearing ... by an impartial tribunal ... ”

Article 1 of Protocol no. 1 to the Convention provides 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.”

18. The Government alleged that the judgment in the applicant’s favour had been quashed by the Presidium of the Chita Regional Court with a view to correcting a judicial error. The Government referred to the fact that the applicant had been injured in 1973. The legislation then in force did not provide for the compensation sought by the applicant. The legal provisions applied by the first instance court had entered into force only in 1992 and could not be applied retrospectively. The Government further maintained that the supervisory proceedings had complied with the Code of Civil Procedure, and therefore the quashing of the subordinate court’s judgments could not be said to have violated the applicant’s right to fair trial. In the

Government's opinion, the participation of the President of the Regional Court in the supervisory review proceedings "made no difference" because the rapporteur at the supervisory review hearing was a different judge. As to whether the applicant's property rights have been violated, the Government contended that the applicant had not acquired property since the judgments which conferred the title on him were unlawful. They conclude that neither Article 6 § 1 nor Article 1 of Protocol 1 has been violated by the quashing of the judgments in question.

19. The applicant contested the Government's allegation and maintains his complaints.

A. Supervisory review: substantive issues

20. 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, in its relevant part, declares 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* [GC], no. 28342/95, § 61, ECHR 1999-VII).

21. The Court has found a violation of the above principle of legal certainty and of the right to a court in the case of *Ryabykh v. Russia*, where a final and binding judgment in the applicant's favour was set aside, on the ground of misinterpretation of the law, by a higher court in supervisory review proceedings following an application by a president of a regional court, whose power to make such applications was not subject to any time-limit, so that judgments were liable to challenge indefinitely (see *Ryabykh v. Russia*, cited above, §§ 51-58). This approach was later confirmed in several Russian and Ukrainian cases concerning the supervisory review system, almost identical in two countries (see *Volkova v. Russia*, no. 48758/99, 5 April 2005; *Tregubenko v. Ukraine*, no. 61333/00, 2 November 2004).

22. The Court further reiterates that a judgment debt may be regarded as a "possession" for the purposes of Article 1 of Protocol No. 1 (see, among other authorities, *Burdov v. Russia*, no. 59498/00, § 40, ECHR 2002-III). Quashing such a judgment after it has become final and unappealable will constitute an interference with the judgment beneficiary's right to the peaceful enjoyment of that possession (see *Brumărescu*, cited above, § 74). In the case *Tregubenko* (see above) the Court found a violation of Article 1 of Protocol no. 1 to the Convention in that the quashing of a final judgment of pecuniary nature in the applicant's favour constituted a disproportionate interference with his right to the peaceful enjoyment of his possessions. The Court dismissed the Government's argument that the quashing was justified

by the need to correct a judicial error committed by a lower court (§§ 54-55).

23. Turning to the circumstances of the present case the Court observes that, by allowing the application lodged by the President of the Chita Regional Court, the Presidium of the Chita Regional Court set at naught an entire judicial process which had ended in a final and binding judicial decision of 21 September 1999 by the Chernyshevskiy District Court and thus *res judicata*. The Court finds no reason to depart from its reasoning in the aforementioned *Ryabykh* and follow-up cases. It concludes that the setting aside of the judgment of 21 September 1999 in supervisory review proceedings for the sake of correcting an alleged judicial error violated the principle of legal certainty enshrined in Article 6 § 1 of the Convention and constituted an unjustified interference with the applicant's possessions, protected by virtue of Article 1 of Protocol no. 1 to the Convention.

24. There has accordingly been a violation of Article 6 § 1 of the Convention and Article 1 of Protocol no. 1 to the Convention.

B. Supervisory review: procedural issues

25. The Court finds that, having concluded that there has been an infringement of the applicant's "right to a court" by the very use of the supervisory review procedure, it is not necessary to consider separately whether the procedural guarantees of Article 6 of the Convention were respected during those proceedings (see *Ryabykh v. Russia*, no. 52854/99, § 59, 24 July 2003).

II. APPLICATION OF ARTICLE 41 OF THE CONVENTION

26. 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."

27. The applicant claimed RUR 40,000 (approximately 1,130 euros) for pecuniary damage and RUR 60,000 (approximately 1,700 euros) for non-pecuniary damage suffered as a result of the quashing of the final judgment favourable to him.

28. The Government disagreed with the amount claimed by the applicant, arguing that in the present case the mere fact of finding a violation could be considered to be sufficient just satisfaction.

29. As regards the pecuniary damage, allegedly sustained by the applicant, the Court notes the following. The applicant was awarded RUR 41,582, to be recovered from a private company. As the Court has

already found (see above) this judgment debt constituted his “possessions” within the meaning of Article 1 of Protocol no. 1 to the Convention. The Government produced no information as to whether this judgment debt was recoverable in practice. Therefore, the Court is of the view that the applicant should be compensated for the money that he would have received if the final judgment in his favour had been fully enforced (see *Poltorachenko v. Ukraine*, no. 77317/01, § 50, 18 January 2005). The Court notes, at the same time, that the applicant claimed only RUR 40,000 under this head. It therefore awards him RUR 40,000 in pecuniary damages, plus any tax that may be chargeable to that amount.

30. As to the non-pecuniary damage, the Court considers that the applicant must have suffered a certain amount of stress and frustration as a result of the quashing of the final judgment of 21 September 1999. On an equitable basis it awards him EUR 1,000 for non-pecuniary damage, plus any tax that may be chargeable on that amount.

C. Default interest

31. 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. *Holds* that there has been a violation of Article 6 § 1 of the Convention and Article 1 of Protocol No. 1 to the Convention;
2. *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, RUR 40,000 (fourty thousand Russian roubles) in respect of pecuniary damage, and EUR 1,000 (one 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;

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

Done in English, and notified in writing on 1 December 2005, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Søren NIELSEN
Registrar

Christos ROZAKIS
President