



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

FIFTH SECTION

**CASE OF PSHENICHNYI v. RUSSIA**

*(Application no. 30422/03)*

JUDGMENT

STRASBOURG

14 February 2008

**FINAL**

***07/07/2008***

*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 Pshenichnyy v. Russia,**

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

Peer Lorenzen, *President*,  
Snejana Botoucharova,  
Volodymyr Butkevych,  
Margarita Tsatsa-Nikolovska,  
Rait Maruste,  
Anatoli Kovler,  
Renate Jaeger, *judges*,

and Claudia Westerdiek, *Section Registrar*,

Having deliberated in private on 22 January 2008,

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

## PROCEDURE

1. The case originated in an application (no. 30422/03) 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 Aleksandr Nikolayevich Pshenichnyy (“the applicant”), on 25 August 2003.

2. The applicant was represented before the Court by Mr S. Fedoryuk, a lawyer practising in Stavropol. The Russian Government (“the Government”) were initially represented by Mr P. Laptev, the former Representative of the Russian Federation at the European Court of Human Rights, and subsequently by their new Representative, Mrs V. Milinchuk.

3. The applicant complained, in particular, about the quashing of the judgment in his favour on supervisory review.

4. On 21 March 2007 the Court decided to communicate the complaint about the supervisory review 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

5. The applicant was born in 1957 and lives in Stavropol.

6. A private company sued the applicant on a claim of unjust enrichment not related to his salary. It submitted a document showing that the applicant

had received money from the company. The applicant counterclaimed that the document had been void.

7. On 20 June 2002 the Leninskiy District Court of Stavropol rejected the applicant's claim, partly allowed the company's claim and ordered that the applicant repay 295,176 Russian roubles (RUB) to the company.

8. By a supplementary judgment of 28 June 2002, the Leninskiy District Court ordered that the applicant pay the court fee of RUB 4,371.77.

9. On 18 September 2002 the Stavropol Regional Court quashed the judgments and remitted the case.

10. On 10 October 2002 the Leninskiy District Court allowed the applicant's claim. It declared the voucher void, confirmed the applicant's title to the disputed money, ordered that the company pay the applicant RUB 4,916 in legal costs and expenses and ordered that the applicant pay the company RUB 112.

11. In its grounds of appeal the company complained that the first-instance and appeal courts had erred in the establishment of the facts.

12. On 27 November 2002 the Stavropol Regional Court reversed the award of RUB 112, rejected the company's claims in full, and upheld the remainder of the judgment.

13. On 16 June 2003 the company filed an application for supervisory review of the judgments of 10 October and 27 November 2002. It reiterated its argument that the first-instance and appeal courts had erred in the establishment of the facts and asked the Presidium of the Stavropol Regional Court to quash their judgments and to remit the case to the first-instance court.

14. On 28 July 2003 the applicant filed comments on the application for supervisory review. He maintained his claims and asked the Presidium of the Stavropol Regional Court to reject the application.

15. On 4 August 2003 the Presidium of the Stavropol Regional Court quashed the judgments of 18 September, 10 October and 27 November 2002 because the courts had incorrectly established the facts. It reinstated the judgment of 20 June 2002. Counsel for the applicant was present at the hearing.

16. On an unspecified date the applicant repaid RUB 295,176 to the company.

## II. RELEVANT DOMESTIC LAW

17. On 29 September 1999 the Supreme Commercial Court gave a binding interpretation of the provisions governing legal fee agreements. It indicated, *inter alia*, that contingency fee agreements were not enforceable. On 23 January 2007 the Constitutional Court confirmed that approach.

## THE LAW

### I. ALLEGED VIOLATION OF ARTICLE 6 § 1 OF THE CONVENTION AND ARTICLE 1 OF PROTOCOL No. 1

18. The applicant complained about the quashing of the judgments of 18 September and 10 October 2002, as upheld on appeal on 27 November 2002, by way of supervisory review. He relied on Article 6 § 1 of the Convention and Article 1 of Protocol No. 1, the relevant parts of which 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**

19. 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. Submissions by the parties*

20. The Government submitted that the application for supervisory review of the judgment of 10 October 2002, as upheld on 27 November 2002, had been lodged by a party to the proceedings less than one year after it had become legally binding. The Presidium of the Stavropol Regional Court had quashed the judgment with a view to correcting the judicial error committed by the District Court. The Government concluded that there had been no violation of the applicant's rights under Article 6 § 1 of the Convention or Article 1 of Protocol No. 1.

21. The applicant maintained his claims. He submitted that the Presidium of the Stavropol Regional Court had quashed the judgment of 18 September 2002 of its own motion, although the other party had asked it to quash only the judgments of 10 October and 27 November 2002.

## 2. *The Court's assessment*

### (a) **Article 6 § 1 of the Convention**

22. 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).

23. 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. Departures from that principle are justified only when made necessary by circumstances of a substantial and compelling character. 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 (see *Borshchevskiy v. Russia*, no. 14853/03, § 42, 21 September 2006, with further references).

24. The Court has already found a violation of an applicant's "right to a court" guaranteed by Article 6 § 1 of the Convention in Russian cases in which a judicial decision that had become binding and enforceable, was subsequently quashed by a higher court on an application by a State official or a party to the proceedings which disagreed with the findings of facts or with the application of the substantive law. The Court found that in the absence of a fundamental defect in the proceedings a party's disagreement with the assessment made by the first-instance and appeal courts was not a circumstance of a substantial and compelling character warranting the quashing of a binding and enforceable judgment and re-opening of the proceedings on the applicant's claim (see *Dovguchits v. Russia*, no. 2999/03, § 30, 7 June 2007; and *Kot v. Russia*, no. 20887/03, § 29, 18 January 2007).

25. The Court observes that in the present case the supervisory-review procedure had been initiated by the private company which was a party to the proceedings. However, once initiated, the supervisory review was not limited to the examination of the arguments advanced by the company. The Presidium of the Stavropol Regional Court conducted a full review of the

case, and quashed not only the two most recent judgments which had been contested by the company, but also of its own motion quashed another judgment adopted earlier in the proceedings and reinstated the judgment which had been previously quashed on appeal (see paragraphs 13 and 15 above).

26. It was not claimed before the supervisory-review instance that the previous proceedings had been tarnished by a fundamental defect, such as, in particular, a jurisdictional error, serious breaches of court procedure or abuses of power. The judgments in the applicant's favour were set aside on the ground that the first-instance court had erred in its findings of facts. In the Court's view, only errors of fact which could not have been corrected by an ordinary appeal because they became apparent only after the judgment had acquired binding force could be considered a circumstance of a substantial and compelling character justifying a departure from the principle of legal certainty. The Court observes that the arguments invoked by the company in its application for supervisory review were identical to those invoked in its grounds for appeal. Since these arguments have been already examined and rejected by the appeal court, the supervisory review proceedings were, in essence, an attempt by the company to re-argue the case on the same points which failed on appeal.

27. Having regard to the above considerations, the Court finds that by quashing the judgments of 18 September and 10 October 2002, as upheld on appeal on 27 November 2002, by way of supervisory-review proceedings, the Presidium of the Stavropol Regional Court 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) Article 1 of Protocol No. 1**

28. The Court reiterates that quashing of an enforceable judgment amounts to an interference with the judgment beneficiary's right to peaceful enjoyment of possessions (see, among other authorities, *Androsov v. Russia*, no. 63973/00, § 69, 6 October 2005).

29. The Court observes that the final and enforceable judgment of 10 October 2002, as upheld on 27 November 2002, by which the company's claims against the applicant had been dismissed, the applicant's title to the disputed money had been confirmed, and the applicant had been awarded a sum of money against the company, was quashed on a supervisory review on 4 August 2003. The Presidium of the Stavropol Regional Court reinstated the judgment of 20 June 2002, by which the applicant's claims had been rejected and he had been ordered to return the disputed money to the company. Thus, the applicant was prevented from benefiting from the final judgment in his favour through no fault of his own. The quashing of the enforceable judgment frustrated the applicant's reliance on the binding judicial decision and deprived him of an opportunity to retain the disputed

money and to receive an additional sum of money he had legitimately expected to receive. In these circumstances, the Court considers that the quashing of the enforceable judgment of 10 October 2002, as upheld on 27 November 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. OTHER ALLEGED VIOLATIONS OF THE CONVENTION

30. The Court has examined the other complaints submitted by the applicants. However, having regard to all the material in its possession, and in so far as these complaints fall within the Court's competence, it finds that those complaints do not disclose any appearance of a violation of the rights and freedoms set out in the Convention or its Protocols. It follows that this part of the application must be rejected as being manifestly ill-founded, pursuant to Article 35 §§ 3 and 4 of the Convention.

## III. APPLICATION OF ARTICLE 41 OF THE CONVENTION

31. 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

32. The applicant claimed RUB 295,176 in respect of pecuniary damage. He indicated that RUB 295,176 was equivalent to 8,443 euros (EUR) on the date of the submission of his claims. He also claimed EUR 2,860 in respect of non-pecuniary damage.

33. The Government considered that the claims were excessive. Moreover, the applicant had not produced any documents in support of his claim for non-pecuniary damage as required by Russian law. The Government argued that the finding of a violation would in itself constitute sufficient just satisfaction.

34. 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 applicant's title to the money confirmed by the final judgment was reversed 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 in 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. The applicant had to repay the money which he legitimately considered his property under the judgment of 10 October 2002, as upheld on 27 November 2002. The Court accepts the applicant's claim in respect of the pecuniary damage and awards him the sum of EUR 8,443 under this head, plus any tax that may be chargeable on that amount.

35. The Court further reiterates that there is no requirement that an applicant furnish any proof of the non-pecuniary damage he or she sustained (see *Gridin v. Russia*, no. 4171/04, § 20, 1 June 2006). It considers that the applicant suffered distress and frustration resulting from the quashing of the judgments of 18 September and 10 October 2002, as upheld on appeal on 27 November 2002. Making its assessment on an equitable basis, the Court awards the applicant EUR 2,000 in respect of non-pecuniary damage, plus any tax that may be chargeable on that amount, and dismisses the remainder of his claim for non-pecuniary damage.

## **B. Costs and expenses**

36. The applicant also claimed EUR 3,390 for his representation by Mr S. Fedoryuk. He relied on the contingency fee agreement under which Mr Fedoryuk was to receive thirty per cent of any amount awarded by the Court.

37. The Government considered the claims excessive and unsubstantiated.

38. The Court notes that the applicant entered into a contingency fee agreement with his lawyer. Such agreements may show, if they are legally enforceable, that the sums claimed are actually payable by the applicant (see *Iatridis v. Greece* (just satisfaction) [GC], no. 31107/96, § 55, ECHR 2000-XI; and *Dudgeon v. the United Kingdom* (Article 50), judgment of 24 February 1983, Series A no. 59, § 22). Under Russian law, contingency fee agreements would be unenforceable against the client (see paragraph 17 above). Accordingly, the applicant is not under any legal liability to pay these fees; nor is there any indication that he in fact paid them. This being so, he cannot be said in any sense actually to have incurred these fees. The Court therefore rejects the applicant's claim for costs and expenses in full.

### C. Default interest

39. 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 applicant's complaint about the quashing of the judgments of 18 September and 10 October 2002, as upheld on appeal on 27 November 2002, by way of supervisory review, and the remainder of the application inadmissible;
2. *Holds* that there has been a violation of Article 6 § 1 of the Convention and Article 1 of Protocol No. 1;
3. *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, to be converted into Russian roubles at the rate applicable at the date of settlement:
    - (i) EUR 8,443 (eight thousand four hundred and forty-three euros) in respect of pecuniary damage;
    - (ii) EUR 2,000 (two thousand euros) in respect of non-pecuniary damage;
    - (iii) plus 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;
4. *Dismisses* the remainder of the applicant's claim for just satisfaction.

Done in English, and notified in writing on 14 February 2008, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Claudia Westerdiek  
Registrar

Peer Lorenzen  
President