



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

FIRST SECTION

CASE OF STANISLAV VOLKOV v. RUSSIA

(Application no. 8564/02)

JUDGMENT

STRASBOURG

15 March 2007

FINAL

15/06/2007

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 Stanislav Volkov 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 N. VAJIĆ,

Mr A. KOVLER,

Mrs E. STEINER,

Mr K. HAJIYEV,

Mr D. SPIELMANN, *judges*,

and Mr S. NIELSEN, *Section Registrar*,

Having deliberated in private on 20 February 2007,

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

PROCEDURE

1. The case originated in an application (no. 8564/02) 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, Mr Stanislav Yevgenyevich Volkov ("the applicant"), on 28 January 2002.

2. The applicant was represented by Mr V. Skibin, a lawyer practising in the town of Cherkessk. 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 applicant was born in 1968 and lives in the town of Cherkessk of the Karachayevo-Cherkessiya Republic.

5. According to the applicant, on 13 July 1997 the police instituted administrative proceedings against him for having disobeyed a lawful order of a police officer and arrested him. On the following day the Elista Town Court of the Kalmykiya Republic discontinued the proceedings because there was no indication of an administrative offence. The decision of the Town Court did not contain any reference to the applicant's alleged deprivation of liberty.

6. The applicant submitted that after the hearing the policemen brought him back to a police station. They handcuffed him to a heating device, put a plastic bag on his head and severely beat him up.

7. On 16 July 1997 an investigator of the Department of Internal Affairs of the Karachayevo-Cherkessiya Republic instituted criminal proceedings against the applicant and three other persons on suspicion of participation in a criminal enterprise and ordered their arrest. As it follows from a record of 16 July 1997, the applicant was arrested on the same day at 11.50 p.m. He was also charged with unlawful possession of a weapon.

8. On 30 December 1998 the Cherkessk Town Court acquitted the applicant and ordered his immediate release. The judgment became final on 2 February 1999 when it was upheld by the Supreme Court of the Karachayevo-Cherkessiya Republic.

9. In August 2000 the applicant lodged an action against the Treasury and the Ministry of Internal Affairs of the Russian Federation for compensation for non-pecuniary damage incurred through unlawful detention.

10. On 11 March 2001 the Cherkessk Town Court accepted the applicant's action and ordered that the Ministry of Internal Affairs should pay the applicant 190,000 Russian roubles (RUR, 7,095 euros) at the expense of the Treasury. The Town Court held as follows:

“Mr Volkov was unlawfully detained from 16 July 1997 to 30 December 1998, that is for a total of 535 days.

It was proven at the court hearing that Mr Volkov sustained non-pecuniary damage and it should be compensated because he was acquitted by a final judgment.

According to paragraph 8 of the Decree of the Plenary Supreme Court of the Russian Federation no. 10 of 20 December 1994 'On certain questions concerning application of the domestic law on compensation for non-pecuniary damage'... the amount of compensation depends on the character and extent of moral and physical suffering caused to the plaintiff, fault of the defendant in each particular case, and other circumstances which merit attention...

The court ... takes into account that the amount and extent of moral and physical suffering of a person depend on his subjective perception of the existing situation and considers that, having regard to the arguments and evidence submitted by the parties, it is possible to award the plaintiff 190,000 roubles in compensation for non-pecuniary damage.

Assessing the moral sufferings caused to the plaintiff, possible consequences of the plaintiff's conviction, and having examined the materials of the criminal case-file, the court considers that the awarded amount is reasonable and fair.”

The judgment of 11 March 2001 was not appealed against and became final.

11. On an unspecified date the President of the Supreme Court of the Karachayevo-Cherkessiya Republic lodged before the Presidium of the

Supreme Court an application for a supervisory review of the judgment of 11 March 2001 because the Town Court should have issued the judgment directly against the Treasury and should have excluded the Ministry of Internal Affairs from the proceedings.

12. On 8 August 2001 the Presidium of the Supreme Court of the Karachaevo-Cherkessiya Republic, by way of supervisory-review proceedings, quashed the judgment of 11 March 2001 and remitted the case for a fresh examination. The Presidium noted that the Town Court had incorrectly assessed the amount of compensation and that it should have joined the Treasury as defendant to the proceedings.

13. On 27 September 2001 the Cherkessk Town Court found that the applicant's detention had been unlawful but reduced compensation to RUR 5,000 (EUR 184). The reasoning in the judgment of 27 September 2001 repeated word by word that of the judgment of 11 March 2001, save for the amount in the penultimate paragraph where 190,000 was replaced with 5,000. The judgment of 27 September 2001 was upheld on appeal on 16 October 2001.

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 OF 11 MARCH 2001

14. The applicant complained that the quashing of the final judgment of 11 March 2001 had violated his “right to a court” and his right to peaceful enjoyment of possessions. The Court considers that this complaint falls to be examined under Article 6 § 1 of the Convention and 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 ... 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. Submissions by the parties

15. The Government argued that that the Presidium of the Supreme Court of the Karachayevo-Cherkessiya Republic quashed the judgment of 11 March 2001 with a view to correcting the judicial error committed by the Town Court.

16. The applicant averred that the quashing of the final judgment had irretrievably impaired the principle of legal certainty and had deprived him of the right to receive compensation for damage caused by the unlawful detention for 535 days which was found by the domestic courts to be unlawful.

B. The Court's assessment

1. Article 6 § 1 of the Convention

(a) Admissibility

17. 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

18. 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).

19. 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).

20. 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).

21. The Court observes that on 11 March 2001 the Cherkessk Town Court accepted the applicant's tort action and granted him a sum of money in respect of compensation for non-pecuniary damage caused by the wrongful detention. The judgment was not appealed against and became binding and enforceable. On 8 August 2001 that judgment was quashed by way of supervisory review initiated by the President of the Supreme Court of the Karachayevo-Cherkessiya Republic who was a State official but not a party to the proceedings (see paragraph 11 above).

22. 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).

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

2. Article 1 of Protocol No. 1

(a) Admissibility

24. The Court observes that the applicant's complaint under Article 1 of Protocol No. 1 is not manifestly ill-founded within the meaning of Article 35 § 3 of the Convention and that it is not inadmissible on any other grounds. It must therefore be declared admissible.

(b) Merits

25. The Court reiterates that the existence of a debt confirmed by a binding and enforceable judgment constitutes the judgment beneficiary's

“possession” 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, *Androsov v. Russia*, no. 63973/00, § 69, 6 October 2005).

26. The Court observes that the final and enforceable judgment of 11 March 2001 by which the applicant had been awarded a certain sum of compensation was quashed on a supervisory review on 8 August 2001. The applicant's claims were sent for re-consideration, following which the Town and Regional courts substantially reduced the amount of the initial award, despite the fact that the reasons given in their judgments were identical to those of the judgment of 11 March 2001. Thus, the applicant was prevented from receiving the initial award through no fault of his own. The quashing of the enforceable judgment frustrated the applicant's reliance on the 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 enforceable judgment of 11 March 2001 by way of supervisory review placed an excessive burden on the applicant and was incompatible with Article 1 of Protocol No. 1. There has therefore been a violation of that Article.

II. ALLEGED VIOLATION OF ARTICLE 5 § 5 OF THE CONVENTION

27. The applicant complained under Article 5 § 5 of the Convention that the quashing of the final judgment of 11 March 2001 had violated his right to adequate compensation for his unlawful detention. Article 5 § 5 of the Convention read as follows:

“Everyone who has been the victim of arrest or detention in contravention of the provisions of this Article shall have an enforceable right to compensation.”

A. Submissions by the parties

28. The Government submitted that the applicant had not exhausted domestic remedies because he had not claimed compensation for the pecuniary damage.

29. The applicant averred that he had not claimed compensation in respect of pecuniary damage because he had considered that he had only sustained non-pecuniary damage as a result of his unlawful detention. He further submitted that he had remained in detention for 535 days. The authorities had acknowledged that his detention had been unlawful but by the final judgment of 16 October 2001 they had awarded him RUR 5,000, that is approximately RUR 9 (EUR 0.3) per day of detention. The amount was inadequate.

B. The Court's assessment

(a) Admissibility

30. Having regard to the above findings under Article 6 of the Convention and Article 1 of Protocol No. 1, as well as the parties' submissions under Article 5 § 5 of the Convention, the Court considers that the latter is closely linked to the other complaints declared admissible. In these circumstances, the Court considers that this complaint should be declared admissible as well.

(b) Merits

31. The Court observes that the applicant complained under Article 5 § 5 of the Convention that as a result of the supervisory review he could no longer receive the compensation awarded to him under the judgment of 11 March 2001. The present complaint is, in fact, a restatement of his complaints under Article 6 § 1 of the Convention and Article 1 of Protocol No. 1 concerning the quashing of the judgment of 11 March 2001. The Court observes that the reduction of the amount of compensation complained of by the applicant was the incidental effect of the quashing of the judgment of 11 March 2001, which the Court has held to be in breach of Article 6 § 1 of the Convention and Article 1 of Protocol No. 1.

32. In view of its findings under Article 6 of the Convention and Article 1 of Protocol No. 1 and taking into account that it was the quashing of the judgment of 11 March 2001 which was at the heart of the present complaint, the Court considers that it is not necessary to examine separately the applicant's complaint under Article 5 § 5 of the Convention.

III. OTHER ALLEGED VIOLATIONS OF THE CONVENTION

33. The applicant further complained under Articles 3 and 5 § 1 (c) of the Convention that the policemen had ill-treated him on 13 July 1997 and that he had been unlawfully detained from 13 to 15 July 1997.

34. The Court observes that the events about which the applicant complained had occurred before 5 May 1998, when the Convention entered into force in respect of Russia, and that the applicant did not raise these issues before any Russian authorities. However, the Convention only governs, for each Contracting Party, facts subsequent to its entry into force with respect to that Party.

35. Accordingly, the Court considers that this part of the application is incompatible *ratione temporis* with the provisions of the Convention, within the meaning of Article 35 § 3 of the Convention, and must be rejected pursuant to Article 35 § 4 of the Convention.

IV. APPLICATION OF ARTICLE 41 OF THE CONVENTION

36. 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

37. The applicant claimed compensation, without specifying the amount. He left the determination of the amount to the Court's discretion.

38. The Government argued that it was for the Russian courts to determine the amount of compensation. However, the applicant did not exhaust domestic remedies because he had not lodged claims in respect of pecuniary damage. In any event, his claims are excessive.

39. The Court recalls that for the purposes of examining claims for just satisfaction submitted under Article 41 of the Convention the requirement of exhaustion of domestic remedies does not apply (see *Gridin v. Russia*, no. 4171/04, § 20, 1 June 2006, with further references).

40. The Court reiterates 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 final judicial decision in the applicant's favour had been quashed by way of supervisory review. Having regard to the nature of the violation found, the Court considers it appropriate to award the applicant the sum which he would have received had the judgment of 11 March 2001 not been quashed, deducting the sum awarded to him under the judgment of 27 September 2001 (see paragraphs 10 and 13 above) (cf. *Stetsenko v. Russia*, no. 878/03, § 69, 5 October 2006).

41. The Court further considers that the applicant must have suffered distress and frustration resulting from the quashing of the final judicial decision by way of the supervisory-review proceedings. Making its assessment on an equitable basis, as required by Article 41 of the Convention, the Court awards the applicant EUR 2,000 in respect of non-pecuniary damage, plus any tax that may be chargeable on the above amount.

B. Costs and expenses

42. The applicant did not seek reimbursement of costs and expenses relating to the proceedings before the domestic courts or the Convention organs and this is not a matter which the Court has to examine on its own motion (see *Motière v. France*, no. 39615/98, § 26, 5 December 2000).

C. Default interest

43. 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 complaints concerning the quashing of the final judgment of 11 March 2001 and the reduction of the compensation for unlawful detention following that quashing admissible and the remainder of the application inadmissible;
2. *Holds* that there has been a violation of Article 6 of the Convention and Article 1 of Protocol No. 1;
3. *Holds* that it is not necessary to examine the applicant's complaint under Article 5 § 5 of the Convention;
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:
 - (i) RUR 185,000 (one hundred and eighty-five thousand Russian roubles) in respect of pecuniary damage;
 - (ii) EUR 2,000 (two thousand euros) in respect of non-pecuniary damage, to be converted into Russian roubles at the rate applicable at the date of the settlement;
 - (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;

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

Søren NIELSEN
Registrar

Christos ROZAKIS
President