



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

FIRST SECTION

CASE OF DEMENTYEV v. RUSSIA

(Application no. 3244/04)

JUDGMENT

STRASBOURG

6 November 2008

FINAL

06/02/2009

This judgment may be subject to editorial revision.

In the case of Dementyev v. Russia,

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

Christos Rozakis, *President*,

Nina Vajić,

Anatoly Kovler,

Dean Spielmann,

Sverre Erik Jebens,

Giorgio Malinverni,

George Nicolaou, *judges*,

and Søren Nielsen, *Section Registrar*,

Having deliberated in private on 16 October 2008,

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

PROCEDURE

1. The case originated in an application (no. 3244/04) 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 Vladislav Yevgenyevich Dementyev (“the applicant”), on 17 December 2003.

2. The applicant was represented by Mr V. Gandzyuk, a lawyer practising in Ryazan. The Russian Government (“the Government”) were represented by Ms V. Milinchuk, former Representative of the Russian Federation at the European Court of Human Rights.

3. On 2 July 2007 the President of the First Section decided to give notice of the application to the Government. Under the provisions of Article 29 § 3 of the Convention, it was decided to examine the merits of the application at the same time as its admissibility.

4. The Government objected to the joint examination of the admissibility and merits of the application. Having examined the Government’s objection, the Court dismissed it.

THE FACTS

I. THE CIRCUMSTANCES OF THE CASE

5. The applicant was born in 1976 and lives in Ryazan.
6. He is currently a military serviceman.

7. From 13 May 2000 to 5 May 2001 the applicant served in the Russian peacekeeping contingent in Kosovo.

8. Upon his return to Russia, he brought proceedings against the head of his military unit for his daily allowance in relation to his service abroad.

9. On 14 April 2003 the Military Court of the Ryazan Garrison ordered the military unit to pay the applicant 371,543.84 Russian roubles in respect of his daily allowance.

10. The military unit did not lodge an ordinary appeal within the statutory ten-day time-limit and on 25 April 2003 the judgment became binding and enforceable. The enforcement proceedings started.

11. However, on 25 August 2003 the military unit applied for a supervisory review of the judgment.

12. On 5 November 2003 the Presidium of the Military Court of the Moscow Command quashed the judgment of 14 April 2003 by way of supervisory review, re-examined the claim and dismissed it in full. The reason given for the quashing of the judgment was the “wrongful application of substantive law by the first-instance court”.

II. RELEVANT DOMESTIC LAW

13. The Code of Civil Procedure of the Russian Federation provides as follows:

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 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.”

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

14. The applicant complained that the quashing of the judgment of 14 April 2003 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. Submissions by the parties

15. The Government, relying on the Court’s judgments in the cases of *Pellegrin v. France* ([GC], no. 28541/95, ECHR 1999-VIII) and *Kanayev v. Russia* (no. 43726/02, 27 July 2006), argued that the applicant’s complaint under Article 6 of the Convention was incompatible *ratione materiae* because the applicant had been a military officer and the judgment award had concerned allowances for his military service. They further argued that Article 1 of Protocol No. 1 was also inapplicable because the applicant had not had a “possession” within the meaning of the invoked Convention provision as he had had no right to receive “payments in the amount claimed”. He neither had an “existing possession”, nor a “legitimate expectation”. As to the merits of the complaint, the Government noted that the judgment of 14 April 2003 had been quashed because the Military Court

of the Ryazan Garrison had incorrectly interpreted and applied substantive law.

16. The applicant averred that the quashing of the final judgment of 14 April 2003 had irremediably impaired the principle of legal certainty and had deprived him of the right to receive money he had been entitled to receive.

B. The Court's assessment

1. Article 6 § 1 of the Convention

(a) Admissibility

17. The Government contested the applicability of Article 6 to the dispute raised by the applicant. Relying on *Pellegrin* (cited above), they argued that Article 6 was not applicable since disputes raised by servants of the State such as military officers over their conditions of service were excluded from its ambit.

18. The Court accepts that in the *Pellegrin* judgment it attempted to establish an autonomous interpretation of the term "civil service". To that end the Court introduced a functional criterion based on the nature of the employee's duties and responsibilities.

19. However, in its judgment in the case of *Vilho Eskelinen and Others v. Finland* ([GC], no. 63235/00, 19 April 2007), the Court found that the functional criterion, adopted in the *Pellegrin* judgment, did not simplify the analysis of the applicability of Article 6 in proceedings to which a civil servant was a party or bring about a greater degree of certainty in this area as intended (§ 55). For these reasons the Court decided to further develop the functional criterion set out in *Pellegrin* and adopted the following approach:

"To recapitulate, in order for the respondent State to be able to rely before the Court on the applicant's status as a civil servant in excluding the protection embodied in Article 6, two conditions must be fulfilled. Firstly, the State in its national law must have expressly excluded access to a court for the post or category of staff in question. Secondly, the exclusion must be justified on objective grounds in the State's interest. The mere fact that the applicant is in a sector or department which participates in the exercise of power conferred by public law is not in itself decisive. In order for the exclusion to be justified, it is not enough for the State to establish that the civil servant in question participates in the exercise of public power or that there exists, to use the words of the Court in the *Pellegrin* judgment, a 'special bond of trust and loyalty' between the civil servant and the State, as employer. It is also for the State to show that the subject matter of the dispute in issue is related to the exercise of State power or that it has called into question the special bond. Thus, there can in principle be no justification for the exclusion from the guarantees of Article 6 of ordinary labour disputes, such as those relating to salaries, allowances or similar entitlements, on the basis of the special nature of relationship between the particular civil servant and the

State in question. There will, in effect, be a presumption that Article 6 applies. It will be for the respondent Government to demonstrate, first, that a civil-servant applicant does not have a right of access to a court under national law and, second, that the exclusion of the rights under Article 6 for the civil servant is justified.” (see *Vilho Eskelinen and Others v. Finland* [GC], no. 63235/00, 19 April 2007, § 62)

20. Turning to the facts of the present case, the Court notes that the applicant had access to a court under national law. He made use of his right and introduced an action against his employer. The Military Court of the Ryazan Garrison examined the applicant’s claims and accepted them, awarding the applicant a daily allowance for his service abroad. After the final judgment of 14 April 2003 had been quashed by way of supervisory review, the applicant’s claims were once again re-examined and dismissed. Neither the domestic courts nor the Government indicated that the domestic system barred the applicant’s access to a court. Accordingly, Article 6 is applicable (see *Vilho Eskelinen*, cited above, § 63, and, for a similar context in Russian cases, *Dovguchits v. Russia*, no. 2999/03, § 33, 7 June 2007).

21. The Court further notes that this complaint is not manifestly ill-founded within the meaning of Article 35 § 3 of the Convention and is not inadmissible on any other grounds. It must therefore be declared admissible.

(b) Merits

22. The Government pointed out that an application for supervisory review had been lodged by a party to the proceedings only four months after the judgment of 14 April 2003 had become binding. The Government referred to the German Code of Civil Procedure which provided for the possibility to lodge an application for review of a judicial decision within one month of it being served. The aim of the application of the supervisory review procedure was to correct judicial errors. The applicant’s case clearly did not call for any payment of a daily allowance and the supervisory review court had to give a proper explanation and an appropriate legal interpretation of the matter in dispute for the purpose of delivering a fair and lawful judgment and for the purpose of securing the correct application of the relevant domestic law in future similar cases. There had therefore been no violation of the principle of legal certainty.

23. The Court observes 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*, 28 October 1999, § 61, *Reports of Judgments and Decisions* 1999-VII).

24. This principle states that no party is entitled to seek the re-opening of proceedings merely for the purpose of a rehearing and a fresh decision of the case. The power of the higher courts to quash or alter binding and enforceable judicial decisions should be exercised only for the correction of fundamental defects. The mere possibility of two views on the subject does not constitute grounds 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).

25. The Court observes 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, and *Zvezdin v. Russia*, no. 25448/06, § 28, 14 June 2007).

26. In the present case the judgment of 14 April 2003 in the applicant’s favour was set aside on 5 November 2003 by way of a supervisory review on the grounds that the Military Court of the Ryazan Garrison had incorrectly applied 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-VIII).

27. The Government distinguished the present application from the above-mentioned cases on account of the fact that the supervisory-review procedure had been initiated by the military unit, that is a party to the case, within four months of the delivery of the judgment. The Court, however, is not persuaded that this distinction is of crucial importance for its analysis.

28. 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 14 April 2003 was quashed by way of supervisory review because of the incorrect application of the substantive law. That defect could have been rectified 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 unit lodged an ordinary appeal within the statutory ten-day time-limit.

29. 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 the ordinary appeal procedure. In the present case the military unit 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 14 April 2003. Instead, it applied for supervisory review more than four months later, after the judgment in the applicant's favour had become binding and enforceable and after the bailiffs had initiated enforcement proceedings. The Government did not point to any exceptional circumstances that would have prevented the military unit from making use of an ordinary appeal in good time (see, as a similar case, *Nelyubin v. Russia*, no. 14502/04, 2 November 2006).

30. Having regard to these considerations, the Court finds that, by granting the military unit's request to set aside the judgment of 14 April 2003, the Presidium of the Military Court of the Moscow Command 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. Article 1 of Protocol No. 1

(a) Admissibility

31. The Court observes that the Government contested the applicability of Article 1 of Protocol No. 1 on the grounds that the applicant did not have a "possession" within the meaning of the invoked Convention provision. In this connection, the Court notes that it has already on a number of occasions found that the existence of a debt confirmed by a binding and enforceable judgment constitutes the judgment beneficiary's "possession" within the meaning of Article 1 of Protocol No. 1 (see, for example, *Bulgakova v. Russia*, no. 69524/01, § 31, 18 January 2007, and *Pravednaya v. Russia*, no. 69529/01, § 38, 18 November 2004). The Court sees no reason to depart from those findings in the present case and dismisses the Government's objection that the applicant's complaint is incompatible *ratione materiae* with Article 1 of Protocol No. 1.

32. The Court further observes that the complaint under Article 1 of Protocol No. 1 is not manifestly ill-founded within the meaning of Article 35 § 3 of the Convention and is not inadmissible on any other grounds. It must therefore be declared admissible.

(b) Merits

33. The Government claimed that there was no violation of the applicant's property rights because he had not had any "possessions". Neither could he have any "legal expectations" to benefit from the judgment, since it had been delivered as a result of an evident judicial error.

34. The Court observes that the existence of a debt confirmed by a binding and enforceable judgment furnishes the judgment beneficiary with a "legitimate expectation" that the debt will be paid and constitutes a beneficiary's "possessions" within the meaning of Article 1 of Protocol No. 1. The 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, and *Androsov v. Russia*, no. 63973/00, § 69, 6 October 2005).

35. The Court observes that the proceedings concerned compensation for a daily allowance for the applicant's military service abroad. A substantial amount was found to be payable by a domestic court from the military unit. The quashing of the enforceable judgment 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. In these circumstances, the Court considers that the quashing of the judgment of 14 April 2003 by way of supervisory review placed an excessive burden on the applicant and was therefore 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

36. 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. Damages

37. The applicant claimed 371,543.84 Russian roubles (RUB) in respect of pecuniary damage, referring to the unpaid judgment debt and RUB 200,745.13, relating to inflation losses accrued during the period of the non-enforcement of the judgment of 14 April 2003. The applicant further claimed 7,000 euros (EUR) in respect of non-pecuniary damage.

38. The Government submitted firstly that no award should be made as the judgment of 14 April 2003 was lawfully quashed. They further noted that the applicant did not apply to a national court with a claim for recalculation of the sum due to inflation. They maintained that in his

calculation the applicant did not refer to any official sources in respect of rates of inflation from 2003-2007. This part of his claim should thus be dismissed. As regards the claim in respect of non-pecuniary damages, the Government considered that the applicant's claim was wholly excessive and unreasonable.

39. The Court observes that in the present case it has found a violation of Article 6 § 1 of the Convention and Article 1 of Protocol No. 1 in that the award in the applicant's favour had not been paid to him 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), 26 October 1984, § 12, Series A no. 85, and, *mutatis mutandis*, *Gençel v. Turkey*, no. 53431/99, § 27, 23 October 2003). The Court finds that this principle also applies in the present case, having regard to the violations found. The applicant was prevented from receiving money he had legitimately expected to receive under the judgment of 14 April 2003. The Court considers that the Government should pay the judgment award made under the judgment of 14 April 2003, i.e. RUB 371,543.

40. The Court further recalls that the adequacy of the compensation would be diminished if it were to be paid without reference to various circumstances liable to reduce its value, such as an extended delay in enforcement (see *Gizatova v. Russia*, no. 5124/03, § 28, 13 January 2005, and *Metaxas v. Greece*, no. 8415/02, § 36, 27 May 2004). Having regard to the materials in its possession and the fact that the Government did not furnish any objection to the applicant's method of calculation of compensation or submitted any other official sources for inflation rates in the relevant period, the Court also awards the applicant RUB 200,745 in respect of pecuniary damage, plus any tax that may be chargeable.

41. The Court further considers that the applicant suffered distress and frustration resulting from the quashing of the final judgment of 14 April 2003. Making its assessment on an equitable basis, the Court awards the applicant EUR 2,000 in respect of non-pecuniary damage, plus any tax that may be chargeable on that amount.

B. Costs and expenses

42. The applicant also claimed RUB 10,000 for the costs and expenses incurred before the Court.

43. The Government did not accept that the applicant's claims under this head were reasonable and substantiated as no service contract between the parties had been submitted. They further claimed that it was not clear

whether the applicant's lawyer had represented his interests before the domestic courts and the Court.

44. According to the Court's case-law, an applicant is entitled to reimbursement of his 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 claimed in full, plus any tax that may be chargeable to the applicant on that amount.

C. Default interest

45. 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 on account of the quashing of the judgment of 14 April 2003;
3. *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 pay the award made in the applicants favour under the judgment of 14 April 2003, i.e. RUB 371,543 (three hundred seventy-one thousand five hundred and forty-three Russian roubles);
 - (b) 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, where appropriate, into Russian roubles at the rate applicable at the date of the settlement:
 - (i) RUB 200,745 (two hundred thousand seven hundred and forty-five Russian roubles) in respect of pecuniary damage;
 - (ii) EUR 2,000 (two thousand euros) in respect of non-pecuniary damage;
 - (iii) RUB 10,000 (ten thousand Russian roubles) in respect of costs and expenses;

(iv) any tax that may be chargeable to the applicant on the above amounts;

(c) 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;

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

Done in English, and notified in writing on 6 November 2008, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Søren Nielsen
Registrar

Christos Rozakis
President