



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

FIRST SECTION

CASE OF KUDRINA v. RUSSIA

(Application no. 27790/03)

JUDGMENT

STRASBOURG

21 June 2007

FINAL

31/03/2008

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 Kudrina v. Russia,

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

Mr C.L. ROZAKIS, *President*,

Mr L. LOUCAIDES,

Mr A. KOVLER,

Mr K. HAJIYEV,

Mr D. SPIELMANN,

Mr S.E. JEBENS,

Mr G. MALINVERNI, *judges*,

and Mr S. NIELSEN, *Section Registrar*,

Having deliberated in private on 31 May 2007,

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

PROCEDURE

1. The case originated in an application (no. 27790/03) 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, Ms Valentina Iosifovna Kudrina ("the applicant"), on 3 July 2003.

2. 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 11 October 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 1954 and lives in Novosibirsk.

5. On 25 December 2002 the Mirninskiy District Court of the Sakha (Yakutiya) Republic upheld the applicant's action against the Ministry of Finance and awarded her 138,967 Russian roubles (RUR, approximately 4,243 euros) in compensation for a special-purpose settlement order by the terms of which the Government was to provide her with a car.

6. On 17 February 2003 the Supreme Court of the Sakha (Yakutiya) Republic upheld the judgment on appeal.

7. Enforcement proceedings were instituted, but on 3 July 2003 the Moscow bailiffs' office returned a writ of execution to the applicant

instructing her to lodge it with the Ministry of Finance. On 2 September 2003 she complied with the instructions.

8. On 14 August 2004 the Ministry of Finance paid the applicant RUR 61,427.04.

9. On 1 October 2004 the Ministry of Finance motioned the President of the Supreme Court of the Sakha (Yakutiya) Republic to review the judgments of 25 December 2002 and 17 February 2003.

10. On 23 December 2004 the Presidium of the Supreme Court of the Sakha (Yakutiya) Republic, by way of supervisory-review proceedings, quashed the judgments of 25 December 2002 and 17 February 2003 and dismissed the applicant's action. The Presidium noted that the District and Regional courts had incorrectly assessed and applied substantive legal norms.

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 25 DECEMBER 2002, AS UPHELD ON 17 FEBRUARY 2003

11. The applicant complained that the quashing of the final judgment of 25 December 2002, as upheld on appeal on 17 February 2003, made in her favour had violated her “right to a court” and her 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

12. The Government argued that the Presidium of the Supreme Court of the Sakha (Yakutiya) Republic quashed the judgments of 25 December 2002 and 17 February 2003 with a view to correcting the judicial error committed by the District and Regional courts.

13. The applicant averred that the quashing of the final judgment of 25 December 2002, as upheld on 17 February 2003, had irretrievably impaired the principle of legal certainty and had deprived her of the right to receive money she had been entitled to receive.

B. The Court's assessment

1. Article 6 § 1 of the Convention

(a) Admissibility

14. 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

15. 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).

16. 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).

17. 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).

18. The Court observes that on 25 December 2002 the Mirninskiy District Court upheld the applicant's action and granted her a sum of money. The judgment was upheld on appeal on 17 February 2003 and became binding and enforceable. On 23 December 2004 that judgment was quashed by way of a supervisory review.

19. The Court reiterates that it has found a violation of an applicant's “right to a court” guaranteed by Article 6 § 1 of the Convention in many Russian 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 or a party to the proceedings, especially when a particularly long period of time, as in the present case, lapsed from the date the judgment in the applicant's favour had become binding to the date the supervisory-review proceedings were instituted (see *Roseltrans v. Russia*, no. 60974/00, §§ 27-28, 21 July 2005; *Volkova v. Russia*, no. 48758/99, §§ 34-36, 5 April 2005; *Ryabykh*, cited above, §§ 51-56; *Borshchevskiy v. Russia*, no. 14853/03, §§ 46-48, 21 September 2006; and *Nelyubin v. Russia*, no. 14502/04, §§ 28-30, 2 November 2006). Furthermore, in the case of *Kot v. Russia* the Court found as follows:

“It is unavoidable that in civil proceedings the parties would have conflicting views on application of the substantive law. The courts are called upon to examine their arguments in a fair and adversarial manner and make their assessment of the claim. The Court observes that before an application for supervisory review was lodged, the merits of the applicant's claim had been examined... by the first-instance and appeal courts. It has not been claimed that the courts acted outside their competences or that there was a fundamental defect in the proceedings before them. The fact that the Presidium disagreed with the assessment made by the first-instance and appeal courts was not, in itself, an exceptional circumstance warranting the quashing of a binding and enforceable judgment and re-opening of the proceedings on the applicant's claim.” (no. 20887/03, § 29, 18 January 2007)

20. 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 final judgment of 25 December 2002, as upheld on 17 February 2003, by way of supervisory-review proceedings.

2. Article 1 of Protocol No. 1

(a) Admissibility

21. 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 is not inadmissible on any other grounds. It must therefore be declared admissible.

(b) Merits

22. 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).

23. The Court observes that the final and enforceable judgment of 25 December 2002, as upheld on 17 February 2003, by which the applicant had been awarded a sum of money, was quashed on a supervisory review on 23 December 2004. The Presidium of the Supreme Court of the Sakha (Yakutiya) Republic re-examined the matter and dismissed the applicant's claims. Thus, the applicant, through no fault of her own, was prevented from receiving the award made by the District Court. The quashing of the enforceable judgment frustrated the applicant's reliance on the binding judicial decision and deprived her of an opportunity to receive the money she had legitimately expected to receive. In these circumstances, the Court considers that the quashing of the enforceable judgment of 25 December 2002 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 6 OF THE CONVENTION AND ARTICLE 1 OF PROTOCOL No. 1 ON ACCOUNT OF THE NON-ENFORCEMENT OF THE JUDGMENT OF 25 DECEMBER 2002, AS UPHELD ON 17 FEBRUARY 2003

24. The applicant complained about the non-enforcement of the judgment of 25 December 2002, as upheld on appeal on 17 February 2003. 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 are cited above.

A. Submissions by the parties

25. The Government argued that the judgment of 25 December 2002, as upheld on 17 February 2003, could not be enforced because it had been quashed on the supervisory review.

26. The applicant maintained her complaints.

B. The Court's assessment

1. Admissibility

27. The Court notes that the application 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.

2. Merits

28. Turning to the facts of the present case, the Court observes that on 25 December 2002 the applicant obtained a judgment by which the Ministry of Finance was to pay her a certain sum of money. The judgment of 25 December 2002 was upheld on appeal on 17 February 2003 and became enforceable on that date. From that moment on, it was incumbent on the debtor, a State body, to comply with it. Enforcement proceedings were instituted and in August 2004 the Ministry of Finance paid the judgment award in part. On 23 December 2004 the Presidium of the Supreme Court of the Sakha (Yakutiya) Republic quashed the judgments of 25 December 2002 and 17 February 2003 and dismissed the applicant's action.

29. It follows that at least from 17 February 2003 to 23 December 2004 the judgment of 25 December 2002 was enforceable and it was incumbent on the State to abide by its terms (cf. *Velskaya v. Russia*, no. 21769/03, § 18, 5 October 2006).

30. The Government cited the initiation of the supervisory-review proceedings in respect of the judgment of 25 December 2002 as the sole reason for its non-enforcement. In this respect, the Court reiterates that it has recently addressed and dismissed the same argument by the Government in the case of *Sukhobokov v. Russia* (no. 75470/01, 13 April 2006). In particular, the Court held that “the quashing of the judgment, which did not respect the principle of legal certainty and the applicant's “right to a court”, cannot be accepted as a reason to justify the non-enforcement of the judgment” (see *Sukhobokov*, cited above, § 26, and *Velskaya*, cited above, §§ 19-21).

31. Having examined the material submitted to it and taking into account its findings in paragraphs 20 and 23 above, the Court notes that the Government did not put forward any fact or argument capable of persuading the Court to reach a different conclusion in the present case. The Government did not advance any other justification for the failure to enforce the judgment of 25 December 2002, as upheld on appeal on 17 February 2003. Having regard to its case-law on the subject (see *Burdov v. Russia*, no. 59498/00, ECHR 2002-III; and, more recently, *Poznakhirina v. Russia*, no. 25964/02, 24 February 2005; *Wasserman v. Russia*, no. 15021/02, 18 November 2004), the Court finds that by failing to comply with the judgment of 25 December 2002 in the applicant's favour the domestic authorities violated her right to a court and prevented her from receiving the money which she was entitled to receive.

32. The Court finds accordingly that there was a violation of Article 6 § 1 of the Convention and Article 1 of Protocol No. 1 on account of the non-enforcement of the judgment of 25 December 2002, as upheld on appeal 17 February 2003.

III. APPLICATION OF ARTICLE 41 OF THE CONVENTION

33. 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

34. The applicant claimed RUR 129,796 in respect of pecuniary damage, of which RUR 77,540 represented the remaining part of the judgment award made on 25 December 2002 and not paid to her and RUR 52,256 represented an interest on the remaining part of the judgment award calculated at the marginal interest rate of the Russian Central Bank. She further claimed an unspecified sum representing inflation losses and an indexation of a certain settlement order for RUR 9,000. The applicant also claimed RUR 50,000 in respect of non-pecuniary damage.

35. The Government submitted that there was no causal link between the alleged violations and the pecuniary damage claimed by the applicant. As regards her claims in respect of non-pecuniary damage, the Government noted that they were reasonable.

36. The Court observes that in the present case it has found a violation of Article 6 § 1 of the Convention and Article 1 of Protocol No. 1 in that the award in the applicant's favour had not been paid to her in full as a result of

the quashing of the final judgment by way of the supervisory review. The Court notes that the most appropriate form of redress in respect of a violation of Article 6 is to ensure that the applicant as far as possible is put in the position he would have been had the requirements of Article 6 not been disregarded (see *Piersack v. Belgium* (Article 50), judgment of 26 October 1984, Series A no. 85, p. 16, § 12, and, *mutatis mutandis*, *Gençel v. Turkey*, no. 53431/99, § 27, 23 October 2003). The Court finds that in the present case this principle applies as well, having regard to the violations found (cf. *Poznakhirina v. Russia*, no. 25964/02, § 33, 24 February 2005, and *Sukhobokov*, cited above, § 34). The applicant was prevented from receiving money she had legitimately expected to receive under the judgment of 25 December 2002. Deducting the sum which the Ministry of Finance has already paid to the applicant on 14 August 2004 under the final judgment of 25 December 2002, the Court considers that the Government shall pay the remaining part of the judgment award made by the domestic courts under the judgment of 25 December 2002, as upheld on appeal on 17 February 2003, i.e. RUR 77,540.

37. The Court further recalls that the adequacy of the compensation would be diminished if it were to be paid without reference to various circumstances liable to reduce its value, such as an extended delay in enforcement (see *Gizatova v. Russia*, no. 5124/03, § 28, 13 January 2005; *Metaxas v. Greece*, no. 8415/02, § 36, 27 May 2004). Having regard to the materials in its possession and the fact that the Government did not furnish any objection to the applicant's method of calculation of compensation, the Court also awards the applicant RUR 52,256 in respect of pecuniary damage, plus any tax that may be chargeable.

38. As to the claim in respect of inflation losses, the Court notes that the applicant did not indicate the sum of the inflation losses and did not offer an explanation as to the method of its calculation. She did not submit any document showing the inflation rates in her region during the period under consideration. The Court therefore dismisses this claim. As to the claim in respect of a certain settlement order, the Court does not discern any causal link between the violations found and the pecuniary damage alleged; it therefore rejects this claim.

39. The Court further considers that the applicant suffered distress and frustration resulting from the non-enforcement and the quashing of the judgment of 25 December 2002, as upheld on 17 February 2003. Making its assessment on an equitable basis, the Court awards the applicant EUR 1,500 in respect of non-pecuniary damage, plus any tax that may be chargeable on that amount.

B. Costs and expenses

40. The applicant did not make any claims for the costs and expenses incurred before the domestic courts and the Court.

41. Accordingly, the Court does not award anything under this head.

C. Default interest

42. 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 non-enforcement of the judgment of 25 December 2002, as upheld on 17 February 2003, and its subsequent quashing by way of a supervisory review 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 on account of the quashing of the judgment of 25 December 2002, as upheld on 17 February 2003;
3. *Holds* that there has been a violation of Article 6 of the Convention and Article 1 of Protocol No. 1 on account of the non-enforcement of the judgment of 25 December 2002, as upheld on 17 February 2003;
4. *Holds*
 - (a) that the respondent State, within three months from the date on which the judgment becomes final according to Article 44 § 2 of the Convention, is to pay the award made by the domestic courts in the applicant's favour under the judgment of 25 December 2002, deducting the sum which has already been paid to her on 14 August 2004;
 - (b) 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, to be converted, where appropriate, into Russian roubles at the rate applicable at the date of the settlement:
 - (i) RUR 52,256 (fifty-two thousand two hundred and fifty-six Russian roubles) in respect of pecuniary damage;
 - (ii) EUR 1,500 (one thousand and five hundred euros) in respect of non-pecuniary damage;

- (iii) any tax that may be chargeable on the above amounts;
- (c) 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;

5. *Dismisses* the remainder of the applicant's claim for just satisfaction.

Done in English, and notified in writing on 21 June 2007, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Søren NIELSEN
Registrar

Christos ROZAKIS
President