



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

FIRST SECTION

CASE OF KONDRASHOVA v. RUSSIA

(Application no. 75473/01)

JUDGMENT

STRASBOURG

16 November 2006

FINAL

16/02/2007

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 Kondrashova 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. QUESADA, *Deputy Section Registrar*,

Having deliberated in private on 24 October 2006,

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

PROCEDURE

1. The case originated in an application (no. 75473/01) 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, Mrs Lyutsiya Ivanovna Kondrashova (“the applicant”), on 31 May 2001.

2. The applicant, who had been granted legal aid, was represented by Ms E. K. Velikokhatskaya, a lawyer practising in St. Petersburg. 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 9 December 2003 the Court decided to communicate the application to the Government.

4. 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

I. THE CIRCUMSTANCES OF THE CASE

5. The applicant was born in 1939 and lives in Petrozavodsk.

1. Background of the case

6. In March and September 1996 the applicant won two cases in court against her former employer, a State-owned enterprise, and was awarded a sum of money.

7. Consequently, enforcement proceedings were instituted by the bailiff and one of the judgments was partly executed.

8. On 14 April 1997 the bailiff transmitted the materials relating to the enforcement proceedings to the Liquidation Committee as there were bankruptcy proceedings instituted in respect of the enterprise.

9. The enterprise was declared bankrupt in June 1998 and its debts were considered as paid upon termination of the bankruptcy proceedings in March 1999. No money was paid to the applicant due to the lack of funds.

2. First instance proceedings

10. On an unspecified date the applicant instituted court proceedings against various public authorities seeking pecuniary and non-pecuniary damages for the non-enforcement of the court judgments. She claimed that the judgments had not been enforced due to the bailiff's failure to take timely measures to facilitate their enforcement.

11. On 13 June 2000 the Petrozavodsk Town Court of the Republic of Karelia (*Петрозаводский городской суд Республики Карелия*) ruled in the applicant's favour. The Town Court found that during the period when the enforcement proceedings were managed by the bailiff, i.e. before 14 April 1997, the enterprise carried out economic activities and paid taxes. However, within that period the bailiff failed to take all the necessary measures to facilitate the timely enforcement of the court judgments. The applicant was awarded pecuniary damages in the amount of 53,655 Russian roubles to be paid from the Federal Treasury. Her claims for non-pecuniary damages were rejected.

3. Appeal proceedings

12. On 25 July 2000 the Supreme Court of the Republic of Karelia (*Верховный Суд Республики Карелия*) upheld the judgment of the Town Court in the final instance.

4. Enforcement proceedings

13. On 10 August 2000 the bailiff instituted enforcement proceedings on the basis of the court judgment of 13 June 2000. The bailiff ordered the Ministry of Finance (*Министерство Финансов РФ*) voluntarily to comply with the judgment by 16 August 2000.

5. *Supervisory review proceedings*

14. On an unspecified date in 2000, while the enforcement proceedings were still in progress, the President of the Supreme Court of the Republic of Karelia (*Председатель Верховного Суда Республики Карелия*) lodged an application for supervisory review (*протест в порядке надзора*) of the judgment of 13 June and the decision of 25 July 2000.

15. On 6 December 2000 the Presidium of the Supreme Court of the Republic of Karelia (*Президиум Верховного Суда Республики Карелия*) decided to quash the said decisions on the grounds that they conflicted with procedural and substantive laws. The case was remitted for a new examination at first instance.

6. *Termination of enforcement proceedings*

16. On an unspecified date following the Presidium's decision the bailiff applied to the courts seeking to stay the enforcement proceedings until there was a final decision taken on the merits of the case.

17. On 12 January 2001 the Petrozavodsk Town Court of the Republic of Karelia found that in the present circumstances the enforcement proceedings should be terminated rather than stayed.

18. By decision of 2 March 2001 the Supreme Court of the Republic of Karelia upheld the decision of the Town Court and decided in the final instance to terminate the enforcement proceedings.

7. *Fresh consideration of the applicant's claims by the courts*

19. On 15 March 2001 the Petrozavodsk Town Court of the Republic of Karelia delivered a new judgment on the merits, rejecting the applicant's claims. The Town Court found that the bailiff had not been responsible for the non-enforcement of the court judgments as the enterprise lacked any assets at the relevant time.

20. On 17 April 2001 the Supreme Court of the Republic of Karelia upheld the judgment of the Town Court in the final instance.

II. RELEVANT DOMESTIC LAW

21. Section 11 of the Code of Civil Procedure of 1964 (*Гражданский процессуальный кодекс РСФСР*), as in force at the relevant time, provided that regional and higher courts could conduct supervisory review of the activities of the lower courts.

22. According to Sections 319, 320 and 327 of the Code, certain senior judicial officers could, at any time, at request of the person concerned or on their own motion, lodge with a higher court an application for supervisory review of a final decision of a lower court on points of law and procedure.

THE LAW

I. ALLEGED VIOLATION OF ARTICLE 6 OF THE CONVENTION AND ARTICLE 1 OF PROTOCOL NO. 1

23. The applicant complained under Article 6 and 13 of the Convention about unfair proceedings in her case. In particular, she submitted that the supervisory instance court had unlawfully quashed the court decisions in her favour, which had been in process of being enforced.

24. These complaints fall to be examined under Article 6 of the Convention and Article 1 of Protocol No. 1 which, insofar as relevant, read as follows:

Article 6

“1. In the determination of his civil rights and obligations ... everyone is entitled to a fair and public hearing ...”

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.

The preceding provisions shall not, however, in any way impair the right of a State to enforce such laws as it deems necessary to control the use of property in accordance with the general interest or to secure the payment of taxes or other contributions or penalties.”

25. The Government alleged that the decisions in the applicant's case had been erroneous in that the domestic courts wrongly interpreted and applied the relevant law and that therefore the quashing had been justified. They contended that the decisions had been reversed with a view to correct a judicial error.

26. The applicant contested the Government's submissions and maintained her complaints.

A. Admissibility

27. The Court notes that these complaints are not manifestly ill-founded within the meaning of Article 35 § 3 of the Convention. It further notes that they are not inadmissible on any other grounds. They must therefore be declared admissible.

B. Merits

28. 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, in its relevant part, declares 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* [GC], no. 28342/95, § 61, ECHR 1999-VII).

29. The Court has found a violation of the above principle of legal certainty and of the right to a court in the case of *Ryabykh v. Russia*, where a final and binding judgment in the applicant's favour was set aside, on the ground of misinterpretation of the law, by a higher court in supervisory review proceedings following an application by a president of a regional court, whose power to make such applications was not subject to any time-limit, so that judgments were liable to challenge indefinitely (see *Ryabykh v. Russia*, cited above, §§ 51-58).

30. The Court further reiterates that a judgment debt may be regarded as a “possession” for the purposes of Article 1 of Protocol No. 1 (see, among other authorities, *Burdov v. Russia*, no. 59498/00, § 40, ECHR 2002-III). Quashing such a judgment after it has become final and unappealable will constitute an interference with the judgment beneficiary's right to the peaceful enjoyment of that possession (see *Brumărescu*, cited above, § 74). In the case of *Tregubenko v. Ukraine* (no. 61333/00, 2 November 2004) the Court found a violation of Article 1 of Protocol No. 1 to the Convention in that the quashing of a final judgment of pecuniary nature in the applicant's favour constituted a disproportionate interference with his right to the peaceful enjoyment of his possessions. The Court dismissed the Government's argument that the quashing was justified by the need to correct a judicial error committed by a lower court (§§ 54-55).

31. Turning to the circumstances of the present case the Court observes that, by allowing the application lodged by its President, the Supreme Court of the Republic of Karelia set at naught an entire judicial process which had ended in a final and binding judicial decision of 25 July 2000 and was thus *res judicata*. The Court finds no reason to depart from its reasoning in the aforementioned *Ryabykh* case. It concludes that the setting aside of that decision in supervisory review proceedings for the sake of correcting an alleged judicial error violated the principle of legal certainty enshrined in Article 6 § 1 of the Convention and constituted an unjustified interference with the applicant's possessions, protected by virtue of Article 1 of Protocol No. 1 to the Convention.

32. There has accordingly been a violation of Article 6 § 1 of the Convention and Article 1 of Protocol No. 1 to the Convention.

II. APPLICATION OF ARTICLE 41 OF THE CONVENTION

33. 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

34. In respect of pecuniary damage, the applicant claimed RUR 92,286.60, of which RUR 53,655 was related to the principal amount lost by the applicant as a result of the supervisory review procedure and RUR 38,631.60 to the interest payable at the statutory rate. In respect of non-pecuniary damage, the applicant claimed EUR 800,000.

35. The Government considered that the finding of a violation in itself would constitute sufficient just satisfaction.

36. The Court awards the applicant RUR 53,655 representing the sum which she lost as a result of the supervisory review procedure. It also accepts the applicant's claim in respect of pecuniary damage in so far as it relates to the interest and awards the applicant the sum of RUR 38,631.60 under this head, plus any tax that may be chargeable on the amount of the principal debt and the interest.

37. As regards the non-pecuniary damage, the Court finds that the applicant has suffered some non-pecuniary damage as a result of the violations found which cannot be compensated by the mere finding of a violation. Nevertheless, the amount claimed is excessive. Making its assessment on an equitable basis, as required by Article 41 of the Convention, the Court awards the applicant the sum of EUR 500 in respect of non-pecuniary damage, plus any tax that may be chargeable on that amount.

B. Costs and expenses

38. The applicant also claimed RUR 15,000 for the costs and expenses incurred before the Court.

39. The Government considered this amount as reasonable and real.

40. Regard being had to the information in its possession and the Government's submissions, the Court finds it appropriate to grant the applicant RUR 15,000 in respect of costs and expenses, less EUR 398, already paid to the applicant's lawyer in legal aid.

41. Any tax that may be chargeable should be added to 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 application admissible;
2. *Holds* that there has been a violation of Article 6 of the Convention and Article 1 of Protocol No. 1;
3. *Holds*
 - (a) that the respondent State is to pay the applicant, within three months from the date on which the judgment becomes final according to Article 44 § 2 of the Convention, the following amounts:
 - (i) RUR 92,286.60 (ninety two thousand two hundred eighty six roubles and sixty kopecks) in respect of pecuniary damage;
 - (ii) EUR 500 (five hundred euros) in respect of non-pecuniary damage, to be converted into Russian roubles at the rate applicable at the date of settlement;
 - (iii) RUR 15,000 (fifteen thousand roubles) in respect of costs and expenses less EUR 398 (three hundred ninety-eight euros) already paid to Ms Velikokhatskaya in legal aid;
 - (iv) 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;
6. *Dismisses* the remainder of the applicant's claim for just satisfaction.

Done in English, and notified in writing on 16 November 2006, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Santiago QUESADA
Deputy Registrar

Christos ROZAKIS
President