



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

FIRST SECTION

**CASE OF LUCHKINA v. RUSSIA**

*(Application no. 3548/04)*

JUDGMENT

STRASBOURG

10 April 2008

**FINAL**

*10/07/2008*

*This judgment may be subject to editorial revision.*



**In the case of Luchkina 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 20 March 2008,

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

## PROCEDURE

1. The case originated in an application (no. 3548/04) 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 a Russian national, Ms Valentina Petrovna Luchkina (“the applicant”), on 21 November 2003.

2. The applicant was represented by Ms H. Clement and Mr K. Koroteev, lawyers practising in Paris. The Russian Government (“the Government”) were represented by Mr P. Laptev, the former Representative of the Russian Federation at the European Court of Human Rights.

3. On 30 January 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

4. The applicant was born in 1964 and lives in Troyes, France.

5. On an unspecified date in 2001 the applicant brought an action to recover her property from a third person. On 1 November 2001 the Dzerzhinskiy District Court of Volgograd granted her claim in full and awarded her, *inter alia*, 5,000 Russian roubles (RUB) in respect of the non-pecuniary damage.

6. On 11 September 2002 the Volgograd Regional Court upheld the above judgment on appeal. The judgment was enforced in full.

7. On 9 August 2003 the other party to the proceedings lodged an application for a supervisory review of the judgment of 1 November 2001, as upheld on appeal on 11 September 2002.

8. On 29 October 2003 a judge of the Volgograd Regional Court examined the above application and decided to remit the case for examination on the merits by the Presidium of the Volgograd Regional Court. He presented the case to the Presidium as the judge rapporteur.

9. On 13 November 2003 the Presidium of the Volgograd Regional Court held a supervisory-review hearing. It held that the lower courts had erroneously applied the substantive law. On that ground it quashed the judgment of 1 November 2001, as upheld on appeal on 11 September 2002, in the part concerning the award in respect of the non-pecuniary damage. Both the applicant and the defendant attended the hearing and made submissions to the court. The decision was delivered by four judges. The judge rapporteur did not take part in the deliberations or voted on the case.

10. On 12 January 2004 the Dzerzhinskiy District Court of Volgograd obliged the applicant to repay RUB 5,000 which she had received by virtue of the judgment of 1 November 2001.

## II. RELEVANT DOMESTIC LAW

### A. Code of Civil Procedure of the Russian Federation

11. 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 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 381. Examination of an application for supervisory review**

“2. Having examined an application for supervisory review, the judge issues a decision on –

(1) obtaining the case file if there exist doubts as to the lawfulness of the judicial decision...

4. If a decision to obtain the file has been made, the judge may suspend enforcement of the judicial decision until the supervisory-review proceedings have been completed...”

**Article 384. Decision on remitting the case for examination on the merits by a supervisory-review court**

“1. A judicial decision on remitting the case for examination on the merits by a supervisory-review court must contain:

(7) a reasoned description of the grounds for remitting the case for examination on the merits...”

**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 substantive legal provisions have been erroneously applied or interpreted.”

**B. Resolution of the Plenary Supreme Court of the Russian Federation**

12. Resolution no. 2 of the Plenary Supreme Court of the Russian Federation of 20 January 2003, “On certain issues arising in connection with adoption and coming into force of the Code of Civil Procedure of the Russian Federation”, provided that –

“22. ... The [one-year] time-limit for lodging an application for supervisory review of judicial decisions that became legally binding before 1 February 2003, shall run from 1 February 2003.”

## THE LAW

### I. ALLEGED VIOLATION OF ARTICLE 6 § 1 OF THE CONVENTION ON ACCOUNT OF QUASHING OF THE JUDGMENT IN THE APPLICANT'S FAVOUR

13. The applicant complained about the partial quashing of the judgment of 1 November 2001, as upheld on appeal on 11 September 2002, by way of supervisory review. She relied on Article 6 § 1 of the Convention, the relevant part of which reads as follows:

“In the determination of his civil rights and obligations ..., everyone is entitled to a fair ... hearing within a reasonable time ... by [a] ... tribunal...”

#### A. Admissibility

14. 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*

15. The Government submitted that the application for supervisory review of the judgment of 1 November 2001, as upheld on 11 September 2002, had been lodged within the one-year time-limit set out in Article 376 § 2 of the Code of Civil Procedure of the Russian Federation. Furthermore, the Presidium of the Volgograd 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.

16. The applicant maintained her claims. She submitted that the quashing of the final judgment of 1 November 2001, as upheld on 11 September 2002, had irremediably impaired the principle of legal certainty and her “right to a court”.

##### *2. The Court's assessment*

17. 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).

18. 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).

19. 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 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 *Kot v. Russia*, no. 20887/03, § 29, 18 January 2007, and *Dovguchits v. Russia*, no. 2999/03, § 30, 7 June 2007).

20. The Court observes that in the present case on 1 November 2001 the applicant obtained a judgment in her favour. On 11 September 2002 the judgment was upheld on appeal and became binding and enforceable. However, on 13 November 2003 that judgment was quashed within the supervisory-review procedure.

21. 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 judgment in the applicant's favour was set aside on the ground that the lower courts had incorrectly applied the substantive law. That ground was not a fundamental defect within the meaning of the Court's case-law and could not justify a departure from the principle of legal certainty.

22. Having regard to the above considerations, the Court finds that by quashing the judgment of 1 November 2001, as upheld on appeal on 11 September 2002, by way of supervisory-review proceedings, the

Presidium of the Volgograd 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.

## II. OTHER ALLEGED VIOLATION OF THE CONVENTION

23. Lastly, the applicant contended that the supervisory-instance court had failed to meet the requirement of impartiality. She relied on Article 6 § 1 of the Convention which in its relevant part reads as follows:

"In the determination of his civil rights and obligations ..., everyone is entitled to a fair ... hearing ... by an independent and impartial tribunal established by law."

24. The Court finds that, having concluded that there has 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 (see, by analogy, *Ryabykh*, cited above, § 59). It therefore rejects this part of the application pursuant to Article 35 § 4 of the Convention.

## III. APPLICATION OF ARTICLE 41 OF THE CONVENTION

25. 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

26. The applicant claimed 5,000 Russian roubles in respect of pecuniary damage and 10,000 euros (EUR) in respect of the non-pecuniary damage.

27. The Government submitted that the applicant's claims were wholly excessive and that the finding of a violation would constitute adequate just satisfaction.

28. The Court observes that in the present case it has found a violation of Article 6 § 1 of the Convention 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 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 she legitimately considered her property under the judgment of 1 November 2001, as upheld on appeal on 11 September 2002. The Court accepts the applicant's claim in respect of the pecuniary damage and awards her the sum of EUR 160 under this head, plus any tax that may be chargeable on that amount.

29. The Court further considers that the applicant suffered distress and frustration because of the State authorities' decision to quash the judgment in her favour. The particular amount claimed is, however, excessive. Making its assessment on an equitable basis, the Court awards the applicant EUR 2,000, plus any tax that may be chargeable on this amount.

### **B. Costs and expenses**

30. The applicant also claimed EUR 2,051.20 for the legal costs of the Convention proceedings, inclusive of value-added tax (VAT). This figure represented work completed by the applicant's representatives (5 hours at EUR 114.34 plus VAT per hour and 5 hours at EUR 228.67 plus VAT per hour). The applicant submitted a copy of the fee agreement to that effect.

31. The Government submitted that the applicant had failed to substantiate the above claim.

32. According to the Court's case-law, an applicant is entitled to the reimbursement of costs and expenses only in so far as it has been shown that these have been actually and necessarily incurred and were reasonable as to quantum. In the present case, regard being had to the information in its possession and the above criteria, the Court considers it reasonable to award the applicant the sum of EUR 2,051.20 for the legal costs and expenses of the Convention proceedings. The sum is inclusive of VAT.

### **C. Default interest**

33. 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 applicant's complaint about the partial quashing of the judgment of 1 November 2001, as upheld on appeal on 11 September 2002, by way of supervisory review, admissible, and the remainder of the application inadmissible;

2. *Holds* that there has been a violation of Article 6 § 1 of the Convention;
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 160 (one hundred sixty euros) in respect of pecuniary damage;
    - (ii) EUR 2,000 (two thousand euros) in respect of non-pecuniary damage;
    - (iii) EUR 2,051.20 (two thousand fifty-one euros and twenty cents) in respect of the costs and expenses;
    - (iv) any tax that may be chargeable on the amounts under (i) and (ii);
  - (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 10 April 2008, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Søren Nielsen  
Registrar

Christos Rozakis  
President