



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

FIRST SECTION

CASE OF TKACHEV v. RUSSIA

(Application no. 22551/06)

JUDGMENT

STRASBOURG

11 December 2008

FINAL

11/03/2009

This judgment may be subject to editorial revision.

In the case of Tkachev 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,

Giorgio Malinverni, *judges*,

and Søren Nielsen, *Section Registrar*,

Having deliberated in private on 20 November 2008,

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

PROCEDURE

1. The case originated in an application (no. 22551/06) 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 Valeriy Pavlovich Tkachev (“the applicant”), on 17 April 2006.

2. 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 29 August 2006 the President of the First Section decided to communicate the complaint concerning supervisory review to the Government. It was also decided to examine the merits of the application at the same time as its admissibility (Article 29 § 3). The Government objected to the joint examination of the admissibility and merits, but the Court rejected this objection.

THE FACTS

I. THE CIRCUMSTANCES OF THE CASE

4. The applicant was born in 1955 and lives in Yoshkar-Ola, a town in Mari El.

5. The applicant is a retired police officer who was injured during his service in Grozny. He sued a local special-purpose police squad (Федеральное государственное учреждение Отряд милиции особого

назначения при Министерстве Внутренних Дел Республики Марий Эл) over his injury. On 5 November 2004 the Yoshkar-Ola Town Court awarded the applicant a lump sum of 202,187.97 Russian roubles (RUB) in damages and costs, and a monthly compensation of RUB 6,201.73 to be paid from 1 November 2004 to 17 September 2005 with an adjustment for the cost of living. On 9 December 2004 the judgment was upheld on appeal and became binding.

6. On the defendant's initiative on 16 December 2005 the Presidium of the Supreme Court of Mari El quashed the judgment and rejected the applicant's claims. The Presidium found that the courts below had misinterpreted material law, and, in particular, that the Ministry of the Interior had not been responsible for the applicant's injuries.

II. RELEVANT DOMESTIC LAW

7. Domestic law concerning supervisory review is cited in detail in earlier cases (see, for example, *Kot v. Russia*, no. 20887/03, § 17, 18 January 2007).

THE LAW

I. ALLEGED VIOLATION OF ARTICLE 6 OF THE CONVENTION

8. The applicant complained under Article 6 of the Convention about the supervisory review of the binding judgment. The Court will examine this complaint under Article 6 § 1 of the Convention and Article 1 of Protocol No. 1. 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

9. The Government argued that this complaint was inadmissible. The supervisory review had been justified because it had been meant to correct a misapplication of material law. The domestic procedure had been thoroughly respected. The review had been initiated by a party to the proceedings. Review of binding judgments had been acceptable in a democratic society and known to such countries as Germany and Austria. 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). The applicant’s property rights had not been breached, because as the Presidium had found, he had had no legitimate expectation to receive the damages.

10. The applicant maintained his complaint.

11. 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

12. The Court reiterates that Article 6 of the Convention includes the “right to a court” (see *Golder v. the United Kingdom*, judgment of 21 February 1975, Series A no. 18, § 36). To honour this right, the State must avoid quashing a binding judgment, save in circumstances where the principle of legal certainty would not be breached (see *Protsenko v. Russia*, no. 13151/04, §§ 25–34, 31 July 2008). Besides, an enforceable judgment constitutes a “possession” within the meaning of Article 1 of Protocol No. 1.

13. In the present case, the judgment was quashed because it had been based on a misinterpretation of material law. However, this ground does not justify supervisory review (see *Kot v. Russia*, no. 20887/03, § 29, 18 January 2007).

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

II. OTHER ALLEGED VIOLATIONS OF THE CONVENTION

15. The applicant also complained under Article 6 of the Convention about the outcome of the proceedings and under Article 14 about inequality in relation to other servicemen whose similar actions had been granted.

16. However, in the light of all the material in its possession, and in so far as the matters complained of are within its competence, the Court finds that they 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 is manifestly ill-founded and must be rejected in accordance with Article 35 §§ 3 and 4 of the Convention.

III. APPLICATION OF ARTICLE 41 OF THE CONVENTION

17. 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

18. The applicant claimed RUB 204,284,99 in respect of pecuniary damage. This sum included monthly payments that he should have allegedly received from October 2005 to April 2007 adjusted for the cost of living.

19. The Government argued that this claim had had no basis in domestic law, that the applicant had received compensation due until the quashing, and that his calculation of cost-of-living adjustment had been arbitrary.

20. The Court notes that the quashed judgment awarded monthly payments only for the period from November 2004 to September 2005. Discerning no causal link between the violation found and the pecuniary damage alleged, the Court rejects this claim.

21. The applicant also claimed 200,000 euros (EUR) in respect of non-pecuniary damage. The Government argued that this claim was excessive and unreasonable.

22. The Court accepts that the applicant must have been distressed by the quashing of the binding judgment. Making its assessment on an equitable basis, the Court awards EUR 3,000 under this head.

B. Costs and expenses

23. The applicant made no claim for the costs and expenses. Accordingly, the Court makes no award under this head.

C. Default interest

24. 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 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 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, EUR 3,000 (three thousand euros), plus any tax that may be chargeable, in respect of non-pecuniary damage, to be converted into Russian roubles at the rate applicable at the date of settlement;
 - (b) that from the expiry of the above-mentioned three months until settlement simple interest shall be payable on the above amount 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 11 December 2008, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Søren Nielsen
Registrar

Christos Rozakis
President