



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

FIRST SECTION

CASE OF KOZEYEV v. RUSSIA

(Application no. 934/03)

JUDGMENT

STRASBOURG

31 July 2007

FINAL

30/01/2008

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 Kozeyev v. Russia,

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

Mr C.L. ROZAKIS, *President*,

Mr A. KOVLER,

Mrs E. STEINER,

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 10 July 2007,

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

PROCEDURE

1. The case originated in an application (no. 934/03) 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, Mr Yuriy Alekseyevich Kozeyev (“the applicant”), on 15 December 2002. He was represented before the Court by Mr V. Gandzyuk, a lawyer practising in Ryazan.

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 18 November 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

I. THE CIRCUMSTANCES OF THE CASE

4. The applicant was born in 1967 and lives in the town of Ryazan.

5. The applicant is a retired serviceman. On unspecified dates in the past, he had taken part in peace-keeping operations in former Yugoslavia.

A. Court proceedings

6. On an unspecified date, the applicant instituted proceedings against military unit no. 03611, seeking to recover the unpaid daily allowances owed to him for his participation in the above operations.

7. In the proceedings before the Military Court of the Ryazan Garrison (*Рязанский гарнизонный военный суд*) the representative of the military unit fully accepted the applicant's claim.

8. He submitted that it was impossible to pay the sum owed to the applicant, since there was no mechanism developed for payment of daily allowances to servicemen who had been commissioned abroad. Furthermore, no funds were available for this purpose.

9. On 11 December 2001 the Military Court of the Ryazan Garrison granted the applicant's claim and ordered the defendant to pay him 377,776.12 Russian roubles (RUR, approximately 14,100 euros at the material time).

10. The court found that the applicant could not be deprived of the right to receive the sum owed to him because of the absence of an appropriate mechanism of payment. No appeal was lodged and this judgment became final on 24 December 2001.

B. Enforcement proceedings

11. On 5 February 2002 the Military Court issued an execution writ.

12. On an unspecified date, the applicant submitted the execution writ to the Ryazan Regional Branch of the Federal Treasury.

13. It appears that the Federal Treasury informed the applicant that it was impossible to enforce the judgment as there were no budgetary funds available on the defendant's account for this purpose. He was advised to apply to the Ministry of Finance for the latter to recover the amount due from the Ministry of Defence.

14. On 16 September 2002 the applicant forwarded the execution writ to the Ministry of Finance.

C. Supervisory review proceedings

15. On 6 November 2002 the Moscow Military Circuit Court, acting as a supervisory review instance upon the application by the President of that Court, quashed the judgment of 11 December 2001 as unlawful and unfounded and remitted the case at first instance for a fresh examination.

16. It does not appear that the applicant and his counsel were notified of the supervisory review proceedings in advance or that they were able to take part in them.

D. Fresh examination of the case by the domestic courts

17. According to the Government, in April 2003 the Military Court rejected the applicant's claims. This judgment was upheld on appeal by the Moscow Military Circuit Court by two decisions dated 16 May, 10 and 17 June 2003.

II. RELEVANT DOMESTIC LAW

18. According to Articles 13, 209 and 338 of the old Code of Civil Procedure (*Гражданский процессуальный кодекс РСФСР*), in force at the material time, a court judgment, which has become final, is binding and must be executed.

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 DECEMBER 2001

19. The applicant complained that the quashing of the final judgment of 11 December 2001 made in his favour had violated his “right to a court” and his right to peaceful enjoyment of possessions. The applicant relied on Article 6 § 1 of the Convention and Article 1 of Protocol No. 1 in this connection. 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

20. The Government submitted that the quashing of the judgment of 11 December 2001 had been justified by the need to correct a judicial error,

that the President of the Moscow Military Circuit Court acted on request by a party to the proceedings and that the quashing took place “within all prescribed time-limits”.

21. The applicant maintained his complaints.

B. The Court's assessment

1. Article 6 § 1 of the Convention

(a) Admissibility

22. 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 ground. It must therefore be declared admissible.

(b) Merits

23. 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).

24. 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).

25. 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).

26. Turning to the facts of the present case, the Court notes that by the judgment dated 11 December 2001 granted the applicant's claims for unpaid allowances owed to him for his participation in the peace-keeping operations against the military authority and awarded him a certain amount. This judgment was not appealed against by the parties and on 24 December 2001 it became final and binding. Some time thereafter the President of the Moscow Military Circuit Court brought an application for the supervisory review of the judgment. On 6 November 2002 the Presidium of the Moscow Military Circuit Court examined this application and 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 courts rejected his claims in this case as unfounded.

27. 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 (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)

28. 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 11 December 2001 by way of supervisory-review proceedings.

2. Article 1 of Protocol No. 1

(a) Admissibility

29. 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 ground. It must therefore be declared admissible.

(b) Merits

30. 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).

31. The Court observes that the final and enforceable judgment of 11 December 2001, by which the applicant had been awarded a sum of money, was quashed on a supervisory review on 6 November 2002. The Moscow Military Circuit Court re-examined the matter and the domestic courts eventually dismissed the applicant's claims.

32. Thus, the applicant, through no fault of his own, was prevented from receiving the award made by the Military Court of the Ryazan Garrison. 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 December 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 6 OF THE CONVENTION AND ARTICLE 1 OF PROTOCOL NO. 1 ON ACCOUNT OF THE NON-ENFORCEMENT OF THE JUDGMENT OF 11 DECEMBER 2001

33. Under Article 6 § 1 of the Convention and Article 1 of Protocol No. 1 the applicant also complained about the non-enforcement of the judgment of 11 December 2002. The relevant parts of these provisions are cited above.

A. Submissions by the parties

34. The Government argued that the judgment of 11 December 2001 could not be enforced because it had been quashed on the supervisory review.

35. The applicant maintained his complaints.

B. The Court's assessment

1. Admissibility

36. 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

37. Turning to the facts of the present case, the Court observes that on 11 December 2001 the applicant obtained a judgment by which the military authority was to pay him a certain sum of money. The judgment was not appealed against by the parties and on 24 December 2001 it became enforceable. From that moment on, it was incumbent on the debtor, a State body, to comply with it. Enforcement proceedings were instituted, but on 6 November 2002 the Presidium of the Moscow Military Circuit Court reopened the proceedings, quashed the judgment of 11 December 2001 and remitted the case for a fresh examination to the first instance court. Upon the fresh examination of the applicant's claims, the domestic courts rejected his claims as unfounded.

38. It follows that at least from 24 December 2001 to 6 November 2002 the judgment in question 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).

39. The Government cited the initiation of the supervisory-review proceedings in respect of the judgment of 11 December 2001 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).

40. Having examined the material submitted to it and taking into account its findings in paragraphs 28 and 32 above, the Court finds 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 11 December 2001. 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 11 December 2001 in the applicant's favour the domestic authorities violated his right to a court and prevented him from receiving the money which he was entitled to receive.

41. 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 11 December 2001.

III. APPLICATION OF ARTICLE 41 OF THE CONVENTION

42. 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

43. The applicant claimed RUR 377,776.46 (14,100 euros, EUR) as a principal debt and RUR 255,905.77 (EUR 7,330) as interest payments in respect of the quashing of the court judgment of 11 December 2001. He also claimed EUR 3,000 as a compensation for non-pecuniary damage.

44. The Government considered that nothing should be granted to the applicant under Article 41 of the Convention. They made no specific comments as regards the calculation of the applicants' alleged pecuniary losses.

45. The Court awards the applicant EUR 14,100 representing the sum which he lost as a result of the supervisory review procedure. It also accepts the applicant's claim in respect of pecuniary damage in so far as it relates to the interest and awards the applicant the sum of EUR 7,330 under this head, plus any tax that may be chargeable on the amount of the principal debt and the interest.

46. 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 2,000 in respect of non-pecuniary damage, plus any tax that may be chargeable on that amount.

B. Costs and expenses

47. The applicant did not seek reimbursement of his costs and expenses incurred before the domestic authorities and the Court. Accordingly, the Court does not make any award under this head.

C. Default interest

48. 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 the quashing of the judgment of 11 December 2001;
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 11 December 2001;
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 to be converted into Russian roubles at the rate applicable at the date of settlement:
 - (i) EUR 21,430 (twenty-one thousand four hundred and thirty euros) in respect of pecuniary damage;
 - (ii) EUR 2,000 (two thousand euros) in respect of non-pecuniary damage;
 - (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.

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

Done in English, and notified in writing on 31 July 2007, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Søren NIELSEN
Registrar

Christos ROZAKIS
President