



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

FIRST SECTION

CASE OF CHERNITSYN v. RUSSIA

(Application no. 5964/02)

JUDGMENT

STRASBOURG

6 April 2006

FINAL

13/09/2006

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 Chernitsyn v. Russia,

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

Mr C.L. ROZAKIS, *President*,

Mr L. LOUCAIDES,

Mrs F. TULKENS,

Mr P. LORENZEN,

Mrs N. VAJIĆ,

Mrs S. BOTOCHAROVA,

Mr A. KOVLER, *judges*,

and Mr S. NIELSEN, *Section Registrar*,

Having deliberated in private on 16 March 2006,

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

PROCEDURE

1. The case originated in an application (no. 5964/02) 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 Ivan Petrovich Chernitsyn, on 18 January 2002.

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

3. The applicant alleged, in particular, a violation of his right of a fair trial under Article 6 of the Convention in that the final judicial decisions in his case were quashed in the supervisory-review procedure.

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 8 July 2004 the Court declared the application partly admissible.

6. 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).

7. The applicant and the Government each filed observations on the merits (Rule 59 § 1). They further commented on each other’s observations.

THE FACTS

I. THE CIRCUMSTANCES OF THE CASE

8. The applicant was born in 1931 and lives in Krasnodar.

A. Domestic proceedings

9. In 1993 the applicant sued his former employer, the public company “KAPRSM”, for unpaid compensation for a work-related injury, caused by a lorry owned by another company, “KTS”.

10. On 21 April 1997 the Takhtamukayskiy District Court found for the applicant and awarded him a lump sum and life-long monthly payments. The lump sum was made up of the principal amount, interest thereon and a penalty for belated payments.

11. On 3 June 1997 the Supreme Court of the Adygheya Republic set aside the judgment in the part concerning the claim for penalty and remitted that claim for a new examination. It upheld the remainder of the judgment. The claim for penalty was subsequently examined by courts of various levels. As of March 2002 the claim was pending before the District Court.

12. On 15 March 2002 the acting President of the Takhtamukayskiy District Court lodged an application (*представление*) with the Supreme Court of the Adygheya Republic to quash the judgment of 21 April 1997 and all other judgments in the case, because the defendant in the applicant’s action should have been KTS that had owned the lorry rather than KAPRSM that had been the applicant’s employer.

13. According to the Government, on 15 August 2002 the Supreme Court informed the applicant that the above application would be examined at a hearing on 27 August 2002.

14. On 27 August 2002 the Presidium of the Supreme Court of the Adygheya Republic granted the application and quashed the previous judgments, including those of 21 April and 3 June 1997. It found that those judgments had been unlawful because the lower courts had failed to determine the proper defendant. The applicant’s claims were remitted for a new examination.

15. In the resumed proceedings, on 12 May 2003 the Takhtamukayskiy District Court established that the applicant had been informed of the possibility to substitute the legal successor of the KTS company as the proper defendant and to join the regional branch of the Social Security Fund as a third party, but he had not agreed to the substitution. His claim was therefore dismissed as being directed against an improper defendant.

B. Proceedings before the Court

16. In his observations on the admissibility and merits of the case of 25 November 2003, the applicant made certain abrasive remarks which prompted the respondent's Government request to declare the application inadmissible as an abuse of the right of petition.

17. In its admissibility decision of 8 July 2004, the Court rejected the Government's request for the reason that they had not identified the allegedly abusive expressions or passages in the applicant's submissions and as the application had not been knowingly based on untrue facts. The Court noted, nevertheless, that some of the applicant's statements had been irrelevant and excessively emotional.

18. In September 2004 the applicant and the Government filed their observations on the merits of the application. The Section President set 11 November 2004 as the time-limit by which the parties could submit written comments in reply to each other's observations.

19. In a letter of 19 October 2004, the applicant commented on the Government's observations in the same abrasive manner.

20. In their observations on the merits of the case and letters of 14 December 2004 and 18 January 2005, the Government invited the Court to declare the application inadmissible as an abuse of the right of petition. Drawing a parallel between the conduct of Mr L.R. (see *L. R. v. Austria*, no. 2424/65, Commission decision of 24 May 1966) and that of the applicant, they claimed that the expressions used by the applicant were even more insulting than those used by Mr L. R. against the representatives of the Austrian Government. The Government reproached the Court for not having invited the applicant to withdraw or amend the objectionable statements. They submitted that the applicant's letter of 19 October 2004 was a further evidence of his abusive attitude to the proceedings before the Court.

21. On 29 September 2005 the Court considered the Government's request to declare the application inadmissible in connection with the applicant's persistent use of offensive language and invited the applicant to withdraw his inappropriate remarks and to offer a formal apology.

22. By letter of 3 November 2005, the applicant informed the Court as follows (translated from Russian):

"I formally withdraw my rough remarks about the Government and about the Government's representative Mr Laptev which were considered offensive. I also offer my sincere apology to the Court, to the Government and to Mr Laptev. It was not my intention to offend anyone..."

23. In their comments on the applicant's letter, the Government asked the applicant to identify the expressions he apologised for.

THE LAW

I. THE GOVERNMENT'S REQUEST TO DECLARE THE APPLICATION INADMISSIBLE AS AN ABUSE OF THE RIGHT OF PETITION

24. The Court will examine the Government's request to declare the application inadmissible from the standpoint of Article 35 which provides, in the relevant parts, as follows:

“3. The Court shall declare inadmissible any individual application... which it considers... an abuse of the right of application.

4. The Court shall reject any application which it considers inadmissible under this Article. It may do so at any stage of the proceedings.”

25. The Court reiterates that, in principle, an application may only be rejected as abusive under Article 35 §§ 3 and 4 of the Convention if it was knowingly based on untrue facts, even if it uses offensive language (see *Řehák v. the Czech Republic* (dec.), no. 67208/01, 18 May 2004; *Varbanov v. Bulgaria*, judgment 5 October 2000, no. 31365/96, § 36, ECHR 2000-X; *Akdivar and Others v. Turkey*, judgment of 16 September 1996, *Reports of Judgments and Decisions* 1996-IV, §§ 53-54). However, the persistent use of insulting or provocative language by an applicant may be considered an abuse of the right of application within the meaning of Article 35 § 3 of the Convention (see *Manoussos v. the Czech Republic and Germany* (dec.), no. 46468/99, 9 July 2002; *Duringer and Others v. France* (dec.), nos. 61164/00 and 18589/02; *Stamoulakatos v. the United Kingdom*, no. 27567/95, Commission decision of 9 April 1997).

26. The Court observes that both the applicant's memorandum of 25 November 2003 and his letter of 19 October 2004, to which the respondent Government made reference, contained serious accusations against politicians, judges and law-enforcement officials of the respondent State. The applicant questioned the integrity of the representative of the Russian Federation before the Court and alleged that he acted in bad faith. Having regard to the principles established in its case-law, the Court considers that these statements did not amount to a legitimate exercise of the right to freedom of expression (cf. *Stamoulakatos v. Greece*, no. 32857/96, Commission decision of 3 December 1997).

27. Nevertheless, the Court is satisfied that in his observations on the merits of the application, of 4 September 2004, the applicant refrained from using provocative or offensive language. Furthermore, following the Court's formal warning, on 3 November 2005 the applicant withdrew his offensive remarks and offered an apology to the Court, the respondent

Government and their representative in the proceedings. The applicant's objectionable statements may thus be considered to have been withdrawn.

28. In these circumstances, the Court finds that the grounds which might have led to a decision on inadmissibility of the application as an abuse of the right of petition, have ceased to exist. Accordingly, it dismisses the Government's request to declare the application inadmissible.

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

29. The applicant complained under Article 6 § 1 of the Convention that on 27 August 2002 the Supreme Court of the Adygheya Republic quashed the final judgment of 21 April 1997 by way of supervisory review. Article 6 § 1 reads as follows:

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

A. Submissions by the parties

30. The applicant pointed out that a first judgment against the allegedly improper defendant had been made as long ago as on 17 May 1993. That “mistake” had been perpetuated in the subsequent judgments of the District and Supreme Courts, all of which had been issued against the same defendant. The applicant submitted that the fault had not been his, but that of the domestic courts who had accepted and entertained a civil action against the “wrong” defendant. It was not until eight years later that the defendant's identity had been for the first time questioned by the Presidium of the Supreme Court.

31. The Government claimed that the Supreme Court of the Adygheya Republic had decided to re-open the proceedings with a view to correcting a miscarriage of justice. The applicant's former employer, the KAPRSM company, was to be replaced, as the defendant, with the KTS company that had owned the “hazardous device” and had therefore strict liability for the injury caused to the applicant. The Government alleged that the re-opening of the proceedings had been necessary to remedy substantial breaches of substantive and procedural law.

B. The Court's assessment

32. The Court notes that the issue to be determined is whether the applicant's “right to a court” has been respected in so far as the final judgment in his favour had been quashed by way of supervisory review.

33. The Court has already found a violation of an applicant's “right to a court” guaranteed by Article 6 § 1 of the Convention in many cases in

which a judicial decision that had become final and binding, was subsequently quashed by a higher court on an application by a State official whose power to intervene was not subject to any time-limit (see *Roseltrans v. Russia*, no. 60974/00, §§ 27-28, 21 July 2005; *Volkova v. Russia*, no. 48758/99, §§ 34-36, 5 April 2005; *Ryabykh v. Russia*, no. 52854/99, §§ 51-56, ECHR 2003-IX, with further references).

34. Turning to the instant case, the Court notes that on 21 April 1997 the Takhtamukayskiy District Court awarded the applicant a fixed amount and monthly payments for future periods. On 3 June 1997 the Supreme Court of the Adygheya Republic upheld that judgment in its essential aspects, excepting the claim for penalty. The judgment thus became final. On 27 August 2002, that is more than five years later, the judgment was quashed in the framework of the supervisory-review procedure initiated by the acting president of the district court who was a State official and not a party to the proceedings (see paragraph 12 above).

35. In the light of the above circumstances, the Court does not find any reason for departing from its aforementioned judgments. The developments in the proceedings that followed on, are of no relevance as there existed no domestic remedies capable of remedying the impairment of the principle of legal certainty brought about by the use of the supervisory-review procedure (see *Sardin v. Russia* (dec.), no. 69582/01, ECHR 2004-II; *Ryabykh v. Russia* (dec.), no. 52854/99, 21 February 2002).

There has therefore been a violation of Article 6 § 1 of the Convention on account of quashing of the final judgment given in the applicant's case.

III. APPLICATION OF ARTICLE 41 OF THE CONVENTION

36. 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

37. The applicant claimed 65,000 euros (EUR) in respect of compensation for non-pecuniary damage. As to compensation for the pecuniary damage, the applicant claimed 198,733 Russian roubles (RUR) representing the penalty which would have accrued to him under the judgment of 21 April 1997 during the period from April 1997 to August 2004, adjusted for inflation, and an unspecified amount as a “fine” for having set aside his claim for penalty.

38. The Government considered that the finding of a violation would constitute a sufficient just satisfaction for the non-pecuniary damage sustained by the applicant. No award in respect of the pecuniary damage should be made because the judgment in question had been set aside on appeal.

39. As regards the claim for the pecuniary damage, the Court notes that the part of the judgment of 21 April 1997 concerning the claim for penalty had been set aside on an ordinary appeal on 3 June 1997 (see paragraph 11 above). It follows that there is no causal link between the violation found in the present case, that is quashing of the judgment of 21 April 1997 by way of supervisory-review proceedings in 2002, and the pecuniary damage claimed by the applicant. As the applicant did not claim that the quashing of that judgment in 2002 had caused him any other pecuniary damage, the Court finds no cause to make an award in respect of the pecuniary damage.

40. As regards the claim for the non-pecuniary damage, the Court finds the amount claimed by the applicant excessive. Making its assessment on an equitable basis, it awards him EUR 2,000, plus any tax that may be chargeable on that amount.

B. Costs and expenses

41. The applicant claimed RUR 8,685 for postage and copying expenses, RUR 25,400 for legal expenses in the domestic proceedings, EUR 3,000 for legal expenses in the Strasbourg proceedings, RUR 12,350 for domestic transport expenses, and RUR 76,400 for medical treatment.

42. The Government pointed out that the medical expenses, as well as the legal and transport expenses in the domestic proceedings, were not related to the present application. Of the expenses incurred in the Strasbourg proceedings, documentary evidence was submitted only in respect of the amount of RUR 1,085.

43. According to the Court's case-law, an applicant is entitled to reimbursement of his costs and expenses only in so far as it has been shown that these have been actually and necessarily incurred and were reasonable as to quantum. The Court rejects the applicant's claim in so far as it related to the costs incurred in the domestic proceedings because there is no causal link between the violation found and those expenses. As regards the Strasbourg proceedings, the case-file contains a copy of a legal services agreement between the applicant and a certain Mr Kolomiets. However, it does not appear that Mr Kolomiets has made any submissions on the applicant's behalf. In the present case, regard being had to the information in its possession and the above criteria, the Court considers it reasonable to award the sum of EUR 200, plus any tax that may be chargeable.

C. Default interest

44. 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;
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, the following amounts, to be converted into Russian roubles at the rate applicable at the date of settlement:
 - (i) EUR 2,000 (two thousand euros) in respect of non-pecuniary damage;
 - (ii) EUR 200 (two hundred euros) in respect of costs and expenses;
 - (iii) 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 amounts 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 6 April 2006, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Søren NIELSEN
Registrar

Christos ROZAKIS
President