



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

FIRST SECTION

CASE OF STETSENKO AND STETSENKO v. RUSSIA

(Application no. 878/03)

JUDGMENT

STRASBOURG

5 October 2006

FINAL

05/01/2007

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 Stetsenko v. Russia,

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

Mr C.L. ROZAKIS, *President*,

Mrs N. VAJIĆ,

Mr A. KOVLER,

Mrs E. STEINER,

Mr K. HAJIYEV,

Mr D. SPIELMANN,

Mr S.E. JEBENS, *judges*,

and Mr S. NIELSEN, *Section Registrar*,

Having deliberated in private on 14 September 2006,

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

PROCEDURE

1. The case originated in an application (no. 878/03) 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 Anatoliy Mikhaylovich Stetsenko and Mrs Nina Ivanovna Stetsenko (“the applicants”), on 10 November 2002.

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

3. On 5 September 2005 the Court decided to give notice of 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.

THE FACTS

4. The applicants were born in 1952 and 1956, respectively, and live in the town of Voronezh.

5. On 28 April 1999 the applicants sued the Savings Bank for arrears and an increased interest on their savings deposited with the bank.

6. On 9 December 1999 and 21 November 2000 the Sovetskiy District Court of Voronezh issued judgments. Both judgments were quashed on appeal on 2 March 2000 and 15 February 2001, respectively, and the case was remitted for a fresh examination by the District Court.

7. On 29 August 2001 the Sovetskiy District Court dismissed the applicants' action. On 18 October 2001 the Voronezh Regional Court, acting

on appeal, quashed the judgment of 29 August 2001 and ordered re-examination of the case.

8. On 18 December 2001 the Sovetskiy District Court partly accepted the applicants' action, awarded the first applicant 9,350.10 Russian roubles (RUR, approximately 342 euros) and the second applicant RUR 25,843.60 (approximately EUR 945) in arrears and dismissed the remainder of their claims.

9. On 5 March 2002 the Voronezh Regional Court upheld the judgment of 18 December 2001 in the part concerning payment of arrears, which accordingly became final, but remitted the remainder of the claims for a new examination.

10. The District Court issued writs of execution and on 20 March 2002 the applicants lodged the writs with bailiffs.

11. On 29 April 2002 the President of the Voronezh Regional Court lodged before the Presidium of the Voronezh Regional Court an application for a supervisory review of the judgments of 18 October and 18 December 2001 and 5 March 2002.

12. A supervisory-review hearing was listed for 15 May 2002 and the applicants were summoned.

13. The applicants arrived to the courthouse on 15 May 2002. They were invited to a courtroom and asked whether they supported the application for a supervisory review. After the applicants had objected to the review they were asked to leave the courtroom.

14. On 15 May 2002 the Presidium of the Voronezh Regional Court, by way of the supervisory-review proceedings, quashed the judgments of 18 October and 18 December 2001 and 5 March 2002 and upheld the judgment of 29 August 2001.

THE LAW

I. ALLEGED VIOLATION OF ARTICLE 6 § 1 OF THE CONVENTION ON ACCOUNT OF THE QUASHING OF THE JUDGMENTS

15. The applicants complained that the act of quashing of the judgments in their favour had violated their “right to a court” under Article 6 § 1 of the Convention. They also complained that they were deprived of their right to effectively participate at the supervisory-review hearing. The relevant part of Article 6 of the Convention read as follows:

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

A. Admissibility

16. 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

1. *Submissions by the parties*

17. The Government submitted that the Presidium of the Voronezh Regional Court quashed the judgments of 18 October and 18 December 2001 and 5 March 2002 with a view to correcting the “judicial error” committed by the District and Regional courts. It did not issue a new judgment but rather upheld the “correct” judgment issued by the District Court on 29 August 2001. The Government lay special emphasis on the fact that the supervisory-review proceedings had only been initiated two months after the judgment of 5 March 2002 had been issued. They concluded that there had been no violation of the applicants' right under Article 6 § 1 of the Convention.

18. The applicants, relaying on the Court's findings in the case of *Ryabykh v. Russia* (no. 52854/99, ECHR 2003-IX), averred that the quashing of the final judgments in their case had irretrievably impaired the principle of legal certainty.

2. *The Court's assessment*

(a) General principles

19. 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).

20. 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).

21. 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).

(b) Application of the principles to the facts of the case

22. The Court observes that on 18 October 2001 the Voronezh Regional Court, acting on appeal, quashed the judgment of the District Court of 29 August 2001, by which the applicants' action had been dismissed. A re-examination of the case was ordered. On 18 December 2001, as a result of the new examination, the District Court partly accepted the applicants' action and awarded them certain sums in arrears. That part of the judgment of 18 December 2001 was upheld on appeal on 5 March 2002 and, accordingly, became final and binding. In April 2002 the President of the Voronezh Regional Court lodged an application for a supervisory review of the judgments of 18 October and 18 December 2001 and 5 March 2002. On 15 May 2002 the Presidium of the Voronezh Regional Court quashed the judgments of 18 October and 18 December 2001 and 5 March 2002 as erroneous and upheld the judgment of 29 August 2001.

23. The Court has 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; and *Ryabykh*, cited above, §§ 51-56).

24. Having examined the materials submitted to it, the Court observes that the Government have not put forward any fact or argument capable of persuading it to reach a different conclusion in the present case. The fact, that a judgment was set aside just two months after it had become final and binding, does not make the present case different from the aforementioned cases. Accordingly, the Court finds that there has been a violation of Article 6 § 1 of the Convention in respect of the quashing of the final and binding judgments given in the applicants' case.

(c) Supervisory review procedure: procedural issues

25. With regard to the complaint about the procedural defects of the hearing before the Presidium of the Voronezh Regional Court, the Court finds that, having concluded that there has been an infringement of the applicants' "right to a court" by the very use of the supervisory review procedure, it is not necessary to consider whether the procedural guarantees of Article 6 of the Convention were available in those proceedings (cf. *Ryabykh*, cited above, § 59, and *Volkova v. Russia*, no. 48758/99, § 39, 5 April 2005).

II. ALLEGED VIOLATION OF ARTICLE 6 OF THE CONVENTION ON ACCOUNT OF EXCESSIVE LENGTH OF THE PROCEEDINGS

26. The applicants complained that the proceedings in their case had been excessively long. The Court considers that this complaint falls to be examined under Article 6 § 1 of the Convention, which is cited above.

27. The Court observes that the proceedings in the present case commenced on 28 April 1999 and ended on 15 May 2002 with the judgment of the Presidium of the Voronezh Regional Court. The proceedings thus lasted approximately three years before courts of three levels of jurisdiction.

28. Having regard to the proceedings as a whole, the Court finds that they did not exceed a "reasonable time" within the meaning of Article 6 § 1 of the Convention. It follows that this complaint is manifestly ill-founded and must be rejected in accordance with Article 35 §§ 3 and 4 of the Convention.

III. OTHER ALLEGED VIOLATIONS OF THE CONVENTION

29. Lastly, the applicants complained that the above court proceedings had been unfair as the courts had misinterpreted domestic law and had incorrectly assessed the facts of the case and the judges, including those sitting in the Presidium of the Voronezh Regional Court, had not been independent and impartial. However, having regard to all the material in its possession, and in so far that the complaints are not covered in the Court's finding above (see paragraph 25), it finds that these complaints do not disclose any appearance of a violation of the rights and freedoms set out in the Convention or its Protocols. It follows that this part of the application must be rejected as being manifestly ill-founded, pursuant to Article 35 §§ 3 and 4 of the Convention.

IV. APPLICATION OF ARTICLE 41 OF THE CONVENTION

30. 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

31. The first applicant claimed RUR 15,327.65 and the second applicant claimed RUR 42,360.16 in respect of pecuniary damage. These sums represented the principle amounts due to them under the judicial decisions of 18 December 2001 and 5 March 2002 and interest thereon. They also claimed EUR 5,000 to be paid to each of them in respect of non-pecuniary damage.

32. The Government argued that there was no causal link between the violation found and the damage alleged. In any event, the claims were unreasonable and excessive.

33. As regards the claims in respect of pecuniary damage, the Court, having regard to the nature of the violation found, considers it appropriate to award the applicants the sums which they would have received had the judgments in their favour not been quashed (see paragraph 8 above). Moreover, some pecuniary loss must have been occasioned on account of the period that elapsed from the time the judicial decisions had become enforceable until the Court's award (see *Grinberg v. Russia*, no. 23472/03, § 39, 21 July 2005). The applicants' assessment of that loss does not appear excessive or unreasonable. In any event, the Government did not suggest a different method of calculation of interest. Accordingly, the Court awards the first applicant EUR 450 and the second applicant EUR 1,250 in respect of the pecuniary damage, plus any tax that may be chargeable on those amounts.

34. The Court further considers that the applicants suffered distress and frustration resulting from the quashing of the judicial decisions by way of supervisory-review proceedings. Nevertheless, the amounts claimed are excessive. Making its assessment on an equitable basis, the Court awards each of the applicants EUR 2,000 in respect of non-pecuniary damage, plus any tax that may be chargeable on the above amounts.

B. Costs and expenses

35. The first applicant claimed RUR 850 for postage and copying expenses, RUR 3,000 for legal expenses in the Strasbourg proceedings and

RUR 2,500 for translation expenses. The second applicant did not submit any claim in this respect.

36. The Government argued that the claims in respect of legal and translation expenses should be dismissed because Mrs R. who had provided the first applicant with legal and translation services had not included the sums paid to her in her tax declaration.

37. 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. In the present case, the first applicant submitted a copy of the contract with Mrs R. which listed, in a detailed manner, letters of the Registry which Mrs R. had translated. The first applicant also submitted a copy of the contract with Mrs R. for provision of legal consultations in the course of the Strasbourg proceedings. The Government did not dispute the fact that Mrs R. had provided the first applicant with legal and translation services. The contracts between the first applicant and Mrs R. had not been declared null and void by any court. They were enforceable under the Russian law and bound the first applicant to pay the amounts indicated therein. The sums indicated in the contracts do not appear excessive or unreasonable. The first applicant also submitted documents supporting his claims in respect of postal and copying expenses. Regard being had to the information in its possession, the Court considers it reasonable to award the first applicant the sum of EUR 185, plus any tax that may be chargeable on the above amount.

38. The Court considers that there is no call to award the second applicant anything under this head.

C. Default interest

39. 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 complaint concerning the quashing of the final judgments of 18 October and 18 December 2001 and 5 March 2002 admissible and the remainder of the application inadmissible;
2. *Holds* that there has been a violation of Article 6 of the Convention on account of the quashing of the final judgments of 18 October and 18 December 2001 and 5 March 2002 by way of supervisory review;

3. *Holds* that it is not necessary to consider the allegation of procedural unfairness of the supervisory-review proceedings;
4. *Holds*
 - (a) that the respondent State is to pay the first 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 450 (four hundred and fifty euros) in respect of pecuniary damage;
 - (ii) EUR 2,000 (two thousand euros) in respect of non-pecuniary damage;
 - (iii) EUR 185 (one hundred and eighty-five euros) in respect of costs and expenses;
 - (iv) any tax that may be chargeable on the above amounts;
 - (b) that the respondent State is to pay the second 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 1,250 (one thousand two hundred and fifty euros) in respect of pecuniary damage;
 - (ii) EUR 2,000 (two thousand euros) in respect of non-pecuniary damage;
 - (iii) any tax that may be chargeable on the above amounts;
 - (c) 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 5 October 2006, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Søren NIELSEN
Registrar

Christos ROZAKIS
President