



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

FIRST SECTION

CASE OF GARAGULYA v. RUSSIA

(Application no. 12157/06)

JUDGMENT

STRASBOURG

20 May 2010

FINAL

20/08/2010

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

In the case of Garagulya 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,

Sverre Erik Jebens, *judges*,

and Søren Nielsen, *Section Registrar*,

Having deliberated in private on 29 April 2010,

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

PROCEDURE

1. The case originated in an application (no. 12157/06) 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 Grigoriy Vasilyevich Garagulya (“the applicant”), on 19 February 2006.

2. The applicant was represented by Mr I. Sivoldayev, a lawyer practising in Voronezh. The Russian Government (“the Government”) were represented by Mr G. Matyushkin, the Representative of the Russian Federation at the Court.

3. The applicant complained of the quashing on supervisory review of a binding and enforceable judgment delivered in his favour in 2002.

4. On 30 March 2009 the President of the First Section decided to communicate the case to the respondent 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

5. The applicant was born in 1925 and lives in Voronezh.

6. The facts of the case, as submitted by the applicant, may be summarised as follows.

7. The applicant sued the local branch of the Pension Fund claiming that his monthly pension had been calculated in a wrong manner.

8. On 10 September 2002 the Levoberezhny District Court of Voronezh granted his claims and ordered that the pension due to the applicant be recalculated and increased.

9. On 19 December 2002 the Voronezh Regional Court dismissed the respondent's appeal and upheld the first-instance judgment, which became final on the same day.

10. On 23 December 2005 the Supreme Court of Russia granted the respondent's application for supervisory review and transferred the case for a fresh examination on the merits to the Presidium of the Voronezh Regional Court.

11. On 1 February 2006 the Presidium of the Voronezh Regional Court quashed the judgments of 10 September and 19 December 2002 and delivered a new judgment dismissing the applicant's claims in full.

12. As from February 2006, the amount of the applicant's monthly pension has been decreased by 10,000 Russian roubles (RUB).

II. RELEVANT DOMESTIC LAW

13. 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 al.*, §§ 33-42, 3 May 2007).

THE LAW

I. ALLEGED VIOLATION OF ARTICLE 6 AND ARTICLE 1 OF PROTOCOL No. 1

14. The applicant complains under Article 6 of the Convention and Article 1 of Protocol No. 1 that the final judgment of 19 December 2002 was quashed by way of supervisory review. In so far as relevant, these provisions read as follows:

Article 6 § 1

“In the determination of his civil rights and obligations ..., everyone is entitled to a fair and public hearing within a reasonable time 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...”

A. Admissibility

15. The Court considers 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. Arguments by the parties*

16. The Government argued that the supervisory-review proceedings resulting in the quashing of the judgments at issue were lawful: they were initiated by the respondent within the time-limits provided for by domestic law. The Government submitted that the Presidium of the Voronezh Regional Court quashed the judgments of 10 September and 19 December 2002 with a view to correcting the “fundamental defect” committed by the lower courts, in particular their misapplication of relevant domestic law. The Government lay special emphasis on the fact that, by contrast with the *Ryabykh* case (see *Ryabykh v. Russia*, no. 52854/99, § 54, ECHR 2003-IX), the supervisory-review proceedings had been initiated by a party to the case, the local branch of the Pension Fund. Finally, the Government maintained that the judgments had been quashed in the applicant's favour as the Presidium's decision entitled him to a higher pension. They concluded that there had been no violation of the applicant's rights under Article 6 § 1 of the Convention or Article 1 of Protocol No. 1.

17. The applicant replied that the judgments of 10 September and 19 December 2002 had been quashed more than three years after becoming binding. He contested the Presidium's finding of the “fundamental defect” allegedly committed by the lower courts in the original judgments. The applicant considered that their quashing had irretrievably impaired the principle of legal certainty and violated his right to peaceful enjoyment of possessions, as the amount of his retirement pension had been reduced by three thereafter.

2. The Court's assessment

18. The Court reiterates that legal certainty, which is one of the fundamental aspects of the rule of law, presupposes respect for the principle of *res judicata*, that is the principle of the finality of judgments. A departure from that principle is justified only when made necessary by circumstances of a substantial and compelling character, such as correction of fundamental defects or miscarriage of justice (see *Brumărescu v. Romania* [GC], no. 28342/95, § 61, ECHR 1999-VII; *Ryabykh*, cited above, §§ 51-52).

19. The Court further recalls that it has already found numerous violations of the Convention on account of the quashing of binding and enforceable judgments by way of supervisory review under the Code of Civil Procedure as in force at the material time. Some of these violations were found in similar and, on certain occasions, virtually identical circumstances involving retired servicemen (see *Sergey Petrov v. Russia*, no. 1861/05, 10 May 2007; *Parolov v. Russia*, no. 44543/04, 14 June 2007 and *Kulkov and Others*, nos. 25114/03, 11512/03, 9794/05, 37403/05, 13110/06, 19469/06, 42608/06, 44928/06, 44972/06 and 45022/06, 8 January 2009). In those cases the Court found that the quashing of final judgments in the applicants' favour was not justified by circumstances of compelling and exceptional character. The Court finds no reason to come to a different conclusion in the present case.

20. The arguments submitted by the Government in the present case were addressed in detail and dismissed in previous similar cases. Misapplication of material law by the lower courts does not in itself justify the quashing of binding and enforceable judgments on supervisory review, even if the latter was exercised within the one-year time-limit set in domestic law (*Kot v. Russia*, no. 20887/03, § 29, 18 January 2007). Nor can the Court discern any fundamental defect in the present case arising from the specific grounds put forward by the Government. In the present case, like in all others, the supervisory review was prompted by higher courts' disagreement about the applicant's entitlement to social benefits, which was determined in fair adversarial proceedings at the first-instance and further confirmed on appeal (compare *Protsenko v. Russia*, no. 13151/04, §§ 30-34, 31 July 2008, and *Tishkevich v. Russia*, no. 2202/05, §§ 25-26, 4 December 2008). Finally, while the aim of uniform application of domestic law may be achieved through various legislative and adjudicative means, it cannot justify disregard for the applicant's legitimate reliance on *res judicata* (see *Kulkov and Others*, cited above, § 27).

21. The Court accordingly concludes that the quashing of the binding and enforceable judgment in the applicant's favour amounts to a breach of the principle of legal certainty in violation of Article 6 of the Convention.

22. The Court further reiterates that the binding and enforceable judgments created an established right to payment in the applicant's favour, which is considered as "possession" within the meaning of Article 1 of

Protocol No. 1 (see *Vasilopoulou v. Greece*, no. 47541/99, § 22, 21 March 2002). The quashing of the judgments in breach of the principle of legal certainty frustrated the applicant's reliance on the binding judicial decisions and deprived him of an opportunity to receive the judicial awards he had legitimately expected to receive (see *Dovguchits v. Russia*, no. 2999/03, § 35, 7 June 2007). There has accordingly been also a violation of that Article 1 of Protocol No. 1.

II. APPLICATION OF ARTICLE 41 OF THE CONVENTION

23. 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

24. The applicant claimed 4,000 euros (EUR) in respect of non-pecuniary damage. He did not claim pecuniary damage.

25. The Government considered that the applicant's claim for non-pecuniary damage was unsubstantiated.

26. The Court finds that the applicant has suffered non-pecuniary damage as a result of the violations found which cannot be compensated by the mere finding of a violation. Having regard to the circumstances of the case and making its assessment on an equitable basis, as required by Article 41 of the Convention, the Court awards to the applicant a sum of EUR 3,000 in respect of non-pecuniary damage, plus any tax that may be chargeable on that amount.

B. Costs and expenses

27. The applicant, who was represented by a lawyer, claimed EUR 2,000 for legal costs. He attached the lawyer's bill in support of his claim.

28. The Government considered the claims as unsubstantiated as the applicant provided no proof of payment.

29. 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 information in its possession and the above criteria, the Court decides to award to the applicant the sum of EUR 1,000, plus any tax that may be chargeable on that amount.

C. Default interest

30. 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 the quashing of the binding and enforceable judgments in the supervisory-review proceedings admissible;
2. *Holds* that there has been a violation of Article 6 of the Convention and of Article 1 of Protocol No. 1 on account of the quashing of the judgments in the applicant's favour by way of supervisory review;
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 3,000 (three thousand euros) in respect of non-pecuniary damage plus any tax that may be chargeable;
 - ii. EUR 1,000 (one thousand euros) in respect of costs and expenses, plus any tax that may be chargeable to the applicant;
 - (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.

Done in English, and notified in writing on 20 May 2010, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Søren Nielsen
Registrar

Christos Rozakis
President