



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

FIRST SECTION

**CASE OF ALEKSEY ZAKHAROV v. RUSSIA**

*(Application no. 51380/07)*

JUDGMENT

STRASBOURG

12 March 2009

**FINAL**

*12/06/2009*

*This judgment may be subject to editorial revision.*



**In the case of Aleksey Zakharov 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 17 February 2009,

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

## PROCEDURE

1. The case originated in an application (no. 51380/07) 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 Aleksey Alekseyevich Zakharov (“the applicant”), on 22 August 2007.

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, and subsequently by their Representative, Mr G. Matyushkin.

3. On 28 February 2008 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 Government objected to the joint examination of the admissibility and merits of the application. Having examined the Government’s objection, the Court dismissed it.

## THE FACTS

### I. THE CIRCUMSTANCES OF THE CASE

4. The applicant was born in 1941 and lives in Safonovo, Smolensk Region.

5. The applicant took part in the clean-up operations at the site of the Chernobyl nuclear plant disaster. As a result of exposure to radioactive emissions, in 1997 a medical board designated him Category 3 disabled. He was awarded monthly compensation for the damage to his health.

6. In 2007 the applicant brought proceedings against the local social welfare authority (*Департамент Смоленской области по социальному развитию*) in order to have his compensation recalculated in line with inflation.

7. On 9 February 2007 the Safonovo Town Court of the Smolensk Region granted the applicant's claim and obliged the respondent to pay the applicant 64,526.01 Russian roubles (RUB) in respect of monthly compensation for health damage from 1 July 2007 and RUB 1,870,641.16 in respect of arrears for the period from 1 July 2000 to 31 December 2006. No appeal was lodged within the statutory time-limit, and on 10 April 2007 the judgment became final and enforceable.

8. On 15 May 2007 the respondent lodged an application for supervisory review of the judgment of 9 February 2007.

9. On 1 June 2007 the enforcement proceedings started.

10. On 30 July 2007 the Presidium of the Smolensk Regional Court re-examined the case and concluded that the first-instance court had erroneously applied the substantive law. It therefore quashed the judgment of 9 February 2007 by way of supervisory review and remitted the case for a fresh examination.

11. On 1 November 2007 the applicant's claim was partly satisfied by the Safonovo Town Court.

12. The applicant appealed against the judgment and on 18 December 2007 the Smolensk Regional Court quashed the judgment on appeal and remitted the case for a fresh examination.

13. Meanwhile the applicant amended his claims and requested the compensation to be adjusted from 3 February 1997. He also raised his claims as regards the monthly payments.

14. On 19 March 2008 the Safonovo Town Court partly granted the applicant's claims. The court obliged the respondent to pay the applicant RUB 55,546.16 in respect of monthly compensation for health damage as from 1 July 2007 and RUB 1,689,301.76 in respect of arrears for the period from 1 July 2000 to 31 December 2006. It also awarded the applicant RUB 3,000 for legal costs and expenses.

15. On 6 May 2008 the Smolensk Regional Court upheld the judgment of 19 March 2008, having raised the subsequent amounts to RUB 57,140.31 and RUB 1,763,050.41 respectively.

## II. RELEVANT DOMESTIC LAW

16. The Code of Civil Procedure of the Russian Federation provides as follows:

**Article 362. Grounds for quashing or altering judicial decisions by appeal courts**

“1. The grounds for quashing or altering judicial decisions by appeal courts are:

...

(4) a violation or incorrect application of substantive or procedural law.”

**Article 376. Right to apply to a court exercising supervisory review**

“1. Judicial decisions that have become legally binding, with the exception for judicial decisions by the Presidium of the Supreme Court of the Russian Federation, may be appealed against ... to a court exercising supervisory review, by parties to the case and by other persons whose rights or legal interests have been adversely affected by these judicial decisions.

2. Judicial decisions may be appealed against to a court exercising supervisory review within one year after they became legally binding ...”

**Article 387. Grounds for quashing or altering judicial decisions  
by way of supervisory review**

“Judicial decisions of lower courts may be quashed or altered by way of supervisory review on the grounds of substantial violations of substantive or procedural legal provisions.”

**Article 390. Competence of the supervisory-review court**

“1. Having examined the case by way of supervisory review, the court may ...

(2) quash the judicial decision issued by a court of first, second or supervisory-review instance in whole or in part and remit the matter for a fresh examination ...

(5) quash or alter the judicial decision issued by a court of first, second or supervisory review instance and issue a new judicial decision, without remitting the matter for a fresh examination, if the substantive law has been erroneously applied or interpreted.”

## THE LAW

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

17. The applicant complained that the quashing of the judgment of 9 February 2007 by way of supervisory review proceedings had violated his “right to a court” under Article 6 § 1 of the Convention and his right to the peaceful enjoyment of possessions under Article 1 of Protocol No. 1. 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 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. Admissibility**

18. The Court notes that these 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**

#### *1. Alleged violation of Article 6 of the Convention*

19. The Government argued that the supervisory review procedure applied in the present case was in accordance with the domestic law: the review was initiated by a party to the proceedings whose property rights and legitimate interests had been violated as a result of a breach of the provisions of the domestic law by the first-instance court. They further submitted that the application for supervisory review had been submitted within the time-limits provided for by Article 376 of the Code of Civil Procedure of the Russian Federation. Finally, the quashing occurred on the

ground of material violation of the rules of substantive law in accordance with Article 387 of the Code of Civil Procedure.

20. The applicant maintained his complaint.

21. The Court observes 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*, 28 October 1999, § 61, *Reports of Judgments and Decisions* 1999-VII).

22. This principle states that no party is entitled to seek the reopening of proceedings merely for the purpose of a rehearing and a fresh decision of the case. The power of the higher courts to quash or alter binding and enforceable judicial decisions should be exercised only for the correction of fundamental defects. The mere possibility of two views on the subject does not constitute grounds 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 v. Russia*, no. 52854/99, § 52, ECHR 2003-X, and *Pravednaya v. Russia*, no. 69529/01, § 25, 18 November 2004).

23. 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 enforceable judicial decision to be quashed by a higher court merely on the ground of disagreement with the assessment made by lower courts with a view to carrying out a fresh examination (see *Kot v. Russia*, no. 20887/03, §§ 27-30, 18 January 2007, and *Zvezdin v. Russia*, no. 25448/06, § 28, 14 June 2007).

24. In the present case the judgment of 9 February 2007 in the applicant’s favour was set aside on 30 July 2007 by the Presidium of the Smolensk Regional Court by way of a supervisory review on the grounds that the Safonovo Town Court had applied the substantive law incorrectly. The Court has to assess whether the power to conduct a supervisory review was exercised by the authorities so 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, *mutatis mutandis*, *Nikitin v. Russia*, no. 50178/99, §§ 57 and 59, ECHR 2004-VIII).

25. The Government distinguished the present application from the above-mentioned cases on account of the fact that the supervisory-review procedure had been initiated by the party to the case, within three months of

the delivery of the judgment. The Court, however, is not persuaded that this distinction is of crucial importance for its analysis.

26. The Court stresses that a binding and enforceable judgment should only be quashed in exceptional circumstances rather than for the sole purpose of obtaining a different decision in the case. In the Russian legal system, the grounds for quashing or altering judgments by appeal courts largely overlap with those for quashing or altering judgments by way of supervisory review (compare Article 362 § 1 (4) and Article 387 of the Code of Civil Procedure). The judgment of 9 February 2007 was quashed by way of supervisory review because of the incorrect application of the substantive law. That defect could have been rectified in the appeal proceedings. Thus, a situation where the final judgment in the applicant's favour was called into question could have been avoided, had the defendant lodged an ordinary appeal within the statutory ten-day time-limit.

27. The Court notes that the social welfare authorities failed to exercise their right to lodge an ordinary appeal and permitted the statutory ten-day time-limit to expire without challenging the judgment of 9 February 2007. Instead, they applied for supervisory review after the judgment in the applicant's favour had become binding and enforceable. The Government did not point to any exceptional circumstances that would have prevented the social welfare authorities from making use of an ordinary appeal in good time (see, as a similar case, *Nelyubin v. Russia*, no. 14502/04, 2 November 2006).

28. Having regard to these considerations, the Court finds that, by granting the respondent's request to set aside the judgment of 9 February 2007, the Presidium of the Smolensk Regional Court infringed the principle of legal certainty and the applicant's "right to a court" under Article 6 § 1 of the Convention. There has accordingly been a violation of that Article.

## *2. Alleged violation of Article 1 of Protocol No. 1*

29. The Government claimed that there was no violation of the applicant's property rights because he had not had any "possessions". Neither could he have any "legal expectations" to benefit from the judgment, since it had been delivered as a result of an evident judicial error. Finally, they pointed out that the applicant was finally awarded compensation and monthly payments in accordance with the final decision of 6 May 2008.

30. The Court observes that the existence of a debt confirmed by a binding and enforceable judgment constitutes a beneficiary's "possessions" within the meaning of Article 1 of Protocol No. 1. The quashing of such a judgment amounts to an interference with his or her right to peaceful enjoyment of possessions (see, among other authorities, *Brumărescu*, cited above, § 74, and *Androsov v. Russia*, no. 63973/00, § 69, 6 October 2005).

31. The Court observes that the proceedings concerned health damages sustained as a result of exposure to radioactive emissions. A substantial amount was found to be payable by a domestic court from the social welfare authorities. 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 the right to receive.

32. It is true that on 6 May 2008 the Smolensk Regional Court in final instance delivered a new judgment partly granting the applicant's claim. However, the Court notes that the sums awarded by this judgment were lower than the initial sums awarded by the judgment of 9 February 2007. In these circumstances, the Court considers that the quashing of the judgment of 9 February 2007 by way of supervisory review placed an excessive burden on the applicant and was therefore incompatible with Article 1 of the Protocol No. 1. There has therefore been a violation of that Article.

## II. APPLICATION OF ARTICLE 41 OF THE CONVENTION

33. 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

34. The applicant claimed 19,130 euros (EUR) in respect of pecuniary damage and EUR 5,000 in respect of non-pecuniary damage.

35. The Government submitted firstly that no award should be made in pecuniary damage since the judgment of 9 February 2007 was lawfully quashed. They further noted that the applicant was entitled to receive the sum awarded to him by the judgment of 6 May 2008. This part of his claim should thus be dismissed. As regards the claim in respect of non-pecuniary damages, the Government considered that the applicant's claim was wholly excessive and unreasonable.

36. The Court reiterates that in the instant case it found a violation of Article 6 § 1 of the Convention and Article 1 of Protocol No. 1, in that the final judgment in the applicant's favour had been quashed in a supervisory review procedure. 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 had the requirements of Article 6 not been disregarded (see *Piersack v. Belgium* (Article 50), 26 October 1984, § 12, Series A no. 85, 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 (see *Dovguchits v. Russia*, no. 2999/03, § 48, 7 June 2007, and *Nekhoroshev v. Russia*, no. 45017/04, § 35, 10 April 2008).

37. As regards the claim in respect of pecuniary damage, the Court considers it appropriate, firstly, to award the applicant the lump sum which he would have received had the judgment in his favour of 9 February 2007 not been quashed (see paragraph 7 above) less the lump sums awarded to him by virtue of the judgment which followed the supervisory-review proceedings, upheld on 6 May 2008 (see paragraph 15 above), e.g. EUR 3,000. Secondly, the Court observes that the applicant was entitled to receive monthly payments awarded by the initial judgment of 9 February 2007 as from 1 July 2007. However, no payments under this judgment were ever made. After the quashing of the initial judgment, on 6 May 2008 the Smolensk Regional Court reduced the applicant's monthly payments. Thus the quashing of the initial judgment deprived the applicant of an increase from 1 July 2007 to 6 May 2008, totally EUR 2,100. Consequently, having regard to the above considerations, the Court awards the applicant EUR 5,100 in respect of pecuniary damage, plus any tax that may be chargeable on that amount.

38. The Court further considers that the applicant suffered distress and frustration resulting from the quashing of the final judgment of 9 February 2007. 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 that amount.

## **B. Costs and expenses**

39. The applicant also claimed EUR 13 for the costs and expenses incurred before the Court. He further claimed EUR 500 for self representation.

40. The Government did not contest the sum as regards the costs and expenses incurred before the Court but considered that the claim for self representation should be dismissed.

41. According to the Court's case-law, an applicant is entitled to the reimbursement of costs and expenses only in so far as it has been shown that these have been actually and necessarily incurred and are reasonable as to quantum. In the present case, regard being had to the information in its possession and the above criteria, the Court considers it reasonable to award the sum of EUR 250 for costs and expenses.

### C. Default interest

42. 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 application admissible;
2. *Holds* that there has been a violation of Article 6 of the Convention and Article 1 of Protocol No. 1 on account of the quashing of the judgment of 9 February 2007 by way of supervisory review;
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 5,100 (five thousand one hundred euros), in respect of pecuniary damage and EUR 2,000 (two thousand euros), in respect of non-pecuniary damage, plus any tax that may be chargeable, to be converted into Russian roubles at the rate applicable at the date of the settlement;
  - (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, EUR 250 (two hundred and fifty euros) in respect of costs and expenses, plus any tax that may be chargeable, to be converted into Russian roubles at the rate applicable at the date of the settlement;
  - (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 March 2009, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Søren Nielsen  
Registrar

Christos Rozakis  
President