



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

1959 · 50 · 2009

FIRST SECTION

CASE OF MIKHAYLOV v. RUSSIA

(Application no. 22156/04)

JUDGMENT

STRASBOURG

22 October 2009

FINAL

22/01/2010

This judgment will become final in the circumstances set out in Article 44 § 2 of the Convention. It may be subject to editorial revision.

In the case of Mikhaylov 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 1 October 2009,

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

PROCEDURE

1. The case originated in an application (no. 22156/04) 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 Dmitriy Nikolayevich Mikhaylov (“the applicant”), on 12 May 2004.

2. The Russian Government (“the Government”) were represented by their Agents, Ms V. Milinchuk, former Representative of the Russian Federation at the European Court of Human Rights and Mr G. Matyushkin, Representative of the Russian Federation at the European Court of Human Rights.

3. On 2 April 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 1964 and lives in Volgograd.

5. In 1986 the applicant was engaged in emergency operations at the site of the Chernobyl nuclear plant disaster. As a result he suffered from extensive exposure to radioactive emissions. In 1997 he underwent medical examinations which established a link between his poor health and his

involvement in the Chernobyl events. The applicant was awarded compensation, to be paid monthly.

6. In 2000 the applicant brought proceedings against the Welfare Office of the Krasnooktyabrskiy District of the Volgograd Region (*Управление социальной защиты населения Краснооктябрьского района Волгоградской области* - “the defendant”) for an increase in the compensation, for the increase to be backdated and for recovery of the unpaid amount. The applicant considered that the amount of compensation had been determined incorrectly.

7. On 5 October 2000 the Krasnooktyabrskiy District Court of Volgograd upheld the applicant's action and awarded him a lump sum of 113,707.59 Russian roubles (RUB) and monthly payments of RUB 4,051.88, to be paid before the date of the subsequent medical examination, which was made in June 2002.

8. On 24 April 2002 the lump sum, and on 29 April 2003 and on 30 May 2003 the arrears of the monthly payments, were credited to the applicant's account, so that the judgment was enforced in full.

9. On 13 February 2004, at the defendant's request, the Presidium of the Volgograd Regional Court quashed the judgment of 5 October 2000 and remitted the case for a fresh examination. The basis for this decision was that the District Court had applied the substantive law incorrectly.

10. On 4 June 2004 the Krasnooktyabrskiy District Court of Volgograd terminated the proceedings due to the applicant's failure to appear. The applicant did not appeal. Instead, he brought another set of proceedings with the same court, claiming adjustment of monthly payments and seeking damages for 1997-2007.

11. After several sets of proceedings, by a final judgment of 16 August 2007 the Krasnooktyabrskiy District Court of Volgograd granted the applicant's claims in part, i.e. lowering the amounts previously awarded by the judgment of 5 October 2000. It took into account that the latter judgment had been quashed on 13 February 2004, recalculated the sums paid under it and deducted the difference from the sums awarded. The judgment entered into force on 3 September 2007.

II. RELEVANT DOMESTIC LAW

12. The relevant domestic law governing the supervisory review procedure at the material time is summed up in the Court's judgment in the case of *Sobelin and Others v. Russia* (no. 30672/03 et seq., §§ 33-42, 3 May 2007).

THE LAW

I. ALLEGED VIOLATION OF ARTICLE 6 § 1 OF THE CONVENTION AND OF ARTICLE 1 OF PROTOCOL No. 1 ON ACCOUNT OF SUPERVISORY REVIEW

13. The applicant complained under Article 6 of the Convention and under Article 1 of Protocol No. 1 that the judgment of 5 October 2000 had been quashed by way of supervisory review on 13 February 2004. In so far 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.[...]”

14. The Government contested that argument. They argued, *inter alia*, that the supervisory review had been compatible with the Convention as the lower court had interpreted and applied the substantive law erroneously.

A. Admissibility

15. 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

16. The Court reiterates that it has frequently found violations of the principle of legal certainty and of the right to a court in the supervisory-review proceedings governed by the Code of Civil Procedure of 2003 (see *Sobelin*, cited above, §§ 57-58, and *Bodrov v. Russia*, no. 17472/04, § 31, 12 February 2009).

17. The Court also reiterates that for the sake of the legal certainty implicitly required by Article 6, final judgments should generally be left intact. They may be disturbed only to correct fundamental errors. To answer

this complaint the Court will hence have to determine if the grounds for the quashing of the applicant's judgment fell within this exception (see *Protsenko v. Russia*, no. 13151/04, § 29, 31 July 2008).

18. In the present case the final judgment was quashed solely on the grounds of the alleged misinterpretation of the substantive law.

19. According to the Court's constant case-law, the fact that the Presidium disagreed with the interpretation of substantive law made by the lower courts was not in itself an exceptional circumstance warranting the quashing of a binding and enforceable judgment (see *Kot v. Russia*, no. 20887/03, § 29, 18 January 2007).

20. The foregoing considerations are sufficient to enable the Court to conclude that in the present cases there were no circumstances justifying departure from the principle of legal certainty.

21. There has accordingly been a violation of Article 6.

22. The Court further observes that the final and enforceable judgment by which the applicant had been awarded and paid a sum of money was quashed by way of a supervisory review. As a result a part of the sum was deducted from subsequent payments (see paragraph 11) and thus the applicant was deprived of possessions given him by the quashed judgment. There has accordingly been a violation of Article 1 of Protocol No. 1.

II. OTHER ALLEGED VIOLATIONS OF THE CONVENTION

23. The applicant also complained under Article 6 that the judgment of 5 October 2000 had not been enforced in time and under Article 14 that he had been discriminated against on the grounds that he was partially disabled.

24. As to the complaint that the judgment had not been enforced in time, it was lodged on 12 May 2004, which is more than six months after the enforcement of the judgment (see paragraph 8).

25. As to the complaint that he had been discriminated against, it is unsubstantiated as it is not supported by any material submitted.

26. It follows that these complaints are respectively out of time and manifestly ill-founded and must be rejected in accordance with Article 35 §§ 1, 3 and 4 of the Convention.

III. APPLICATION OF ARTICLE 41 OF THE CONVENTION

27. 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

28. The applicant claimed 1,564.35 euros (EUR) in respect of pecuniary damage caused by the delayed enforcement of the judgment of 5 October 2000 (which was fully enforced only on 30 May 2003), and EUR 6,500 in respect of non-pecuniary damage.

29. The Government contested the claims.

30. As to pecuniary damage, on the one hand, the application in part of the lengthy enforcement of the judgment of 5 October 2000 is inadmissible (see paragraph 24 above). On the other hand, the applicant failed to claim in respect of pecuniary damage caused by the quashing by way of supervisory review of the final judgment, the quashing being the only violation of the Convention found in the present case. Thus, there is no causal link between the applicant's claims in respect of pecuniary damage (which concern only the delayed enforcement of the judgment) and the violation found. Therefore no award in respect of pecuniary damage should be made in the present case.

31. As to non-pecuniary damage, the Court takes the view that the applicant has suffered non-pecuniary damage as a result of the violation found which cannot be made good by the Court's mere finding of a violation. Making its assessment on an equitable basis, as required by Article 41 of the Convention, the Court awards the applicant the sum of EUR 3,500 in respect of non-pecuniary damage.

B. Costs and expenses

32. The applicant made no claims under this head. Accordingly, the Court will make no award under this head.

C. Default interest

33. 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 the 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 of Article 1 of Protocol No. 1 in respect of the quashing by way of supervisory review of the final judgment in the applicant's favour;
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 3,500 (three thousand five hundred 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 22 October 2009, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Søren Nielsen
Registrar

Christos Rozakis
President