



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

FIRST SECTION

CASE OF MORDACHEV v. RUSSIA

(Application no. 7944/05)

JUDGMENT

STRASBOURG

25 February 2010

FINAL

25/05/2010

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

In the case of Mordachev v. Russia,

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

Nina Vajić, *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 4 February 2010,

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

PROCEDURE

1. The case originated in an application (no. 7944/05) 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 a Russian national, Mr Vladimir Vladimirovich Mordachev (“the applicant”), on 4 February 2005.

2. The applicant was represented by Ms N. Mukhlayeva, a lawyer practising in Astrakhan. 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 10 September 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 1951 and lives in the village of Tri Protoka in the Astrakhan Region.

5. On 6 December 2003 the applicant was dismissed from his position in a private company. He sued his former employer claiming reinstatement in the position and damages.

6. On 11 March 2004 the Krasnoyarskiy District Court of Astrakhan rejected his claims.

7. On 8 June 2004 the Astrakhan Regional Court set it aside on appeal, reinstated the applicant in his position and awarded him 157,427.98 Russian roubles (RUB) of outstanding salary, RUB 5,000 of non-pecuniary damages and RUB 4,000 of legal fees. The appeal judgment became final and enforceable on the same date.

8. On 28 June 2004 the defendant company lodged an application for supervisory review of the appeal judgment of 8 June 2004. On 12 July 2004 the local public prosecutor, who had earlier participated in the proceedings, lodged a similar application.

9. On 3 August 2004 a judge of the Astrakhan Regional Court referred the case to its Presidium.

10. On 18 August 2004 the Presidium of the Astrakhan Regional Court, having heard the parties and the prosecutor, quashed the appeal judgment of 8 June 2004 and reinstated the judgment of 11 March 2004, on the grounds that the appeal court had made wrong findings of fact.

II. RELEVANT DOMESTIC LAW

11. 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

12. The applicant complained under Article 6 of the Convention that the appeal judgment 8 June 2004 had been quashed by way of supervisory review on 18 August 2004. In so far as relevant, this Article 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...”

13. The Government contested that argument. They argued, *inter alia*, that the supervisory review had been compatible with the Convention as it was the only possibility to correct a judicial error, which was fundamental; that the public prosecutor participated in the hearings in accordance with the

law and therefore could apply for supervisory review, and this application was lodged and the case reviewed within a very short period of time.

A. Admissibility

14. The Court notes that the 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

15. 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).

16. The Court further 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).

17. In the present case the final and binding appeal judgment was quashed for wrong findings of fact, which is not in itself an exceptional circumstance warranting the quashing (see *Kot v. Russia*, no. 20887/03, § 29, 18 January 2007).

18. The respondent State's argument that the public prosecutor could have applied for supervisory review is irrelevant, as the other party to the proceedings had earlier applied for it anyway.

19. Accordingly, there has been a violation of Article 6 § 1 of the Convention.

II. APPLICATION OF ARTICLE 41 OF THE CONVENTION

20. 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

21. The applicant claimed 997,623.70 Russian roubles (RUB) in respect of pecuniary damage. He took the sums awarded to him by the final judgment (RUB 157,427.98 of outstanding salary, RUB 5,000 of non-pecuniary damages and RUB 4,000 of legal fees), and added the sums he could have received as a salary had the judgment not been quashed by way of supervisory review.

22. He also claimed 50,000 euros (EUR) in respect of non-pecuniary damage.

23. The Government noted that no satisfaction should be awarded since the applicant's rights were not violated and he had failed to substantiate his allegedly excessive and unreasonable claims.

24. The Court reiterates 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), 26 October 1984, § 12, Series A no. 85, p. 16, § 12 and *Dovguchits v. Russia*, no. 2999/03, § 48, 7 June 2007).

25. In the present case insofar as the applicant did not receive the money he had legitimately expected to receive under the quashed final appeal judgment, there is a causal link between the violations found and the applicant's claims in respect of pecuniary damage.

26. As regards the applicant's claims in respect of his future salary loss, however, they inevitably rely on highly speculative assumptions that veil them in a great deal of uncertainty (*Parolov v. Russia*, no. 44543/04, § 45, 14 June 2007).

27. The Court therefore can only award in respect of pecuniary damage the sums which would have been paid under the appeal judgment quashed by way of supervisory review (EUR 4,640).

28. The Court furthermore finds that the applicant has suffered non-pecuniary damage as a result of the violation found which cannot be compensated by the mere finding of a violation. Having regard to the circumstances of the cases and making its assessment on an equitable basis, the Court awards to applicant the sum of EUR 3,000 in respect of non-pecuniary damage.

B. Costs and expenses

29. The applicants also claimed RUB 4,000 for the costs and expenses incurred.

30. The Government asserted that the applicant had failed to substantiate the claims.

31. 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 68.

C. Default interest

32. 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 in respect of the quashing by way of supervisory review of the final appeal 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, the following amounts, to be converted into Russian roubles at the rate applicable at the date of settlement:
 - (i) EUR 4,640 (four thousand six hundred and forty euros), in respect of pecuniary damage;
 - (ii) EUR 3,000 (three thousand euros), plus any tax that may be chargeable, in respect of non-pecuniary damage;
 - (iii) EUR 68 (sixty eight euros), plus any tax that may be chargeable to the applicant, 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 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 25 February 2010, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Søren Nielsen
Registrar

Nina Vajić
President