



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

FIRST SECTION

**CASE OF IRINA FEDOTOVA v. RUSSIA**

*(Application no. 1752/02)*

JUDGMENT

STRASBOURG

19 October 2006

**FINAL**

*19/01/2007*

*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 Irina Fedotova 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 28 September 2006,

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

**PROCEDURE**

1. The case originated in an application (no. 1752/02) 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, Ms Irina Yuryevna Fedotova ("the applicant"), on 29 December 2000.

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 2 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 applicant was born in 1966 and lives in the town of Penza.

5. According to the applicant, in December 1997 she lodged an action against the electricity supplier, seeking to have her home connected to the electricity supply network and asking for compensation for non-pecuniary damage.

6. On 17 July 1998 the Leninskiy District Court of Penza found for the applicant. That judgment was quashed on appeal on 1 December 1998 and re-examination of the case was ordered.

7. On 15 April 1999 the Leninskiy District Court dismissed the action. The judgment became enforceable on 22 June 1999 when the Penza Regional Court upheld it on appeal.

8. On 28 April 2000 the Presidium of the Penza Regional Court, acting upon the applicant's request, quashed the judgments of 15 April and 22 June 1999, by way of supervisory-review proceedings, and remitted the case for a fresh examination.

9. On 24 August 2000 the Leninskiy District Court partly allowed the applicant's action and ordered that the company connect the applicant's home and pay her 1,000 Russian roubles (RUR, approximately 40 euros) in compensation. The judgment was upheld on appeal on 17 October 2000.

10. Enforcement proceedings were opened and on 22 January 2001 the applicant received the awarded compensation, but the company refused to connect her home because it did not meet certain technical requirements. Thus, the applicant complained to a court that the bailiffs had failed to enforce the judgment of 24 August 2000, as upheld on appeal on 17 October 2000.

11. On 23 January 2001 the Zheleznodorozhniy District Court of Penza held that the bailiffs had been inactive in securing the execution of the judgment in the part concerning provision of electricity. The District Court furthermore informed the applicant of the possibility of lodging a separate civil claim for damages against the local treasury. It appears that the applicant did not lodge such a claim.

12. On 29 December 2001 the company connected the applicant's home to the electricity network.

13. On 21 March 2002 a Deputy President of the Supreme Court of the Russian Federation introduced an application for supervisory review of the judgments of 24 August and 17 October 2000.

14. On 26 April 2002 the Presidium of the Penza Regional Court quashed the judgments of 24 August and 17 October 2000 by way of supervisory review and remitted the matter for a fresh examination. The Presidium held that the District and the Regional courts had incorrectly assessed the facts of the case and misinterpreted the relevant legal norms.

15. On 25 June 2002 the Leninskiy District Court dismissed the applicant's claims. On 10 September 2002 the Penza Regional Court upheld the judgment. However, the applicant was not ordered to repay the compensation of RUR 1,000 and her house was not disconnected from the electricity network.

16. The applicant lodged an application before the European Court of Human Rights, complaining about a violation of her rights in the course of the abovementioned domestic proceedings. On 19 December 2002 she received an empty envelope from the Court. The applicant complained to the Leninskiy District Court about unlawful actions of the Penza post office. On 31 January 2003 the District Court instructed her to correct certain defects of her statement of claim by 6 February 2003. That instruction was upheld on appeal on 18 February 2003. There is no indication that the applicant fulfilled the courts' instructions and apparently no further action has been taken.

## THE LAW

### I. ALLEGED VIOLATION OF ARTICLE 6 OF THE CONVENTION ON ACCOUNT OF THE QUASHING OF THE JUDGMENTS OF 24 AUGUST AND 17 OCTOBER 2000

17. The applicant complained under Article 6 § 1 of the Convention that the act of quashing of the final judgments of 24 August and 17 October 2000 had violated her “right to a court”. She also complained that she had not been able 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

18. 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*

19. The Government submitted that the Presidium of the Penza Regional Court quashed the judgments of 24 August and 17 October 2000 with a view to correcting the “judicial error” committed by the District and Regional courts. They concluded that there had been no violation of the applicant's right under Article 6 § 1 of the Convention.

20. The applicant averred that the quashing of the final judgments in her case had irremediably impaired the principle of legal certainty.

##### 2. *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. The Court observes that on 24 August 2000 the Leninskiy District Court partly accepted the applicant's claims and granted her a sum of money. The judgment of 24 August 2000 was upheld on appeal on 17 October 2000. The judgment thus became binding and enforceable. On 26 April 2002, that is more than eighteen months later, the judgments of 24 August and 17 October 2000 were quashed in the framework of the supervisory-review procedure initiated by a Deputy President of the Supreme Court of the Russian Federation who was a State official and was not a party to the proceedings (see paragraph 13 above).

25. 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).

26. 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 developments in the proceedings that followed 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).

27. Accordingly, the Court finds that there has been a violation of Article 6 § 1 of the Convention on account of the quashing of the judgments given in the applicant's case by way of supervisory-review proceedings.

28. As regards the complaint about the procedural defects of the hearing before the Presidium of the Penza Regional Court, 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 whether the procedural guarantees of Article 6 of the Convention were available in those proceedings (see *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 AN EXCESSIVE LENGTH OF THE PROCEEDINGS

29. The applicant complained that the proceedings in her case had been excessively long. The Court considers that this complaint falls to be examined under Article 6 § 1 of the Convention, cited above.

30. The Court notes that in December 1997 the applicant lodged an action before the Leninskiy District Court. The proceedings finally came to an end on 10 September 2002. Thus, having regard to the fact that the Convention entered into force in respect of Russia on 5 May 1998, the total period of time involved was approximately four years and four months. However, the Court considers it appropriate to take into account only the periods when the case was actually pending before the courts, that is the periods when there was no effective judgment in the determination of the merits of the applicant's dispute and when the authorities were under an obligation to pass such a judgment. The periods during which the domestic courts decided whether or not to re-open the case should be excluded (see *Skorobogatova v. Russia*, no. 33914/02, § 39, 1 December 2005).

31. Applying these principles to the facts of the present case, the Court finds that it has competence *ratione temporis* to examine a period of approximately three years and two months during which the proceedings were pending, namely from 5 May 1998 to 22 June 1999, when the Penza Regional Court issued the final judgment; from 28 April 2000, when the Presidium of the Regional Court re-opened the case, to 29 December 2001, when the judgment of 24 August 2000 was enforced in full; and from 26 April 2002, when the Presidium of the Regional Court again re-opened the proceedings, to 10 September 2002, when the final judgment was given.

32. The Court observes that during the period under consideration the case was examined by the courts in three instances. No substantial periods of inactivity can be observed. On the contrary, the hearings were held and the decisions were taken at regular intervals by the first instance court and on appeal.

33. Thus, 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

34. Lastly, the applicant complained that the proceedings leading to the final judgment of 10 September 2002 had been unfair as the courts had misinterpreted domestic law, had incorrectly assessed the facts of the case and had not examined her complaints in detail, that the judgment of 24 August 2000 had not been enforced and that the Court's letter had been lost in December 2002. However, having regard to all the material in its possession, the Court 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

35. 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**

36. The applicant claimed 7,500 euros (EUR) in respect of pecuniary damage, representing the price of a power generator and the value of the documents allegedly lost by the domestic courts. The applicant also claimed EUR 10,000 in respect of non-pecuniary damage.

37. The Government commented that there was no causal link between the alleged violation and the pecuniary damage alleged. In any case, the applicant's claims are unsubstantiated, excessive and unreasonable.

38. The Court does not discern any causal link between the violation found and the alleged pecuniary damage; it therefore rejects this claim. On the other hand, it considers that the applicant suffered distress because of the authorities' decision to quash the judgments in her case. However, the particular amount claimed is excessive. Making its assessment on an equitable basis, the Court awards the applicants EUR 2,000 in respect of non-pecuniary damage, plus any tax that may be chargeable on the above amount.

## B. Costs and expenses

39. The applicant also claimed EUR 1,000 for the costs and expenses incurred before the domestic courts and the Court.

40. The Government averred that only RUR 274.15 should be awarded to the applicant because she did not produce evidence of the other expenses.

41. 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, regard being had to the information in its possession and the above criteria, the Court considers it reasonable to award the sum of EUR 10 covering costs under all heads, plus any tax that may be chargeable on that amount.

## C. Default interest

42. 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 judgments of 24 August and 17 October 2000 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 judgments of 24 August and 17 October 2000 by way of supervisory review;
3. *Holds* that it is not necessary to consider the allegation of procedural unfairness in the supervisory-review proceedings;
4. *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 10 (ten euros) in respect of costs and expenses;
    - (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 applicant's claim for just satisfaction.

Done in English, and notified in writing on 19 October 2006, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Søren NIELSEN  
Registrar

Christos ROZAKIS  
President