



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

FIRST SECTION

CASE OF MURTAZIN v. RUSSIA

(Application no. 26338/06)

JUDGMENT

STRASBOURG

27 March 2008

FINAL

27/06/2008

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 Murtazin v. Russia,

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

Christos Rozakis, *President*,

Nina Vajić,

Anatoly Kovler,

Elisabeth Steiner,

Khanlar Hajiyeu,

Giorgio Malinverni,

George Nicolaou, *judges*,

and Søren Nielsen, *Section Registrar*,

Having deliberated in private on 6 March 2008,

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

PROCEDURE

1. The case originated in an application (no. 26338/06) 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 Danyal Abdulovich Murtazin (“the applicant”), on 22 May 2006.

2. The Russian Government (“the Government”) were represented by Mr P. Laptev, former Representative of the Russian Federation at the European Court of Human Rights.

3. The applicant complained about the continued non-enforcement of the judgment in his favour and its subsequent quashing by way of supervisory review.

4. On 6 September 2006 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

I. THE CIRCUMSTANCES OF THE CASE

5. The applicant was born in 1937 and lives in Novocherkassk, a town in the Rostov Region. He is a retired military officer.

6. On 10 August 2004 the applicant brought proceedings against the Military Service Commissariat of Novocherkassk (*Военный комиссариат*

2. *Новочеркасска* – “the Commissariat”) seeking to recover his pension arrears from January 1995 to March 1998 to take account of the increase of the minimum monthly wage.

7. On 15 September 2004 the Novocherkassk Town Court of the Rostov Region granted the applicant’s claim and awarded him 261,343.87 roubles (RUB) in arrears. On the applicant’s request the court held that the judgment should be enforced immediately since it concerned the applicant’s main source of income and was of considerable importance for the applicant’s financial situation. The Commissariat did not appeal against the judgment and on 25 September 2004 it became final.

8. On 12 October 2004 the applicant’s representative submitted the copy of the judgment and the writ of execution to the Social Welfare Office of the Military Commissariat of the Rostov Region.

9. On 24 February 2005 the enforcement proceedings were opened. In the same month the applicant was informed that the sums awarded to him could not be paid as the Commissariat was conducting an examination of his case.

10. On 19 September 2005 the Commissariat filed an application for supervisory review of the judgment of the Novocherkassk Town Court of 15 September 2004, referring to the lack of grounds in domestic law for increasing the applicant’s pension, and asked for a stay of enforcement.

11. On 9 December 2005 the Rostov Regional Court examined the above application and remitted the case for examination on its merits by the Presidium of the Rostov Regional Court.

12. On 22 December 2005 the Presidium of the Rostov Regional Court quashed the judgment of 15 September 2004 and remitted the case to the Oktyabrskiy District Court for a fresh consideration. It concluded that the first-instance court had erroneously applied the substantive law and that the matter should have been examined by a district court rather than by a town court.

13. On 20 March 2006 the Oktyabrskiy District Court of Rostov-on-Don dismissed the applicant’s claim.

II. RELEVANT DOMESTIC LAW

A. The Code of Civil Procedure of the Russian Federation

14. The Code of Civil Procedure of the Russian Federation (“the new Code”) was enacted on 14 November 2002 and replaced the RSFSR Code of Civil Procedure (“the old Code”) from 1 February 2003. It provides as follows:

Article 209. Entry into force of judicial decisions

“1. A judicial decision becomes legally binding upon expiry of the time-limit for lodging an appeal against it if no such appeal had been lodged.”

Article 210. Enforcement of judicial decisions

“A judicial decision is to be enforced after it becomes legally binding, unless it provides for immediate enforcement...”

Article 362. Grounds for quashing or altering judicial decisions by appeal courts

“1. The grounds for quashing or altering judicial decisions by appeal courts are:

...

(4) a violation or incorrect application of substantive or procedural law.”

Article 376. Right to apply to a court exercising supervisory review

“1. Judicial decisions that have become legally binding, with the exception for judicial decisions by the Presidium of the Supreme Court of the Russian Federation, may be appealed against ... to a court exercising supervisory review, by parties to the case and by other persons whose rights or legal interests have been adversely affected by these judicial decisions.

2. Judicial decisions may be appealed against to a court exercising supervisory review within one year after they became legally binding...”

Article 387. Grounds for quashing or altering judicial decisions by way of supervisory review

“Judicial decisions of lower courts may be quashed or altered by way of supervisory review on the grounds of substantial violations of substantive or procedural legal provisions.”

Article 390. Competence of the supervisory-review court

“1. Having examined the case by way of supervisory review, the court may...

(2) quash the judicial decision issued by a court of first, second or supervisory-review instance in whole or in part and remit the matter for a fresh examination...

(5) quash or alter the judicial decision issued by a court of first, second or supervisory-review instance and issue a new judicial decision, without remitting the matter for a fresh examination, if the substantive law has been erroneously applied or interpreted.”

B. Enforcement Proceedings Act (Law of 21 July 1997)

15. Once instituted, enforcement proceedings must be completed within two months upon receipt of the execution warrant by the bailiff (Section 13).

C. The 2004 Federal Budget Act and the 2005 Federal Budget Act

16. Collection of funds from the recipients of the federal budget is carried out through the local branches of the Federal Treasury upon submission of warrants of execution and court orders (Section 133 and Section 109 respectively).

D. The Federal Law of 12 February 1993 4468-1 on provision of pensions for the retired military servicemen

17. Pensions to the retired military servicemen are paid by the specialised territorial services of the Ministry of Defence (Section 56).

E. The Agreement between the Ministry of Finance and the Savings Bank of the Russian Federation № 01-01-06/03-1710 of 31 December 2002

18. The local branches of the Savings Bank (the Sberbank) distribute the funds allocated by the federal budget for payment of pensions to the retired military servicemen to the specialised territorial services of the Ministry of Defence (Section 2.2.2).

THE LAW**I. ALLEGED VIOLATION OF ARTICLE 6 § 1 OF THE CONVENTION AND ARTICLE 1 OF PROTOCOL No. 1 ON ACCOUNT OF THE QUASHING OF THE JUDGMENT IN THE APPLICANT'S FAVOUR**

19. The applicant complained that the quashing of the judgment of 15 September 2004 by way of supervisory-review proceedings had violated his "right to a court" under Article 6 § 1 of the Convention and his right to the peaceful enjoyment of possessions under 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

20. The Court considers 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. Alleged violation of Article 6 of the Convention*

21. The Government submitted that the quashing of the judgment of 15 September 2004 by way of supervisory review fully complied with Articles 376 § 1, 387 and 390 of the Russian Code of Civil Procedure. The supervisory-review procedure was set in motion with the view of correcting a “judicial error” committed by the first-instance court in determining the amount of arrears to be awarded to the applicant. There had therefore been no violation of the principle of legal certainty.

22. The applicant maintains his complaints.

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 (see, *mutatis mutandis*, *Ryabykh v. Russia*, no. 52854/99, § 52, ECHR 2003-X; and *Sypchenko v. Russia*, no. 38368/04, § 26, 1 June 2007).

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 enforceable judicial decision to be quashed by a higher court merely on the ground of disagreement with the assessment made by lower courts with the view of carrying out a fresh examination (see *Kot v. Russia*, no. 20887/03, § 27-30, 18 January 2007).

26. In the present case the judgment of 15 September 2004 in the applicant’s favour was set aside by the way of a supervisory review on the ground that the Town Court had allegedly incorrectly applied the substantive law and the rules of territorial jurisdiction. The Court has to assess whether the power to conduct a supervisory review was exercised by the authorities so as to strike, to the maximum extent possible, a fair balance between the interests of the individual and the need to ensure the proper administration of justice (see, *mutatis mutandis*, *Nikitin v. Russia*, no. 50178/99, §§ 57 and 59, ECHR 2004-...).

27. The Court stresses that a binding and enforceable judgment should only be quashed in exceptional circumstances rather than for the sole purpose of obtaining a different decision in the case. In the Russian legal system, the grounds for quashing or altering judgments by appeal courts largely overlap with those for quashing or altering judgments by way of supervisory review (compare Article 362 § 1 (4) and Article 387 of the Code of Civil Procedure). The judgment of 15 September 2004 was quashed by way of supervisory-review because of an alleged incorrect application of the substantive law and the rules of territorial jurisdiction. These defects could have been cured in the appeal proceedings. Thus, a situation where the final judgment in the applicant’s favour was called into question could have been avoided, had the Military Commission lodged an ordinary appeal within the statutory ten-day time-limit (see *Borshchevskiy v. Russia*, no. 14853/03, § 48, 21 September 2006, and *Nelyubin v. Russia*, no. 14502/04, § 27, 2 November 2006).

28. The Court further notes that the Russian Code of Civil Procedure permits a party to apply for supervisory review even if it had not previously exhausted an ordinary appeal. In the present case the Military Commissariat failed to exercise its right to lodge an ordinary appeal and permitted the statutory ten-day time-limit to expire without challenging the judgment of

15 September 2004. The Government did not point to any exceptional circumstances that would have prevented the Military Commissariat from exposing its arguments to the Town Court or making use of an ordinary appeal in good time (see *Nelyubin*; cited above, § 28).

29. Having regard to these considerations, the Court finds that, by granting the Military Commission's request to set aside the judgment of 15 September 2004, the Presidium of the Rostov 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.

2. Alleged violation of Article 1 of Protocol No. 1

30. 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; *Androsov v. Russia*, no. 63973/00, § 69, 6 October 2005; and *Borshchevskiy v. Russia*, cited above, § 51).

31. The Court observes that the quashing of the judgment of 15 September 2004 by way of supervisory review led to the dismissal of the applicant's claim. In these circumstances, the Court considers that the quashing of the enforceable judgment of 15 September 2004 by way of supervisory review frustrated the applicant's reliance on a binding judicial decision and deprived him of an opportunity to receive the money he had legitimately expected to receive. Furthermore, the quashing of the judgment of 15 September 2004 by way of supervisory review placed an excessive burden on the applicant and was therefore incompatible with Article 1 of Protocol No. 1. There has therefore been a violation of that Article.

II. ALLEGED VIOLATION OF ARTICLE 6 § 1 OF THE CONVENTION AND ARTICLE 1 OF PROTOCOL No. 1 ON ACCOUNT OF LENGTHY NON-ENFORCEMENT OF THE JUDICIAL DECISION

32. The applicant further complained about the non-enforcement of the judgment of 15 September 2004. He relied on Article 6 of the Convention and Article 1 of Protocol No. 1, cited above.

A. Admissibility

33. 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

34. The Government claimed that the applicant had submitted the warrant of execution without indicating the requisites of his bank account.

35. The applicant responded that there was no need to indicate his bank requisites as the lump sum awarded to him should have been simply transferred to his relevant pension account to which the Commissariat regularly paid his monthly pension.

36. Furthermore, the Government advanced the argument that the administration of the Social Welfare Office of the Military Commissariat did not take any steps in order to enforce the judgment of 15 September 2004 as it had been passed in breach of the substantive and procedural domestic law.

37. The applicant asserted on this point that the judgment of 15 September 2004 was not appealed against and became final. Moreover, it provided for its immediate enforcement, and, therefore, the Government's argument was unconvincing.

38. The Court observes that on 15 September 2004 the applicant obtained a judgment by which the Military Service Commissariat was to pay him a certain sum of money. The judgment provided for its immediate enforcement. From that moment on, it was incumbent on the debtor, a State agency, to comply with it. On 25 September 2004 the judgment became legally binding since no appeal was lodged against it. The Town Court issued the applicant with a warrant of execution, and it was submitted to the debtor on 12 October 2004. However, no attempts were made to execute the judgment. The Rostov Regional Court's decision of 5 October 2005 had the effect of staying the enforcement proceedings but did not affect the validity of the underlying judgment which remained unenforced on that date. The launching of the supervisory-review procedure could not, in itself, extinguish the debtor's obligation to comply with an enforceable judgment which obligation existed until its quashing by the Presidium of the Rostov Regional Court in supervisory-review procedure on 22 December 2005.

39. It follows that at least between 15 September 2004 and 22 December 2005 the judgment in the applicant's favour was "enforceable" and it was incumbent on the State agency to abide by its terms. In any event, the Court reiterates that the quashing of a judgment in a manner which has been found to have been incompatible with the principle of legal certainty and the

applicant's "right to a court" cannot be accepted as a justification for the failure to enforce that judgment (see *Sukhobokov v. Russia*, no. 75470/01, § 26, 13 April 2006).

40. The Court has frequently found violations of Article 6 § 1 of the Convention and Article 1 of Protocol No. 1 in cases raising issues similar to the ones in the present case (see, for example, *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. 1), no. 15021/02, 18 November 2004, and *Sukhobokov*, cited above).

41. Having examined the material submitted to it, the Court notes that the Government did not put forward any fact or argument capable of persuading it to reach a different conclusion in the present case. They did not advance any plausible justification for the delay in enforcement. Having regard to its case-law on the subject, the Court finds that by failing to comply with the judgment 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.

42. The Court finds accordingly that there was a violation of Article § 1 of the Convention and Article 1 of Protocol No. 1 as regards non-enforcement of the judgment in the applicant's favour.

III. OTHER ALLEGED VIOLATIONS OF THE CONVENTION

43. Lastly, the applicant complained that the non-enforcement of the judgment of 15 September 2004 and its subsequent quashing by way of supervisory review violated his rights enshrined in Article 13 of the Convention.

44. In so far as the applicant may be understood to complain about the lack of an effective domestic remedy against the continued non-enforcement of the judgment in his favour, the Court considers that, having regard to the above findings (see paragraph 42 above), it is not necessary to examine whether, in this case, there has been a violation of Article 13 (see *Tolokonnikova v. Russia*, no. 24651/03, § 27, 17 November 2005, and *Gerasimenko v. Russia*, no. 24657/03, § 29, 17 November 2005).

45. Thus, the Court rejects this complaint under Article 35 § 4 of the Convention.

46. In so far as the applicant may be understood to complain about the lack of an effective domestic remedy against the quashing by way of supervisory review of a judgment in his favour, the Court notes that Article 13 of the Convention does not, as such, guarantee the right to appellate remedies in respect of a decision taken by way of supervisory review, and the mere fact that the judgment of the highest judicial body is not subject to further judicial review does not infringe in itself the said

provision (see *Tregubenko v. Ukraine* (dec.), no. 61333/00, 21 October 2003, and *Sitkov v. Russia* (dec.), no. 55531/00, 9 November 2004).

47. It follows that this part of the applicant's complaint under Article 13 of the Convention is incompatible *ratione materiae* with the provisions of the Convention within the meaning of Article 35 § 3 and must be rejected in accordance with Article 35 § 4 thereof.

IV. APPLICATION OF ARTICLE 41 OF THE CONVENTION

48. 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

49. The applicant claimed that the Government should pay him 261,343.87 Russian roubles (RUB) lost as a result of the non-enforcement of the judgment of 15 September 2004 and its subsequent quashing by way of supervisory review. He also claimed 5,000 Euros (EUR) in respect of non-pecuniary damage.

50. The Government claimed that no award should be made because the applicant's claim had been rejected by the domestic courts. As regards the non-pecuniary damage, the Government considered that the applicant's claim was excessive and unreasonable.

51. 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 remained unenforced for a long period of time and was subsequently quashed. The applicant was thereby prevented from receiving the money he had legitimately expected to receive. There is, therefore, a causal link between the violations found and the applicant's claim for the pecuniary damage. The Court thus awards the applicant 7,300 Euros (EUR) representing the amount due to him under the quashed judgment of 15 September 2004 (to be converted into Russian roubles).

52. The Court further considers that the applicant suffered distress because of the State authorities' failure to enforce the judgment in his favour and its subsequent decision to quash it. The Court takes into account the amount and nature of the award in the instant case and the period of the authorities' inactivity. Making its assessment on an equitable basis, it awards the applicant the amount of EUR 4,700, plus any tax that may be chargeable on it.

B. Costs and expenses

53. The applicant did not claim costs or expenses and there is accordingly no call to make an award under this head.

C. Default interest

54. 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 continued non-enforcement of the judgment of 15 September 2004 in the applicant's favour and its subsequent quashing by way of supervisory review admissible and the remaining complaints 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 15 September 2004 by way of supervisory review;
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 15 September 2004;
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 7,300 (seven thousand three hundred Euros) to be converted into Russian roubles in respect of pecuniary damage;
 - (ii) EUR 4,700 (four thousand seven hundred Euros) in respect of non-pecuniary damage, to be converted into Russian roubles at the rate applicable at the date of settlement;
 - (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.

Done in English, and notified in writing on 27 March 2008, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Søren Nielsen
Registrar

Christos Rozakis
President