



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

FIRST SECTION

CASE OF PRISYAZHNIKOVA AND DOLGOPOLOV v. RUSSIA

(Application no. 24247/04)

JUDGMENT

STRASBOURG

28 September 2006

FINAL

28/12/2006

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 Prisyazhnikova and Dolgopolov 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,

Mrs N. VAJIĆ,

Mr A. KOVLER,

Mr D. SPIELMANN,

Mr S.E. JEBENS, *judges*,

and Mr S. NIELSEN, *Section Registrar*,

Having deliberated in private on 7 September 2006,

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

PROCEDURE

1. The case originated in an application (no. 24247/04) 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 two Russian nationals, Ms Inna Nikolayevna Prisyazhnikova and Mr Nikolay Nikolayevich Dolgopolov (“the applicants”), on 28 May 2004.

2. The second applicant was represented before the Court by the first applicant, Ms I. Prisyazhnikova. 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 27 September 2004 the Court decided to communicate the application 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. On 30 August 2005 the Court put additional questions to the parties.

THE FACTS

I. THE CIRCUMSTANCES OF THE CASE

4. The applicants were born 1966 and 1934 respectively, and live in Neryungri in the Sakha (Yakutiya) Republic of the Russian Federation.

5. The applicants brought a civil action against the Government, seeking to enforce State promissory notes for purchase of a Russian-made car or to recover the monetary value thereof.

6. On 17 March 2003 the Ust-Yanskiy District Court of the Sakha (Yakutiya) Republic found for the applicants and awarded 112,441.80 Russian roubles ("RUR") to the first applicant and RUR 107,327.82 to the second applicant against the Ministry of Finance.

7. On 23 April 2003 the Supreme Court of the Sakha (Yakutiya) Republic (hereinafter – "the Supreme Court") rejected an appeal by the Ministry of Finance and upheld the judgment.

8. The enforcement proceedings were opened on 15 May 2003, but the judgment was not enforced.

9. By interim decision of 11 August 2003, Judge R. of the Supreme Court of the Sakha (Yakutiya) Republic refused a request by the Ministry of Finance for obtaining the case file for the purpose of initiating supervisory-review proceedings. The Ministry had claimed that the courts had incorrectly applied the substantive law.

10. By letter of 20 October 2003, the Supreme Court's President rejected a renewed request by the Ministry of Finance for launching the supervisory-review proceedings.

11. On 9 June 2004 the Ministry of Finance introduced a new application for supervisory review of the judgments in the applicants' favour, founded on the same grounds as before.

12. On 30 September 2004 the Supreme Court's President issued an interim decision on remitting the applicants' cases for examination on the merits to the Supreme Court's Presidium by way of supervisory review. In the procedural part, the interim decision of 11 August 2003, but not the letter of 20 October 2003, was mentioned.

13. On 14 October 2004 the Presidium of the Supreme Court of the Sakha (Yakutiya) Republic, in a five-judge formation presided over by the Supreme Court's President, found that the lower courts had not taken into account certain provisions relating to reimbursement of State promissory notes. On that ground, relying on Articles 388 and 390 of the Code of Civil Procedure, the Presidium quashed the judgments in the applicants' favour and dismissed their claim as having no basis in the domestic law.

II. RELEVANT DOMESTIC LAW AND PRACTICE

A. Code of Civil Procedure of the Russian Federation

14. A judicial decision becomes legally binding after the appeal court has examined the matter (Article 209 § 1). A judicial decision must be

enforced once it became legally binding, unless the law provides for its immediate enforcement (Article 210).

15. The relevant provisions governing the supervisory-review proceedings read as follows:

Article 13. Binding force of judicial decisions

“1. Courts may issue judicial decisions in the form of judicial orders, judgments and interim decisions...”

Article 376. Right to apply to a court exercising supervisory review

“1. Judicial decisions that have become legally binding, with the exception for judicial decisions by the Presidium of the Supreme Court of the Russian Federation, may be appealed against... to a court exercising supervisory review, by parties to the case and by other persons whose rights or legal interests have been adversely affected by these judicial decisions.

2. Judicial decisions may be appealed against to a court exercising supervisory review within one year after they became legally binding...”

Article 378. Contents of an application for supervisory review

“An application for supervisory review must contain:

(1) the name of the court to which it is addressed;

...

(4) a reference to the first-instance, appeal or cassation courts that examined the case and a summary of their decisions;

(5) a reference to the judgment or decision which is being appealed against...”

Article 381. Examination of an application for supervisory review

“2. Having examined an application for supervisory review, the judge issues an interim decision on –

(1) obtaining the case file if there exist doubts as to the lawfulness of the judicial decision;

(2) refusing to obtain the case file if the arguments in the application for supervisory review may not, in accordance with the federal law, result in quashing of the judicial decision.

...

6. The President of the regional Supreme Court... may disagree with the judge's decision refusing to obtain the case file. In such case the President issues his own decision on obtaining the case file.”

Article 382. Examination of case files obtained by the supervisory-review court

“2. Having examined the case file obtained by the supervisory-review court, the judge issues an interim decision on –

– refusing to remit the case for examination on the merits by the supervisory-review court;

– remitting the case for examination of the application for supervisory review on the merits by the supervisory-review court.”

Article 383. Interim decision refusing to remit the case for examination on the merits by the supervisory-review court

“2. The President of the regional Supreme Court... may disagree with the judge's decision refusing to remit the case for examination on the merits by the supervisory-review court. In such case the President issues his own decision on remitting the case for examination on the merits by the supervisory-review court.”

Article 384. Decision on remitting the case for examination on the merits by a supervisory-review court

“1. A judicial decision on remitting the case for examination on the merits by a supervisory-review court must contain:

(7) a reasoned description of the grounds for remitting the case for examination on the merits...”

Article 390. Competence of the supervisory-review court

“1. Having examined the case by way of supervisory review, the court may

...

(5) quash or alter the judicial decision issued by a court of first, second or supervisory-review instance and issue a new judicial decision, without remitting the matter for a fresh examination, if substantive legal provisions have been erroneously applied or interpreted.”

B. Enforcement Proceedings Act (Law of 21 July 1997)

16. Once instituted, enforcement proceedings must be completed within two months upon receipt of the writ of execution by the bailiff (Section 13).

THE LAW

I. ALLEGED VIOLATION OF ARTICLE 6 § 1 OF THE CONVENTION AND ARTICLE 1 OF PROTOCOL No. 1 ON ACCOUNT OF QUASHING OF THE JUDGMENTS IN THE APPLICANTS' FAVOUR

17. The Court will firstly examine the applicants' complaint concerning the quashing of the judgments in their favour by way of supervisory-review proceedings. The applicants complained that the act of quashing had violated their “right to a court” under Article 6 § 1 of the Convention and their right to the peaceful enjoyment of possessions under Article 1 of Protocol No. 1. The relevant parts of these provisions read as follows:

Article 6 § 1

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

A. Admissibility

18. 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.

B. Merits

1. Alleged violation of Article 6 of the Convention

(a) Arguments by the parties

19. The Government submitted that the Presidium of the Supreme Court of the Sakha (Yakutiya) Republic had had lawful grounds to quash the judgments in the applicants' favour because their claims had been granted

mistakenly. Accordingly, there had been no violation of the applicants' "right to a court" under Article 6 § 1 of the Convention.

20. The applicants pointed out, firstly, that the Ministry's application for supervisory review had been lodged on 9 June 2004, that is more than a year after the judgments in their favour had become legally binding on 23 April 2003, whereas Article 376 of the Code of Civil Procedure established a one-year time-limit for lodging an application for supervisory review. Secondly, the interim decisions of 30 September and 14 October 2004 contradicted each other. Furthermore, the Presidium did not indicate any compelling reasons for quashing the final judgments in their favour. The applicants considered that the quashing of final judgments had irremediably impaired the principle of legal certainty and violated their right to peaceful enjoyment of possessions.

(b) The Court's assessment

21. 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 (see *Brumărescu v. Romania*, judgment of 28 October 1999, *Reports of Judgments and Decisions* 1999-VII, § 61).

22. This principle insists that no party is entitled to seek re-opening of the proceedings merely for the purpose of a rehearing and a fresh decision of the case. Higher courts' power to quash or alter binding and enforceable judicial decisions should be exercised for correction of fundamental defects. 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, *mutatis mutandis*, *Ryabykh v. Russia*, no. 52854/99, § 52, ECHR 2003-X; and *Pravednaya v. Russia*, no. 69529/01, § 25, 18 November 2004).

23. 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 and binding judicial decision to be quashed by a higher court on an application made by a State official whose power to lodge such an application is not subject to any time-limit, with the result that the judgments were liable to challenge indefinitely (see *Ryabykh*, cited above, §§ 54-56).

24. In the present case the judgments of 17 March 2003, as upheld on appeal on 23 April 2003, were set aside by way of supervisory review on the ground that the first-instance and appeal courts had erred in application of the substantive law. The Court has to assess whether the power to conduct a supervisory review was exercised by the authorities so as to strike, to the maximum extent possible, a fair balance between the interests of the individual and the need to ensure the proper administration of justice (see, *mutatis mutandis*, *Nikitin v. Russia*, no. 50178/99, §§ 57 and 59, ECHR 2004-...).

25. The Court takes note, firstly, of an exceptionally long period of time – more than thirteen months – that lapsed from the date the judgments in the applicants' favour had become legally binding to the date the supervisory-review proceedings were instituted. It observes that the Code of Civil Procedure (“CCP”) set a time-limit of one year for lodging an application for supervisory review, the starting point being the date on which the judicial decision became legally binding (Article 376 § 2 of the CCP). Since the term “judicial decision” encompassed both judgments and interim decisions (Article 13 § 1 of the CCP), it appears that each time an interim decision refusing institution of supervisory-review proceedings – such as the one of 11 August 2003 – was issued, the one-year time-limit started running anew. The laxity of time-limits for instituting supervisory-review proceedings permitted the defendant – the Ministry of Finance – to introduce three consecutive applications for supervisory review, of which the third one was lodged almost fourteen months after the judgments in the applicants' favour had become binding and enforceable.

26. The Court further observes that the Ministry's applications for supervisory review were founded on substantially similar arguments. The first was rejected by a Supreme Court judge, the second was dismissed by the Supreme Court President but the third was granted by the same President. It transpires from Articles 381 § 6 and 383 § 2 of the CCP that the President of a regional Supreme Court may overrule the decision of any other judge of the court, whereby that judge refused institution of supervisory-review proceedings. As the Court has already observed, the President's power to do so was not subject to any time-limit (see *Denisov v. Russia* (dec.), no. 33408/03, 6 May 2004).

27. Furthermore, the Court notes that under the Russian Code of Civil Procedure the President's power to overrule decisions of other judges is not circumscribed in any way. The President has an unfettered discretion to initiate supervisory-review proceedings, a mere “disagreement” with the ordinary judge's decision being a sufficient ground for doing so (see Articles 381 § 6 and 383 § 2 of the CCP). The President needs no application by a party to exercise that discretion and may take such initiative at any time.

28. 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 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; and *Ryabykh*, cited above, §§ 51-56). The Government did not put forward any arguments which would enable the Court to reach a different conclusion in the present case. The Court therefore finds that the quashing of the judgments of 17 March 2003, as upheld on appeal on 23 April 2003, by way of supervisory-review proceedings initiated by the President of the Supreme Court of the Sakha (Yakutiya) Republic, infringed the principle of legal certainty and the applicants' "right to a court". There has been, accordingly, a violation of Article 6 § 1 of the Convention.

2. Alleged violation of Article 1 of Protocol No. 1

29. The Court reiterates that the existence of a debt confirmed by a binding and enforceable judgment furnishes the judgment beneficiary with a "legitimate expectation" that the debt would be paid and constitutes the beneficiary's "possessions" within the meaning of Article 1 of Protocol No. 1. Quashing of such a judgment amounts to an interference with his or her right to peaceful enjoyment of possessions (see, among other authorities, *Brumărescu*, cited above, § 74; and *Androsov v. Russia*, no. 63973/00, § 69, 6 October 2005).

30. The Government denied that there had been an interference with the applicants' rights under Article 1 of Protocol No. 1 because they could have applied for redemption of promissory notes to the Savings Bank of Russia.

31. The Court observes that the applicants obtained binding and enforceable judgments in their favour, by the terms of which the Ministry of Finance was to pay them substantial amounts of money. They were prevented from receiving the award through no fault of their own. The quashing of the enforceable judgments frustrated the applicants' reliance on binding judicial decisions and deprived them of an opportunity to receive the money they had legitimately expected to receive. In these circumstances, even assuming that the interference was lawful and pursued a legitimate aim, the Court considers that the quashing of the enforceable judgments in the applicants' favour by way of supervisory review placed an excessive burden on the applicants and was incompatible with Article 1 of the Protocol No. 1. There has therefore been a violation of that Article.

II. ALLEGED VIOLATION OF ARTICLE 6 § 1 OF THE CONVENTION AND ARTICLE 1 OF PROTOCOL NO. 1 ON ACCOUNT OF LENGTHY NON-ENFORCEMENT OF THE JUDGMENTS

32. The applicants complained that continued non-enforcement of the judgments of 17 March 2003, as upheld on appeal on 23 April 2003, had violated their rights under Article 6 § 1 of the Convention and Article 1 of Protocol No. 1, both cited above.

A. Admissibility

33. The Government claimed that the application should be declared inadmissible in accordance with Article 35 § 4 of the Convention because the judgments in the applicants' favour had been quashed. The Supreme Court's Presidium had dismissed their claims.

34. The Court observes that the issue to be examined is whether the judgments in the applicants' favour were enforced within a “reasonable time”. Accordingly, it is necessary to ascertain that the judgments were “enforceable”. In the instant case, once the Supreme Court had dismissed an appeal against the judgments of 17 March 2003, in accordance with the Code of Civil Procedure the judgments became legally binding and enforceable (see paragraph 14 above). From that moment on, it was incumbent on the debtor, a State agency, to comply with them. Enforcement proceedings were initiated. The launching of the supervisory-review procedure could not, in itself, extinguish the debtor's obligation to comply with enforceable judgments which obligation existed until 14 October 2004 when the Supreme Court quashed those judgments.

35. It follows that at least from 23 April 2003 to 14 October 2004 the judgments in the applicants' favour were “enforceable” and it was incumbent on the State agency to abide by their terms. In any event, the Court reiterates that the quashing of a judgment in a manner which has been found to have been incompatible with the principle of legal certainty and the applicant's “right to a court” cannot be accepted as justification for the failure to enforce that judgment (see *Sukhobokov v. Russia*, no. 75470/01, § 26, 13 April 2006). Accordingly, the Government's objection must be dismissed.

36. The Court notes that the 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

37. The Government made no comments on the merits of the non-enforcement complaint.

38. The applicants maintained their claims.

39. The Court observes that the judgments of 17 March 2003 became enforceable on 23 April 2003. From that day on and at least until 14 October 2004 when they had been quashed by the Presidium of the Supreme Court, it was incumbent on the State agency to comply with them but it failed to execute them. In fact, the judgments have never been enforced.

40. The Court has frequently found violations of Article 6 § 1 of the Convention and Article 1 of Protocol No. 1 in cases raising issues similar to the ones in the present case (see, e.g., *Burdov v. Russia*, no. 59498/00, ECHR 2002-III; and, more recently, *Poznakhirina v. Russia*, no. 25964/02, 24 February 2005; *Wasserman v. Russia (no. 1)*, no. 15021/02, 18 November 2004).

41. Having examined the material submitted to it, the Court notes that the Government did not put forward any fact or argument capable of persuading it to reach a different conclusion in the present case. They did not advance any justification for the delay in enforcement. Having regard to its case-law on the subject, the Court finds that by failing for a substantial period to comply with the enforceable judgments in the applicants' favour the domestic authorities violated their right to a court and prevented them from receiving the money which they were entitled to receive. Accordingly, there has been a violation of Article 6 § 1 of the Convention and Article 1 of Protocol No. 1 on account of non-enforcement of the judgments of 17 March 2003, as upheld on 23 April 2003.

III. APPLICATION OF ARTICLE 41 OF THE CONVENTION

42. 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

43. In respect of compensation for the pecuniary damage, the applicants claimed RUR 124,441.80 for Ms Prisyazhnikova and RUR 119,626.82 for Mr Dolgoplov, representing the amounts which, in their view, should have been paid to them under the promissory notes. They further claimed jointly 100,000 US dollars in respect of non-pecuniary damage.

44. The Government considered that no pecuniary damage should be awarded because the judgments had been quashed. The claim for non-pecuniary damage was excessive and not justified.

45. The Court recalls that in the instant case it found a violation of Article 6 § 1 of the Convention and Article 1 of Protocol No. 1, in that the judgments in the applicants' favour had remained unenforced for a long period of time and had been subsequently quashed. The applicants were thereby prevented from receiving the money they had legitimately expected to receive. There has been therefore a causal link between the violations found and the applicants' claim for the pecuniary damage in so far as it covered the original awards. The applicants' right to receive bigger amounts was not upheld in the domestic proceedings and they did not claim any interest for the period that lapsed between the original award and the Court's judgment. Accordingly, the Court awards RUR 112,442 to Ms Prisyazhnikova and RUR 107,328 to Mr Dolgopolov in respect of the pecuniary damage, plus any tax that may be chargeable on those amounts, and dismisses the remainder of their claim for the pecuniary damage.

46. The Court further considers that the applicants suffered distress because of the State authorities' failure to enforce the judgments in their favour and their subsequent decision to quash them. The Court takes into account the amount and nature of the award in the instant case and the period of the authorities' inactivity. Making its assessment on an equitable basis, it awards each applicant the amount of EUR 2,400, plus any tax that may be chargeable on it.

B. Costs and expenses

47. The applicants did not claim costs or expenses and there is accordingly no call to make an award under this head.

C. Default interest

48. 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 application admissible;
2. *Holds* that there has been a violation of Article 6 of the Convention and Article 1 of Protocol No. 1 on account of the quashing of the judgments

of of 17 March 2003, as upheld on appeal on 23 April 2003, by way of supervisory review;

3. *Holds* that there has been a violation of Article 6 of the Convention and Article 1 of Protocol No. 1 on account of prolonged non-enforcement of the judgments of 17 March 2003, as upheld on appeal on 23 April 2003;
4. *Holds*
 - (a) that the respondent State is to pay, within three months from the date on which the judgment becomes final in accordance with Article 44 § 2 of the Convention, the following amounts:
 - (i) RUR 112,442 (one hundred and twelve thousand four hundred and forty-two Russian roubles) to Ms Prisyazhnikova and RUR 107,328 (one hundred and seven thousand three hundred and twenty-eight Russian roubles) to Mr Dolgopolov in respect of pecuniary damage;
 - (ii) EUR 2,400 (two thousand four hundred euros) to each of the applicants in respect of non-pecuniary damage, to be converted into Russian roubles at the rate applicable at the date of settlement;
 - (iii) any tax that may be chargeable on the above amounts;
 - (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;
5. *Dismisses* the remainder of the applicants' claim for just satisfaction.

Done in English, and notified in writing on 28 September 2006, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Søren NIELSEN
Registrar

Christos ROZAKIS
President