



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

FIRST SECTION

CASE OF KURINNYI v. RUSSIA

(Application no. 36495/02)

JUDGMENT

STRASBOURG

12 June 2008

FINAL

12/09/2008

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 Kurinny 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 22 May 2008,

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

PROCEDURE

1. The case originated in an application (no. 36495/02) 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 Nikolay Mikhaylovich Kurinny (“the applicant”), on 25 September 2002.

2. 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 17 May 2006 the Court decided to communicate 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. Having examined the Government’s objection concerning the application of Article 29 § 3 of the Convention, the Court dismissed it.

THE FACTS

4. The applicant was born in 1939 and lives in the village of Rakitnyy in the Rostov Region.

A. Judgment of 27 May 1999

5. In 1998 the applicant brought court proceedings against the Social Security Service of the Zernogradskiy District of the Rostov Region (“the Social Security Service”) claiming old-age pension arrears.

6. By judgment of 27 May 1999, the Zernogradskiy District Court awarded the applicant 3,770.46 Russian roubles (RUB) in pension arrears for the period from August 1998 to April 1999 and RUB 469.21 in monthly payments as from May 1999. The judgment was not appealed against and became final on 6 June 1999.

7. On 7 December 1999 the District Court issued the applicant with writs of execution which he submitted to the bailiffs but they refused to enforce the judgment.

B. Judgment of 31 July 2001

8. In April 2001 the payment of the applicant's pension was entrusted to the Zernogradskiy District Agency of the Pension Fund ("the Agency"). In July 2001 the applicant sued the Agency and the Social Security Service for pecuniary damages on account of their failure to enforce the judgment of 27 May 1999.

9. By judgment of 31 July 2001, the District Court established that the judgment of 27 May 1999 had not been enforced and ordered the Agency to pay the applicant RUB 24,998.55 in pension arrears for the period from August 1998 to July 2001, adjusted in line with the increases in the level of pensions during this period. The District Court revoked the enforcement writs issued in December 1999.

10. The Agency appealed. It appears that the sole ground of its appeal was that it should not have been held responsible for the period of time when the payment of the applicant's pension had been entrusted to the Social Security Service. On 10 October 2001 the Rostov Regional Court upheld the judgment.

11. On 15 January 2002 the amount of RUB 24,998.55 was transferred to the applicant's account.

C. Quashing of the judgment of 31 July 2001

12. On 30 April 2002 the President of the Rostov Regional Court lodged an application for supervisory review of the judgment of 31 July 2001, as upheld on 10 October 2001. The applicant challenged the above application relying on the *Brumarescu* judgment and alleging that the quashing of the judgment in his favour would violate Article 6 § 1 of the Convention.

13. On 23 May 2002 the Presidium of the Rostov Regional Court set aside the judgment of 31 July 2001, as upheld on appeal, on the ground that it had infringed the rules of civil procedure by re-awarding the applicant the sums due under the judgment of 27 May 1999 and thereby re-considering the issues resolved by that final judgment. The Presidium also noted that the courts had failed to set out detailed calculations of the awarded sums and

their conclusions in that part had been unsubstantiated. It remitted the case for a new examination by the District Court.

D. Further examination of the case

14. By judgment of 9 October 2002, the District Court granted the applicant's claims in part. The Regional Court reversed the judgment on 27 November 2002 and remitted the case to the District Court.

15. By judgment of 25 March 2003, the District Court dismissed the applicant's claims in full. It noted, among other things, that the Agency had paid the applicant the sums due under the judgment of 31 July 2001 and that those sums had not been claimed from him.

16. On 14 May 2003 the Regional Court upheld the judgment. It endorsed the District Court's reasoning and noted that the amounts paid to the applicant under the judgment of 31 July 2001 could not be claimed from him under the relevant legislation.

II. RELEVANT DOMESTIC LAW

17. For the relevant provisions on the supervisory review proceedings contained in the 1964 Code of Civil Procedure see the Court's judgment in the case *Ryabykh v. Russia* (no. 52854/99, §§31-42, ECHR 2003-IX).

18. Article 208 § 3 of the 1964 Code of Civil Procedure, as in force at the material time, provided that when a court judgment had become legally binding the parties were not allowed to re-submit to courts the claims resolved by that final judgment.

19. Article 1109 of the 1995 Civil Code stipulates that salary and other payments, including pensions, granted as means of subsistence, to a person in the absence of bad faith and miscalculations on his or her part cannot be claimed back.

20. The 2003 Code of Civil Procedure provides that if a judicial decision is annulled after it has been enforced and if in ensuing proceedings the claims are dismissed in full or in part, the respondent can recover the sums awarded against him under the annulled judicial decision (Article 443). The court which examines the case afresh is under an obligation to examine the above issue of its own motion or upon the respondent's request (Article 444).

THE LAW

I. ALLEGED VIOLATION OF ARTICLE 6 OF THE CONVENTION AND ARTICLE 1 OF PROTOCOL NO. 1 ON ACCOUNT OF THE QUASHING OF THE JUDGMENT OF 31 JULY 2001

21. The applicant complained under Article 6 of the Convention and Article 1 of Protocol No. 1 about the quashing of the judgment of 31 July 2001, as upheld on 10 October 2001, by way of supervisory review. 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 ... 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

22. 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. Alleged violation of Article 6 of the Convention

(a) Submissions by the parties

23. The Government submitted that the judgment of 31 July 2001, as upheld on appeal, had been issued in breach of Article 208 § 3 of the 1964 Code of Civil Procedure, which prohibited re-examination of the claims already resolved by a final judgment. On 31 July 2001 the District Court had awarded the applicant the sums already due under the judgment of 27 May 1999. Such decision had amounted to a manifest and substantial

procedural error. Besides, it had lacked a detailed calculation and substantiation of the awarded sums. When examining the appeal against the impugned judgment the Regional Court “had not paid attention” to the above errors and thus the President of the Regional Court had not had other ways to rectify it but to apply for supervisory review. The supervisory review ruling had intervened only six months after the judgment had become final and the ensuing examination of the case had been prompt. Finally, the supervisory review procedure had been amended in the new Code of Civil Procedure which clearly demonstrated the authorities’ respect for the principle of legal certainty.

24. The applicant submitted that on 31 July 2001 the District Court had awarded him compensation in respect of pecuniary damage incurred as a result of non-enforcement of the judgment of 27 May 1999. Hence, the District Court had not committed any errors and the review had been initiated with the sole purpose of a fresh determination of the case. Relying on the *Ryabykh* judgment, the applicant stressed that the supervisory review proceedings had been initiated by the President of the Regional Court who had not been party to the proceedings and not by the Agency which had never objected to the impugned judgment in the relevant part and had duly paid the award. The judgment in his favour had been set aside four months after it had been enforced.

(b) The Court’s assessment

25. The Court reiterates its constant case-law to the effect that the quashing by way of supervisory review of a judicial decision which has become final and binding may render the litigant’s right to a court illusory and infringe the principle of legal certainty (see, among many other authorities, *Brumărescu v. Romania* [GC], no. 28342/95, § 62, ECHR 1999-VII; *Ryabykh v. Russia*, no. 52854/99, §§ 56-58, 24 July 2003; *Roseltrans v. Russia*, no. 60974/00, §§ 27-28, 21 July 2005). Furthermore, the Court has found in this respect in the judgment *Sovtransavto Holding v. Ukraine* no. 48553/99, § 77, ECHR 2002-VII:

“... judicial systems characterised by the objection (protest) procedure and, therefore, by the risk of final judgments being set aside repeatedly, as occurred in the instant case, are, as such, incompatible with the principle of legal certainty that is one of the fundamental aspects of the rule of law for the purposes of Article 6 § 1 of the Convention, read in the light of *Brumărescu*...”

26. Whereas the Court has accepted that the mere possibility of reopening a case is *prima facie* compatible with the Convention (see, in the context of criminal proceedings, *Nikitin v. Russia*, no. 50178/99, § 57, ECHR 2004-VIII) and in certain circumstances a final and binding judgment may be revised, it has held that a departure from the principle of legal certainty is justified only when made necessary by circumstances of a

substantial and compelling character (see *Ryabykh*, cited above, § 52). It has stressed that the power of review should not be used in an arbitrary manner (see *Petrov v. Russia*, no. 7061/02, § 17, 21 December 2006) and certain special circumstances of the case may reveal that the actual manner in which the reopening was used impaired the very essence of a fair trial (see *Nikitin*, *ibid.*). Therefore, the Court has to assess in each case before it 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 *Prisyazhnikova and Dolgopolov v. Russia*, no. 24247/04, § 24, 28 September 2006).

27. Turning to the present case, the Court takes note of the Government's argument that the judgment in the applicant's favour had been set aside by the Presidium to correct what they considered the courts' "substantial procedural error", namely the re-examination of the issues already resolved by a final judicial decision.

28. The Court considers, however, that the cogency of their argument is, at the very least, open to doubt. It cannot but note that the Government rely on the need to ensure respect for the *res judicata* principle to justify the domestic authorities' encroachment on that same principle. It would furthermore appear that the rationale behind the annulled judgment of 31 July 2001 was to remedy the domestic authorities' failure to enforce the judgment of 27 May 1999 (see para 9).

29. Moreover, as regards the manner in which the supervisory review was conducted in the present case, the Court considers it necessary to note the following.

30. First, the Court observes that the application for supervisory review was lodged by the President of the Regional Court who had not been a party to the proceedings (see *Ryabykh v. Russia*, no. 52854/99, § 54, ECHR 2003-IX).

31. Furthermore, it transpires that the Agency did not challenge the judgment of 31 July 2001 before the court of appeal on the ground that it had re-examined the issues already resolved by another final judgment. It promptly paid the amounts awarded to the applicant after the judgment had become final. Indeed, had the Agency had any objections to the re-examination in 2001 of the issues already resolved by a final judgment of 1999, it would have been open to it to raise those points in its ordinary appeal against the judgment of 31 July 2001. Thus, a situation where the final judgment in the applicant's favour was called into question could have been avoided (see, *mutatis mutandis*, *Nelyubin v. Russia*, no. 14502/04, §§ 28-29, 2 November 2006). The Government did not point to any exceptional circumstances that would have prevented the Agency from raising those issues on appeal (see *Petrov v. Russia*, cited above, § 19). The Court does not discern any reason as to why it should be for the applicant to

bear the burden of the Agency's omission or the Regional Court's failure to "pay attention" to the District Court's alleged error and to find himself in a situation where the final and binding judgment in his favour is set aside four months after it was enforced.

32. Finally, as to the Government's submission concerning lack of calculation and substantiation of the awarded sums in the judgment of 31 July 2001, the Court has already held that it did not consider similar shortcomings to amount to "circumstances of a substantial and compelling character" which could require departure from the principle of legal certainty (see *Boris Vasilyev v. Russia*, no. 30671/03, § 34, 15 February 2007).

33. In sum, even though the Court does not underestimate the importance of the procedural rule relied on by the Government, it considers that in the case at hand the authorities failed to strike, to the maximum extent possible, a fair balance between the interests of the applicant and the need to ensure the proper administration of justice.

34. Having regard to the circumstances, the Court does not find any reason for departing from its aforementioned case-law and considers that there has been a violation of Article 6 § 1 in respect of the quashing of a final and binding judgment given in the applicant's case.

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

35. The Government submitted, with reference to the judgment of 14 May 2003 and Article 1109 § 3 of the Civil Code (see Relevant Domestic Law above), that the sums paid to the applicant could not be claimed back from him.

36. The applicant referred, among other things, to Articles 443-444 of the 2003 Code of Civil Procedure and claimed that the sums paid under the annulled judgment could be claimed back from him at any moment.

37. The Court observes that the applicant was paid the award made to him under the judgment of 31 July 2001. It was subsequently set aside by way of supervisory review and in the ensuing proceedings the courts dismissed the applicant's claims. Nevertheless, in their judgments of 25 March and 14 May 2003, the courts expressly held that the amounts already paid to the applicant could not be recovered from him. In this connection the Court reiterates that it is in the first place for the domestic authorities, notably the courts, to interpret and apply domestic law (see, for example, *Jahn and Others v. Germany* [GC] nos. 46720/99, 72203/01 and 72552/01, § 86, ECHR 2005 -).

38. Having regard to the findings made by the domestic courts, the Court does not consider it necessary to rule on the question whether there has been a violation of Article 1 of Protocol No. 1 (see *Klimenko v. Russia*, no. 11785/02, §§ 170-172, 18 January 2007; *Zasurtsev v. Russia*,

no. 67051/01, §§ 53-55, 27 April 2006 and cf. *Kuznetsova v. Russia*, no. 67579/01, §§ 46-52, 7 June 2007).

II. OTHER ALLEGED VIOLATIONS OF THE CONVENTION

39. The applicant further complained that the judgment of 27 May 1999 had not been enforced, the proceedings after the quashing of the judgment of 31 July 2001 had been unfair and had culminated in incorrect court decisions.

40. As to the applicant's complaint about the non-enforcement, the Court is satisfied that, by making a payment on 15 January 2002 under the judgment of 31 July 2001, the authorities complied with their obligations under the judgment of 27 May 1999 (see paras 6-10 above). However, the applicant first raised this complaint in his application form dated 11 February 2004, that is more than six months after the judgment had been enforced. It follows that this complaint has been introduced out of time and must be rejected in accordance with Article 35 §§ 1 and 4 of the Convention.

41. As to the remainder of the applicant's complaints, the Court finds, having regard to all the material in its possession, that these 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

42. 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."

43. The applicant did not submit a claim for just satisfaction. Accordingly, the Court considers that there is no call to award him any sum on that account.

FOR THESE REASONS, THE COURT UNANIMOUSLY

1. *Declares* the complaint concerning quashing of the judgment of 31 July 2001, as upheld on 10 October 2001, 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* that there is no need to examine the complaint under Article 1 of Protocol No. 1 of the Convention;
4. *Decides* to make no award under Article 41 of the Convention.

Done in English, and notified in writing on 12 June 2008, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Søren Nielsen
Registrar

Christos Rozakis
President