



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

FIRST SECTION

CASE OF SERGEY PETROV v. RUSSIA

(Application no. 1861/05)

JUDGMENT

STRASBOURG

10 May 2007

FINAL

10/08/2007

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 Petrov 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 8 March 2007,

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

PROCEDURE

1. The case originated in an application (no. 1861/05) 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 Sergey Mikhaylovich Petrov (“the applicant”), on 15 November 2004.

2. 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 29 May 2006 the Court communicated 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.

THE FACTS

I. THE CIRCUMSTANCES OF THE CASE

5. The applicant, Mr Sergey Mikhaylovich Petrov was born in 1955 and lives in Moscow. He is a retired military officer.

6. In 2001 he brought proceedings against the Military Service Commission of Moscow (*Военный комиссариат г. Москвы*, hereinafter

the “Commission”) for recalculation of his pension as from 1990 to take account of the fact that he served in the extreme north of Russia which made him eligible for a higher pension.

7. On 30 April 2002 the Tverskoy District Court of Moscow granted the applicant's claim, adjusted his pension by a coefficient 1.5 and awarded him 84,915.42 Russian roubles (RUR) in arrears.

8. The Commission did not lodge an ordinary appeal against the judgment and it became binding and enforceable on 10 May 2002.

9. On 3 November 2003 the Commission filed an application for supervisory review, claiming that the civil-law provisions on which the court based its judgment were not relevant to the applicant.

10. On 18 May 2004 the applicant was informed about the initiation of the supervisory-review procedure.

11. On 20 May 2004 the Presidium of the Moscow City Court held a supervisory-review hearing. It held that the first-instance court had erroneously applied the substantive law. On that ground it quashed the judgment of 30 April 2002 and remitted the matter for a fresh examination. Before the announcement of the judgment the applicant was asked to wait outside the courtroom. At the same time the respondent remained there. The decision of the court was announced to the applicant by the bailiff. The applicant received a copy of the final decision on 13 August 2004.

12. The new hearing was scheduled for 16 September 2004. The applicant could not attend the hearing, and on 9 September 2004 asked the court to postpone it.

13. On 24 October 2004 the applicant received a letter from the court, which enclosed a copy of the decision of the Tverskoy District Court of 6 October 2004 by which the applicant's action was left without consideration for his failure to appear twice before the court. The applicant claims that the court did not inform him about the new date of the hearing. The applicant filed an appeal, but, since the time-limit for an appeal was up, the court ignored his petition.

II. RELEVANT DOMESTIC LAW

A. Code of Civil Procedure of the Russian Federation

14. The Code of Civil Procedure of the Russian Federation (“the new Code”) was enacted on 14 November 2002 and replaced the RSFSR Code of Civil Procedure (“the old Code”) from 1 February 2003. It 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) violation or incorrect application of substantive or procedural legal provisions.”

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

“1. Judicial decisions that have become legally binding, with the exception for judicial decisions by the Presidium of the Supreme Court of the Russian Federation, may be appealed against... to a court exercising supervisory review, by parties to the case and by other persons whose rights or legal interests have 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 381. Examination of an application for supervisory review

“2. Having examined an application for supervisory review, the judge issues a decision on –

(1) obtaining the case file if there exist doubts as to the lawfulness of the judicial decision...

4. If a decision to obtain the file has been made, the judge may suspend enforcement of the judicial decision until the supervisory-review proceedings have been completed...”

Article 384. Decision on remitting the case for examination on the merits by a supervisory-review court

“1. A judicial decision on remitting the case for examination on the merits by a supervisory-review court must contain:

(7) a reasoned description of the grounds for remitting the case for examination on the merits...”

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 substantive legal provisions have been erroneously applied or interpreted.”

B. Resolution of the Plenary Supreme Court of the Russian Federation

15. Resolution no. 2 of the Plenary Supreme Court of the Russian Federation of 20 January 2003, “On certain issues arising in connection with adoption and coming into force of the Code of Civil Procedure of the Russian Federation”, provided that –

“22. ...The [one-year] time-limit for lodging an application for supervisory review of judicial decisions that became legally binding before 1 February 2003, shall run from 1 February 2003.”

C. Case-law review of civil cases in the second quarter of 2004 by the Supreme Court (Resolution of 6 October 2004)

16. In response to question no. 4 concerning calculation of the time-limit for lodging an application for supervisory review of judicial decisions that became legally binding before 1 February 2003, the Presidium of the Supreme Court clarified that the final date for lodging such an application should be 2 February 2004.

D. Interim Resolution ResDH (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

17. “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

17. The Court will firstly examine the applicant's complaint concerning the quashing of the judgment of 30 April 2002 by way of supervisory-review proceedings. The applicant complained that the act of quashing 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

18. The Court considers 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

1. Arguments by the parties

19. The Government submitted that the supervisory-review proceedings in the applicant's case fully complied with the requirements set out in the Code of Civil Procedure of the Russian Federation. First, the application for supervisory review was lodged by a party to the proceedings. Secondly, it was lodged within the prescribed time-limit, that is ten months and three days after the beginning of the time-limit for lodging such applications against the judicial decisions which entered into force before 1 February

2003, as clarified by the Resolution no. 2 of the Plenary Supreme Court of the Russian Federation of 20 January 2003 “On certain issues arising in connection with adoption and coming into force of the Code of Civil Procedure of the Russian Federation”. Furthermore, the ground for quashing of the judgment of 30 April 2002 was the essential breach of substantive provisions of the domestic law. Finally, the Presidium of the Moscow City Court did not overstep the margins of its competence by quashing the judgment of 30 April 2002 and remitting the matter for a fresh examination. The Government laid special emphasis on the fact that, by contrast with the *Ryabykh* case (see *Ryabykh v. Russia*, no. 52854/99, § 54, ECHR 2003-IX), the supervisory-review proceedings had been initiated by a party to the case, the Military Service Commission. In conclusion the Government referred to the legislation of Germany, Austria and Switzerland, which provided for the possibility to review of final judicial decisions in cases of essential breach of the provisions of substantive or procedural law by lower courts, and on the Interim Resolution ResDH (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. There had therefore been no violation of the principle of legal certainty.

20. The applicant maintained his claims.

2. The Court's assessment

(a) Article 6 of the Convention

21. 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).

22. 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).

23. 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).

24. 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, among other authorities, *Ryabykh*, cited above, §§ 51–56; and more recently *Volkova v. Russia*, no. 48758/99, §§ 34-36, 5 April 2005; *Roseltrans v. Russia*, no. 60974/00, §§ 27-28, 21 July 2005; *Kutepov and Anikeyenko v. Russia*, no. 68029/01, §§ 49-52, 25 October 2005).

25. In the present case the judgment of 30 April 2002 in the applicant's favour was set aside by 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-...).

26. 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 Service Commission, that is a party to the case, rather than a State official. The Court, however, is not persuaded that this distinction is of crucial importance for its analysis.

27. The Court notes, firstly, a rather long period of time – about eighteen months – that lapsed from the date the judgment in the applicant's favour had become binding to the date the supervisory-review procedure was launched. It observes that the RSFSR Code of Civil Procedure set no time-limit for lodging an application for supervisory review thus permitting a final judgment to be challenged indefinitely (see *Ryabykh*, cited above). The supervisory-review proceedings in the present case were instituted under the new Code of Civil Procedure which limited the time-limit to one year (Article 376 § 2, cited in paragraph 14 above). However, the transitional provisions governing the entry into force of the new Code of Civil Procedure, as they were clarified by the Plenary Supreme Court of the Russian Federation, introduced the possibility for lodging an application for

supervisory review of any judgment that had become legally binding before 1 February 2003 (see paragraphs 15 and 16 above). In the present case the Commission availed itself of this opportunity to challenge the judgment in the applicant's favour that had become binding eighteen months earlier.

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 22 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). Thus, a situation where the binding judgment in the applicant's favour was called into question could have been avoided, had the Commission lodged an ordinary appeal. It is noteworthy, however, that the Russian Codes of Civil Procedure, both that of RSFSR and that of the Russian Federation, permitted a party to apply for supervisory review even if it had not previously exhausted an ordinary appeal. In the present case the 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 30 April 2002. The Government did not point to any exceptional circumstances that would have prevented the Department from exposing its arguments to the District Court or making use of an ordinary appeal in good time.

29. Having regard to the above considerations, the Court finds that, by granting the Department's request to set aside the judgment of 30 April 2002, the Presidium of the Moscow City 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.

(b) Article 1 of Protocol No. 1

30. 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).

31. The Government denied that there had been a violation of the applicant's property rights for the following reasons. Until 20 May 2004, when the judgment of 30 April 2002 was quashed by way of supervisory review, the applicant had been receiving the increased pension. Later on, after the remittal of the case for a fresh examination, the applicant's action

was left without consideration. Therefore, the proceedings had not been completed, and they had not established the applicant's property right or created a "legitimate expectation" for him.

32. The Court observes that by virtue of the judgment of 30 April 2002 the applicant's pension was considerably increased. 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 30 April 2002 by way of supervisory review placed an excessive burden on the applicant and was therefore incompatible with Article 1 of Protocol no. 1. There has therefore been a violation of that Article.

II. OTHER ALLEGED VIOLATIONS OF THE CONVENTION

33. The applicant complained under Article 13 of the Convention that he had no effective domestic remedy in respect of the decision of the Presidium of the Moscow City Court of 20 May 2004 to quash, on supervisory review, the final judgment of 30 April 2002. Article 13 reads as follows:

"Everyone whose rights and freedoms as set forth in [the] Convention are violated shall have an effective remedy before a national authority notwithstanding that the violation has been committed by persons acting in an official capacity."

34. The Court notes that Article 13 of the Convention does not, as such, guarantee the right to appellate remedies in respect of a decision taken by way of supervisory review, and the mere fact that the judgment of the highest judicial body is not subject to further judicial review does not infringe in itself the said provision (see *Tregubenko v. Ukraine* (dec.), no. 61333/00, 21 October 2003, and *Sitkov v. Russia* (dec.), no. 55531/00, 9 November 2004).

35. It follows that the applicant's complaint under Article 13 of the Convention is incompatible *ratione materiae* with the provisions of the Convention within the meaning of Article 35 § 3 and must be rejected in accordance with Article 35 § 4 thereof.

36. He complained under Article 6 § 1 of the Convention about various procedural defects of the hearing before the Presidium of the Moscow City Court.

37. The Court finds that, having concluded that there has been an infringement of the applicant's "right to a court" by the very use of the supervisory review procedure, it is not necessary to consider whether the procedural guarantees of Article 6 of the Convention were available in those proceedings (see *Ryabykh*, cited above, § 59).

38. The applicant further complained under Article 6 § 1 that in the new proceedings which commenced following the supervisory review the Tverskoy District Court held a hearing on 6 October 2004 without having apprised him about it.

39. Having regard to its above findings under Article 6 of the Convention (paragraphs 22-30) the Court does not find it necessary to examine whether Article 6 was complied with in the subsequent proceedings.

40. Thus, the Court rejects this complaint under Article 35 § 4 of the Convention.

41. Finally, the applicant complained Articles 14 and 17 of the Convention that the domestic court discriminated against him and abused of his rights. Article 14 of the Convention provides as follows:

“The enjoyment of the rights and freedoms set forth in this 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 17 of the Convention provides as follows:

“Nothing in [the] Convention may be interpreted as implying for any State, group or person any right to engage in any activity or perform any act aimed at the destruction of any of the rights and freedoms set forth herein or at their limitation to a greater extent than is provided for in the Convention.”

42. The Court notes that the applicant did not substantiate his complaints under either of these Convention provisions.

43. It follows that this part of the application is manifestly ill-founded and must be rejected in accordance with Article 35 §§ 3 and 4 of the Convention.

III. APPLICATION OF ARTICLE 41 OF THE CONVENTION

44. 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

45. The applicant claimed 793,831 Russian roubles (RUR) in respect of pecuniary damage. He explained that this amount consisted in the following expenditure: the increase of the pension lost from August 2004 to December 2006 as a result of quashing of the judgment of 30 April 2002

plus the amount of his increased pension for 20 years ahead. He also claimed 30,000 euros (EUR) in respect of non-pecuniary damage.

46. The Government considered that no pecuniary damage should be awarded to the applicant. As to the claim for non-pecuniary damage, the Government considered it excessive and unreasonable and suggested that it should not be higher than EUR 500.

47. As regards the claim in respect of pecuniary damage, the Court believes that the amount claimed by the applicant is excessive. Having regard to the nature of the violation found, the Court considers it appropriate to award the applicant EUR 2,500 as compensation for pecuniary damages, plus any tax that may be chargeable on this amount.

48. The Court further considers that the applicant suffered distress and frustration because of the quashing by way of supervisory review of the final judgment in his favour. Making its assessment on an equitable basis, it awards him EUR 2,000 in respect of non-pecuniary damage (see *Chernitsyn v. Russia*, no. 5964/02, § 40, 6 April 2006), plus any tax that may be chargeable on that amount.

B. Costs and expenses

49. The applicant claimed RUR 2,880 to cover his expenses for translation. The Government did not dispute that this cost had been actually incurred and reasonable as to quantum.

50. According to the Court's case-law, an applicant is entitled to reimbursement of his costs and expenses only in so far as it has been shown that these have been actually and necessarily incurred and were reasonable as to quantum. In the present case, the applicant submitted a receipt supporting his claim. The sum indicated in the contract does not appear excessive or unreasonable. Regard being had to the information in its possession, the Court considers it reasonable to award the applicant the sum requested, plus any tax that may be chargeable on that amount.

C. Default interest

51. 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 complaint concerning the quashing of the judgment in the applicant's favour by way of supervisory review admissible and the remainder of the application inadmissible;
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, the following amounts:
 - (i) EUR 2,500 (two thousand five hundred euros) in respect of pecuniary damage and 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 settlement;
 - (ii) RUR 2,880 (two thousand eight hundred and eighty Russian roubles) in respect of costs and expenses;
 - (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 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 10 May 2007, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Søren NIELSEN
Registrar

Christos ROZAKIS
President