



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

FIRST SECTION

CASE OF IGOR KOLYADA v. RUSSIA

(Application no. 19097/04)

JUDGMENT

STRASBOURG

18 December 2008

FINAL

18/03/2009

This judgment may be subject to editorial revision.

In the case of Igor Kolyada v. Russia,

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

Christos Rozakis, *President*,

Nina Vajić,

Anatoly Kovler,

Elisabeth Steiner,

Khanlar Hajiyeu,

Dean Spielmann,

Sverre Erik Jebens, *judges*,

and Søren Nielsen, *Section Registrar*,

Having deliberated in private on 27 November 2008,

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

PROCEDURE

1. The case originated in an application (no. 19097/04) 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 Igor Aleksandrovich Kolyada (“the applicant”), on 21 April 2004.

2. 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 21 February 2007 the Court decided to communicate the complaints concerning non-enforcement and supervisory review of binding judgments to the Government. It also decided to examine the merits of the application at the same time as its admissibility (Article 29 § 3).

THE FACTS

4. The applicant was born in 1962 and lives in Volsk, a town in the Saratov Region.

5. In 2001–2006 the applicant participated in three actions.

6. In his first action the applicant applied to a court for the status as a Chernobyl victim. On 4 December 2002 the Volsk Town Court rejected this claim. The applicant did not lodge an ordinary appeal against this judgment.

7. In his second action the applicant sued his former employer, the Tax Police, for an extension of his working record, which would result in an increase of his pension. On 4 February 2004 the Oktyabrskiy District Court of Saratov obliged the defendant to formally include in the applicant’s

working record his employment preceding the service in the Tax Police. This judgment became binding on 20 February 2004, but the Tax Police failed to update the applicant's working record. The applicant sought the assistance of bailiffs in the enforcement of this award, but on 4 November 2004 bailiffs stopped the enforcement proceedings because in July 2004 the Tax Police had been disbanded.

8. In his third action the applicant resubmitted his previous claim against the successor of the Tax Police – the Saratov Regional Police. He asked to formally include in his working record his employment preceding the service in the Tax Police. On 27 May 2005 the Frunzenskiy District Court of Saratov granted this claim, and obliged the defendant to formally include in the applicant's working record his employment preceding the service in the Tax Police and to recalculate his pension accordingly. This judgment became binding on 18 July 2005.

9. On the Regional Police's request, the President of the Saratov Regional Court applied for a supervisory review of this judgment. The supervisory-review hearing was fixed for 3 April 2006. According to the Government, on 21 March 2006 the court mailed to the applicant a summons and left a telephone message with his wife.

10. On 3 April 2006 the Presidium of Regional Court quashed the judgment on the ground that the courts below had misinterpreted material laws. This hearing was chaired by the President of the Regional Court. The applicant was absent from this hearing.

THE LAW

I. ALLEGED VIOLATION OF ARTICLE 6 § 1 OF THE CONVENTION AND OF ARTICLE 1 OF PROTOCOL No. 1

11. The applicant complained under Article 6 of the Convention and Article 1 of Protocol No. 1 about the non-enforcement of the judgments of 4 February 2004 and 27 May 2005, as well as, in substance, about the quashing of the judgment of 27 May 2005 and the unfairness of the supervisory-review proceedings. 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

12. The Government argued that the application was inadmissible.

The periods of enforcement had been reasonable. The bailiffs had faced difficulties caused by the disbandment of the Tax Police, but they had not idled and had done all they could to enforce the judgment. Under domestic law, a liquidated organisation’s debts could not have been transferred to another organisation. To protect his rights, it had remained open to the applicant to bring a new action against the Tax Police’s successor.

The supervisory review had been meant to correct a judicial error. 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). The supervisory review had not interfered with the applicant’s existing possessions, because the proceedings had revealed that the applicant’s claim had been unfounded.

As to the fairness of the proceedings, the President’s examination of his own application for supervisory review had not breached the applicant’s rights. The courts had properly notified the applicant of the supervisory-review hearing, but he had failed to appear for no good reason.

13. The applicant argued that his complaint was admissible. The liquidation board of the Tax Police could have enforced the judgment within the next few months following the judgment. The court could have mailed the writ of enforcement directly to the defendant to speed up the enforcement. The Regional Police should have assumed the debt without new proceedings.

As to the fairness of the proceedings, under domestic law, summons had had to be served against signature, and the applicant he had never signed any summons.

14. The Court notes that the complaints are not manifestly ill-founded within the meaning of Article 35 § 3 of the Convention. It further notes that they are not inadmissible on any other grounds. They must therefore be declared admissible.

B. Merits

15. The Court notes that the applicant's initial claim, the one that resulted in the judgment of 4 February 2004 was redirected against the successor of the Tax Police, and in its turn resulted in the judgment of 27 May 2005. This judgment became binding but was quashed on supervisory review.

16. 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.

17. Furthermore, the Court notes that the enforcement of the judgments was made impossible by this quashing. Given that the quashing was incompatible with the Convention, it cannot serve as a justification for the non-enforcement (see *Sukhobokov v. Russia*, no. 75470/01, §§ 25–26, 13 April 2006).

18. There has accordingly been a violation of Article 6 § 1 of the Convention and Article 1 of Protocol No. 1 in this respect.

19. As to the alleged unfairness of the supervisory-review proceedings, the Court considers that given the finding of a violation by the very use of supervisory review, it is unnecessary to examine this complaint (see *Ryabykh v. Russia*, no. 52854/99, § 59, ECHR 2003-IX).

III. OTHER ALLEGED VIOLATIONS OF THE CONVENTION

20. Lastly, the applicant complained under Articles 3 and 4 of the Convention that he had been sent to serve in the hazardous area of the Chernobyl nuclear disaster. He complained under Articles 6 and 8 of the Convention that the proceedings in his first action had been unfair. He also complained under Article 6 of the Convention about the findings of the Presidium of the Regional Court.

21. 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.

22. 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.

IV. APPLICATION OF ARTICLE 41 OF THE CONVENTION

23. 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

24. The applicant claimed 20,000 euros (EUR) in respect of non-pecuniary damage alone.

25. The Government argued that this claim had been excessive, disproportionate, and unsubstantiated. If the Court had been to find a violation, a mere finding would have been sufficient just satisfaction.

26. The Court accepts that the applicant might 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

27. The applicant made no claim under this head. Accordingly, there is no call to award any sum on that account.

C. Default interest

28. 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 non-enforcement and 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* that there is no need to examine the allegation of procedural unfairness of the supervisory review;

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, 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;

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

Done in English, and notified in writing on 18 December 2008, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Søren Nielsen
Registrar

Christos Rozakis
President