



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

FIRST SECTION

CASE OF NELYUBIN v. RUSSIA

(Application no. 14502/04)

JUDGMENT

STRASBOURG

2 November 2006

FINAL

26/03/2007

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 Nelyubin 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,

Mrs E. STEINER,

Mr K. HAJIYEV, *judges*,

and Mr S. NIELSEN, *Section Registrar*,

Having deliberated in private on 12 October 2006,

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

PROCEDURE

1. The case originated in an application (no. 14502/04) 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 a Russian national, Mr Vladimir Konstantinovich Nelyubin (“the applicant”), on 14 March 2004.

2. The applicant was represented before the Court by Ms S. Anisimova, a lawyer practising in Lipetsk. The Russian Government (“the Government”) were represented by Mr P. Laptev, Representative of the Russian Federation at the European Court of Human Rights.

3. The applicant complained about the quashing of the judgment in his favour by way of supervisory review and alleged a violation of his property rights.

4. On 9 September 2005 the Court decided to give notice of the application to the respondent 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.

5. The Government objected to the joint examination of the admissibility and merits of the application. Having examined the Government’s objection, the Court dismissed it.

6. The Chamber decided, after consulting the parties, that no hearing on the admissibility and/or merits was required (Rule 59 § 3 *in fine*).

THE FACTS

I. THE CIRCUMSTANCES OF THE CASE

7. The applicant was born in 1948 and lives in Lipetsk. In 1994 he retired from military service.

8. In 2002 he sued the Military Service Commission of the Lipetsk Region (“the Military Commission”), seeking to recover the unpaid pension for the period from February 1994 to November 1998.

9. On 15 July 2002 the Pravoberezhniy District Court of Lipetsk granted him claim in full and awarded him 32,947.11 Russian roubles (“RUR”) in respect of the unpaid pension. In November 2002 the Military Commission paid him the amount awarded.

10. The applicant lodged a new claim against the Military Commission, seeking to recover damages incurred through belated payment of the pension.

11. On 27 January 2003 the Pravoberezhniy District Court granted his claim and awarded him RUR 145,835.69 in damages.

12. The Military Commission did not lodge an ordinary appeal against the judgment and it became binding and enforceable on 6 February 2003.

13. On 23 February 2003 the bailiffs’ service of the Pravoberezhniy District instituted enforcement proceedings.

14. On 20 May 2003 the Military Commission filed an application for supervisory review of the judgment, claiming that the civil-law provisions relating to compensation for damages were not applicable to pensions.

15. On 25 September 2003 the Presidium of the Lipetsk Regional Court held a supervisory-review hearing. It held that the first-instance court had correctly established the facts but erroneously applied the substantive law because the damages could only be recovered for the three years immediately preceding the judicial decision. On that ground it quashed the judgment of 27 January 2003 and rejected the applicant’s claim in full.

II. RELEVANT DOMESTIC LAW

16. The Code of Civil Procedure of the Russian Federation provides as follows:

Article 362. Grounds for quashing or altering judicial decisions by appeal courts

“1. The grounds for quashing or altering judicial decisions by appeal courts are:

...

(4) a violation or incorrect application of substantive or procedural law.”

**Article 387. Grounds for quashing or altering judicial decisions
by way of supervisory review**

“Judicial decisions of lower courts may be quashed or altered by way of supervisory review on the grounds of substantial violations of substantive or procedural legal provisions.”

Article 390. Competence of the supervisory-review court

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

(2) quash the judicial decision issued by a court of first, second or supervisory-review instance in whole or in part and remit the matter for a fresh examination...

(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 the substantive law has been erroneously applied or interpreted.”

III. RELEVANT COUNCIL OF EUROPE DOCUMENTS

17. Interim Resolution Res DH (2006) concerning the violations of the principle of legal certainty through the supervisory review procedure (“*nadzor*”) in civil proceedings in the Russian Federation, adopted by the Committee of Ministers on 8 February 2006, reads, in its relevant parts, as follows:

“The Committee of Ministers, under the terms of Article 46, paragraph 2, of the Convention...

Welcoming the reforms of the supervisory review (“*nadzor*”) procedure introduced by the new Code of Civil Procedure entered into force on 1 February 2003;

Noting with satisfaction, in particular, that some of the problems at the basis of the violations found in these cases have thus been remedied...

Expressing, however, particular concern at the fact that at the regional level it is often the same court which acts consecutively as a cassation and “*nadzor*” instance in the same case and stressing that the court should be enabled to rectify all shortcomings of lower courts’ judgments in a single set of proceedings so that subsequent recourse to “*nadzor*” becomes truly exceptional, if necessary at all;

Stressing that a binding and enforceable judgment should be only altered in exceptional circumstances, while under the current “*nadzor*” procedure such a judgment may be quashed for any material or procedural violation;

Emphasising that in an efficient judicial system, errors and shortcomings in court decisions should primarily be addressed through ordinary appeal and/or cassation proceedings before the judgment becomes binding and enforceable, thus avoiding the subsequent risk of frustrating parties’ right to rely on binding judicial decisions;

Considering therefore that restricting the supervisory review of binding and enforceable judgments to exceptional circumstances must go hand-in-hand with improvement of the court structure and of the quality of justice, so as to limit the need for correcting judicial errors currently achieved through the “*nadzor*” procedure...

CALLS UPON the Russian authorities to give priority to the reform of civil procedure with a view to ensuring full respect for the principle of legal certainty established in the Convention, as interpreted by the Court’s judgments;

ENCOURAGES the authorities to ensure through this reform that judicial errors are corrected in the course of the ordinary appeal and/or cassation proceedings before judgments become final...

ENCOURAGES the authorities, pending the adoption of this comprehensive reform, to consider adoption of interim measures limiting as far as possible the risk of new violations of the Convention of the same kind, and in particular:

- continue to restrict progressively the use of the “*nadzor*” procedure, in particular through stricter time-limits for *nadzor* applications and limitation of permissible grounds for this procedure so as to encompass only the most serious violations of the law...

- to limit as much as possible the number of successive applications for supervisory review that may be lodged in the same case;

- to discourage frivolous and abusive applications for supervisory review which amount to a further disguised appeal motivated by a disagreement with the assessment made by the lower courts within their competences and in accordance with the law;

- to adopt measures inducing the parties adequately to use, as much as possible, the presently available cassation appeal to ensure rectification of judicial errors before judgments become final and enforceable...”

THE LAW

I. ALLEGED VIOLATION OF ARTICLE 6 § 1 OF THE CONVENTION AND ARTICLE 1 OF PROTOCOL NO. 1 ON ACCOUNT OF THE QUASHING OF THE JUDGMENT IN THE APPLICANT’S FAVOUR

18. The applicant complained that the quashing of the judgment of 27 January 2003 by way of supervisory-review proceedings had violated his “right to a court” under Article 6 § 1 of the Convention and his 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

19. The Government submitted that the supervisory-review instance had issued a correct and lawful decision. The applicant had neither “existing possessions” nor a “legitimate expectation” within the meaning of Article 1 of Protocol No. 1 because the supervisory-review court had found no reason to make an award in respect of damages.

20. The Court considers that the application 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*

21. The Government pointed out that an application for supervisory review had been lodged by a party to the proceedings only three months and fourteen days after the judgment of 27 January 2003 had become binding. They referred to the German Code of Civil Procedure which provided for a possibility to lodge an application for review of a judicial decision within one month after its service. There had therefore been no violation of the principle of legal certainty.

22. 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).

23. 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).

24. 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).

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. In the present case the judgment of 27 January 2003 in the applicant's favour was set aside by the way of a supervisory review on the ground that the District Court had incorrectly applied 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-...).

27. The Government distinguished the present application from the above-mentioned cases on account of the fact that the supervisory-review procedure had been initiated by the Military Commission, that is a party to the case, within four months of the delivery of the judgment. The Court, however, is not persuaded that this distinction is of crucial importance for its analysis.

28. The Court stresses that a binding and enforceable judgment should only be quashed in exceptional circumstances rather than for the sole purpose of obtaining a different decision in the case (see the case-law cited in paragraph 23 above). In the Russian legal system, the grounds for

quashing or altering judgments by appeal courts largely overlap with those for quashing or altering judgments by way of supervisory review (compare Article 362 § 1 (4) and Article 387 of the Code of Civil Procedure). The judgment of 27 January 2003 was quashed by way of supervisory-review because of incorrect application of the substantive law. That defect could have been rectified in the appeal proceedings. Thus, a situation where the final judgment in the applicant's favour was called into question could have been avoided, had the Military Commission lodged an ordinary appeal within the statutory ten-day time-limit.

29. The Court further notes that the Russian Code of Civil Procedure permits a party to apply for supervisory review even if it had not previously exhausted an ordinary appeal. In the present case the Military Commission failed to exercise its right to lodge an ordinary appeal and permitted the statutory ten-day time-limit to expire without challenging the judgment of 27 January 2003. Instead, it applied for supervisory review more than three months later, after the judgment in the applicant's favour had become binding and enforceable and after the bailiffs had initiated enforcement proceedings (see paragraph 13 above). The Government did not point to any exceptional circumstances that would have prevented the Military Commission from making use of an ordinary appeal in good time.

30. Having regard to these considerations, the Court finds that, by granting the Military Commission's request to set aside the judgment of 27 January 2003, the Presidium of the Lipetsk Regional Court infringed the principle of legal certainty and the applicant's "right to a court" under Article 6 § 1 of the Convention. There has accordingly been a violation of that Article.

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

31. The Government claimed that there was no violation of the applicant's property rights because he had not had any "possessions".

32. 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).

33. The Court observes that the proceedings concerned compensation for belated payment of a pension. A substantial amount was recovered by a domestic court from the State Military Commission. The quashing of the enforceable judgment frustrated the applicant's reliance on a binding judicial decision and deprived him of an opportunity to receive the money he had legitimately expected to receive. In these circumstances, the Court

considers that the quashing of the judgment of 27 January 2003 by way of supervisory review placed an excessive burden on the applicant and was therefore incompatible with Article 1 of the Protocol No. 1. There has therefore been a violation of that Article.

II. APPLICATION OF ARTICLE 41 OF THE CONVENTION

34. 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

35. The applicant claimed 145,835.69 Russian roubles in respect of compensation for pecuniary damage, representing the amount due to him under the quashed judgment of 27 January 2003. He did not make a claim for non-pecuniary damage.

36. The Government claimed that no award should be made because the applicant's claim had been rejected by the domestic courts.

37. 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 judgment in the applicant's favour had been quashed four months after it had become binding and enforceable. The applicant was thereby prevented from receiving the money he had legitimately expected to receive. There has been therefore a causal link between the violations found and the applicant's claim for the pecuniary damage. Accordingly, the Court awards him the entire amount claimed, that is 145,836 Russian roubles, plus any tax that may be chargeable on it.

B. Costs and expenses

38. The applicant did not claim costs and expenses. Accordingly, there is no call to make an award 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 application admissible;
2. *Holds* that there has been a violation of Article 6 § 1 of the Convention;
3. *Holds* that there has been a violation of Article 1 of Protocol No. 1;
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, 145,836 (one hundred and forty-five thousand eight hundred and thirty-six) Russian roubles in respect of the pecuniary damage, 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.

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

Søren NIELSEN
Registrar

Christos ROZAKIS
President