



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

FIRST SECTION

CASE OF NIKOLAY ZAYTSEV v. RUSSIA

(Application no. 3447/06)

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 Nikolay Zaytsev v. Russia,

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

Christos Rozakis, *President*,

Anatoly Kovler,

Elisabeth Steiner,

Dean Spielmann,

Sverre Erik Jebens,

Giorgio Malinverni,

George Nicolaou, *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. 3447/06) 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 Nikolay Ivanovich Zaytsev (“the applicant”), on 7 December 2005.

2. The Russian Government (“the Government”) were represented by Mr G. Matyushkin, the Representative of the Russian Federation at the European Court of Human Rights.

3. On 28 November 2008 the President of the First Section decided to give notice of the application to the Government and to give the application priority treatment under Rule 41 of the Rules of Court. 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 1927 and lives in Pskov.

5. The applicant, a retired military serviceman, brought court proceedings against the Military Service Commissariat of Pskov Region (“the Commissariat”).

6. On 25 October 2002 the Pskov Town Court of Pskov Region ruled that the applicant was entitled to a monthly allowance for health damage

related to professional hardship of 4,540.52 Russian roubles (RUB) and a monthly allowance for food expenses of RUB 544.80. The court also found that the debt accrued as a result of previous underpayment of the monthly allowance for health damage was RUB 49,566.56, the debt in respect of the allowance for food expenses was RUB 734.40 and the debt in respect of the annual allowance for health damage accrued in 2001 was RUB 281.50. The court also ordered that the monthly allowances awarded to be subsequently adjusted in line with inflation.

7. The judgment was not appealed against and on 5 November 2002 became final.

8. On 19 December 2003 and 23 March 2004 the arrears awarded for the period from 1 August 2001 to 31 March 2004 were paid to the applicant.

9. On 11 November 2003 the Commissariat applied for the supervisory review of the judgment.

10. On 12 March 2004 the Presidium of the Supreme Court of Russia, by way of supervisory review proceedings, quashed the judgment of 25 October 2002 in the part obliging the respondent Commissariat to index-link the payments and upheld the remainder of the first instance court's findings.

11. On 5 August 2004 the Pskov Town Court rejected the Commissariat's request to annul the judgment of 25 October 2002 due to discovery of new circumstances. The applicant made written submissions and, apparently, was present at the court room.

12. On 30 December 2004 the Commissariat introduced a new application for the supervisory review of the judgments of 24 October 2002 and 12 March 2004 with the Supreme Court of the Russian Federation.

13. On 30 September 2005 the Presidium of the Supreme Court of the Russian Federation, by way of supervisory review proceedings, quashed the judgment of 25 October 2002 on the ground of incorrect application of the domestic law and remitted the case for a new examination. The Presidium also annulled the judgment of 12 March 2004 insofar as the latter upheld the award made on 25 October 2002.

14. On 27 January 2006 the Pskov Town Court examined the case afresh and granted the applicant's claims in full. The court ordered the Commissariat to pay the applicant RUB 37,896.38 in arrears in food allowance for the period from 1 July 2000 to 31 December 2005 RUB 36,930.96 in arrears in compensation for health damage. The applicant was further awarded RUB 1,640.91 monthly in respect of the food allowance and RUB 6,838.04 in compensation for health damage. On 4 April 2006 the judgment was upheld by the Pskov Regional Court. On 5 May 2006 the award was enforced.

THE LAW

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

15. The applicant complained under Article 6 of the Convention and Article 1 of Protocol No.1 about the quashing of the judgment in his favour on 30 September 2005. 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 ... 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...”

16. The Government argued that the supervisory review of the judgment had not breached the Convention. It had been initiated by a party to the proceedings within less than one year from the judgment's entry into force. The quashing had been justified because the judgment had been based on a misapplication of law and hence had contained a fundamental defect. The Presidium had not issued a new judgment in the case, but remitted it to the first instance court. Annulment of the binding judgment had been legitimate in a democratic society and had been exercised so as to strike a fair balance between the interests of the applicant and the need to ensure the effectiveness of the system of justice. As regards the complaint under Article 1 of Protocol No.1, the Government submitted, with reference to the judgment of 27 January 2006, that the applicant's claims were granted in full in the new set of the domestic proceedings, and therefore his rights under the above mentioned Article have not been affected.

17. The applicant maintained his claim. He pointed out that the judgment in his favour had been quashed more than two years after it had become final and the application for the supervisory review had been introduced by the Commissariat in violation of the procedural time-limits established in the domestic law. The Commissariat failed to challenge the award by way of introducing an ordinary appeal. Instead, the judgment was

annulled on supervisory review in violation of the principle of legal certainty.

A. Admissibility

18. 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

1. Article 6 of the Convention

19. 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*, cited above, § 52).

20. Turning to the present case, the Court observes that the judgment of 25 October 2002 was set aside by way of a supervisory review solely on the ground that the lower 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 court 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). The Government did not put forward any arguments which would enable the Court to reach a different conclusion in the present two cases. There has been, accordingly, a violation of Article 6 § 1 of the Convention.

2. Article 1 of Protocol No. 1

21. The Court notes that the applicant had been successful in a new round of the court proceedings after the quashing and that as a result of the proceedings he had received the amount which equalled the initial one made in his favour by the final judgment of 25 October 2002. In these circumstances the Court does not consider it necessary to rule on the

question where there has been a violation of Article 1 of Protocol No. 1 in respect of the applicant (see, *mutatis mutandis*, *Zasurtsev v. Russia*, no. 67051/01, §§ 53-55, 27 April 2006, *Kurinnyy v. Russia*, no. 36495/02, § 38, 12 June 2008).

II. ALLEGED VIOLATION OF ARTICLE 13 OF THE CONVENTION

22. The applicant also complained under Article 13 of the Convention that he was not in possession of an effective domestic remedy against the quashing of the final judgment in his favour.

23. 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.

24. However, having found above that the supervisory review breached the applicant's substantive rights under Article 6 § 1 of the Convention, the Court considers that it is not necessary to examine separately the complaint about the absence of effective remedies with regard to the proceedings begun by that supervisory review (see *Sitkov v. Russia*, no. 55531/00, § 39, 18 January 2007).

III. OTHER ALLEGED VIOLATIONS OF THE CONVENTION

25. The applicant complained, without referring to the Convention, that the judgment of 25 October 2002 had remained unenforced for six months and that the initial award had not been index-linked until 12 March 2004, when the obligation to upgrade the compensation in line with inflation was quashed by the Presidium of the Pskov Regional Court.

26. It was uncontested by the parties that at the material time the Russian law of civil procedure did not provide for any ordinary appeal against a decision by which the final judgement had been quashed by way of a supervisory review. In the absence of an effective remedy the Court concludes that it was the very act of quashing the final judgment of 10 March 1999 that triggered the start of the six-month time-limit for lodging this part of the application to the Court (see, *mutatis mutandis*, *Sardin v. Russia* (dec.), no. 69582/01, ECHR 2004-II). The Court further notes that the quashing of a final judgment is an instantaneous act, which does not create a continuing situation, even if it entails a re-opening of the proceedings as in the instant case (see *Sitokhova v. Russia* (dec.), no. 55609/00, 2 September 2004). In the present case the final judgment of 25 October 2004 in the part which had allegedly not been enforced was quashed by the Presidium of Pskov Regional Court on 12 March 2004, and ceased to be binding and enforceable. There is nothing in the present case to suggest that the applicant had not been aware of the judgment by 5 August

2004, the date of the examination of the Commissariat's extraordinary appeal against the amended judgment at the Pskov Town Court, at latest. However, it was not until 7 December 2005, more than six months after the decision had been quashed, that the applicant complained to the Court that the authorities had failed to enforce the judgment in the part providing for index-linking of the award.

27. It follows that this part of the application has been introduced out of time and must be rejected in accordance with Article 35 §§ 1 and 4 of the Convention.

IV. APPLICATION OF ARTICLE 41 OF THE CONVENTION

28. 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

29. The applicant claimed 3,000 euros (EUR) in respect of non-pecuniary damage. He did not make claims in respect of pecuniary damage. The Government submitted that the applicant's claim for non-pecuniary damage was not substantiated and that in any event the award should be in line with the Court's practice in similar cases.

30. Having regard to the nature of the breach in this case, 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 to the applicant.

B. Costs and expenses

31. The applicant claimed 318 Russian roubles (RUB) in postal expenses and EUR 300 for representation of his own case before the Court.

32. The Government argued that the applicant had substantiated with the postal receipts the expenses in the amount of RUB 309 only. They further contested the amount claimed for self-representation of the case by the applicant on the ground that the said amount of EUR 300 had not been actually paid by the applicant.

33. 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 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 award the sum of EUR 8 plus any tax that may be chargeable to the applicant, and to reject the remainder of the applicant's claims as regards costs and expenses as unsubstantiated.

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 quashing of the judgment in the applicant's favour on supervisory review admissible and the remainder of the application inadmissible;
2. *Holds* that there has been a violation of Article 6 of the Convention;
3. *Holds* that there is no need to examine the complaints under Article 13 of the Convention and Article 1 of Protocol No.1 of the Convention;
4. *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, the following amounts, plus any tax that may be chargeable to the applicant, to be converted into Russian roubles at the rate applicable at the date of settlement:
 - (i) EUR 2,000 (two thousand euros) in respect of non-pecuniary damage, and
 - (ii) EUR 8 (eight euros) in respect of costs and expenses;
 - (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;
5. *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