



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

FIRST SECTION

CASE OF IVANOVA v. RUSSIA

(Application no. 11697/05)

JUDGMENT

STRASBOURG

24 April 2008

FINAL

24/07/2008

This judgment may be subject to editorial revision.

In the case of Ivanova v. Russia,

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

Christos Rozakis, *President*,

Anatoly Kovler,

Elisabeth Steiner,

Dean Spielmann,

Sverre Erik Jebens,

Giorgio Malinverni,

George Nicolaou, *judges*,

and Søren Nielsen, *Section Registrar*,

Having deliberated in private on 27 March 2008,

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

PROCEDURE

1. The case originated in an application (no. 11697/05) 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, Ms Natalya Pavlovna Ivanova (“the applicant”), on 21 February 2005.

2. The Russian Government (“the Government”) were represented by Mrs V. Milinchuk, Representative of the Russian Federation at the European Court of Human Rights.

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

4. On 15 March 2007 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

5. The applicant was born in 1934 and lives in Lensk in the Sakha (Yakutiya) Republic of the Russian Federation.

6. In 2003 the applicant brought an action against the Government, seeking to recover the monetary value of a State promissory note for purchasing of a Russian-made car.

7. On 4 March 2003 the Lenskiy District Court of the Sakha (Yakutiya) Republic found for the applicant and awarded her 138,967 Russian roubles

(RUB) in compensation and RUB 2,802.32 in reimbursement of the court fee, payable by the Ministry of Finance.

8. On 21 April 2003 the Supreme Court of the Sakha (Yakutiya) Republic (hereinafter – “the Supreme Court”) dismissed the appeal by the Ministry of Finance and upheld the judgment. The Supreme Court rejected the Ministry’s argument that the first-instance court had unlawfully refused to apply the Commodity Bonds Act governing redemption of promissory notes for purchasing of cars.

9. On 15 May 2003 the Ministry of Finance lodged an application for supervisory review before the Presidium of the Supreme Court. It claimed that the courts had unlawfully refused to apply the provisions of the Commodity Bonds Act and the 2001 State Programme for Redemption of Promissory Notes. It is unclear whether any procedural decision was taken on that application.

10. On 28 June 2004 the Ministry of Finance introduced a new application for supervisory review, invoking the same arguments. According to the Government, the proceedings on the applicant’s claim had been previously “suspended” on 23 October 2003 because the Supreme Court had sent a reference for a preliminary ruling to the Constitutional Court. The Constitutional Court had been requested to decide on compatibility of the Commodity Bonds Act with the Constitution.

11. On 7 October 2004 the Presidium of the Supreme Court granted the Ministry’s application for supervisory review, quashed the judgment of 4 March 2003, as upheld on 21 April 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 2001 State Programme for Redemption of Promissory Notes which had extended the period of redemption until 31 December 2004. In the Presidium’s assessment, that failure amounted to a substantial violation of the material law warranting reconsideration of the case.

THE LAW

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

12. The applicant complained under Article 6 of the Convention and Article 1 of Protocol No. 1 about the quashing of the judgment in her favour on supervisory review and the issuing of a new decision by which her claims had been dismissed in full. She also invoked in this connection Articles 13 and 17 of the Convention. The Court considers that this

complaint falls to be examined solely under Article 6 of the Convention and Article 1 of Protocol No. 1, which provide in the relevant parts 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

13. The Court notes that the application 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

14. The Government submitted that the judgment in the applicant's favour had been issued in breach of Russian law. The Ministry of Finance had consistently lodged appeals against it, seeking to overturn the judgment which could lead to formation of “negative case-law” on similar claims and “unjustified expenditure from the federal budget”. There had been no violation of the applicant's rights because the application for supervisory review had been preceded by an ordinary appeal and because the supervisory review judgment had been issued within one year and seven months. The judgment in the applicant's favour had been quashed with a view to correcting a judicial mistake, that is incorrect application of substantive law.

15. The applicant disagreed. She pointed out that the Ministry had lodged its application outside the statutory time-limit, more than one year after the appeal judgment had been issued. Furthermore, even though the Presidium had quashed the judgment on the ground that the payment would be made until 31 December 2004, no payment had been made to the present day.

2. *Alleged violation of Article 6 of the Convention*

16. 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 v. Russia*, no. 52854/99, §§ 54-56, ECHR 2003-IX).

17. In the present case the judgment of 4 March 2003, as upheld on appeal on 21 April 2003, was set aside by way of supervisory review on the ground that the courts had erred in application of the substantive law. 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-...).

18. The Court takes note, firstly, of an exceptionally long period of time – more than seventeen months – that lapsed from the date the judgment in the applicant’s favour had become legally binding to the date the supervisory-review proceedings were conducted. It observes that the Code of Civil Procedure (“CCP”) set a time-limit of one year for lodging an application for supervisory review, the starting point being the date on which the judicial decision became legally binding (Article 376 § 2 of the CCP). In the present case it is not clear what happened to the first application for supervisory review which had been lodged by the Ministry of Finance within the statutory time-limit (see paragraph 9 above). A second application for supervisory review was lodged on 28 June 2004, that is more than two months after the expiry of the one-year time-limit (see paragraph 10 above). No copy of any judicial decision extending the time-limit was made available to the Court. The Government claimed that the proceedings on the applicant’s claim had been previously suspended pending the Constitutional Court’s decision. This claim does not appear convincing to the Court. Firstly, by the time the Supreme Court decided to adjourn proceedings on similar claims in October 2003, the proceedings on the applicant’s claim had already ended with the final appeal judgment of 21 April 2003. It is not clear how the decision on adjournment of pending proceedings could have effect on the proceedings that had already been finished more than five months previously. Secondly, the Court observes that in October 2003 the statutory time-limit for lodging an application for supervisory review against the appeal judgment of 21 April 2003 had not

yet expired. The Government did not point to any exceptional circumstances which could have prevented the Ministry of Finance from filing the supervisory-review application between October 2003 and April 2004, that is within the statutory time-limit. The Court finds that by accepting a belated application for supervisory review without valid grounds the domestic courts breached the principle of legal certainty.

19. In addition to the laxity of the time-limits which the Court has noted above, it reiterates its constant approach that in the absence of a fundamental defect in the previous proceedings a party's disagreement with the assessment made by the first-instance and appeal courts is 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). The Government did not claim that the previous proceedings before the first-instance and appeal courts had been tarnished by a fundamental defect. In fact, the judgment in the applicant's favour was quashed because of incorrect application of 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.

20. The Court has already found a violation of an applicant's "right to a court" guaranteed by Article 6 § 1 of the Convention in the cases in which a judicial decision that had become final and binding, was subsequently quashed after a substantial delay for the sole purpose of re-arguing the case (see the *Dovguchits*, *Kot* and *Ryabykh* judgments, cited above). The Government did not put forward any arguments which would enable the Court to reach a different conclusion in the present case. The Court therefore finds that the quashing of the judgment of 4 March 2003, as upheld on appeal on 21 April 2003, by way of supervisory review, infringed the principle of legal certainty and the applicant's "right to a court". There has been, accordingly, a violation of Article 6 § 1 of the Convention.

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

21. 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, *Androsov v. Russia*, no. 63973/00, § 69, 6 October 2005).

22. The Government denied that there had been an interference with the applicant's rights under Article 1 of Protocol No. 1 because she could still apply for redemption of the promissory note.

23. 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 sum of money. She was prevented from receiving the award through no fault of hers. The quashing of the enforceable judgment frustrated the applicant's reliance on the 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 her 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

24. 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

25. The applicant claimed 21,000 euros (EUR) in respect of non-pecuniary damage and 11,000 US dollars in respect of pecuniary damage, representing the present-day value of a Russian-made passenger car.

26. The Government submitted that the claim was excessive and unreasonable. They claimed that no compensation for the pecuniary damage should be awarded because there had been no violation of the applicant's rights.

27. 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 concerned the original award (compare *Prisyazhnikova and Dolgopolov v. Russia*, no. 24247/04, § 45, 28 September 2006). The applicant's right to receive any additional amount was not upheld in the domestic proceedings. Accordingly, the Court awards the applicant EUR 4,100 in respect of the pecuniary damage, plus any tax that may be chargeable on that amount, and dismisses the remainder of her claim for the pecuniary damage.

28. 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

29. The applicant also claimed RUB 4,650 for legal costs incurred before the Court. She submitted receipts for payment for legal services.

30. The Government pointed out that only reasonable and necessarily incurred expenses should be reimbursed.

31. The Court notes that the applicant was not represented in the Strasbourg proceedings. However, she must have incurred expenses in preparing her written pleadings (see *Lauko v. Slovakia*, judgment of 2 September 1998, *Reports of Judgments and Decisions* 1998-VI, § 75). The Court further notes that the applicant submitted receipts showing the amount of expenses. Regard being had to the information in its possession, the Court considers it reasonable to award EUR 150 to the applicant, plus any tax that may be chargeable on this amount.

C. Default interest

32. 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;
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 4,100 (four thousand one hundred euros) in respect of pecuniary damage;

- (ii) EUR 2,000 (two thousand euros) in respect of non-pecuniary damage;
- (iii) EUR 150 (one hundred and fifty euros) in respect of costs and expenses,
- (iv) 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 24 April 2008, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Søren Nielsen
Registrar

Christos Rozakis
President