



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

FIRST SECTION

CASE OF LENSKAYA v. RUSSIA

(Application no. 28730/03)

JUDGMENT

STRASBOURG

29 January 2009

FINAL

29/04/2009

This judgment may be subject to editorial revision.

In the case of Lenskaya v. Russia,

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

Christos Rozakis, *President*,

Anatoly Kovler,

Elisabeth Steiner,

Khanlar Hajiyeu,

Dean Spielmann,

Sverre Erik Jebens,

Giorgio Malinverni, *judges*,

and Søren Nielsen, *Section Registrar*,

Having deliberated in private on 8 January 2009,

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

PROCEDURE

1. The case originated in an application (no. 28730/03) 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, Mrs Lyudmila Gennadyevna Lenskaya (“the applicant”), on 19 May 2003.

2. The applicant was represented by Mrs T. Vyalova, a lawyer practising in Tomsk. 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. The applicant alleged, in particular, a violation of her “right to a court” and her right to peaceful enjoyment of possessions as a result of the quashing, by way of a supervisory review, of a final judgment issued in her favour.

4. By a decision of 8 March 2007, the Court declared the application partly admissible.

5. The applicant and the Government each submitted observations on the merits (Rule 59 § 1). The Court decided, after consulting the parties, that no hearing on the merits was required (Rule 59 § 3 *in fine*).

THE FACTS

I. THE CIRCUMSTANCES OF THE CASE

6. The applicant was born in 1955 and lives in the town of Tomsk. She works as a deputy head of the Tomsk Regional Hospital.

7. On 25 November 2000 the applicant asked the Kirovskiy District police department to institute criminal proceedings against her former husband, Mr Ch., complaining that he had assaulted her. She provided a police investigator with a certificate from the Tomsk Town Hospital no. 1. According to that certificate, on 25 November 2000 the applicant presented herself at the hospital, where she was examined and diagnosed with injuries to the soft tissues of the head. The certificate also stated that the applicant did not have concussion.

8. Two days later a forensic medical expert examined the applicant and issued a report which, in the relevant part, read as follows:

“1. On the day of the examination, on 27 November 2000, [the applicant] has: two bruises on the face, [and] an injury to the soft tissues on the left side of the parietal tuber. As it follows from medical documents, from 29 November to 16 December 2000 [the applicant] underwent treatment in the neurological department of the Tomsk Regional Hospital; following her dismissal from the hospital she underwent outpatient treatment, consulting a therapist until 23 December 2000 in respect of her diagnosis: “concussion”.

2. The concussion, bruises on the face, the injury to the soft tissues of the head sustained by [the applicant] were caused by blunt firm objects and are considered to have caused “minor health damage” requiring treatment for no more than twenty-one days....

It cannot be excluded that those injuries could have been caused in the period indicated by [the applicant]”.

9. On 15 December 2000 the Kirovskiy District Prosecutor instituted criminal proceedings, finding as follows:

“On 25 November 2000 [the applicant] applied to the Kirovskiy District police department seeking institution of criminal proceedings against her husband, Mr Ch., on the ground that he had injured her on 24 November 2000, at 8.30 p.m., in their place of residence...

I see particular social importance in the fact that the injuries were caused by a man to a woman who cannot offer adequate resistance”.

10. On an unspecified date Mr Ch. was committed to stand trial before the Kirovskiy District Court of Tomsk.

11. The District Court held several hearings at which it heard the applicant, Mr Ch. and a number of witnesses and examined documentary

evidence, including two reports by forensic medical experts. The applicant insisted on her description of events as given to the police and prosecution authorities. Mr Ch. disputed the accusations, denying that he had even visited the applicant on the day of the alleged assault. He claimed that he had visited his female friend, Ms P., on that day and spent the night at her house. Ms P. confirmed Mr Ch.'s statement in open court. The defendant's alibi was also corroborated by his son, who claimed that he had spent the whole day with his father before the latter had gone to see Ms P. One witness testified to having heard the applicant and Mr Ch. arguing in the applicant's flat on the day of the alleged assault. Two witnesses stated that they had seen the applicant in the evening of the day of the alleged assault or on the following day. The applicant had complained to them that Mr Ch. had beaten her up. One witness, the applicant's neighbour, stated that the applicant had unsuccessfully asked two persons to lie in court about Mr Ch. assaulting her. The District Court also heard a doctor who had examined the applicant immediately after the alleged assault. The doctor insisted that the applicant had not had concussion.

12. On 15 July 2002 the Kirovskiy District Court found Mr Ch. guilty of assault and sentenced him to six months of correctional labour. The sentence was suspended on probation. The District Court also partly accepted the applicant's tort action against Mr Ch. and awarded her 4,782.68 Russian roubles (RUB) in compensation for pecuniary damage and RUB 10,000 in compensation for non-pecuniary damage.

13. Mr Ch. and his lawyer appealed, arguing that there was no evidence that the defendant had beaten the applicant. He had an alibi which had been confirmed by two witnesses. However, no witnesses testified to seeing the defendant hitting the applicant. The witnesses also did not state that they had seen the defendant in the vicinity of the applicant's flat at the alleged time of the assault. Furthermore, the lawyer argued that the presiding judge had unlawfully dismissed his request to step down from the case as the applicant's lawyer had supervised the presiding judge's Ph.D. work.

14. On 12 September 2002 the Tomsk Regional Court reduced the amount of compensation for non-pecuniary damage to RUB 3,000 and upheld the remainder of the judgment, endorsing reasons given by the District Court.

15. On 30 September 2002 Mr Ch. and his lawyer applied to the President of the Tomsk Regional Court, seeking institution of supervisory review proceedings. They once again insisted on the partiality of the presiding judge and the unavailability of evidence proving Mr Ch.'s guilt.

16. In October 2002 the President of the Tomsk Regional Court lodged an application for a supervisory review of the judgment of 15 July 2002, as amended on 12 September 2002.

17. On 1 November 2002 the Registry of the Presidium of the Tomsk Regional Court notified the applicant by letter that a hearing was scheduled

for 13 November 2002 at 10.00 a.m. The applicant was also invited to study the case file materials and to submit her observations in response to Mr Ch.'s and his lawyer's applications for a supervisory review. On 10 November 2002 the applicant lodged her written arguments with the Presidium.

18. On 11 December 2002 the Presidium of the Tomsk Regional Court, relying on Article 378 of the RSFSR Code of Criminal Procedure (the CCP), quashed the judgments of 15 July and 12 September 2002 and acquitted Mr Ch. The compensation claims were accordingly dismissed. The Presidium held, *inter alia*, that the district and regional courts had not established what constituted the criminal conduct under the particular head of the criminal charge, whether it had in fact taken place and whether it had been committed by the former husband. The District and Regional courts, without proper assessment of evidence, presumed that the applicant's injuries had been caused by her former husband. Thus, Mr Ch.'s guilt was not proven and the principle of presumption of innocence was violated.

19. The applicant and her representative attended the supervisory review hearing and submitted their arguments. On 10 January 2003 the applicant was served with a copy of the judgment of 11 December 2002.

II. RELEVANT DOMESTIC LAW

20. Section VI, Chapter 30, of the RSFSR Code of Criminal Procedure (in force at the material time) allowed certain officials to challenge a judgment which had entered into force and have the case reviewed on points of law and procedure. The supervisory review procedure was to be distinguished from proceedings which review a case because of newly discovered facts.

21. Pursuant to Article 356 of the CCP, a judgment entered into force and was subject to execution as of the day when the appeal (cassation) instance pronounced its judgment.

22. Article 371 of the CCP provided that the power to lodge an application for supervisory review could be exercised by the Prosecutor General, the President and the Vice-President of the Supreme Court of the Russian Federation, in respect of any judgment other than those of the Presidium of the Supreme Court, and by the president of the regional courts in respect of any judgment of a regional or subordinate court. A party to criminal or civil proceedings could solicit the intervention of such officials for a review.

23. Article 373 of the CCP laid down a limitation period of one year during which an application for supervisory review of an acquittal judgment could be brought. This period also applied to an application for supervisory review of a conviction, if such application sought a harsher punishment to be imposed. The period ran from the date when the judgment entered into

force. In all other cases, there was no time-limit prescribed for lodging such applications.

24. According to Articles 374, 378 and 380 of the CCP, the application for supervisory review was to be considered by the judicial board of the competent court which examined the case on the merits, not being bound by the scope and grounds of the application. The board could either dismiss the application and thus uphold the earlier judgment, or grant the application. In the latter case it had to decide whether to quash the judgment and terminate the criminal proceedings, to remit the case for a new investigation, or for a fresh court examination at any instance, to uphold a first-instance judgment reversed on appeal, or to modify and uphold any of the earlier judgments.

25. According to Article 377 of the CCP, the relevant prosecutor was to participate in the supervisory review hearing. If necessary, the convicted person and his counsel could be summoned to the hearing to make submissions. If summoned to the hearing, the convicted person, the victim and their counsel were to have the opportunity to familiarise themselves with the application for supervisory review and written submissions in reply. At the hearing, the case was to be presented by a judge rapporteur, following which the parties, if present, were to be entitled to make oral submissions.

26. Articles 342 and 379 of the CCP identify grounds for quashing or amending earlier judgments. In particular, such judgments were to be quashed or modified if a court performing the supervisory review had found that the judgments were unlawful or groundless; or if the pre-trial and judicial investigation had been one-sided and inadequate; or if the lower-instance courts had come to conclusions which did not correspond to the facts of the case; or if the courts had violated criminal procedural law or had incorrectly applied criminal law; or if the sentence did not correspond to the gravity of the crime and the character of the convicted person.

THE LAW

I. ALLEGED VIOLATION OF ARTICLES 6 OF THE CONVENTION AND ARTICLE 1 OF PROTOCOL NO. 1

27. The applicant complained under Article 6 § 1 of the Convention and Article 1 of Protocol No. 1 that the act of quashing of the final judgment of 15 July 2002, as amended on 12 September 2002, had violated her “right to a court” and her right to peaceful enjoyment of possessions. 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 ... 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

28. The Government argued that the Presidium of the Tomsk Regional Court had quashed the judgments of 15 July and 12 September 2002 in order to correct the judicial error committed by the District and Regional courts. The guilt of the applicant’s former husband in having assaulted the applicant had not been proven. The supervisory review proceedings had been instituted by the President of the Regional Court upon Mr Ch.’s and his counsel’s applications in compliance with the relevant provisions of the RSFSR Code of Criminal Procedure. The Government insisted that the quashing of the final judgments had pursued the legitimate aim of correcting the fundamental judicial defect.

29. The applicant averred that the quashing of the final judgment in her case had irremediably impaired the principle of legal certainty and had deprived her of the right to receive compensation for damage caused by her former husband.

B. The Court’s assessment*1. Article 6 § 1 of the Convention***(a) General principles**

30. 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 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*, judgment of 28 October 1999, *Reports of Judgments and Decisions* 1999-VII, § 61).

31. This principle insists that no party is entitled to seek reopening of proceedings merely for the purpose of a rehearing and a fresh decision on the case. The mere possibility of there being two views on the subject is not a ground for re-examination.

32. 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). Higher courts' powers to quash or alter binding and enforceable judicial decisions should be exercised for correction of fundamental defects. That power must be exercised so as to strike, to the maximum extent possible, a fair balance between the interests of an individual and the need to ensure the effectiveness of the system of justice (see, *mutatis mutandis*, *Nikitin v. Russia*, no. 50178/99, §§ 54-61, ECHR 2004-VIII).

33. The relevant considerations to be taken into account in this connection include, in particular, the effect of the reopening and any subsequent proceedings on the applicant's individual situation and whether the reopening resulted from the applicant's own request; the grounds on which the domestic authorities revoked the finality of the judgment in the applicant's case; the compliance of the procedure at issue with the requirements of domestic law; the existence and operation of procedural safeguards in the domestic legal system capable of preventing abuses of this procedure by the domestic authorities; and other pertinent circumstances of the case (see *Nikitin*, cited above, § 60; *Bratyakin v. Russia* (dec.), no. 72776/01, 9 March 2006; *Fadin v. Russia*, no. 58079/00, § 34, 27 July 2006; and *Savinskiy v. Ukraine*, no. 6965/02, §§ 24-26, 28 February 2006). In addition, the review must afford all the procedural safeguards of Article 6 § 1 and must ensure the overall fairness of the proceedings (see *Vanyan v. Russia*, no. 53203/99, §§ 63-68, 15 December 2005).

34. In a number of cases the Court, while addressing the notion of "a fundamental defect", stressed that the mere consideration that the investigation in the applicant's case was "incomplete and one-sided" or led to an "erroneous" acquittal cannot in itself, in the absence of jurisdictional errors or serious breaches of court procedure, abuses of power, manifest errors in the application of substantive law or any other weighty reasons stemming from the interests of justice, indicate the presence of a fundamental defect in the previous proceedings (see *Radchikov v. Russia*, no. 65582/01, § 48, 24 May 2007).

35. The Court further reiterates its findings in the case of *Protsenko v. Russia* (no. 13151/04, 31 July 2008). In that case the final judgment in the applicant's favour was quashed by way of a supervisory review, on the ground that the first-instance court "had failed to establish all the circumstances of the case, to identify all the parties to the proceedings and to invite the owner of the land to participate in the proceedings, with the

result that the rights of the latter [had been] adversely affected”. While concluding that there had been no breach of Article 6 § 1 of the Convention in that case, the Court held (§§ 31 et seq.) as follows:

“The Court observes that the third person knew about the judgment of 7 April 2003 only after it had become final and that, in any event, being no party to the proceedings the owner of the land could not lodge an ordinary appeal against it. Therefore, through no fault of the third person who was not a party to the proceedings the domestic court rendered a judgment which directly affected his rights. The Court considers that the circumstances referred to were in their nature and significance such as to justify the quashing of the final judgment and that this was not inconsistent with the principle of legal certainty. The Court finds, therefore, that in the circumstances of this particular case the quashing of the final judgment of 7 April 2003 by the Presidium of the Rostov Regional Court by way of supervisory review did not deprive the applicant of the “right to a court” under Article 6 § 1 of the Convention.”

(b) Application to the present case

36. Having regard to the above-mentioned principles, the Court has to ascertain whether on 11 December 2002 the Presidium of the Tomsk Regional Court reopened the proceedings and quashed the enforceable judgment of 15 July 2002, as amended on 12 September 2002, with a view to correcting a fundamental judicial error, and, if so, whether the actual manner in which the Presidium exercised that power undermined the overall fairness of the proceedings at issue.

37. As regards the purpose of the quashing performed by the Presidium of the Regional Court on 11 December 2002, the Court observes that the Presidium found that the district and regional courts had failed to indicate the constituent element of a criminal offence, in that they had not established that the assault had in fact taken place. The courts had also violated the former husband’s right to be presumed innocent because in the absence of sufficient evidence they had concluded that he had assaulted the applicant. The Presidium considered that the former husband’s guilt had not been proven, and acquitted him. Having regard to that finding, the Presidium held that there was no ground for accepting the applicant’s tort action against her former husband and dismissed the compensation claims in full.

38. The Court considers that in such circumstances the Presidium’s decision to quash the judgments, flawed as they were with such defects, does not appear unreasonable or arbitrary (see *Bratyakin v. Russia* (dec.), no. 72776/01, 9 March 2006). After examination of the entire case, including the evidence, the Presidium declared that the lower courts had committed a miscarriage of justice by having subjected the applicant’s former husband to an unmerited conviction and by issuing decisions which were prejudicial to and inconsistent with the substantial rights of the convicted person. The Presidium concluded that the District and Regional courts had taken the mistaken judgments as to the existence and effect of

matters of fact and the application of the law which had led to the conviction of an innocent person and the imposition on him of the obligation to pay compensation for damage, although it was not proven that he had caused that damage. The Presidium noted the lower courts' ignorance of the important substantive evidence, such as witnesses' statements corroborating the defendant's alibi, their selective and grossly inconsistent approach to the assessment of the circumstantial evidence, the overestimation of the evidential value of the victim's testimony and the defective understanding of the medical reports. The judicial errors committed by the district and regional courts went to the merits of the criminal case and the applicant's cause of action. Those errors vitiated the proceedings and were so grave that, if not rectified, would have resulted in a denial of a fair trial to the applicant's former husband.

39. In this connection, the Court once again reiterates that the Convention in principle permits the reopening of a final judgment to enable the State to correct miscarriages of criminal justice. A verdict ignoring key evidence may well constitute such a miscarriage (see *Vedernikova v. Russia*, no. 25580/02, § 25, 12 July 2007).

40. The Court observes that the errors committed by the District and Regional courts were sufficient in nature and effect to warrant the reopening of the proceedings. Leaving such errors uncorrected would seriously affect the fairness, integrity and public reputation of the judicial proceedings. The Court also attributes particular weight to the fact that those judicial errors could not be neutralised or corrected by any other means, save by the quashing of the judgments of 15 July and 12 September 2002. In such circumstances, the Presidium could not utterly disregard the plight of the innocent victim of the unjust conviction. The quashing of the final judgment was a means of indemnifying the convicted person for mistakes in the administration of the criminal law.

41. The Court is satisfied that the Presidium reopened the proceedings for the purpose of correcting a fundamental judicial error. The considerations of "legal certainty" should not discourage the State from correcting particularly egregious errors committed in the administration of justice and thus, in the circumstances of the present case, should not prevent the Presidium of the Tomsk Regional Court from reviewing the final judgment which was grossly prejudicial to the convicted person, that is the applicant's former husband.

42. Having established that the interests of justice required the reopening of the proceedings and the quashing of the judgment of 15 July 2002, as amended on 12 September 2002, the Court has now to consider whether the procedural guarantees of Article 6 of the Convention were available in those supervisory review proceedings.

43. The Court finds that there is nothing to indicate that the Presidium's evaluation of the facts and evidence presented in the case was contrary to

Article 6 of the Convention. The Court observes that the applicant was provided with ample opportunities to present her arguments and to challenge the submissions of the adversary in the proceedings. She submitted detailed written arguments in reply to the supervisory review application. Furthermore, she and her representative attended the supervisory review hearing and made oral submissions. The Court considers that the Presidium gave the applicant's arguments due consideration. In the light of the foregoing consideration, the Court finds that the reasons on which the Presidium based its conclusions are sufficient to exclude any doubt that the way in which it established and assessed the evidence in the applicant's case was unfair or arbitrary. Therefore the Court considers that the proceedings before the Presidium of the Tomsk Regional Court afforded the applicant all the procedural safeguards of Article 6 § 1 of the Convention.

44. Having regard to the foregoing, the Court is of the opinion that in the circumstances of this particular case the Presidium rightfully balanced the competing interests of finality and justice. The Court finds that the quashing of the judgment of 15 July 2002, as amended on 12 September 2002, by the Presidium of the Tomsk Regional Court did not deprive the applicant of the "right to a court" under Article 6 § 1 of the Convention. There has been accordingly no violation of that Article.

2. Article 1 of Protocol No. 1

(a) General principles

45. The Court reiterates that the existence of a debt confirmed by a binding and enforceable judgment furnishes the judgment beneficiary with a "legitimate expectation" that the debt would be paid, and constitutes the beneficiary's "possessions" within the meaning of Article 1 of Protocol No. 1. Quashing such a judgment amounts to an interference with his or her right to peaceful enjoyment of possessions (see, among other authorities, *Brumărescu v. Romania*, cited above, § 74, ECHR, and *Androsov v. Russia*, no. 63973/00, § 69, 6 October 2005). An interference with the peaceful enjoyment of possessions must strike a fair balance between the demands of the general interests of the community and the requirements of the protection of the individual's fundamental rights (see, among other authorities, *Sporrong and Lönnroth v. Sweden*, judgment of 23 September 1982, Series A no. 52, p. 26, § 69). In particular, there must be a reasonable relationship of proportionality between the means employed and the aim sought to be realised by any measure depriving a person of his possessions (see *Pressos Compania Naviera S.A. and Others*, cited above, p. 23, § 38).

(b) Application to the present case

46. Turning to the facts of the present case, the Court observes that by virtue of the judgment of 15 July 2002, as amended on 12 September 2002, the applicant's former husband was to pay her a certain sum of money in compensation for damage caused as the result of the assault. By operation of law and as pronounced by the judgments of 15 July and 12 September 2002 the payment of the compensation was conditional on the former husband's conviction of the assault. Following the quashing of the judgments and the acquittal of the former husband, the applicant's claim in respect of the money awarded under those judgments ceased to exist.

47. Having regard to the Court's findings under Article 6 of the Convention, the Court concludes that the special circumstances of the present case can be regarded as exceptional grounds justifying the quashing of the judgments of 5 July and 12 September 2002 and the dismissal of the applicant's claim for compensation.

48. The Court therefore considers that the quashing in the present case did not amount to an unjustified interference with her property rights as guaranteed by Article 1 of Protocol No. 1. There has, therefore, been no violation of that Convention provision.

FOR THESE REASONS, THE COURT UNANIMOUSLY

1. *Holds* that there has been no violation of Article 6 § 1 of the Convention;
2. *Holds* that there has been no violation of Article 1 of Protocol No.1.

Done in English, and notified in writing on 29 January 2009, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Søren Nielsen
Registrar

Christos Rozakis
President