



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

FIFTH SECTION

CASE OF AGASARYAN v. RUSSIA

(Application no. 39897/02)

JUDGMENT

STRASBOURG

20 November 2008

FINAL

20/02/2009

This judgment may be subject to editorial revision.

In the case of Agasaryan v. Russia,

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

Rait Maruste, *President*,
Anatoly Kovler,
Renate Jaeger,
Mark Villiger,
Isabelle Berro-Lefèvre,
Mirjana Lazarova Trajkovska,
Zdravka Kalaydjieva, *judges*,

and Claudia Westerdiek, *Section Registrar*,

Having deliberated in private on 21 October 2008,

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

PROCEDURE

1. The case originated in an application (no. 39897/02) 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, Ms Tatyana Samvelovna Agasaryan (“the applicant”), on 20 September 2002.

2. The applicant was represented by Mr A. Glashev, a lawyer practising in Moscow. The Russian Government (“the Government”) were represented by Mr P. Laptev and Ms V. Milinchuk, former Representatives of the Russian Federation at the European Court of Human Rights.

3. On 11 May 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

4. The applicant was born in 1949 and lives in Moscow.

I. THE CIRCUMSTANCES OF THE CASE

5. The applicant worked as chief physician in a hospital managed by the Moscow patriarchate. On 29 November 2000 the applicant on her own initiative left her place of work in order to participate in a conference dedicated to the fight against drug addiction in Russia, organised by the Russian Orthodox Church.

6. On 18 December 2000 the applicant was dismissed for unjustified absence from work on 29 November 2000. She believed that the dismissal was unlawful and brought civil proceedings for reinstatement and for compensation for pecuniary and non-pecuniary damage.

7. On 28 March 2001 the Simonovskiy District Court of Moscow partly allowed the claims, ordered her reinstatement and awarded her 19,401.03 Russian roubles (RUB) in respect of pecuniary damage. The applicant's claims for non-pecuniary damage were dismissed. On 14 May 2001 the Moscow City Court upheld the judgment on appeal.

8. On 16 May 2001 the Moscow Prosecutor's Office lodged an application for supervisory review of the judgment. On 1 June 2001 the Presidium of the Moscow City Court quashed the judgment of 28 March 2001 and the appeal decision of 14 May 2001 and remitted the case to the first-instance court for a fresh examination.

9. On 19 September 2001 the Simonovskiy District Court of Moscow dismissed the applicant's claims in full. The Moscow City Court upheld the judgment on 22 October 2001.

10. The Vice-President of the Supreme Court lodged an application for supervisory review of the ruling of the Presidium of the Moscow City Court of 1 June 2001 and the subsequent judgments.

11. On 16 April 2002 the Supreme Court of Russia, by way of supervisory review, quashed the ruling of 1 June 2001 and the judgment of 19 September 2001 and restored the validity of the judgment of 28 March and the appeal decision of 14 May 2001 as regards the applicant's reinstatement and the refusal to pay her compensation for non-pecuniary damage. The applicant's pecuniary claims were remitted to the first-instance court for a fresh examination as the amount initially awarded had by that time considerably decreased in purchasing power. No appeal lay against this ruling.

12. The Prosecutor General's Office lodged an application for supervisory review of the Supreme Court's ruling of 16 April 2002.

13. On 5 June 2002 the Presidium of the Supreme Court of Russia quashed the judgment of 16 April 2002 by way of supervisory review and restored the validity of the judgment of 19 September 2001, upheld on appeal on 22 October 2001.

II. RELEVANT DOMESTIC LAW

14. 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 of *Ryabykh v. Russia* (no. 52854/99, §§ 31-42, ECHR 2003-IX).

THE LAW

I. ALLEGED VIOLATION OF ARTICLE 6 OF THE CONVENTION AND ARTICLE 1 OF PROTOCOL No. 1 IN RESPECT OF THE SUPERVISORY REVIEW OF THE JUDGMENT OF 16 APRIL 2002

15. The applicant complained that the quashing under the supervisory review procedure of the Russian Supreme Court's judgment of 16 April 2002 had violated her right to a fair hearing, guaranteed by Article 6 § 1 of the Convention, and her right to the peaceful enjoyment of possessions, guaranteed by Article 1 of Protocol No. 1 to the Convention.

Article 6 § 1 and Article 1 of Protocol No. 1 to the Convention, in so far as relevant, provide 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. Alleged violation of Article 6 of the Convention

1. Admissibility

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.

2. *Merits*

(a) Submissions by the parties

17. The Government submitted that, in quashing the Supreme Court's decision of 16 April 2002, the Presidium of the Supreme Court of Russia had based its findings on the fact that the Supreme Court had wrongly assessed the arguments of the Presidium of the Moscow City Court set forth in the ruling of 1 June 2001. In particular, the Supreme Court in its decision had mentioned that the "arguments of the Presidium of the Moscow City Court appeared to be a reassessment of evidence, whereas a supervisory-review court is not eligible to make such a reassessment". The Government further noted that the ruling of 16 April 2002, which had restored the validity of the judgment of 28 March and the appeal decision of 14 May 2001, had been based on unverified allegations as to the lawfulness of the applicant's absence from work. Thus, the ruling had been quashed to eliminate a judicial error made by the first-instance court in the judgment of 28 March 2001 and to prevent any possible violations of the rights and legal interests of other persons.

18. Lastly, the Government drew the Court's attention to the fact that, contrary to the situation in the *Ryabykh v. Russia* case (no. 52854/99, ECHR 2003-X), the applicant and her counsel had been able to attend the hearing before the Presidium and to give explanations on the merits of the case.

19. The applicant maintained her complaint.

(b) The Court's assessment

20. 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, in its relevant part, declares 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* [GC], no. 28342/95, § 61, ECHR 1999-VII).

21. This principle underlines that no party is entitled to seek the reopening of proceedings merely for the purpose of obtaining a rehearing and a fresh determination of the case. Higher courts' power to quash or alter binding and enforceable judicial decisions should be exercised to correct fundamental defects. The mere possibility of there being 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*, cited above, § 52, and *Pravednaya v. Russia*, no. 69529/01, § 25, 18 November 2004).

22. 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 was not subject to any time-limit, with the result that the judgments were liable to challenge indefinitely (see *Ryabykh*, cited above, §§ 54-56).

23. Although the Court has accepted that the mere possibility of reopening a case is *prima facie* compatible with the Convention and that in certain circumstances a final and binding judgment may be revised (see, for a recent example, *Protsenko v. Russia*, no. 13151/04, § 34, 31 July 2008), it has held that a quashing of final judgment is justified only when made necessary by circumstances of a substantial and compelling character (see *Ryabykh*, cited above, § 52). The Court has, consequently, to assess in each case before it whether the power to conduct a supervisory review was exercised by the authorities in such a way 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).

24. Turning to the present case, the Court first notes that the judgment of 16 April 2002, which was set aside by the Presidium of the Supreme Court of Russia by way of supervisory review, had been delivered by way of the same procedure. As both supervisory review procedures were covered by the “old” Code of Civil Procedure, both were initiated by State officials who were not parties to the proceedings: in the first case, by the Moscow Prosecutor’s Office and in the second, by the Vice-President of the Supreme Court. For both procedures no time-limit was set as regards the date for bringing an application for supervisory review. The only significant difference between these procedures concerned their outcome, which was favourable to the applicant in the first case and unfavourable in the second.

25. Since the applicant complained about the quashing of the Supreme Court’s judgment of 16 April 2002, the Court has to examine whether the principle of legal certainty was complied with in this respect. It notes that the judgment of 16 April 2002 was final in the part which restored the validity of the favourable judgment of 28 March and the appeal decision of 14 May 2001. No ordinary appeal lay against this ruling. However, the Supreme Court’s judgment was set aside by a higher court, the Presidium of the Supreme Court of Russia. The fact that the ruling of the Supreme Court was subsequently quashed on a further application for supervisory review could not be said to have enhanced legal certainty in the applicant’s case (see, *mutatis mutandis*, *Volkova v. Russia*, no. 48758/99, § 33, 5 April

2005). Further, the Government did not provide the Court with any arguments enabling it to establish any circumstances of a substantial and compelling character justifying the quashing of the final judgment of 16 April 2002. The fact that the Presidium disagreed with the assessment made by the Supreme Court was not, in itself, an exceptional circumstance warranting the quashing of a binding and enforceable judgment and the review of the applicant's claim.

26. The Court thus finds no reason to depart from its well-established case-law in respect of the quashing by way of supervisory review of the final judgment in the applicant's favour. Consequently, it finds that by using the supervisory review procedure to set aside the judgment of 16 April 2002, the Presidium of the Supreme Court of Russia infringed the principle of legal certainty and the applicant's "right to a court" under Article 6 § 1 of the Convention.

27. There has accordingly been a violation of Article 6 § 1 of the Convention.

B. Alleged violation of Article 1 of Protocol No. 1 to the Convention

28. The Government submitted that the complaint under Article 1 of Protocol No. 1 was inadmissible as the judgment of 16 April 2002, in the part concerning the applicant's pecuniary claims, had not contained any awards. The Supreme Court had quashed this part of the initial judgment of 28 March 2001 and had referred it back for fresh consideration. The Government noted that the applicant had neither had a "possession" within the meaning of Article 1 of Protocol No. 1, nor any legitimate expectation of obtaining pecuniary compensation for her unauthorised absence from work.

29. The applicant maintained her complaint. She claimed that the initial judgment of 28 March 2001, whose validity had been restored, had included an award for pecuniary damage amounting to RUB 19,401.03 and that the Supreme Court in its ruling of 16 April 2002 had quashed that part of the judgment in order to increase the sum.

30. The Court reiterates that, according to its established case-law, "possessions" within the meaning of Article 1 of Protocol No. 1 can be "existing possessions" (see *Van der Mussele v. Belgium*, 23 November 1983, § 48, Series A no. 70) or assets, including claims, in respect of which the applicant can argue that he or she has at least a "legitimate expectation" of obtaining effective enjoyment of a property right (see *Kopecký v. Slovakia* [GC], no. 44912/98, § 25, ECHR 2004-IX).

31. The Court notes that when the Supreme Court gave its decision of 16 April 2002 it restored the validity of part of the judgment of 28 March 2001 (and the subsequent appeal judgment of 14 May 2001). It did not, it is true, restore the validity of the award of RUB 19,401.03 in the applicant's

favour, but instead remitted that question to the first instance court. Accordingly, at that moment, the applicant did not have an “existing possession” within the meaning of the case-law on Article 1 of Protocol No. 1. However, given that it was not open to the first instance court to reduce the amount awarded, the applicant had a legitimate expectation that she would receive at least that sum from the first instance court. Her claim therefore falls within the definition of “possessions” for these purposes.

32. It follows that the quashing of the judgment of 16 April 2002 frustrated the applicant’s reliance on a binding judicial decision and deprived her of an opportunity to receive the money she had legitimately expected to receive.

33. In these circumstances, the Court considers that the quashing of the judgment of 16 April 2002 by way of supervisory review placed an excessive burden on the applicant and was therefore incompatible with Article 1 of Protocol No. 1. There has therefore been a violation of that Article.

II. ALLEGED VIOLATION OF ARTICLE 10 OF THE CONVENTION

34. Lastly, the applicant complained under Article 10 of the Convention that she had been unlawfully dismissed from her post for participating in a conference, in breach of her right to freedom of expression.

35. The Court reiterates that in accordance with Article 35 § 1 of the Convention, those seeking to bring their case against the State before the Court are required to use first the remedies provided by the national legal system. The applicant did not raise the complaint about the alleged violation of her right to freedom of expression in the applications she lodged with the domestic authorities.

36. It follows that this complaint must be dismissed pursuant to Article 35 §§ 1 and 4 of the Convention for non-exhaustion of domestic remedies.

III. APPLICATION OF ARTICLE 41 OF THE CONVENTION

37. 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

38. The applicant claimed 11,546 euros (EUR) in respect of pecuniary damage, representing her unpaid wages from 19 December 2000 to 31 October 2006. She also claimed EUR 14,285 in respect of the non-pecuniary damage caused by the uncertainty as to the finality of the judgment in her favour.

39. The Government contested these claims.

40. As regards the claim in respect of pecuniary damage, the Court considers that, since it is impossible for it to assess what the increase in the initial sum would have been after the review of the claim for non-pecuniary damage by the domestic courts, it would be appropriate to award the applicant the minimum amount which she would have received following a fresh examination as ordered by the final judgment. Thus, having regard to the nature of the violations found and to the circumstances of the present case, the Court awards the applicant EUR 750 in respect of the pecuniary damage, plus any tax that may be chargeable on this amount.

41. The Court further considers that the applicant suffered distress and frustration as a result of the quashing of the judicial decisions in her favour by way of supervisory-review proceedings. However, the particular amount claimed is excessive. 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 this amount.

B. Costs and expenses

42. The applicant also claimed EUR 202 for the costs and expenses incurred in ordering an expert assessment of pecuniary damage and for postage.

43. The Government found this amount unjustified. They argued that no contract or receipt of payment had been produced by the applicant to substantiate her expenses under this head.

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 dismisses the claim as the applicant did not submit any receipts or other vouchers in support of it.

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 complaint concerning the quashing of the final judgment in the applicant's favour 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 has been a violation of Article 1 of Protocol No. 1 to the Convention;
4. *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 750 (seven hundred and fifty euros) in respect of pecuniary damage;
 - (ii) EUR 2,000 (two thousand euros) in respect of non-pecuniary damage;
 - (iii) 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.
5. *Dismisses* the remainder of the applicant's claim for just satisfaction.

Done in English, and notified in writing on 20 November 2008, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Claudia Westerdiek
Registrar

Rait Maruste
President