



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

FIRST SECTION

CASE OF KUCHEROV AND FROLOVA v. RUSSIA

(Application no. 14390/05)

JUDGMENT

STRASBOURG

11 February 2010

FINAL

11/05/2010

This judgment has become final under Article 44 § 2 of the Convention. It may be subject to editorial revision.

In the case of Kucherov and Frolova v. Russia,

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

Christos Rozakis, *President*,

Anatoly Kovler,

Khanlar Hajiyeu,

Dean Spielmann,

Sverre Erik Jebens,

Giorgio Malinverni,

George Nicolaou, *judges*,

and Søren Nielsen, *Section Registrar*,

Having deliberated in private on 21 January 2010,

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

PROCEDURE

1. The case originated in an application (no. 14390/05) 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 two Russian nationals, Mr Yengeniye Ivanovich Kucherov and Mrs Marina Vasilyevna Frolova (“the applicants”), on 28 February 2005.

2. The applicants were represented by Mr A. Maysak, a lawyer practising in Belgorod. 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 19 February 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 applicants were born in 1959 and 1967 respectively and live in Belgorod.

5. On 16 November 2002 the applicants’ minor son died in a building site accident.

A. Proceedings for non-pecuniary damage.

6. Considering that the private construction company working on the site was responsible for the accident, the applicants sued the company for non-pecuniary damage.

7. On 26 December 2003 the Sverdlovskiy District Court of Belgorod granted their claim in part and ordered the company to pay the applicants 400,000 Russian roubles (RUB) for non-pecuniary damage and RUB 5,000 for legal assistance costs.

8. On 24 February 2004 the Belgorod Regional Court, acting on appeal, reduced the award to RUB 300,000.

9. In March 2004 the enforcement proceedings were stayed as the respondent had applied for supervisory review of the case.

10. On 29 April 2004 the Presidium of the Belgorod Regional Court quashed the judgment of 26 December 2003 and the appeal judgment of 24 February 2004 and remitted the case for fresh consideration.

11. On 8 June 2004 the Sverdlovskiy District Court granted the applicants' claims in part and awarded them RUB 100,000 for non-pecuniary damage.

12. On 3 August 2004 the Belgorod Regional Court, acting on appeal, amended the judgment increasing the sum to RUB 200,000. The appeal judgment became enforceable on the same day.

13. In September 2004 the enforcement proceedings were stayed as the respondent had again applied for supervisory review of the case.

14. On 7 October 2004 the Presidium of the Belgorod Regional Court reassessed the evidence, quashed the appeal judgment of 3 August 2004 and remitted the case for fresh consideration on appeal.

15. On 26 October 2004 the Belgorod Regional Court upheld the judgment of 8 June 2004 on appeal. The award to be paid to the applicants was, accordingly, RUB 100,000.

16. In November 2004 the judgment was enforced.

B. Proceedings for pecuniary damage

17. On an unspecified date one of the applicants, Mr Kuchеров, sued the construction company for pecuniary damage.

18. On 11 February 2004 the Sverdlovskiy District Court granted the claim in part and awarded him RUB 59,273.

19. On 13 April 2004 the Belgorod Regional Court quashed the judgment and remitted the case for fresh consideration.

20. On 6 July 2004 the Sverdlovskiy District Court awarded Mr Kuchеров RUB 94,468.

21. On 17 August 2004 the Belgorod Regional Court upheld the judgment with minor changes, having reduced the award due to RUB 86,326. The judgment became final and binding on the same day.

22. Following an application for supervisory review lodged by the defendant, on 20 October 2004 a judge of the Belgorod Regional Court referred the case to its Presidium for consideration on the merits.

23. On 28 October 2004 the Presidium of the Belgorod Regional Court reassessed the evidence, quashed the judgment of the Sverdlovskiy District Court of 6 July 2004 and the appeal judgment of the Belgorod Regional Court of 17 August 2004 and remitted the case for fresh consideration.

24. On 28 December 2004 the Sverdlovskiy District Court awarded Mr Kucherov RUB 19,068 for burial expenses and RUB 10,000 for legal assistance costs.

25. On 15 March 2005 the Belgorod Regional Court quashed the judgment and remitted the case for new consideration.

26. On 27 April 2005 the Sverdlovskiy District Court awarded Mr Kucherov RUB 19,068 for burial expenses and dismissed the remainder of the claim.

27. On 21 June 2005 the Belgorod Regional Court upheld the judgment on appeal.

II. RELEVANT DOMESTIC LAW

28. 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* (see *Sobelin and Others v. Russia*, nos. 30672/03, et seq., §§ 33-42, 3 May 2007).

THE LAW

I. ALLEGED VIOLATION OF ARTICLE 6 § 1 OF THE CONVENTION

29. The applicants complained under Article 6 of the Convention that the final appeal judgment of 3 August 2004 had been quashed by way of supervisory review on 7 October 2004. Mr Kucherov also complained that the judgment of 6 July 2004 and the appeal judgment of 17 August 2004 were quashed via supervisory review on 28 October 2004. In so far as relevant, this Article reads as follows:

Article 6 § 1

“In the determination of his civil rights and obligations ..., everyone is entitled to a fair ... hearing ... by [a] ... tribunal...”

30. The Government contested that argument. They argued, *inter alia*, that the supervisory review had been compatible with the Convention as the inferior courts wrongly assessed the evidence; as the application for supervisory review had been lodged by a party to the proceedings; and as it had been lodged and the case reviewed within a very short period of time.

A. Admissibility

31. 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 it is not inadmissible on any other grounds. It must therefore be declared admissible.

B. Merits

32. The Court reiterates that for the sake of legal certainty implicitly required by Article 6, final judgments should generally be left intact. They may be disturbed only to correct fundamental errors. The mere possibility of there being two views on the subject is not a ground for re-examination (see *Ryabykh v. Russia*, no. 52854/99, §§ 51-52, ECHR 2003-IX).

33. 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 in force since 2003 (see, among other authorities, *Sobelin and Others*, cited above, §§ 57-58, and *Bodrov v. Russia*, no. 17472/04, § 31, 12 February 2009).

34. In the present case the final and binding judgments were quashed because the Presidium disagreed with the assessment made by the inferior courts, which is not in itself an exceptional circumstance warranting the quashing (see *Kot v. Russia*, no. 20887/03, § 29, 18 January 2007). Accordingly, there has been a violation of Article 6 § 1 of the Convention.

II. OTHER ALLEGED VIOLATIONS OF THE CONVENTION

35. The applicants also lodged several other complaints concerning the above proceedings, referring to Articles 6, 8 and 9 of the Convention.

36. 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 aforementioned provisions. 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.

III. APPLICATION OF ARTICLE 41 OF THE CONVENTION

37. 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

38. In respect of compensation for the pecuniary damage, one of the applicants, Mr Kuchеров, claimed 3,351 euros (EUR). In respect of non-pecuniary damage each applicant claimed EUR 160,000.

39. The Government contested the claims.

40. The Court recalls that in general the most appropriate form of redress in respect of violations found is to put applicants as far as possible in the position they would have been in if the Convention requirements had not been disregarded (see, amongst other authorities, *Piersack v. Belgium* (Article 50), judgment of 26 October 1984, § 12, Series A no. 85, and *Dovguchits v. Russia*, no. 2999/03, § 48, 7 June 2007).

41. In the present case insofar as Mr Kuchеров did not receive the money he had legitimately expected to receive under the quashed final judgments, there is a causal link between the violations found and the claim in respect of pecuniary damage. Therefore the Court awards Mr Kuchеров EUR 3,335.

42. The Court furthermore finds that the applicants have suffered non-pecuniary damage as a result of the violation found which cannot be compensated by the mere finding of a violation. Making its assessment on an equitable basis, the Court awards each of the applicants EUR 3,000 in respect of non-pecuniary damage, plus any tax that may be chargeable.

B. Costs and expenses

43. The applicants also claimed EUR 2,131 for Mr Kuchеров and EUR 639 for Mrs Frolova for the costs and expenses incurred.

44. The Government contested the claim.

45. According to the Court’s case-law, applicants are 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 were reasonable

as to quantum. In the present case, regard being had to the documents in its possession and the above criteria, the Court considers it reasonable to grant the claims in full and awards Mr Kucherov EUR 2,131 and Mrs Frolova EUR 639.

C. Default interest

46. 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 complaints concerning the supervisory review proceedings admissible and the remainder of the application inadmissible;
2. *Holds* that there has been a violation of Article 6 of the Convention on account of the quashing of the judgments in the applicants' favour via supervisory review;
3. *Holds*
 - (a) that the respondent State is to pay, 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 settlement:
 - (i) EUR 3,335 (three thousand three hundred and thirty five euros) to Mr Kucherov, in respect of pecuniary damage;
 - (ii) EUR 3,000 (three thousand euros) each applicant, in respect of non-pecuniary damage;
 - (iii) EUR 2,131 (two thousand one hundred and thirty one euros) to Mr Kucherov and EUR 639 (six hundred and thirty nine euros) to Mrs Frolova, in respect of costs and expenses;
 - (iv) any tax that may be chargeable to the applicants on the above amounts;
 - (b) 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 applicants' claim for just satisfaction.

Done in English, and notified in writing on 11 February 2010, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Søren Nielsen
Registrar

Christos Rozakis
President