



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

FIRST SECTION

CASE OF ABBASOV v. RUSSIA

(Application no. 11470/03)

JUDGMENT

STRASBOURG

18 February 2010

FINAL

18/05/2010

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

In the case of Abbasov 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 Hajiyev,

Dean Spielmann,

Giorgio Malinverni, *judges*,

and Søren Nielsen, *Section Registrar*,

Having deliberated in private on 28 January 2010,

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

PROCEDURE

1. The case originated in an application (no. 11470/03) 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, Mr Kerim Kamran-ogly Abbasov (“the applicant”), on 19 February 2003.

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 Mr G. Matyushkin, Representative of the Russian Federation at the European Court of Human Rights.

3. On 21 January 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 FACTS

I. THE CIRCUMSTANCES OF THE CASE

4. The applicant was born in 1956 and lives in Nizhnevartovsk, a city in the Khanty-Mansi Autonomous District.

5. In 1987 the applicant was convicted of fraud and complicity in bribery. In 1988 a supervisory instance court quashed the conviction and ordered a new investigation. The investigation was pending until 1999.

In February 1999 the criminal proceedings against the applicant were discontinued.

6. The applicant sued the Ministry of Finance for compensation. On 14 September 2001 the Nizhnevartovsk District Court awarded the applicant 37 016 Russian roubles (RUB) in pecuniary damage and 800 000 RUB in non-pecuniary damage.

7. On 28 November 2001 the Khanty-Mansi Regional Court upheld on appeal the judgment in respect of the pecuniary damage, but reduced the amount of the compensation of non-pecuniary damage to 80 000 RUB.

8. The applicant applied for a supervisory review of the appeal decision of 28 November 2001. On 7 December 2001 the Khanty-Mansi Regional Court quashed the appeal decision of 28 November 2001 and restored in full the validity of the judgment of 14 September 2001.

9. On 10 December 2002 the applicant received the money awarded to him in pecuniary damage by the judgment of 14 September 2001.

10. On 26 September 2003 the Supreme Court quashed, by means of supervisory review, the judgments of 14 September 2001 and 7 December 2001, and restored the validity of the appeal decision of 28 November 2001.

11. On 13 May 2004 the applicant received the money awarded to him in non-pecuniary damage by the appeal decision of 28 November 2001.

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* (nos. 30672/03 et seq., §§ 33-42, 3 May 2007).

13. In 2001-2004 judgments delivered against the public authorities were executed in accordance with a special procedure established, *inter alia*, by Government's Decree No. 143 of 22 February 2001 and, subsequently, by Decree No. 666 of 22 September 2002, entrusting execution to the Ministry of Finance (see further details in *Pridatchenko and Others v. Russia*, nos. 2191/03, 3104/03, 16094/03 and 24486/03, §§ 33-39, 21 June 2007).

THE LAW

I. ALLEGED VIOLATION OF ARTICLE 6 OF THE CONVENTION AND OF ARTICLE 1 OF PROTOCOL No. 1 ON ACCOUNT OF SUPERVISORY REVIEW OF 26 SEPTEMBER 2003

14. The applicant complained in substance that the judgments of 14 September 2001 and 7 December 2001 had been quashed by the Supreme Court. The Court will examine this complaint under Article 6 § 1 of the Convention and Article 1 of Protocol No. 1. Insofar 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.

The preceding provisions shall not, however, in any way impair the right of a State to enforce such laws as it deems necessary to control the use of property in accordance with the general interest or to secure the payment of taxes or other contributions or penalties.”

15. The Government argued that this complaint had been introduced out of time.

16. The applicant maintained his complaint, but did not comment on the issue of six months.

17. The Court notes that the quashing complained of took place on 26 September 2003, whereas the complaint about it was indeed raised for the first time before the Court on 23 January 2006 only. The Court reiterates that quashing of a judgment by means of supervisory review is an instantaneous act, which does not create a continuing situation (see *Sardin v. Russia* (dec.), no. 69582/01, 12 February 2004). The Court observes that on 13 May 2004 the applicant received the money awarded to him in non-pecuniary damage by the appeal decision of 28 November 2001 (see paragraph 11 above), the validity of which had been restored by the supervisory review of 26 September 2003. This fact permits the Court to conclude that the applicant must have learnt about the supervisory review in question on 13 May 2004 at the latest. It follows that the complaint about the quashing of 26 September 2003 has been introduced out of time and

must be rejected in accordance with Article 35 §§ 1 and 4 of the Convention.

II. ALLEGED VIOLATION OF ARTICLE 6 OF THE CONVENTION AND OF ARTICLE 1 OF PROTOCOL No. 1 ON ACCOUNT OF NON-ENFORCEMENT OF THE JUDGMENT OF 14 SEPTEMBER 2001 AS CONFIRMED ON 7 DECEMBER 2001

18. The applicant complained about non-enforcement of the judgment of 14 September 2001 as confirmed by the judgment of 7 December 2001. The Court will examine this complaint under Article 6 § 1 of the Convention and Article 1 of Protocol No. 1, the relevant parts of which are quoted above.

A. Admissibility

19. The Government alleged that the applicant had not exhausted the domestic remedies available to him under domestic law. First, the applicant could have complained under Chapter 25 of the Code of Civil Procedure about the authorities' failure to comply with the given judgment. Second, the applicant could have lodged a claim for non-pecuniary damage under Chapter 59 § 4 of the Civil Code. Third, the applicant could have requested an upgrade of the judgment debt under Article 208 of the Code of Civil Procedure.

20. The applicant maintained his complaint.

21. The Court has already assessed the effectiveness of the remedies quoted by the Government and concluded that they did not satisfy the Convention requirements at the material time (see *Kulkov and Others v. Russia*, nos. 25114/03 et seq., §§ 42-47, 8 January 2009). The Court sees no reason to depart from those findings in the case at hand.

22. 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

23. The Government did not discern any irregularity in the enforcement proceedings in question, while the applicant maintained his complaint.

24. The Court notes that the judgment of 14 September 2001, binding since 7 December 2001, remained unenforced in part of the pecuniary damage award until 10 December 2002, whereas in part of the non-pecuniary damage award its non-enforcement lasted until the supervisory review of 26 September 2003. Hence, the periods of enforcement amount respectively to twelve and twenty-one months. While the first period can

arguably be considered as reasonable, the second one is incompatible with the requirements of the Convention (see *Burdov v. Russia* (no. 2), no. 33509/04, §§ 66-67, ECHR 2009-...).

25. There has, accordingly, been a violation of Article 6 § 1 of the Convention and Article 1 of Protocol No. 1.

III. OTHER ALLEGED VIOLATIONS OF THE CONVENTION

26. The applicant complained under Articles 5 and 6 of the Convention, and Article 3 of Protocol No. 7, that his conviction was unjust and that the compensation for it was too small.

27. Insofar as these complaints relate to the applicant's conviction and imprisonment, the Court notes that these events took place in 1987, i.e. long before the entry of the Convention into force in respect of Russia on 5 May 1998. It follows that these complaints are incompatible *ratione temporis* with the provisions of the Convention within the meaning of Article 35 § 3 and must be rejected in accordance with Article 35 § 4 (see *Zhuravlev v. Russia*, no. 5249/06, § 17, 15 January 2009).

28. Insofar as these complaints relate to the amount of compensation, the Court notes that the conviction was quashed in 1988, i.e. before the entry of Protocol No. 7 into force in respect of Russia on 1 August 1998. It follows that these complaints are also incompatible *ratione temporis* with the provisions of the Convention within the meaning of Article 35 § 3 and must be rejected in accordance with Article 35 § 4 (see the above cited *Zhuravlev*, § 18).

IV. APPLICATION OF ARTICLE 41 OF THE CONVENTION

29. 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

30. The applicant claimed 1,000,000 euros (EUR) in respect of non-pecuniary damage.

31. The Government argued that this claim was excessive and unreasonable.

32. The Court accepts that the applicant must have been distressed by the non-enforcement of the judgment. Making its assessment on an equitable basis, the Court awards 1,800 EUR under this head.

B. Costs and expenses

33. The applicant has made no claim for the costs and expenses. Hence, the Court makes no award under this head.

C. Default interest

34. 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 non-enforcement of the judgment of 14 September 2001 as confirmed on 7 December 2001 admissible and the remainder of the application inadmissible;
2. *Holds* that there has been a violation of Article 6 § 1 of the Convention and Article 1 of Protocol No.1;
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 1,800 (one thousand eight 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 18 February 2010, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Søren Nielsen
Registrar

Christos Rozakis
President