



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

FIRST SECTION

CASE OF VIKTOR PETROV v. RUSSIA

(Application no. 15890/04)

JUDGMENT

STRASBOURG

24 July 2008

FINAL

24/10/2008

This judgment may be subject to editorial revision.

In the case of Viktor Petrov v. Russia,

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

Christos Rozakis, *President*,

Nina Vajić,

Anatoly Kovler,

Khanlar Hajiyeu,

Dean Spielmann,

Sverre Erik Jebens,

George Nicolaou, *judges*,

and Søren Nielsen, *Section Registrar*,

Having deliberated in private on 3 July 2008,

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

PROCEDURE

1. The case originated in an application (no. 15890/04) 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, Mr Viktor Mikhailovich Petrov (“the applicant”), on 15 March 2004.

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

3. On 26 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

I. THE CIRCUMSTANCES OF THE CASE

4. The applicant was born in 1952 and lives in Pskov, a town in the Pskov Region.

5. As a victim of Chernobyl, the applicant is entitled to social benefits. Considering himself underpaid, he brought six successful actions against local authorities responsible for welfare.

6. On 13 August 2002 the Pskov Town Court fixed a new amount of periodic benefits. This judgment became binding on 24 September 2002.

According to the Government, this judgment was fully enforced by 31 December 2006. According to the applicant, this judgment has still not been enforced, because from 1 January 2007 the periodic benefits were reduced again.

7. On 11 June 2003 the Town Court awarded 15,000 Russian roubles ("RUB") as interest for delayed payment. This judgment became binding on 15 July 2003. On the welfare authority's request, on 20 February 2004 the Presidium of the Pskov Regional Court quashed the judgment on supervisory review, on the ground of misapplication of material law.

8. On 21 July 2003 the Justice of the Peace of Court District 31 of Pskov awarded RUB 3,000 as interest for delayed payment. This judgment became binding on 9 October 2003. On the welfare authority's request, on 14 May 2004 the Presidium of the Pskov Regional Court quashed the judgment on supervisory review, on the ground of misapplication of material law.

9. On 28 October 2003 the Town Court awarded arrears and fixed a new amount of periodic payments. This judgment became binding on 10 November 2003. According to the Government, this judgment was fully enforced by 31 December 2005. According to the applicant, this judgment has still not been enforced, because the periodic payments continue to be miscalculated.

10. On 29 December 2003 the Town Court awarded compensation of inflationary loss caused by the delayed enforcement of an earlier judgment. This judgment became binding on 9 January 2004 and was enforced on 8 July 2005.

11. On 1 June 2005 the Town Court ordered the applicant to be provided in 2005 with a decent flat of at least 65 m². This judgment became final on 15 June 2005 and was enforced on 29 December 2006.

II. RELEVANT DOMESTIC LAW

12. Under section 9 of the Federal Law on Enforcement Proceedings of 21 July 1997, a bailiff must enforce a judgment within two months. Under section 242.2.6 of the Budget Code of 31 July 1998, the Ministry of Finance must enforce a judgment within three months.

THE LAW

I. ALLEGED VIOLATION OF ARTICLE 6 § 1 OF THE CONVENTION AND ARTICLE 1 OF PROTOCOL No. 1 ON ACCOUNT OF NON-ENFORCEMENT

13. The applicant complained under Article 6 of the Convention and Article 1 of Protocol No. 1 about the lengthy non-enforcement of the judgments of 13 August 2002, 28 October 2003, 29 December 2003, and 1 June 2005. Insofar as relevant, these Articles 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.

The preceding provisions shall not, however, in any way impair the right of a State to enforce such laws as it deems necessary to control the use of property in accordance with the general interest or to secure the payment of taxes or other contributions or penalties.”

A. Admissibility

14. The Government argued that this complaint was inadmissible. Any delay in the enforcement of the judgment of 13 August 2002 had been caused by the workings of the federal budget. The authorities had not idled; they had paid the award as soon as funds had become available. The other three judgments had been enforced within a reasonable time. The applicant had abused his right of petition, because he had impertinently accused the authorities of falsity.

15. The applicant argued that this complaint was admissible. The judgments of 13 August 2002 and 28 October 2003 had not been fully enforced. The other judgments had not been enforced within a reasonable time.

16. 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

17. The Court reiterates that an unreasonably long delay in the enforcement of a binding judgment may breach the Convention (see *Burdov v. Russia*, no. 59498/00, ECHR 2002-III). To decide if the delay was reasonable, the Court will look at how complex the enforcement proceedings were, how the applicant and the authorities behaved, and what the nature of the award was (see *Raylyan v. Russia*, no. 22000/03, § 31, 15 February 2007).

18. The enforcement of the judgment of 13 August 2002 lasted four years and three months (or longer, given the applicant's allegation that his periodic payments continue to be miscalculated). The enforcement of the judgment of 28 October 2003 lasted two years and one month (or longer, given the applicant's allegation that his periodic payments continue to be miscalculated). The enforcement of the judgment of 29 December 2003 lasted one year and five months. The enforcement of the judgment of 1 June 2005 lasted one year and six months.

19. In the circumstances of the present case, and given the nature of the awards (benefits to a victim of Chernobyl), these periods were incompatible with the requirements of the Convention.

20. There has, accordingly, been a violation of Article 6 § 1 of the Convention and Article 1 of Protocol No. 1.

II. ALLEGED VIOLATION OF ARTICLE 13 OF THE CONVENTION ON ACCOUNT OF NON-ENFORCEMENT

21. The applicant complained under Article 13 of the Convention that he had no effective domestic remedy against the non-enforcement of the judgments. Article 13 reads as follows:

“Everyone whose rights and freedoms as set forth in [the] Convention are violated shall have an effective remedy before a national authority notwithstanding that the violation has been committed by persons acting in an official capacity.”

A. Admissibility

22. The Government argued that this complaint was inadmissible. The applicant had had an opportunity to complain about the welfare authority's failure to enforce the judgments to a court, a prosecutor, or other competent agencies.

23. The applicant maintained his complaint. He indicated that the Court had many times before found a violation of Article 13 in similar circumstances.

24. 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

25. The Court reiterates that Article 13 guarantees an effective remedy before a national authority for a prolonged non-enforcement of a binding judgment (see, *mutatis mutandis*, *Kudla v. Poland* [GC], no. 30210/96, § 156, ECHR 2000-XI).

20. The Government have not, however, specified how recourse to a court, a prosecutor, or other competent agencies would have provided preventive or compensatory relief against the non-enforcement. Nor have the Government given an example from domestic practice of a successful application of those remedies (see *Kudla*, cited above, § 159).

21. It follows that there has been a violation of Article 13.

III. ALLEGED VIOLATION OF ARTICLE 6 § 1 OF THE CONVENTION AND OF ARTICLE 1 OF PROTOCOL No. 1 ON ACCOUNT OF SUPERVISORY REVIEW

26. The applicant further complained under Article 6 of the Convention and Article 1 of Protocol No. 1 about the supervisory review of the judgments of 11 June 2003 and 21 July 2003.

A. Admissibility

27. The Government argued that this complaint was inadmissible.

The supervisory-review procedure had been an integral part of the Russian legal system. According to the Constitutional Court, the elimination of the supervisory-review procedure could have produced a procedural vacuum, disrupted civil adjudication, and threatened the basic function of the judiciary – the restoration of breached rights.

In the present case, the courts had reached a fair balance between the requirements of legal certainty and justice. In particular, the supervisory review had come after an ordinary appeal; only one supervisory-review court had been engaged; the supervisory review had happened promptly (less than a year after the judgments had become binding); the supervisory review had been initiated by a party to the proceedings; the judgments had been quashed in order to correct a misapplication of material law.

Annulment of binding judgments was legitimate in a democratic society and known, for example, to such countries as Germany, Austria, and Switzerland. Besides, the Committee of Ministers of the Council of Europe had been satisfied that Russia's supervisory-review procedure had been improved (ResDH(2006)1, 8 February 2006; CM/Inf/DH(2005)20, 23 March 2005).

28. The applicant insisted that his complaint was admissible. He cited a number of the Court's cases, arguing that a misapplication of material law had not justified supervisory review.

29. 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

30. The Court has earlier found a violation of Article 6 § 1 and Article 1 of Protocol No. 1 where, like in the present case, supervisory review was used to quash a binding judgment on the ground of an alleged misinterpretation of material law (see, for example, *Kot v. Russia*, no. 20887/03, § 29, 18 January 2007). There is no reason to depart from that finding in the present case.

31. There has accordingly been a violation of Article 6 of the Convention and Article 1 of Protocol No. 1.

IV. ALLEGED VIOLATION OF ARTICLE 13 OF THE CONVENTION ON ACCOUNT OF SUPERVISORY REVIEW

32. The applicant complained under Article 13 of the Convention that he had no effective domestic remedy against the supervisory review of the judgments.

33. 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.

34. However, having found above that the supervisory review breached the applicant's substantive rights under Article 6 § 1 of the Convention and Article 1 of Protocol No. 1, the Court considers that it is not necessary to examine separately the complaint about the absence of effective remedies with regard to the proceedings begot by that supervisory review (see *Sitkov v. Russia*, no. 55531/00, § 39, 18 January 2007).

V. APPLICATION OF ARTICLE 41 OF THE CONVENTION

35. 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

36. The applicant claimed 1,800 euros (“EUR”) in respect of pecuniary damage and EUR 20,500 in respect of non-pecuniary damage. He also asked the Court to oblige the Government to enforce the judgment of 13 August 2002.

37. The Government argued that no award should be made, because the judgments in the applicant’s favour had been fully enforced, and because the applicant had failed to substantiate his non-pecuniary damage.

38. As to pecuniary damage caused by the non-enforcement, the Court reiterates that the violation found is best redressed by putting the applicant in the position he would have been if the Convention had been respected. The Government shall therefore secure, by appropriate means, the enforcement of any outstanding awards (see, with further references, *Poznakhirina v. Russia*, no. 25964/02, § 33, 24 February 2005).

39. As to pecuniary damage caused by the supervisory review, the Court considers that the violation found with regard to supervisory review is best redressed by putting the applicant in the position he would have been if the Convention had been respected. It is therefore appropriate to award the applicant the equivalent in euros of the sums that he would have received if the judgments of 11 June 2003 and 21 July 2003 had not been quashed (see *Bolyukh v. Russia*, no. 19134/05, § 39, 31 July 2007). The Court awards EUR 500 in this respect.

40. As to non-pecuniary damage, the Court accepts that the applicant may have been distressed by the non-enforcement and supervisory review of the binding judgments. Making its assessment on an equitable basis, the Court awards EUR 5,500 under this head.

B. Costs and expenses

41. The applicant also claimed RUB 1,815.69 for the costs and expenses incurred before the Court.

42. The Government argued that this claim was unsubstantiated.

43. 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 sum of EUR 50 for the proceedings before the Court.

C. Default interest

44. 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 § 1 of the Convention and Article 1 of Protocol No. 1 on account of non-enforcement;
3. *Holds* that there has been a violation of Article 13 of the Convention on account of non-enforcement;
4. *Holds* that there has been a violation of Article 6 § 1 of the Convention and Article 1 of Protocol No. 1 on account of the supervisory-review quashing of a final judgment;
5. *Holds* that there is no need to examine the complaint under Article 13 of the Convention on account of the supervisory-review quashing of a final judgment;
6. *Holds*
 - (a) that the respondent State, within three months from the date on which the judgment becomes final according to Article 44 § 2 of the Convention, shall secure, by appropriate means, the enforcement of any outstanding awards made by the domestic court, and in addition pay the following amounts, to be converted into Russian roubles at the rate applicable at the date of settlement:
 - (i) EUR 500 (five hundred euros), plus any tax that may be chargeable, in respect of pecuniary damage;
 - (ii) EUR 5,500 (five thousand five hundred euros), plus any tax that may be chargeable, in respect of non-pecuniary damage;
 - (iii) EUR 50 (fifty euros), plus any tax that may be chargeable to the applicant, in respect of costs and expenses;

(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;

7. *Dismisses* the remainder of the applicant's claim for just satisfaction.

Done in English, and notified in writing on 24 July 2008, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Søren Nielsen
Registrar

Christos Rozakis
President