



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

FIRST SECTION

CASE OF BODROV v. RUSSIA

(Application no. 17472/04)

JUDGMENT

STRASBOURG

12 February 2009

FINAL

12/05/2009

This judgment may be subject to editorial revision.

In the case of Bodrov 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,

Giorgio Malinverni,

George Nicolaou, *judges*,

and Søren Nielsen, *Section Registrar*,

Having deliberated in private on 22 January 2009,

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

PROCEDURE

1. The case originated in an application (no. 17472/04) 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 Guriy Nikolayevich Bodrov (“the applicant”), on 6 April 2004.

2. The Russian Government (“the Government”) were represented by Mrs V. Milinchuk, their former Representative at the European Court of Human Rights.

3. On 16 November 2007 the President of the First Section decided to give notice of the application 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 FACTS

I. THE CIRCUMSTANCES OF THE CASE

4. The applicant was born in 1934 and lives in Vologda, the Vologda Region.

A. The first round of the pension proceedings

5. The applicant is a former military officer. He brought a claim against the Vologda Regional Military Service Commissariat (“the Commissariat”), seeking recalculation of his pension on account of increase of daily allowances due to servicemen of the military units belonging to the nuclear weapons complex of the Russian Federation.

6. On 12 May 2003 the Vologda Town Court of the Vologda Region granted his claim and held that the Commissariat should increase his pension on account of an increase of the official salary rate with the multiplier of 1.5 as from 1 January 2001, and also pay him the arrears for the period from 1 January 2001 to 30 April 2003.

7. The Commissariat did not file an ordinary appeal and the judgment became binding and enforceable ten days later.

8. While the judgment was in force the Commissariat paid to the applicant 39,171.16 Russian roubles (RUB) in respect of increased pension and arrears for the period from 1 January 2001 to 30 September 2003.

9. On 22 October 2003 the Commissariat filed an application for supervisory review of the judgment of 12 May 2003 referring to the lack of grounds in domestic law for increasing the applicant’s pension.

10. On 19 November 2003 a judge of the Vologda Regional Court ordered the case to be sent for examination by the Presidium of the Vologda Regional Court.

11. On 8 December 2003 the Presidium of the Vologda Regional Court quashed the judgment of 12 May 2003 and rejected the applicant’s initial claim on the ground that the Town Court’s findings had been premised on an incorrect application of substantive law. In particular, the Presidium found that the Town Court had examined all the relevant circumstances of the case, but incorrectly applied the multiplier of 1.5 in the applicant’s case. The court found that the applicant’s unit could not be considered as belonging to the nuclear weapons complex of Russia, because it had been discontinued before the list of such units had been established in the respective Decree of the Russian Government.

12. The applicant subsequently attempted to challenge the judgment of 8 December 2003 by lodging an application for its supervisory review with the Supreme Court of the Russian Federation. On 30 September 2004 the Supreme Court rejected his application.

13. At some point the Commissariat claimed return of the amount paid in execution of the judgment of 12 May 2003, referring to the fact that the judgment had been quashed by way of the supervisory review proceedings. The applicant contested the request for repayment on the ground that the sums already paid represented compensation for health damage which, once paid, could not be recovered in accordance with the domestic law.

14. On 22 January 2004 the Vologda Town Court dismissed the applicant's argument on the ground that the amount to be returned had been paid in respect of pension, not compensation for health damage. The court granted the Commissariat's application and ordered the applicant to return RUB 39,171.16 to the Commissariat.

15. On 20 February 2004 the Vologda Regional Court upheld the judgment on appeal.

16. In 2005 the applicant's military unit was added to the list of the units belonging to the nuclear weapons complex of Russia, in accordance with the Decree no. 949 of 9 August 2005 by the President of the Russian Federation. In March 2007 the Commissariat recalculated the applicant's pension and increased it with the multiplier of 1.5, as from 1 January 2005.

B. The second round of the pension proceedings

17. The applicant brought a separate set of proceedings against the Commissariat for increase of his pension. He claimed index-linking of the monetary compensation instead of uncollected food allowance, which constituted a part of his pension, and arrears for the period from 1 January 2000 to 30 June 2005.

18. On 26 August 2005 the Vologda Regional Court rejected the claim in the final instance.

II. RELEVANT DOMESTIC LAW

19. For the relevant provisions on the supervisory review proceedings contained in the Code of Civil Procedure of the Russian Federation ("the CCivP") see the Court's judgment in the case of *Sobelin and Others v. Russia* (nos. 30672/03 et seq., § 34, 3 May 2007).

THE LAW

I. ALLEGED VIOLATION OF ARTICLE 6 OF THE CONVENTION AND ARTICLE 1 OF PROTOCOL No. 1 ON ACCOUNT OF QUASHING OF THE JUDGMENT IN THE APPLICANT'S FAVOUR

20. With reference to Articles 6, 13, 14 and 17 the applicant complained in substance about unfairness of the quashing of the judgment of 12 May 2003 by way of supervisory review. He further complained under Article 1 of Protocol No.1 that as a result of the quashing he had been obliged to repay the pension and arrears paid to him to the respondent Commissariat.

The Court will examine the quashing problem under Article 6 of the Convention and Article 1 of Protocol No. 1, the relevant parts of which 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. The parties’ submissions

1. The Government

21. The Government argued that the applicant had not raised a legal certainty issue in his application to the Court, but only challenged the fairness of those proceedings and accuracy of the Commissariat’s submissions in their application for the supervisory review. Thus, even having a right to investigate *proprio motu* whether the facts at consideration disclosed other violations of the Convention than those stated in the application, the Court had raised the legal certainty issue outside the six months time-limit established by Article 35 § 1 of the Convention.

22. They further claimed that the dispute concerning the calculation of pension belonged to the realm of public law and fell outside the area of “civil rights and obligations” within the meaning of Article 6. They also argued that the proceedings had not established the applicant’s property right, because the Presidium had rejected his claims in full, and the domestic law did not give him a “legitimate expectation” within the meaning of Article 1 of Protocol No.1 to receive an increased pension. The supervisory-review proceedings were held in compliance with the domestic law requirements, and the Presidium had reversed the judgment because of a serious violation of substantive law. They provided detailed information on the material norms allegedly misinterpreted by the first instance court. The quashing had been lawful, pursued a legitimate aim of correction of a judicial error, and was in the interests of prevention of violations of the rights and legal interests of other persons. Civil procedure of other countries, for example Austria, Germany, and Switzerland had also allowed for the annulment of binding judgments. Besides, the Council of Europe had been satisfied with reforms of the supervisory-review procedure in Russia.

23. With reference to the *Fadin v. Russia* case (no. 58079/00, § 34, 27 July 2006) they further argued that the applicant himself had asked for further supervisory review of the judgment of the Presidium of the Vologda Regional Court. Accordingly, he could not claim to be a victim of the alleged breach of the principle of legal certainty. They finally argued that he could not be considered as a victim, since in March 2007 his pension had been increased with the effect as from 1 January 2005.

2. *The applicant*

24. The applicant maintained his claims. He submitted that the Commissariat could have lodged an ordinary appeal against the judgment of 12 May 2003, but had not done so, having preferred to apply for supervisory review four months after the judgment had become final. The Presidium of the Vologda Regional Court wrongly applied the domestic law. Thus, the quashing was in breach of the legal certainty principle. The order to return to the Commissariat the amount paid pursuant to the judgment of 12 May 2003 had had no basis in the domestic law.

B. The Court's assessment

1. *Admissibility*

25. As regards the Court's competence to examine the matter and compliance with the six months rule, the Court reiterates that it has jurisdiction to review in the light of the entirety of the Convention's requirements the circumstances complained of by an applicant and, notably, is free to attribute to the facts of the case, as found to be established on the evidence before it, a characterisation in law different from that given by the applicant or, if need be, to view the facts in a different manner (see *Foti and Others v. Italy*, 10 December 1982, Series A no. 56, § 44, and *Smirnova and Smirnova v. Russia* (dec.), nos. 46133/99 and 48183/99, 3 October 2002). The Court further notes that the application form submitted on 6 April 2004, that is within the six months time limit, set out the relevant facts concerning the supervisory review proceedings and made a general claim in relation to Article 6 of the Convention. The Court therefore finds that it may examine whether the proceedings in question disclose a violation of Article 6 of the Convention (see, *mutatis mutandis*, *C.J.M.E.*, *J.C.D. AND W.A.C.S. v. the Netherlands*, nos. 5100/71 et al, Commission decision of 29 May 1973, and *O'Reilly v. Ireland*, no. 21624/93, Commission decision of 31 August 1994) and dismisses the objection.

26. As regards the objections concerning applicability of Article 6 § 1 of the Convention and Article 1 of Protocol No. 1, the Court has found in many cases that Article 6 § 1 was applicable to proceedings concerning the

calculation of the applicant's pension (see, among others, *Bulgakova v. Russia*, no. 69524/01, § 28-30, 18 January 2007) and that the existence of a debt confirmed by a binding and enforceable judgment constituted the beneficiary's "possession" within the meaning of Article 1 of Protocol No. 1. Quashing of such a judgment amounted to an interference with his or her right to peaceful enjoyment of possessions (see, among other authorities, *Androsov v. Russia*, no. 63973/00, § 69, 6 October 2005). The Court sees no reason to depart from those findings in the present case and dismisses the respective objections.

27. Turning to the argument that the applicant himself had asked for further supervisory review of the judgment of 8 December 2003 and cannot claim to be a victim of the alleged breach of the legal certainty principle, the Court notes that, by contrast to the *Fadin v. Russia* case (cited above), the applicant was not an initiator of the proceedings which resulted into the judgment of 8 December 2003, at issue in the present case. The Court further observes that the applicant's subsequent attempts to challenge the quashing in a new round of the supervisory review proceedings proved unsuccessful, and, in any event, were provoked by the overturning of the final judgment in his favour. Finally, as regards the alleged impact of the recalculation of the pension in March 2007 on the applicant's victim status, the Court notes that the adjustment only concerned the pension the applicant had received as from 1 January 2005, while the quashed judgment awarded him such pension with the effect as from 1 January 2001, and the amount he had to repay represented arrears in respect of 2001-2003. The alleged violation was not recognised and no redress was afforded. Thus, the pension increase as from 2005 did not have any impact on his victim status. The objection in this respect should be dismissed.

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

2. Merits

a. Article 6 of the Convention

29. The Court reiterates its constant case-law to the effect that the quashing by way of supervisory review of a judicial decision which has become final and binding may render the litigant's right to a court illusory and infringe the principle of legal certainty (see, among many other authorities, *Brumărescu v. Romania* [GC], no. 28342/95, § 62, ECHR 1999-VII; *Ryabykh v. Russia*, no. 52854/99, §§ 56-58, 24 July 2003). Departures from that principle are justified only when made necessary by circumstances of a substantial and compelling character (see, *mutatis mutandis*, *Ryabykh v. Russia*, cited above, § 52).

30. Turning to the present case, the Court observes, first, that the Commissariat did not challenge the judgment of 12 May 2003 before the court of appeal. The Court reiterates that it has found a violation of an applicant's "right to a court" in many Russian cases in which a judicial decision that had become final and binding, was subsequently quashed by a higher court on an application by a State official or by a party to the proceedings when the latter had not made use of the ordinary appeal procedure (see, among others, *Nelyubin v. Russia*, no. 14502/04, §§ 29-30, 2 November 2006). The Court does not find any reason to depart from these findings in the present case, since the Government did not point to any exceptional circumstances that would have prevented the respondent authority from raising the relevant issues of application of the domestic law on appeal (see *Petrov v. Russia*, no. 7061/02, § 19, 21 December 2006).

31. The Court further observes that the judgment of 12 May 2003 was set aside by way of a supervisory review on the grounds that the Vologda Town Court had incorrectly applied the substantive law. The Court reiterates its constant approach that in the absence of a fundamental defect in the previous proceedings a party's disagreement with the assessment made by the first-instance and appeal courts is not a circumstance of a substantial and compelling character warranting the quashing of a binding and enforceable judgment and re-opening of the proceedings on the applicant's claim (see *Dovguchits v. Russia*, no. 2999/03, § 30, 7 June 2007; and *Kot v. Russia*, no. 20887/03, § 29, 18 January 2007).

32. Accordingly, the Court finds that there has been a violation of Article 6 § 1 of the Convention on account of the quashing of the final judgment of 12 May 2003 by way of supervisory-review proceedings.

b. Article 1 of Protocol No. 1

33. The Court observes that by virtue of the judgment of 12 May 2003 the applicant's pension was considerably increased. 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. Furthermore, following the quashing, on 22 January 2004, as upheld on 20 February 2004, the domestic court ordered the applicant to return to the respondent authority the amount he had already received pursuant to the judgment of 12 May 2003. In these circumstances, even assuming that the interference was lawful and pursued a legitimate aim, the Court considers that the quashing of the enforceable judgment of 12 May 2003 by way of supervisory review placed an excessive burden on the applicant and was incompatible with Article 1 of Protocol No. 1. There has therefore been a violation of that Article.

II. OTHER ALLEGED VIOLATIONS OF THE CONVENTION

34. The applicant complained under Articles 6 and 13 of the Convention about forgery of evidence, the bias and insufficient independence of the national courts in the pension proceedings, and about incorrect application of the domestic law by the domestic courts in these proceedings. He also referred to Articles 14 and 17 in respect of his grievances.

35. The Court has examined these complaints as submitted by the applicant. However, having regard to all the material in its possession, it finds that these complaints 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 must be rejected as being manifestly ill-founded, pursuant to Article 35 §§ 3 and 4 of the Convention.

III. 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. Damage

37. The applicant claimed RUB 88,779.53 in respect of pecuniary damage, of which RUB 39,171.16 represented the sum he had had to repay to the respondent authority pursuant to the judgment of 22 January 2004, RUB 12,338.92 compensation for depreciation of that sum as a result of inflation during the period from January 2005 to December 2008 and RUB 37,269.45 unpaid pension for the period between 1 January 2004 and 31 July 2005. He further claimed 5,400 euros (EUR) in respect of non-pecuniary damage.

38. The Government submitted that the applicant was not entitled to receive the pecuniary damage claimed, since the judgment in his favour was quashed in accordance with the domestic law. They argued that he had not produced any documents in support of his claim for non-pecuniary damage. They submitted that the finding of a violation would in itself constitute sufficient just satisfaction.

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 applicant's title to the money confirmed by the final judgment was reversed 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 in had the requirements of Article 6 not been disregarded (see *Piersack v. Belgium* (Article 50), judgment of 26 October 1984, Series A no. 85, p. 16, § 12, and, *mutatis mutandis*, *Gençel v. Turkey*, no. 53431/99, § 27, 23 October 2003). The Court finds that in the present case this principle applies as well, having regard to the violations found. It observes that the applicant had to repay the money which he legitimately considered his property under the judgment of 12 May 2003. The Court accepts the applicant's claim in this part and awards him the sum of RUB 39,171.16 under this head, plus any tax that may be chargeable.

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 (see, *mutatis mutandis*, *Gizzatova v. Russia*, no. 5124/03, § 28, 13 January 2005). The Court accepts the applicant's argument relating to the loss of value of the judgment debt and notes that the applicant submitted detailed calculations based on the consumer price index in the reference period. Taking into account that the Government has not submitted any comment in respect of the method used by the applicant for the calculation of the inflation losses, the Court also awards the applicant EUR 341, plus any tax that may be chargeable, and dismisses the remainder of his claim for just satisfaction.

41. The Court further reiterates that there is no requirement that an applicant furnish any proof of the non-pecuniary damage he or she sustained (see *Gridin v. Russia*, no. 4171/04, § 20, 1 June 2006). It considers that the applicant suffered distress and frustration resulting from the quashing of the judgment of 12 May 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 from this amount, and dismisses the remainder of his claim in respect of damages.

B. Costs and expenses

42. The applicant claimed RUB 12,000 for the costs and expenses, of this sum RUB 7,000 representing legal costs and RUB 5,000 the cost of the translation of the applicant's observations in French. The Government submitted that no award should be made under this head since the applicant had failed to submit any documentary evidence in support of his claim.

43. The Court notes that the applicant did not submit any receipts or other vouchers confirming that the expenses had been actually incurred. Accordingly, the Court does not make any award under this head.

C. Default interest

44. 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 quashing of the judgment of 12 May 2003 by way of supervisory review admissible and the remainder of the application inadmissible;
2. *Holds* that there has been a violation of Article 6 of the Convention and Article 1 of Protocol No.1 on account of quashing of the judgment by way of supervisory review;
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, is to pay the award made by the domestic courts in the applicant's favour under the judgment of 12 May 2003, that is RUB 39,171.16, plus any tax that may be chargeable on this amount;
 - (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 into Russian roubles at the rate applicable at the date of the settlement:
 - (i) EUR 341 (three hundred forty one euro) 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;
 - (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;
4. *Dismisses* the remainder of the applicant's claim for just satisfaction.

Done in English, and notified in writing on 12 February 2009, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Søren Nielsen
Registrar

Christos Rozakis
President