



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

FIRST SECTION

CASE OF PANASENKO v. RUSSIA

(Application no. 9549/05)

JUDGMENT

STRASBOURG

1 April 2010

FINAL

01/07/2010

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

In the case of Panasenکو 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 Hajiyeو,

Giorgio Malinverni,

George Nicolaou, *judges*,

and André Wampach, *Deputy Section Registrar*,

Having deliberated in private on 11 March 2010,

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

PROCEDURE

1. The case originated in an application (no. 9549/05) 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 Grigoriy Fedorovich Panasenکو (“the applicant”), on 7 February 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 15 May 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 1949 and lives in Shakhty, the Rostov Region.

5. In the 1990s the applicant subscribed to a State savings scheme which would entitle him to receive a passenger car in 1993. He paid the car's full value but never received the car.

6. On 17 July 2002 the applicant received 31,375.48 Russian roubles (RUB) of compensation in accordance with the State Programme for the

redemption of the State internal debt (see paragraphs 20-22 below). This amount equalled to 33.41% of the car value.

7. The applicant brought the court action against the authorities, claiming the full monetary value of the promissory notes for purchasing of a car.

8. On 1 April 2003 the Ust-Yanskiy District Court of the Sakha Republic (Yakutiya) allowed the applicant's action, having found that the State had failed in its obligation to grant the applicant a car and had only provided a partial compensation instead. The court further held that a unilateral change of the conditions of the redemption of the commodity bonds by the State in accordance with the Federal Law of 2 June 2000 and the respective State Programme (see below) did not “comply with the constitutional principles and principles of the civil law”, because a partial payment of a car's value did not constitute a sufficient remedy of the damage caused to the bond holders. The court awarded the applicant RUB 66,693.35, that is the full car price less the amount already paid to him in July 2002, to be paid at the expense of the Federal Treasury.

9. On 30 April 2003 the Supreme Court of the Sakha (Yakutiya) Republic upheld the judgment and it became final. The award remained unenforced.

10. In June 2004 the respondent authority lodged a request for supervisory review of the case with the Presidium of the Supreme Court of the Sakha (Yakutiya) Republic.

11. On 14 October 2004 the Presidium reviewed the lower courts' judgments by way of the supervisory review proceedings and established, in particular, that the lower courts had failed to take into account the provisions of the amended State Commodity Bonds' Act and the Government's Resolution no. 1006. The Presidium ruled as follows:

“Having regard to the substantive violation of the material law, the judicial decisions taken in the case under consideration cannot be held lawful and well-founded and should be quashed [...].”

12. The Presidium annulled the judgment of 1 April 2003 and the appeal decision of 30 April 2003 and delivered a new judgment in which it dismissed the applicant's claim in full.

II. RELEVANT DOMESTIC LAW

A. Review of the compliance of the federal laws with the Constitution

13. According to Article 15 § 1 of the Constitution of the Russian Federation, the Constitution has the supreme juridical force, direct action and shall be used on the whole territory of the Russian Federation. Laws

and other legal acts adopted in the Russian Federation shall not contradict the Constitution.

14. In accordance with Article 125 § 4 of the Constitution, the Constitutional Court of the Russian Federation reviews constitutionality of the law applied or due to be applied in a specific case in accordance with procedures established by federal law, upon requests of the courts.

15. By the Ruling no. 19-II of 17 June 1998 the Constitutional Court of the Russian Federation held that it had exclusive competence to decide whether federal or regional laws violated the Constitution of the Russian Federation. Ordinary courts were not entitled to rule on the constitutionality of federal laws. In case of doubt as to whether a law complied with the Constitution, they should direct an inquiry to the Constitutional Court.

B. Redemption of the State commodity bonds

16. The State Commodity Bonds Act (federal law no. 86-FZ of 1 June 1995) provided that the State commodity bonds, including special-purpose settlement orders, were to be recognised as the State internal debt (section 1). They were to be enforced in accordance with the general principles of the Civil Code (section 2). The relevant parts of section 3 read as follows:

“The Government of the Russian Federation shall draft the State Programme for the redemption of the State internal debt... The Programme shall provide for the terms of redemption of State commodity bonds that would be convenient for citizens, including, of their choice: provision of goods indicated in ... special-purpose bonds for the purchase of passenger cars ...; redemption of State commodity bonds at consumer prices prevailing at the moment of the redemption...”

17. On 2 June 2000, section 3 of the Act was amended to read, in the relevant parts, as follows:

“To establish that the repayment of the State internal debt of the Russian Federation under State commodity bonds ... is carried out in 2001-2004 in accordance with the State Programme...”

To set, in the above-mentioned Programme, the following sequence and terms of redemption of State commodity bonds:

- [...] in respect of bearers of special-purpose settlement orders that gave the right to purchase passenger cars in 1993-1995 – payment of monetary compensation equal to a part of the value of the car described in the order, as determined on account of the percentage of the part of the full value of car paid by the owner by 1 January 1992 (in accordance with the price scales in force until 1 January 1992), as well as the price of the cars determined in co-ordination with car manufacturers at the moment of redemption”

18. On 27 December 2000 the Government approved, by Resolution no. 1006, the State Programme for the redemption of the State internal debt

of the Russian Federation arising from State commodity bonds in the period of 2001-2004. Paragraph 2 of the Programme set out that the State commodity bonds were to be redeemed by way of payment of pecuniary compensation.

THE LAW

I. ALLEGED VIOLATION OF ARTICLE 1 OF PROTOCOL No. 1 TO THE CONVENTION

19. The applicant complained under Article 1 of Protocol No. 1 to the Convention about the quashing of the judgments of 1 and 30 April 2003 in his favour on supervisory review. This Article, in so far as relevant, reads as follows:

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.”

20. The Government argued that the supervisory review had not breached the Convention. It had been initiated by a party to the proceedings within less than one year from the judgments' entry into force. The supervisory review had aimed at remedying a fundamental defect of the first instance and appeal proceedings. The lower courts were not competent to rule on compliance of the provisions of the Federal Law of 2 June 2000 with the Constitution of the Russian Federation. Instead, they should have introduced a request for review of the constitutionality of the Federal Law in question with the Constitutional Court and suspend the proceedings pending delivery of the relevant ruling. However, they failed to make such request, and no suspension of the proceedings took place. Therefore, the examination of the applicants' cases before the lower courts was tarnished by a fundamental defect, namely abuse of power by the courts and jurisdictional error. In these circumstances, the quashing was the only available way to rectify the fundamental defect and to restore legal certainty in the present cases. The Government further reiterated that in July 2002 the applicant received compensation from the Ministry of Finance in the amount established by the domestic law. In their view, his subsequent claim in respect of the full monetary value of the car had been unfounded and therefore he had not had a “possession” within the meaning of Article 1 of Protocol No. 1.

21. The applicant maintained his claim arguing that he had been entitled to obtain the full monetary value of the car, but had never received that sum.

A. Admissibility

22. 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

23. The Court reiterates that the existence of a debt confirmed by a binding and enforceable judgment constitutes the beneficiary's "possession" within the meaning of Article 1 of Protocol No. 1. Quashing of such a judgment amounts to an interference with his or her right to peaceful enjoyment of possessions (see, among other authorities, *Brumărescu v. Romania* [GC], no. 28342/95, § 74, ECHR 1999-VII, and *Androsov v. Russia*, no. 63973/00, § 69, 6 October 2005).

24. At the outset the Court notes that in the Government's view the annulment of the judgments on supervisory review was required by the need to rectify a fundamental defect in the initial domestic proceedings. The Court reiterates its constant approach that a jurisdictional error, a serious breach of court procedure or abuses of power may, in principle, be regarded as a fundamental defect and therefore justify the quashing (see, *mutatis mutandis*, *Luchkina v. Russia*, no. 3548/04, § 21, 10 April 2008). However, nothing in the text of the Presidium's ruling of 14 October 2004 enables the Court to conclude that the lower courts' judgments were indeed quashed because these courts had ruled on the constitutionality of the federal law in excess of their jurisdiction. Neither the alleged jurisdictional error nor abuse of competence was cited by the Presidium as a ground for the annulment of the judgments of 1 and 30 April 2003. On the contrary, it clearly follows from the wording of the supervisory instance ruling that the sole ground for the quashing was the misinterpretation and incorrect application of the provisions of the State Commodity Bonds Act by the courts. Furthermore, it was not claimed before the supervisory-review instance by the respondent authority that the previous proceedings had been tarnished by a fundamental defect, such as, in particular, a jurisdictional error, serious breaches of court procedure or abuses of power (see *Luchkina*, cited above). Such argument was only advanced in the Government's observations. In the absence of any reference to the ground for quashing cited by the Government in the texts of the supervisory-instance ruling of 14 October 2004, the Court is unable to conclude that the quashing was caused, and even less justified by the

substantive jurisdictional error by the lower courts. It therefore rejects the Government's argument.

25. The Court further observes that the applicant obtained a binding and enforceable judgment in his favour, by the terms of which the State was to pay him a substantial amount of money at the expense of the Federal Treasury. The Court further reiterates that the existence of a debt confirmed by a binding and enforceable judgment constitutes the beneficiary's "possession" within the meaning of Article 1 of Protocol No. 1 (see, among other authorities, *Androsov*, cited above, § 69). However, he was prevented from receiving the award through no fault of his own. The quashing of the enforceable judgment frustrated the applicant's reliance on a binding judicial decision and deprived him of an opportunity to receive the money he had legitimately expected to receive. In these circumstances, even assuming that the interference was lawful and pursued a legitimate aim, the Court considers that the quashing of the enforceable judgment in the applicant's favour by way of supervisory review placed an excessive burden on the applicant and was incompatible with Article 1 of the Protocol No. 1.

26. There has therefore been a violation of that Article.

II. OTHER ALLEGED VIOLATIONS OF THE CONVENTION

27. The applicant complained under Article 13 of the Convention that he had no effective remedy against the quashing of his final judgment on supervisory review and under Article 1 of Protocol No. 1 about the State's failure to comply with its obligation to provide a car.

28. The Court has examined these complaints as submitted by the applicant. However, having regard to all the material in its possession, it finds that these complaints do not disclose any appearance of a violation of the rights and freedoms set out in the Convention or its Protocols. It follows that this part of the application must be rejected as being manifestly ill-founded, pursuant to Article 35 §§ 3 and 4 of the Convention.

III. 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 100,000 United States dollars (USD) in respect of non-pecuniary damage.

31. The Government challenged the claim as unsubstantiated and manifestly excessive.

32. Having regard to the nature of the breach in this case, making its assessment on an equitable basis, the Court awards the applicant 3,000 euros (EUR) in respect of non-pecuniary damage, plus any tax that may be chargeable, and dismisses the remainder of his claims for just satisfaction.

B. Costs and expenses

33. The applicant did not claim costs or expenses and there is accordingly no call to make an 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 under Article 1 of Protocol No. 1 concerning the quashing of the final judgment in the applicant's favour admissible and the remainder of the application inadmissible;
2. *Holds* that there has been a violation of Article 1 of Protocol No. 1 to the Convention;
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 3,000 (three thousand 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 1 April 2010, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

André Wampach
Deputy Registrar

Christos Rozakis
President