



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

FIRST SECTION

CASE OF GAVRIKOVA v. RUSSIA

(Application no. 42180/02)

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 Gavrikova 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 S.E. JEBENS,

Mr G. MALINVERNI, *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. 42180/02) 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 Rozaliya Shafigulovna Gavrikova ("the applicant"), on 14 November 2002.

2. The applicant was represented before the Court by Mr A. Sapegin. 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, in particular, about the domestic courts' denial of compensation for non-pecuniary damage in connection with the death of her non-marital partner.

4. By decision of 30 June 2005, the Court declared the application partly admissible.

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

THE FACTS

I. THE CIRCUMSTANCES OF THE CASE

6. The applicant was born in 1962 and lives in the town of Zarechniy of the Sverdlovsk Region. In 1984 she married Mr Igor Gavrikov and a year later gave birth to their first son.

7. On 25 May 1995 the applicant formally divorced Mr Gavrikov. She explained that the divorce had been motivated by the desire to improve their housing conditions. As a divorced person she had become eligible for a separate flat which she received. But shortly thereafter they had exchanged the two flats for a larger one and moved in together. In 1996 their second son was born.

8. In the night from 3 to 4 July 2001 Mr Gavrikov died in an aeroplane crash. The plane was owned and operated by the public company "VladivostokAvia" ("the air carrier").

9. The air carrier offered to pay compensation. However, the applicant was not satisfied with the amount and sued the air carrier in tort, seeking compensation for pecuniary and non-pecuniary damage and payment of the insurance cover. She lodged the action on behalf of herself and her two sons.

10. On 13 March 2002 the Beloyarskiy District Court of the Sverdlovsk Region granted the claims in part. It held that the claim for pecuniary damage was covered through the plaintiffs' entitlement to a lump-sum compensation and monthly payments from the local social security office. As to the applicant's claim for non-pecuniary damage, the District Court ruled as follows:

"The plaintiff's claims for compensation for non-pecuniary damage are substantiated by virtue of Article 151 of the Civil Code of the Russian Federation. Through the air carrier's fault the plaintiff lost her beloved person with whom she had been living for a long time and to whom she gave two children. It is natural that the news of a sudden death of their husband and father came as a strong nervous shock to her and her children. The plaintiff also suffered mental anguish during identification of her husband. The depressed mental state of the plaintiff following [her partner's] death is confirmed by medical certificates. At present she is still in a state of moral anguish because she has two underage children who need upbringing and education. It would have been easier for her to [bring them up] together with her husband. The defendant violated the plaintiff's right to have a full family with her husband and the children's right to have the father..."

11. The court ordered the air carrier to pay 20,000 Russian roubles ("RUR") to the applicant and RUR 200,000 to her sons in compensation for non-pecuniary damage.

12. On 14 June 2002 the Sverdlovsk Regional Court quashed the judgment of 13 March 2002 in the part concerning the applicant's claim for non-pecuniary damage:

"As it has been established by the [first-instance] court and supported by the materials in the case-file, in 1995 the plaintiff divorced Mr Igor Gavrikov. By law she has not been a relative of Mr Gavrikov who died in the crash. Therefore, the provisions on compensation for non-pecuniary damage in connection with the loss of a relative may not be applied to [the applicant] and her mental trauma sustained as a result of her former husband's death is of no legal significance. On this ground [the court]... makes a new decision, according to which [the applicant's] claim for non-pecuniary damage must be dismissed".

13. On 5 August 2005 the Supreme Court of the Russian Federation examined an application for supervisory review lodged by the applicant and referred it for examination on the merits to the Presidium of the Sverdlovsk Regional Court.

14. On 5 October 2005 the Presidium of the Sverdlovsk Regional Court found the application meritorious. It pointed out that the law does not make the right to receive compensation for non-pecuniary damage conditional on the existence of a marital relationship. Family ties may arise not only from marriage or cognation, and the death of a breadwinner may cause damage not only to the spouse or blood relatives, but also to other family members. The Presidium further acknowledged that the District Court's findings that the applicant and her late partner had lived together and that his death had caused her moral anxiety and neurosis, had not been called into question. In these circumstances, the Regional Court's decision refusing compensation to the applicant, was not lawful. On that ground the Presidium quashed the Regional Court's judgment in the part concerning compensation in respect of non-pecuniary damage sustained by the first applicant and remitted this part of the claim for a new examination.

15. On 6 December 2005 the Zarechnyi District Court found that the applicant had incurred non-pecuniary damage because of the death of her partner. It determined that her non-pecuniary rights to a functional family and parental care for the children had been violated and she had suffered a mental trauma and depression. The District Court stressed that the law does not confine the possibility of receiving compensation for non-pecuniary damage to the persons in a registered marriage. Assessing the intensity of the applicant's suffering, the extent of the perpetrator's fault, and applying the principles of reasonableness and fairness, the District Court awarded her RUR 200,000 in respect of compensation for non-pecuniary damage incurred through the death of her partner.

16. On 14 March 2006 the Sverdlovsk Regional Court upheld the District Court's judgment on appeal.

II. RELEVANT DOMESTIC LAW

17. Article 151 of the Russian Civil Code provides that a court may award compensation for non-pecuniary damage (that is, for mental anguish or physical suffering) to a person who sustained such damage as a result of a violation of his or her personal non-pecuniary rights. In order to determine the amount of compensation for non-pecuniary damage the court must have regard to the extent of fault on the part of the perpetrator and intensity of mental anguish or physical suffering, bearing in mind individual characteristics of the victim.

18. Section 2 of Practice Directions of the Plenary Supreme Court of the Russian Federation no. 10 of 20 December 1994 "Certain issues arising out

of application of provisions on compensation for non-pecuniary damage” provides as follows:

“The notion of non-pecuniary damage shall be understood as mental anguish or physical suffering caused by the acts (failures to act) encroaching on non-material assets that belong to an individual by virtue of his/her birth or by operation of law (life, health, dignity of a person, professional reputation, inviolability of private life, personal and family secret, etc.)...

Non-pecuniary damage may, in particular, include emotional anxiety in connection with the loss of relatives...”

THE LAW

I. ALLEGED VIOLATION OF ARTICLES 8 AND 14 OF THE CONVENTION AND ARTICLE 1 OF PROTOCOL NO. 1

19. The applicant complained that, by refusing her compensation for non-pecuniary damage in connection with the death of her partner, the domestic authorities showed lack of respect for her private and family life. The Court decided also to examine that complaint from the standpoint of Article 1 of Protocol No. 1, read alone or in conjunction with Article 14 of the Convention. The above provisions read as follows:

Article 8

“1. Everyone has the right to respect for his private and family life...

2. There shall be no interference by a public authority with the exercise of this right except such as is in accordance with the law and is necessary in a democratic society in the interests of national security, public safety or the economic well-being of the country, for the prevention of disorder or crime, for the protection of health or morals, or for the protection of the rights and freedoms of others.”

Article 14

“The enjoyment of the rights and freedoms set forth in [the] Convention shall be secured without discrimination on any ground such as sex, race, colour, language, religion, political or other opinion, national or social origin, association with a national minority, property, birth or other status.”

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.”

20. The Government submitted that the applicant was no longer a “victim” of the alleged violations after the Presidium of the Sverdlovsk Regional Court had recognised unfairness of the previous judgments and remitted her claim for a new examination. In the new proceedings the District Court granted her claim.

21. The Court will first examine the issue whether or not the applicant can claim to be a “victim” of the alleged violation of her rights under the Convention and its Protocols. It recalls that for an applicant to be able to claim to be the “victim” of a violation, within the meaning of Article 34 of the Convention, not only must he have the status of victim at the time the application is introduced, but such status must continue to obtain at all stages of the proceedings. It reiterates that a decision or measure favourable to an applicant is not in principle sufficient to deprive him of his status as a “victim” unless the national authorities have acknowledged, either expressly or in substance, and then afforded redress for, the breach of the Convention (see *Amuur v. France*, judgment of 25 June 1996, *Reports of Judgments and Decisions* 1996-III, § 36).

22. In the present case the alleged violation stemmed from the Regional Court's judgment of 14 June 2002 whereby the applicant's claim for non-pecuniary damage resulting from the death of her partner was denied on the ground that they had not been bound by marital ties. On 5 October 2005 the Presidium of the Regional Court quashed that part of the judgment as unlawful, finding that entitlement to compensation for non-pecuniary damage was not conditional on the existence of an official marriage. The claim was remitted for a new examination which ended in an award in the applicant's favour.

23. The Court observes that, in quashing the Regional Court's judgment of 14 June 2002, the Presidium acknowledged that there was no legal basis for a difference in treatment between married and non-married partners in relation to compensation for non-pecuniary damage. Since the applicant and her late partner had lived and raised children together, she had a legitimate expectation of receiving compensation for non-pecuniary damage sustained as a result of his death. In the Court's view, that finding amounted to acknowledgement of the breach of the applicant's Convention rights she complained about. It remains to be seen whether the applicant has been afforded redress for that breach. The Court notes that in the ensuing proceedings the District and Regional Court granted the applicant the amount of RUR 200,000 in respect of compensation for non-pecuniary

damage, which amount was ten times greater than the original award made by the District Court on 13 March 2002.

24. In these circumstances the Court finds that the Presidium's decision of 5 October 2005, taken together with the subsequent proceedings, constituted acknowledgement and sufficient redress for the alleged violations of the applicant's rights. The applicant thus ceased to be a “victim” within the meaning of Article 34 of the Convention.

25. Accordingly, there has been no violation of Articles 8 or 14 of the Convention or Article 1 of Protocol No. 1.

FOR THESE REASONS, THE COURT UNANIMOUSLY

Holds that there has been no violation of Articles 8 and 14 of the Convention and Article 1 of Protocol No. 1.

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