



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

FIRST SECTION

CASE OF GAVRILENKO v. RUSSIA

(Application no. 30674/03)

JUDGMENT

STRASBOURG

15 February 2007

FINAL

15/05/2007

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 Gavrilenko v. Russia,

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

Mr L. LOUCAIDES, *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 25 January 2007,

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

PROCEDURE

1. The case originated in an application (no. 30674/03) 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 a Russian national, Mr Viktor Aleksandrovich Gavrilenko (“the applicant”), on 2 September 2003.

2. The applicant was represented by Mrs O. Suprunova, a lawyer practising in Bataysk. 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. The applicant alleged, in particular, that the quashing of a final judgment in his favour violated Article 6 of the Convention and Article 1 of Protocol No.1 to the Convention.

4. On 2 February 2006 the Court declared the application partly admissible.

5. The Government, but not the applicant, filed further written observations (Rule 59 § 1).

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

THE FACTS

I. THE CIRCUMSTANCES OF THE CASE

1. Background

7. The applicant was born in 1949 and lives in the town of Bataysk of the Rostov Region.

8. In 1986 the applicant took part in the emergency operation at the Chernobyl nuclear plant. As a result he suffered from extensive exposure to radioactive emissions. The applicant underwent medical examinations which established the link between his poor health and his involvement in the Chernobyl events. He was consequently granted status of a disabled person and awarded a monthly pension and a special allowance from the State, to be adjusted once a year in line with the minimum subsistence amount (*величина прожиточного минимума*).

9. At a certain moment in 2001 the social security authorities ceased to increase regularly the amounts of pension and allowance, paid to the applicant in connection with his disability. Instead, he started to receive his pension in a fixed amount (2,800 Roubles), which was less than he expected. Presuming that this practice was illegal, the applicant brought proceedings against the regional social security office ("the defendant") claiming the increase of the monthly allowance and pension in line with the increase of the minimum subsistence amount during the relevant period.

2. Court proceedings

10. On 21 January 2003 the Bataysk Town Court of the Rostov Region ("the Town Court") rendered a judgment ordering the increase of the monthly allowance due to the applicant in line with the increase of the minimal subsistence amount in the Rostov Region. In re-calculating the amount of the applicant's pension the court applied the multiplier of 1.92 based on the data provided by the regional committee on statistics. As a result, the monthly pension of the applicant increased to 5,376 Roubles. The court ordered the defendant to pay the applicant the recalculated amount as from 1 January 2002 less the sums already paid.

11. The defendant appealed challenging, among other things, the multiplier of 1.92 applied by the first-instance court.

12. On 16 April 2003 the Rostov Regional Court ("the Regional Court") upheld the judgment of 21 January 2003 in full. The enforcement proceedings were opened.

3. Supervisory review proceedings

13. On 13 May 2003 the defendant appealed to the Regional Court by way of supervisory review seeking to quash the judgment of 21 January 2003, as upheld on 16 April 2003.

14. On 30 June 2003 the judge rapporteur refused to initiate the supervisory review proceedings and to remit the case for examination on the merits to the Presidium of the Rostov Regional Court ("the Presidium").

15. On 14 July 2003 the defendant complained to the President of the Regional Court about the judgment of 21 January 2003, as upheld on appeal, and the judge rapporteur's decision of 30 June 2003 rejecting their previous application for supervisory review. They also requested that the enforcement proceedings be suspended pending the examination of the new supervisory review appeal.

16. On 6 August 2003 a judge of the Regional Court requested the case-file from the court of first instance. On 24 October 2003 judge B. of the Regional Court initiated the review of the judgment of 21 January 2003, as upheld on 16 April 2003. The decision of 24 October 2003 referred in detail to the arguments adduced by the defendant but offered no explanation as to the grounds for overruling the judge rapporteur's decision of 30 June 2003. The case was transferred to the Presidium for the examination on the merits.

17. On 4 November 2003 the applicant was informed about the date and venue of the hearing of his case by the Presidium.

18. On 4 December 2003 the Presidium quashed the judgment of 21 January 2003, as upheld on appeal, stating that the first instance court's calculation of the minimum subsistence amount, based on the multiplier of 1.92, had been insufficiently supported by evidence. The Presidium also noted that the first instance court had misinterpreted the domestic law. The case was remitted to the first instance court for a fresh examination.

4. Second round of court proceedings

19. On 25 December 2003 the Bataysk Town Court examined the case anew. In the course of the proceedings the court established that the allowance should have been multiplied by 1.25 in 2002 and by 1.26 for 2003. The applicant maintained that he accepted this multiplier.

20. As a result, the court held that the amount of pension due to the applicant for 2002 was 3,125 Roubles per month. In 2003 the pension of the applicant should have amounted to 3,937.5 Roubles per month. The court ordered the social security authorities to compensate the applicant for previous underpayments and, starting from 2004, pay him 3,937.5 Roubles monthly, with subsequent indexation.

21. On 14 January 2004 the Bataysk Town Court rendered an additional decision in the above case aimed at correction of an arithmetic error in the calculation of the amount awarded to the applicant.

22. The above decisions of the Town Court were not appealed against and became final. On 28 January 2004 the social security authorities transferred to the applicant's account the amount awarded by the court for previous underpayments.

II. RELEVANT DOMESTIC LAW

23. On 1 February 2003 the Code of Civil Procedure of the Russian Federation (“the CCivP”) entered into force introducing, in particular, an amended system of supervisory review.

24. The CCivP, in the relevant part, provides as follows:

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

“1. Judicial decisions that have become legally binding ... may be appealed against... to a court exercising supervisory review by parties to the case and by other persons whose rights and legal interests had 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 379. Proceedings in a supervisory review court after an application for supervisory review was lodged

“A President or Deputy President of the respective court transfers the application for supervisory review ... to a judge of this court for examination.”

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...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...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 387. Grounds for quashing or varying judicial decisions by way of supervisory review

“The grounds for quashing or varying the judicial decisions of the lower courts by way of supervisory review are serious violations of the substantive and procedural laws”

THE LAW

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

25. The applicant complained that the quashing of the judgment of 21 January 2003 in his favour, as upheld on appeal, violated his rights under Article 6 § 1 of the Convention and Article 1 of Protocol No. 1, which, insofar as relevant, provide as follows:

Article 6 § 1

“In the determination of his civil rights and obligations ..., everyone is entitled to a ... 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.

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.”

A. Arguments of the parties

26. The Government argued that the new system of supervisory review, introduced by the CCivP of 2003, differed from the old one. In particular, it was a judge who decided whether to obtain the case-file following a supervisory review complaint and to remit the case to the supervisory review court. They considered that the time-limits for examination of applications for supervisory review represented an additional safeguard of the applicant's rights.

27. They further submitted that supervisory review of the judgment in the applicant's favour had been initiated and carried out in full compliance with the applicable procedure.

28. The Government emphasised that the Presidium had reversed the judgment in the applicant's favour because of serious violations of substantive and procedural laws. In particular, the case-file contained no evidence to support the first instance court findings about the multiplier of 1.92 which was, moreover, never provided for by either local or regional legislation. Furthermore, the mentioned multiplier was overestimated and did not correspond to the level of inflation. According to the Government, the Town Court in its judgment of 25 December 2003 referred to correct multipliers of 1.25 and 1.26 for the years 2001 and 2002 respectively and reached lawful, just and reasoned conclusions. Accordingly, the Government submitted that a balance between the State interests and the legal requirements on the one hand and the applicant's interests on the other hand had been preserved.

29. The Government finally argued that the applicant's failure to appeal against the Town Court judgment of 25 December 2003 clearly showed that he himself considered the initial multiplier incorrect.

30. The applicant maintained his complaints.

B. The Court's assessment

1. *Alleged violation of Article 6 § 1 of the Convention*

31. 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).

32. In a number of previous cases the Court examined the Russian system of supervisory review under the “old” Code of Civil Procedure. That 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 was not subject to any time-limit, with the result that the judgments were liable to challenge indefinitely (see, among other authorities, see *Ryabykh v. Russia*, no. 52854/99, § 52, ECHR 2003-X, §§ 54-56; see also *Roseltrans v. Russia*, no. 60974/00, §§ 27-28, 21 July 2005; *Volkova v. Russia*, no. 48758/99, §§ 34-36, 5 April 2005). In the opinion of the Court, such system was incompatible with the “legal certainty” principle and the applicant's “right to a court” enshrined in Article 6 § 1.

33. The Court also stressed in the above cases that the “old” supervisory review mechanism was used for the purpose of obtaining a rehearing of a settled judicial dispute (see *Ryabykh v. Russia*, mentioned above; see also, *mutatis mutandis*, *Pravednaya v. Russia*, no. 69529/01, § 25, 18 November 2004). However, the mere possibility of two views on the subject is not a ground for re-examination. Higher courts' power to quash or alter binding and enforceable judicial decisions should be exercised only for correction of fundamental defects.

34. In 2003 the “old” system of supervisory review was replaced with the “new” one (see the “Relevant domestic law” part above). In the opinion of the Government, the new system guarantees better stability of court judgments. The Court observes that supervisory review of the judgment in the applicant's favour was made under the new rules, so the Court has now to determine on the facts of the case whether or not the review was compatible with Article 6 § 1.

35. The Court does not find sustainable the Government's argument that the applicant's rights had been adequately secured by the time-limits set in the new Code of Civil Procedure. It is true that the new CCivP established a one-year time-limit for introducing a supervisory review appeal. However,

under the new CCivP the president's power to overrule decisions of other judges refusing to initiate supervisory-review proceedings is not subject to any time-limits (see *Denisov v. Russia* (dec.), no. 33408/03, 6 May 2004). Furthermore, it is unclear on what grounds the president may decide to overrule the decision of the judge rapporteur (see the “Relevant domestic law” part above).

36. In the present case the Court notes that on 30 June 2003 the judge rapporteur of the Regional Court examined the defendant's first application for supervisory review of the final judgment in the applicant's favour and refused to initiate the supervisory-review proceedings. Dissatisfied with the refusal, the defendant lodged a repeated supervisory review complaint, now with the President of the Regional Court, challenging the final judgment of 21 January 2003, as upheld on appeal, and the judge rapporteur's decision of 30 June 2003. Four months later, judge B. of the Regional Court, apparently acting within the President's powers provided by Article 383 of the CCivP (on behalf of the President), overruled the decision of 30 June 2003 and remitted the case to the Presidium for the examination on the merits. Thus, having disagreed with the judge rapporteur's previous decision and without giving any reasons for his disagreement, the President made use of his unfettered discretion to launch supervisory review proceedings.

37. The Court further notes that the judgment of 21 January 2003 in the applicant's favour, as upheld on 16 April 2003, was set aside because the first-instance and appeal courts' findings had been insufficiently supported by evidence and they had misinterpreted the law. In other words, the reason for quashing the final judgment in the applicant's favour was the Presidium's disagreement with the way in which the lower courts had assessed the evidence before them and had applied the domestic law. Examining the Government's argument that the mentioned shortcomings constituted “serious violations of substantive and procedural laws”, the Court is nevertheless unable to conclude that they amounted to fundamental defects or circumstances of a substantial and compelling character which could have required departure from the principle of legal certainty secured by the Convention (see *mutatis mutandis*, *Ryabykh v. Russia*, cited above, and *Pravednaya v. Russia*, cited above).

38. Thus, the Court considers that the quashing of the judgment of 21 January 2003 in the applicant's favour, as upheld on appeal on 16 April 2003, by way of supervisory review proceedings infringed the principle of legal certainty and the applicant's “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 to the Convention

39. 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).

40. Insofar as the Government submitted that the applicant had failed to appeal against the Town Court judgment of 25 December 2003, the Court observes that the core issue before it is the quashing of the final and binding judgment given in the applicant's favour, an instantaneous act (see *Sitokhova v. Russia* (dec.), no. 55609/00, 2 September 2004). Thus, the eventual outcome of the post-quashing proceedings is not directly relevant for the Court's analysis of the complaint about the annulment of the judgment in the applicant's favour (see *Ivanova v. Ukraine*, no. 74104/01, §§ 35-38, 13 September 2005), unless, as a result of the subsequent proceedings, the applicant obtained more than he had had before the supervisory review which is clearly not the case.

41. Having regard to its case-law (see §§ 78-80 in the *Brumărescu* judgment cited above) and the conclusions under Article 6 above, the Court considers that the quashing of the judgment by way of supervisory review, even though it pursued a legitimate aim, imposed an excessive and disproportionate burden on the applicant and was therefore incompatible with Article 1 of Protocol No. 1 to the Convention.

42. There has accordingly been a violation of that Article.

II. APPLICATION OF ARTICLE 41 OF THE CONVENTION

43. 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."

44. The Court points out that under Rule 60 of the Rules of Court any claim for just satisfaction must be itemised and submitted in writing together with the relevant supporting documents or vouchers, "failing which the Chamber may reject the claim in whole or in part".

45. In the instant case, on 8 February 2006, after the application had been declared partly admissible, the applicant was invited to submit his claims for just satisfaction. He failed to submit any such claims within the required time-limit.

46. In these circumstances, the Court makes no award under Article 41 of the Convention.

FOR THESE REASONS, THE COURT UNANIMOUSLY

1. *Holds* that there has been a violation of Article 6 § 1 of the Convention and Article 1 of Protocol No. 1 to the Convention on account of the quashing of the judgment in the applicant's favour;
2. *Decides* to make no award under Article 41.

Done in English, and notified in writing on 15 February 2007, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Søren NIELSEN
Registrar

Loukis LOUCAIDES
President