



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

FIRST SECTION

CASE OF NAYDENKOV v. RUSSIA

(Application no. 43282/02)

JUDGMENT

STRASBOURG

7 June 2007

FINAL

24/09/2007

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 Naydenkov 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 15 May 2007,

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

PROCEDURE

1. The case originated in an application (no. 43282/02) 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 Mikhail Igorevich Naydenkov (“the applicant”), on 30 September 2002. He was represented before the Court by Mr K.P. Krakovski, a lawyer practising in the town of Rostov-na-Donu.

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. On 4 February 2004 the Court decided to communicate 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

THE CIRCUMSTANCES OF THE CASE

4. The applicant was born in 1966 and lives in the town of Taganrog, the Rostov Region.

5. In the 1980s the applicant took part in a rescue operation on the site of the Chernobyl nuclear disaster. As of the late 1990s the applicant has been in receipt of social benefits in this connection.

A. First set of proceedings

6. On 1 December 1998 the Taganrog Town Court (“the Town Court”) granted the applicant's claim for unpaid social benefits and ordered the pension authority to make him monthly payments of 1,850.55 Russian roubles (RUR – approximately 69 euros (EUR)) and a one-time payment of RUR 32,457 (approximately EUR 1,210). This judgment came into force on 17 April 1999. The sums due pursuant to the judgment of 1 December 1998 were paid in full on 8 May 2002.

B. Second set of proceedings

7. By a judgment of 4 October 1999 the Town Court granted the applicant's claim for other unpaid social benefits and ordered the authority to pay him RUR 1,850.55 (approximately EUR 69) monthly and also to make him a one-time payment of RUR 85,650 (approximately EUR 3,172).

8. It appears that the judgment was not appealed against by the parties and came into force on 14 October 1999. The respective award was paid in full on 8 May 2002.

C. Third set of proceedings

9. On 29 August 2000 the Town Court examined and granted the applicant's claim to index-link the social benefits in line with the minimum monthly wage using coefficient “1,581”. It does not appear that the parties challenged the judgment on appeal and on 8 September 2000 it came into force. It appears that the authority disagreed with the judgment and refused to enforce it.

10. On 6 March 2003 the Regional Court, acting by way of supervisory review upon the application of the President of the Rostov Regional Court under the old Code of Civil Procedure which, in its relevant part, remained in force until 30 June 2003, set aside the judgment of 29 August 2000 and remitted it to the first instance court for a fresh examination on the ground of a serious breach of substantive law.

11. It appears that on 5 May 2003 the domestic courts re-examined and eventually rejected the applicant's claim. The respective judgment came into force on 30 June 2003.

D. Fourth set of proceedings

12. By a judgment of 5 December 2002 the Town Court examined and granted the applicant's claim for damages in respect of delays in the enforcement of the judgment of 29 August 2000.

13. The court ordered the authority to make him a one-time payment of RUR 39,446.93 (approximately EUR 1,240) and monthly payments of RUR 8,007.74 (approximately EUR 251) starting from 1 January 2003. This judgment was rectified by the Town Court decision of 29 January 2003 and later approved by the Rostov Regional Court on 19 February 2003.

14. It appears that eventually the authority was ordered to pay the applicant RUR 43,102.62 (approximately EUR 1,353) one-time and RUR 8,086.95 (approximately EUR 253) on a monthly basis.

15. It appears that the judgment was re-opened and quashed on the ground of new circumstances by the Town Court on 10 October 2003. The court considered that the quashing of the judgment of 29 August 2000 constituted a new relevant fact and quashed the judgment of 5 December 2002 accordingly. Subsequently, the court decided to reject the applicant's claims.

THE LAW

I. ALLEGED VIOLATION OF ARTICLE 6 OF THE CONVENTION AND ARTICLE 1 OF PROTOCOL No. 1 ON ACCOUNT OF LENGTHY NON-ENFORCEMENT OF COURT AWARDS IN THE APPLICANT'S FAVOUR

16. The applicant complained that the delay in enforcement of the judgments of 1 December 1998 and 4 October 1999 violated his rights under Article 6 § 1 of the Convention and his right to the peaceful enjoyment of possessions as guaranteed in Article 1 of Protocol No. 1. These Articles, in so far as relevant, provide 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.

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. Admissibility

17. The Government acknowledged that there was a delay in the enforcement of the judgments in the applicant's favour, but argued that the applicant is no longer a victim since the judgments were enforced. They submitted that the applicant had been offered to conclude a friendly settlement but declined.

18. The applicant maintained his complaints.

19. The Court notes that the mere refusal by the applicant to conclude a friendly settlement may not serve as a basis for declaring his complaint inadmissible. As to the applicant's alleged loss of victim status, the Court reiterates that “a decision or measure favourable to the applicant is not in principle sufficient to deprive her of her 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, p. 846, § 36, *Dalban v. Romania* [GC], no. 28114/95, § 44, ECHR 1999-VI, and *Rotaru v. Romania* [GC], no. 28341/95, § 35, ECHR 2000-V). Only when these conditions are satisfied does the subsidiary nature of the protective mechanism of the Convention preclude examination of an application (see, for example, *Jensen and Rasmussen v. Denmark* (dec.), no. 52620/99, 20 March 2003).

20. In the present case, the Court observes that the mere fact that the authorities complied with the judgments after a substantial delay cannot be viewed as automatically depriving the applicant of his victim status under the Convention. The domestic authorities have not acknowledged that the applicant's Convention rights were unjustifiably restricted by the non-enforcement of the judgment and until now no redress has been offered to the applicant for the delays, as required by the Court's case-law (see, for example, *Petrushko v. Russia*, no. 36494/02, § 16, 24 February 2005).

21. Accordingly, the Court rejects the Government's objection as to the loss of victim status.

22. The Court observes that the applicant's 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

23. The parties' submissions on the merits of the complaint are similar to those on the admissibility.

24. The Court notes that the judgment dated 1 December 1998 came into force on 17 April 1999 and remained without enforcement until 8 May 2002, i.e. for the period of three years and twenty-two days. It further notes the judgment dated 4 October 1999 came into force on 14 October 1999 and remained without enforcement until 8 May 2002, i.e. for the period of two years, six months and twenty-four days.

25. The Court has found violations of Article 6 § 1 of the Convention and Article 1 of Protocol No. 1 in many cases raising issues similar to the ones in the present case (see, among other authorities, *Burdov v. Russia*, no. 59498/00, ECHR 2002-III; and, more recently, *Petrushko*, cited above, or *Poznakhirina v. Russia*, no. 25964/02, 24 February 2005).

26. Having examined the material submitted to it, the Court notes that the Government did not put forward any fact or argument capable of persuading it to reach a different conclusion in the present case. Having regard to its case-law on the subject, the Court finds that by failing for such substantial period to comply with the enforceable judgments in the applicant's favour the domestic authorities prevented him from receiving the money which he was entitled to receive under the final and binding judgments.

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

II. ALLEGED VIOLATION OF ARTICLE 6 OF THE CONVENTION AND ARTICLE 1 OF PROTOCOL No. 1 ON ACCOUNT OF QUASHING OF COURT AWARDS IN THE APPLICANT'S FAVOUR

28. The applicant complained that the quashing under supervisory review procedure of the judgment of 29 August 2000 and the consequent quashing of the judgment of 5 December 2002 violated his right to a fair trial guaranteed by Article 6 § 1 of the Convention and his right to the peaceful enjoyment of his possessions guaranteed by Article 1 of Protocol No. 1.

A. Admissibility

29. The Government submitted that on 6 March 2003 the Presidium of the Rostov Regional Court acted in accordance with the domestic law and procedure and quashed the court decisions in the third set of proceedings because the first instance court had made erroneous interpretations of the substantive domestic law. The Government contended that the application for supervisory review had been lodged in order to correct a judicial error and was, therefore, in the interests of prevention of violations of the rights and legal interests of other persons. As regards the judgment of 5 December

2002, the Government submitted that its quashing was justified by the need to take into account the outcome of supervisory review proceedings of 6 March 2003. Accordingly, the complaint was unfounded.

30. The applicant contested the Government's submissions and maintained the initial complaints.

31. 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

32. The parties' submissions on the merits of the complaint are similar to those on the admissibility.

1. Article 6 § 1 of the Convention

33. The Court first notes that the disputes regarding the debts owed to the applicant by the authorities were of a pecuniary nature and indisputably concerned a civil right within the meaning of Article 6 § 1 of the Convention.

34. The Court observes that the issue of the present case is whether the supervisory review procedure permitting a final judgment to be quashed can be considered compatible with Article 6 and, more specifically, whether on the facts of the present case the principle of legal certainty was respected.

35. The Court finds that this case is similar to the case of *Ryabykh v. Russia*, cited above, where it was said, in so far as relevant to the instant case:

“51. ... 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...”

54. The Court notes that the supervisory review of the judgment ... was set in motion by the President of the Belgorod Regional Court – who was not party to the proceedings ... As with the situation under Romanian law examined in *Brumărescu*, the exercise of this power by the President was not subject to any time-limit, so that judgments were liable to challenge indefinitely.

55. 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, binding judicial decision to remain inoperative to the detriment of one party. It would be inconceivable that Article 6 § 1 should describe in detail procedural guarantees afforded to litigants – proceedings that are fair, public and expeditious – without protecting the implementation of judicial decisions; to construe Article 6 as being concerned exclusively with access to a court and the conduct of proceedings would be likely to lead to situations incompatible with the principle of the rule of law which the Contracting States undertook to respect when they ratified the Convention (see *Hornsby v. Greece*, judgment of 19 March 1997, *Reports of Judgments and Decisions* 1997-II, p. 510, § 40).

56. The Court considers that the right of a litigant to a court would be equally illusory if a Contracting State's legal system allowed a judicial decision which had become final and binding to be quashed by a higher court on an application made by a State official."

36. Furthermore, the Court has found in this respect in the judgment *Sovtransavto Holding v. Ukraine*, no. 48553/99, § 77, ECHR 2002-VII:

"... judicial systems characterised by the objection (protest) procedure and, therefore, by the risk of final judgments being set aside repeatedly, as occurred in the instant case, are, as such, incompatible with the principle of legal certainty that is one of the fundamental aspects of the rule of law for the purposes of Article 6 § 1 of the Convention, read in the light of *Brumărescu*..."

37. Turning to the facts of the present case, the Court notes that by two judgments dated 29 August 2000 and 5 December 2002 respectively the domestic courts granted the applicant's claims for unpaid social benefits and awarded him certain amounts. After the judgment of 29 August 2000 in the applicant's favour had become final and binding, the President of the Rostov Regional Court brought an application for its supervisory review. On 6 March 2003 the Presidium of the Rostov Regional Court quashed the said judgment on the ground of erroneous application of the substantive law. Upon the fresh examination of the applicant's claims, the domestic court rejected his claims in this case as unfounded. Since the judgment of 5 December 2002 was based on the findings made in the judgment of 29 August 2000, on 10 October 2003 the Town Court quashed the judgment of 5 December 2002 on the ground of new facts too and eventually rejected the applicant's claims accordingly.

38. Having regard to the circumstances of the present case, the Court does not find any reason for departing from its aforementioned judgments and considers that there has been a violation of Article 6 § 1 in respect of the quashing of the final and binding judgments given in the applicant's cases.

2. Article 1 of Protocol No. 1

39. The Court reiterates first that the Convention does not guarantee, as such, the right to an old-age pension or any social benefit in a particular amount (see, for example, *Aunola v. Finland* (dec.), no. 30517/96, 15 March 2001). However a "claim" – even concerning a pension or a social benefit –

can constitute a “possession” within the meaning of Article 1 of Protocol No. 1 if it is sufficiently established to be enforceable (see *Stran Greek Refineries v. Greece*, judgment of 9 December 1994, Series A no. 301, § 59).

40. The judgment of the Town Court of 29 August 2000 provided the applicant with an enforceable claim to receive an increased amount of social benefits index-linked in line with the minimum monthly wage using coefficient “1,581”. As to the judgment of the Town Court of 5 December 2002, it awarded the applicant RUR 43,102.62 one-time and RUR 8,086.95 on a monthly basis.

41. The Court finds that the decision of the Rostov Regional Court of 6 March 2003 and subsequent proceedings voiding the effect of the judgment of 29 August 2000 as well the decision of the Town Court of 10 October 2003 and subsequent proceedings voiding the effect of the judgment of 5 December 2002 constituted an interference with the applicant's right to the peaceful enjoyment of possessions guaranteed by Article 1 of Protocol No. 1 (see *Brumărescu v. Romania* [GC], no. 28342/95, § 74, ECHR 1999-VII, and *Pravednaya v. Russia*, no. 69529/01, §§ 38-39, 18 November 2004).

42. While the Court accepts that this measure was lawful and may have pursued the public interest, its compliance with the requirement of proportionality is open to doubt.

43. It is true that a recalculation of one's social benefit and its decrease does not, as such, violate Article 1 of Protocol No. 1 (*Skorkiewicz v Poland* (dec.), no. 39860/98, 1 June 1998). However, backdating the recalculation with the effect that the awarded sums already transferred (or overdue) are reduced involves an individual and excessive burden for the applicant and is thus incompatible with Article 1 of the Protocol. In this respect, the Court recalls the aforementioned *Pravednaya* judgment, where it held:

“40. ... The “public interest” may admittedly include an efficient and harmonised State pension scheme, for the sake of which the State may adjust its legislation.

41. However, the State's possible interest in ensuring a uniform application of the Pensions Law should not have brought about the retrospective recalculation of the judicial award already made. The Court considers that by depriving the applicant of the right to benefit from the pension in the amount secured in a final judgment, the State upset a fair balance between the interests at stake (see, *mutatis mutandis*, *Pressos Compania Naviera S.A. and Others v. Belgium*, judgment of 20 November 1995, Series A no. 332, § 43).”

44. The Court does not find any reason to depart from its conclusions in that judgment and finds that there has been a violation of Article 1 of Protocol No. 1 in the present case too.

III. APPLICATION OF ARTICLE 41 OF THE CONVENTION

45. 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

46. The applicant claimed 184,264.14 roubles (RUR) (approximately 5,330 euros (EUR)) in respect of pecuniary and EUR 3,000 in respect of non-pecuniary damage.

47. The Government considered that the claims were excessive and unreasonable. They made no specific comments as regards the calculation of the applicants' alleged pecuniary losses.

48. In respect of the violation of Article 1 of Protocol No. 1 on account of the quashing of court awards in the applicant's favour, the Court considers it appropriate to award the applicant RUR 184,264.14, representing the sum the applicant would have received had the judgments dated 29 August 2000 and 5 December 2002 not been quashed, plus any tax that may be chargeable on that amount.

49. 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. Making its assessment on an equitable basis, as required by Article 41 of the Convention, the Court awards the applicant the sum of EUR 3,000 in respect of non-pecuniary damage, plus any tax that may be chargeable on that amount.

B. Costs and expenses

50. The applicant claimed RUR 5,000 (approximately EUR 145) for legal costs.

51. The Government did not make any comments in this connection.

52. Regard being had to the information in its possession and the Government's submissions, the Court finds it appropriate to grant the applicant RUR 5,000 in respect of legal costs.

C. Default interest

53. 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 on account of lengthy non-enforcement of the judgments dated 1 December 1998 and 4 October 1999;
3. *Holds* that there has been a violation of Article 6 of the Convention and Article 1 of Protocol No. 1 on account of quashing of the judgments dated 29 August 2000 and 5 December 2002 by way of supervisory review procedure;
4. *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 184,264.14 (one hundred eighty-four thousand two hundred and sixty-four roubles fourteen kopecks) in respect of pecuniary damage;
 - (ii) EUR 3,000 (three thousand euros) in respect of non-pecuniary damage, to be converted into Russian roubles at the rate applicable at the date of settlement;
 - (iii) RUR 5,000 (five thousand roubles) in respect of costs and expenses;
 - (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.

Done in English, and notified in writing on 7 June 2007, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Søren NIELSEN
Registrar

Christos ROZAKIS
President