



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

FIRST SECTION

CASE OF BOLYUKH v. RUSSIA

(Application no. 19134/05)

JUDGMENT

STRASBOURG

31 July 2007

FINAL

31/10/2007

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 Bolyukh 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 10 July 2007,

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

PROCEDURE

1. The case originated in an application (no. 19134/05) 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, Mrs Rosa Ivanovna Bolyukh (“the applicant”), on 29 April 2005.

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 15 September 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

THE CIRCUMSTANCES OF THE CASE

4. The applicant was born in 1933 and lives in Lensk, a town in the Sakha (Yakutiya) Republic of the Russian Federation.

5. The applicant brought a civil action against the Ministry of Finance of the Russian Federation, seeking to recover the monetary value of state promissory notes for purchase of a Russian-made car.

6. On 3 April 2003 the Lenskiy District Court of the Republic of Sakha (Yakutiya) found for the applicant and awarded her 91,500 Russian roubles.

7. By a decision of 5 May 2003 the Supreme Court of the Republic of Sakha (Yakutiya) rejected an appeal by the Ministry of Finance and upheld the judgment. On the same date the judgment of 3 April 2003 acquired legal force but it has never been enforced.

8. On 1 September 2004 the President of the Supreme Court of the Republic of Sakha (Yakutiya) referred the case to the Presidium of the Supreme Court, upon the defendant's application for supervisory review.

9. On 23 September 2004 the Presidium quashed the judgment of 3 April 2003, as upheld by the decision of 5 May 2003, and dismissed the applicant's claim in full. In so deciding, the Presidium noted that the courts had failed to take into account the provisions of the Federal Law on State Promissory notes of 1 June 1995, as amended on 2 June 2000, which extended the period of redemption of the state promissory notes until 31 December 2004. In the Presidium's assessment, that failure amounted to a substantial violation of the material law warranting a re-examination of the case.

10. The applicant submitted that she had not been properly notified of the session of the Presidium of the Supreme Court of the Republic of Sakha (Yakutiya) of 23 September 2004 and therefore she could not attend it. The defendant's representative had attended the hearing and presented his arguments. According to the Government, the applicant had been informed of the date and the time of the hearing by a letter of 13 September 2004. The applicant submitted that she had become aware of the decision of 23 September 2004 on 8 November 2004 when she had received it by post. She provided the Court with an envelope sent by the Supreme Court of the Republic of Sakha (Yakutiya) postmarked on 8 November 2004.

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 IN THE APPLICANT'S FAVOUR

11. The applicant complained that the judgment of 3 April 2003 was quashed following the supervisory review and that she was deprived of her right to effectively participate at the supervisory review hearing. She referred to Article 6 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. Admissibility

12. 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*1. Article 6 § 1 of the Convention***(a) Supervisory review procedure: legal certainty**

13. The Government submitted that on 23 September 2004 the Presidium of the Supreme Court of the Republic of Sakha (Yakutiya) acted in accordance with domestic law and procedure. It quashed the judgment of 3 April 2003, as upheld by the decision of 5 May 2003, because the lower courts had made an error in the application of substantive law. In particular, they had failed to take into account the provisions of the Federal Law on State Promissory notes of 1 June 1995 which extended the period of redemption of the state promissory notes until 31 December 2004. They concluded that there had been no violation of the principle of legal certainty.

14. The applicant maintained her complaint.

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 underlines that no party is entitled to seek a review of a final and binding judgment merely for the purpose of obtaining a rehearing and a fresh determination of the case. Higher courts' power of review should be exercised to correct judicial errors and miscarriages of justice, but not to carry out a fresh examination. The review should not be treated as an appeal in disguise, and the mere possibility of there being two views on the subject is not a ground for re-examination. A departure from that principle is 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, §§ 51-56).

18. The Court observes that on 3 April 2003 the Lenskiy District Court of the Republic of Sakha (Yakutiya) granted the applicant's action against the Ministry of Finance and awarded her a sum of money. The judgment was upheld on appeal on 5 May 2003 and acquired legal force on the same date. On 23 September 2004 the judgment was quashed by way of supervisory review on the ground that the lower courts had erroneously applied substantive law.

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 *Ryabykh*, cited above, §§ 51-58; *Volkova v. Russia*, no. 48758/99, §§ 34-37, 5 April 2005; *Roseltrans v. Russia*, no. 60974/00, §§ 27-28, 21 July 2005; *Borshchevskiy v. Russia*, no. 14853/03, §§ 46-50, 21 September 2006; and *Nelyubin v. Russia*, no. 14502/04, §§ 28-30, 2 November 2006). Furthermore, in the case of *Kot v. Russia* (no. 20887/03, § 29, 18 January 2007) 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."

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 by quashing the judgment of 3 April 2003, by way of supervisory review, the Presidium of the Supreme Court of the Republic of Sakha (Yakutiya) 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) Supervisory review procedure: procedural issues

21. With regard to the complaint about the procedural defects of the hearing before the Presidium of the Supreme Court of the Republic of Sakha (Yakutiya), the Court finds that, having concluded that there had 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 (cf. *Ryabykh*, cited above, § 59, and *Volkova*, cited above, § 39).

2. Article 1 of Protocol No. 1

22. The Government submitted that the quashing of the judgment of 3 April 2003 had not amounted to an interference with the applicant's rights under Article 1 of Protocol No. 1.

23. The applicant maintained her complaint.

24. 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).

25. The Court observes that the applicant obtained a binding and enforceable judgment in her favour, by the terms of which the Ministry of Finance was to pay her a substantial amount of money. She was prevented from receiving the award through no fault of her own. The quashing of the enforceable judgment frustrated the applicant's reliance on a binding judicial

decision and deprived her of an opportunity to receive the money she had legitimately expected to receive. In these circumstances, even assuming that the interference was lawful and pursued a legitimate aim, the Court considers that the quashing of the enforceable judgment in the applicant's favour by way of supervisory review placed an excessive burden on the applicant and was incompatible with Article 1 of the 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 3 APRIL 2003

26. The applicant complained about the non-enforcement of the judgment of 3 April 2003, as upheld on 5 May 2003. She relied on Article 6 of the Convention and Article 1 of Protocol No. 1. The relevant parts of these provisions are cited above.

A. Admissibility

27. The Court notes that the 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

28. The Government submitted that the judgment of 3 April 2003 had not been enforced because it had been quashed by the Presidium of the Supreme Court of the Republic of Sakha (Yakutiya) on 23 September 2004. The Presidium issued a new decision in the applicant's case by which rejected her claims in full.

29. The applicant maintained her complaint.

30. The Court observes that on 3 April 2003 the applicant obtained a judgment by which the Ministry of Finance was to pay her a substantial amount of money. On 5 May 2003 the judgment was upheld on appeal and became legally binding and enforceable. From that moment, it was incumbent on the debtor, a state body, to comply with it. On 23 September 2004 the Presidium of the Supreme Court of the Republic of Sakha (Yakutiya) quashed the judgment of 3 April 2003.

31. It follows that at least from 5 May 2003 to 23 September 2004 the judgment of 3 April 2003 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).

32. The Government cited the initiation of the supervisory review proceedings in respect of the judgment of 3 April 2003 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 v. Russia*, cited above, § 19).

33. Having examined the material submitted to it and taking into account its findings in paragraphs 20 and 25 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. Nor did they advance any other justification for the failure to enforce the judgment of 3 April 2003. Having regard to its case-law on the subject (see *Burdov v. Russia*, no. 59498/00, ECHR 2002-III; and, more recently, *Reynbakh v. Russia*, no. 23405/03, 29 September 2005, and *Denisov v. Russia*, no. 21823/03, 25 January 2007), the Court finds that by failing for a substantial period to comply with the judgment in the applicant's favour, the domestic authorities violated her right to a court and prevented her from receiving the money she was entitled to receive.

34. 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 3 April 2003.

III. APPLICATION OF ARTICLE 41 OF THE CONVENTION

35. 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

36. In respect of pecuniary damage, the applicant claimed 5,200 United States dollars (USD) representing the market value of a Russian made car. She further claimed 15,000 euros (EUR) in respect of non-pecuniary damage.

37. The Government submitted that, in case of finding of a violation, the applicant's claim in respect of pecuniary damage should be dismissed as there was no causal link between the alleged violation and the pecuniary damage claimed. They referred in this respect to the Court's judgment in the

case of *Volkova v. Russia* (no. 48758/99, 5 April 2005). They further submitted that the applicant's claim for non-pecuniary damage was excessive and ill-founded. They considered that in case of finding of a violation of the applicant's rights, the amount of compensation should be determined with account taken of the particular circumstances of the case.

38. The Court recalls that in the instant case it found a violation of Article 6 § 1 of the Convention and Article 1 of Protocol No. 1 in that the judgment in the applicant's favour had remained unenforced for a long period of time and had been subsequently quashed. The applicant was thereby prevented from receiving the money she had legitimately expected to receive. There has been therefore a causal link between the violations found and the applicant's claim for the pecuniary damage in so far as it covered the original award.

39. The Court further 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 the money she had legitimately expected to receive under the judgment of 3 April 2003. Having regard to the nature of the violation found, the Court considers it appropriate to award the applicant the equivalent in euros of the sum which she would have received had the judgment of 3 April 2003 not been quashed, i.e. EUR 2,700 in respect of pecuniary damage, plus any tax that may be chargeable on that amount, and dismisses the remainder of her claim for pecuniary damage.

40. The Court further considers that the applicant suffered distress and frustration because of the State authorities' failure to enforce the judgment in her favour and their subsequent decision to quash it. Nevertheless, the amount claimed appears excessive. Making its assessment on an equitable basis, it awards the applicant EUR 2,900 in respect of non-pecuniary damage, plus any tax that may be chargeable on that amount.

B. Costs and expenses

41. The applicant did not claim costs or expenses and there is accordingly no call to make an award 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 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 3 April 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 3 April 2003;
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 2,700 (two thousand seven hundred euros) in respect of pecuniary damage;
 - (ii) EUR 2,900 (two thousand nine hundred euros) in respect of non-pecuniary damage;
 - (iii) any tax that may be chargeable on the above amounts;
 - (b) that the above amounts shall be converted into Russian roubles at the rate applicable at the date of settlement;
 - (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 31 July 2007, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Søren NIELSEN
Registrar

Christos ROZAKIS
President