



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

FIRST SECTION

CASE OF GLADYSHEV AND OTHERS v. RUSSIA

(Application no. 20430/04)

JUDGMENT

STRASBOURG

7 February 2008

FINAL

07/05/2008

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 Gladyshev and Others v. Russia,

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

Christos Rozakis, *President*,

Loukis Loucaides,

Nina Vajić,

Anatoli Kovler,

Elisabeth Steiner,

Sverre Erik Jebens,

Giorgio Malinverni, *judges*,

and Søren Nielsen, *Section Registrar*,

Having deliberated in private on 17 January 2008,

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

PROCEDURE

1. The case originated in application no. 20430/04 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 three Russian nationals, Mr Anton Viktorovich Gladyshev, Mr Stanislav Aleksandrovich Mogilnikov and Mrs Lyudmila Nikolayevna Voronina (“the applicants”), on 7 May 2004.

2. The applicants were represented by Mr V. Murtsev, a lawyer practising in Barnaul. 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 29 May 2006 the Court decided to communicate the complaint concerning the quashing of two judgments to the Government. Under the provisions of Article 29 § 3 of the Convention, it decided to examine the merits of the applications at the same time as their admissibility.

THE FACTS

I. THE CIRCUMSTANCES OF THE CASE

4. The applicants were born in 1976, 1973 and 1955 respectively and live in Barnaul, the Altay region.

5. In 1988 and 1990 the applicants obtained several state bonds entitling them to 4 % annual interest and to recovering of their value at the State Savings Bank at any time. After the applicants' unsuccessful attempts to

receive the payment of the bonds, the following civil proceedings were initiated.

1. Proceedings concerning the first applicant

6. On 7 October 2002 the Tsentralnyi District Court of Barnaul in the Altay region partly granted Mr Gladyshev's claim against the Government of Russia for pecuniary damages and interests and awarded him 104,690 Russian roubles (RUB).

7. On 27 November 2002 the Altay Regional Court upheld the judgment with minor changes.

8. On the respondent's request to review the judgment due to the wrong assessment of evidence by the courts and the failure to indicate the organisation which was due to transfer the award, a supervisory review was initiated, and, on 10 February 2004 the Presidium of the Altay Regional Court quashed the judgment and dismissed the applicant's claim.

2. Proceedings concerning the second applicant

9. On 6 November 2002 the Novoaltayskiy City Court partly granted Mr Mogilnikov's claim against the Government of Russia for pecuniary damages and interests and awarded him RUB 90,788.

10. On 5 February 2003 the Altay Regional Court upheld the judgment.

11. On the respondent's request to review the judgment due to the wrong assessment of evidence and misapplication of the domestic law, a supervisory review was initiated and on 2 December 2003 the Presidium of the Altay Regional Court quashed the judgment and dismissed the applicant's claim.

3. Proceedings concerning the third applicant

12. On 21 November 2002 the Novoaltayskiy City Court partly granted Mrs Voronina's claim against the Government of Russia for pecuniary damages and interests and awarded her RUB 98,961.

13. On 15 February 2003 the Altay Regional Court upheld the judgment.

14. On the respondent's request to review the judgment due to the wrong assessment of evidence and misapplication of the domestic law, a supervisory review was initiated and on 21 October 2003 the Presidium of the Altay Regional Court quashed the judgment and dismissed the applicant's claim.

THE LAW

I. ALLEGED VIOLATION OF ARTICLE 6 § 1 OF THE CONVENTION AND ARTICLE 1 OF PROTOCOL No. 1 ON ACCOUNT OF QUASHING OF THE JUDGMENTS IN THE APPLICANTS' FAVOUR.

15. The applicants complained that the quashing of the final judgments made in their favour violated their “right to a court” and their 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 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

16. The Court notes that the complaints of the first two applicants, Mr Gladyshev and Mr Mogilnikov 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.

17. As to the complaint of the third applicant, Mrs Voronina, the final judgment in respect of her was quashed by the Presidium of the Altay Regional Court on 21 October 2003 and the applicant lodged her application with the Court only on 7 May 2004, e.g. more than six months later. Nothing in the applicant's submissions indicates that she was not immediately aware of the ruling. The third applicant's complaints are thus introduced to the Court out of time (see *Sardin v. Russia* (dec.), no. 69582/01, ECHR 2004-II) and should be dismissed in accordance with Article 35 §§ 1 and 4 of the Convention.

B. Merits

1. Alleged violation of Article 6 of the Convention

(a) Arguments by the parties

18. The Government submitted that the Presidium of the Supreme Court of the Altay Region had lawful grounds to quash the judgments in the applicants' favour because their claims had been granted mistakenly. Accordingly, there had been no violation of the applicants' "right to a court" under Article 6 § 1 of the Convention.

19. The applicants maintained their claims.

(b) The Court's assessment

20. 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).

21. 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).

22. The Court observes that on 7 October 2002 the Tsentralnyi District Court of Barnaul and on 6 November 2002 the Novoaltayskiy City Court of Barnaul upheld the first two applicants' actions and granted them certain sums of money. The judgments were upheld on appeal on 27 November 2002 and on 5 February 2003 respectively by the Altay Regional Court and became binding and enforceable. On 10 February 2004 and on 2 December 2003 these judgments were quashed by way of a supervisory review.

23. 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 or even amended 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 *Sypchenko v. Russia*, no. 38368/04, §§ 25-31, 6 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)).

24. 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 judgments of 7 October 2002 and 6 November 2002 as upheld on appeal on 27 November 2002 and on 5 February 2003 respectively, by way of supervisory-review proceedings.

2. Article 1 of Protocol No. 1

25. 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).

26. The Court observes that final and enforceable judgments from 7 October 2002 and 6 November 2002 as upheld on appeal on 27 November 2002 and on 5 February 2003 respectively were both quashed by way of a supervisory review on 10 February 2004 and on 2 December 2003.

27. The Court observes that the applicants obtained binding and enforceable judgments in their favour, by the terms of which the Ministry of Finance was to pay them substantial amounts of money. They were prevented from receiving the award through no fault of their own. The quashing of the enforceable judgments frustrated the applicants' reliance on

binding judicial decisions and deprived them of an opportunity to receive the money they 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 judgments in the applicants' favour by way of supervisory review placed an excessive burden on the applicants and was incompatible with Article 1 of the Protocol No. 1. There has therefore been a violation of that Article.

II. APPLICATION OF ARTICLE 41 OF THE CONVENTION

28. 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

29. The applicants claimed sums representing judgment awards in respect of pecuniary damage. They further claimed 3,000 euros (EUR) each in respect of non-pecuniary damage.

30. The Government argued that the claims for pecuniary damages were unsubstantiated. They further submitted that the claims in respect of non-pecuniary damage were unreasonable and excessive.

31. As regards the claims in respect of pecuniary damage, the Court, having regard to the nature of the violation found, considers it appropriate to award the applicants the sums which they would have received had the judgments in their favour not been quashed (see the facts), plus any tax that may be chargeable (cf. *Stetsenko v. Russia*, no. 878/03, § 69, 5 October 2006).

32. The Court further considers that the applicants suffered distress and frustration resulting from the quashing of the judicial decisions by way of supervisory-review proceedings. Nevertheless, the amounts claimed are excessive. Making its assessment on an equitable basis, the Court awards each of the applicants EUR 2,000 in respect of non-pecuniary damage, plus any tax that may be chargeable on the above amounts.

B. Costs and expenses

33. The applicants did not seek reimbursement of costs and expenses relating to the proceedings before the domestic courts or the Convention organs and this is not a matter which the Court will examine on its own motion (see *Motière v. France*, no. 39615/98, § 26, 5 December 2000).

C. Default interest

34. 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* admissible the complaints submitted under Article 6 of the Convention and under Article 1 of Protocol No. 1 to the Convention by Mr Gladyshev and Mr Mogilnikov, and the remainder of the application inadmissible;
2. *Holds* that there has been a violation of Article 6 of the Convention;
3. *Holds* that there has been a violation of Article 1 of Protocol No. 1 to the Convention;
4. *Holds*
 - (a) that the respondent State, within three months from the date on which the judgment becomes final in accordance with Article 44 § 2 of the Convention, shall pay the applicants the awards made under the judgment of 7 October 2002 in favour of the first applicant, Mr Gladyshev, and under the judgment of 6 November 2002 in favour of the second applicant, Mr Mogilnikov, plus any tax that may be chargeable;
 - (b) that the respondent State shall pay each of the applicants, within three months from the date on which the judgment becomes final in accordance with Article 44 § 2 of the Convention, 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 the settlement, plus any tax that may be chargeable;
 - (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 applicants' claim for just satisfaction.

Done in English, and notified in writing on 7 February 2008, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Søren NIELSEN
Registrar

Christos ROZAKIS
President