

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

FIRST SECTION

CASE OF KIRILENKO v. RUSSIA

(Application no. 38597/04)

JUDGMENT

STRASBOURG

5 April 2011

This judgment is final but it may be subject to editorial revision.



In the case of Kirilenko v. Russia,

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

George Nicolaou, *President,*
Anatoly Kovler,
Mirjana Lazarova Trajkovska, *judges,*

and André Wampach, *Deputy Section Registrar,*

Having deliberated in private on 15 March 2011,

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

PROCEDURE

1. The case originated in an application (no. 38597/04) 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 Pyotr Vladimirovich Kirilenko ("the applicant"), on 5 October 2004.

2. The applicant was represented by Ms N. Yurchak. The Russian Government ("the Government") were represented by Mr P. Laptev and subsequently Mrs V. Milinchuk, both the Representatives of the Russian Federation at the European Court of Human Rights.

3. The applicant complained of non-enforcement of a binding and enforceable judgment delivered in his late father's favour in 2002 and its subsequent quashing by way of supervisory review.

4. On 16 January 2006 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 their admissibility (Article 29 § 1). On 19 June 2007 the Court put additional questions to the parties.

5. In accordance with Protocol No. 14, the application is assigned to a Committee of three Judges.

THE FACTS

I. THE CIRCUMSTANCES OF THE CASE

6. The applicant, Mr Pyotr Vladimirovich Kirilenko, is a Russian national who was born in 1985 and lives in the village of Sreznevo in the Ryazan Region.

7. The facts of the case, as submitted by the parties, may be summarised as follows.

A. Civil proceedings

8. On 7 May 2001 Neryungri Town Court of the Sakha (Yakutiya) Republic ("the town court") ordered the Russian Government and the Savings Bank to jointly pay 106,989.50 Russian roubles (RUB) to the applicant's father.

9. On 18 June 2001 the Supreme Court of the Sakha (Yakutiya) Republic ("the Supreme Court") upheld the judgment on appeal.

10. On 30 August 2001 half of the amount, i.e. RUB 53,494.75, was credited to the account of Ms Yu., the representative of the applicant's father.

11. On 16 May 2002 the Presidium of the Supreme Court of the Sakha (Yakutiya) Republic ("the Presidium") quashed those judgments and remitted the case to the town court.

12. By a judgment of 26 June 2002, the town court ordered the Treasury to pay RUB 53,494.54 to the applicant's father, which corresponded to the difference between the amount awarded on 7 May 2001 and the amount paid out on 30 August 2001.

13. On 21 August 2002 the Supreme Court upheld the judgment on appeal.

14. On 7 October 2002 the applicant's father submitted a writ of enforcement to the Ministry of Finance.

15. On 9 October 2002 the applicant's father died.

16. Having learnt about his father's death and being his sole heir, the applicant, represented by Ms Yu., sought an extension of the time-limit for claiming his right to receive the debt under the judgment of 26 June 2002. On 30 March 2005 the town court granted the extension. On 1 June 2005 a public notary issued a succession certificate, confirming that the applicant had acquired the right to receive the judgment debt.

B. Supervisory review and ensuing proceedings

17. Since 2002 the Treasury and the Ministry of Finance have sought supervisory review of the judgment of 26 June 2002, as upheld on 21 August 2002.

18. On 13 May 2003 the Supreme Court refused the application for supervisory review submitted by the Treasury.

19. On 22 May 2003 the Ministry of Finance informed Ms Yu. that it had applied for supervisory review of the judgment of 26 June 2002 and therefore would not execute it pending a decision on the application. On

3 September 2003 the Ministry of Finance submitted another application for supervisory review. It appears that these applications were unsuccessful.

20. In 2006 the Ministry of Finance filed a new application for supervisory review, asking the town court to extend the expired time-limit for introduction of their application.

21. On 8 August 2006 the town court extended the time-limit for unspecified reasons and accepted the Ministry's application for consideration.

22. On 30 November 2006 the Presidium quashed the judgment of 26 June 2002, as upheld on 21 August 2002, and remitted the case for a fresh examination to the town court. The applicant was not notified of the date of the hearing and was not provided with a copy of the respondent's review application.

23. On 25 December 2006 Ms Yu. submitted a request to review the above decision on the ground that no copy of the respondent's review application had been served on her. It appears that the request remained without response.

24. The town court re-examined the case on 25 May 2007 and rejected the claims. Ms Yu. attended the hearing and produced the applicant's succession certificate and the town court's decision of 30 March 2005. It does not appear that the parties appealed against the judgment.

II. RELEVANT DOMESTIC LAW

A. Supervisory review

25. Under Article 376 of the Code of the Civil Procedure of the Russian Federation of 14 November 2002 (in force from 1 February 2003), judicial decisions that have become legally binding, with the exception of judicial decisions by the Presidium of the Supreme Court of the Russian Federation, may be appealed against to a court exercising supervisory review, by parties to the case and by other persons whose rights or legal interests have been adversely affected by the judicial decisions concerned (§ 1). Judicial decisions may be appealed against to a court exercising supervisory review within one year after they became legally binding (§ 2). By its ruling of 5 February 2007, the Constitutional Court interpreted Article 376 § 1 as allowing the above-mentioned persons to apply for supervisory review only after having exhausted all available ordinary appeals.

26. For the summary of other applicable provisions of the domestic law, see *Murtazin v. Russia*, no. 26338/06, §§ 14-18, 27 March 2008.

B. Succession

27. Under the Code of Civil Procedure of 14 November 2002, if a party dies during the proceedings, the court may allow its successor to pursue the proceedings. Succession is possible at any stage of the proceedings (Article 44 § 1).

28. Under Part 3 of the Civil Code, the succession includes the deceased's property or pecuniary rights or claims but does not include rights or obligations intrinsically linked to the deceased's person, such as alimony or a right to compensation for health damage (Article 1112). An heir should claim and accept succession, as well as obtain a succession certificate from a public notary (Articles 1152, 1162).

C. Enforcement proceedings

29. Under the Enforcement Act (Federal Law no. 229-FZ of 2 October 2007), if the judgment debtor has died the bailiff should obtain the appointment of the late debtor's successor as the judgment debtor (section 52). All measures taken within the enforcement proceedings before such appointment should be binding for the successor to the extent that they were binding for the original debtor (ibid).

THE LAW

I. *LOCUS STANDI*

A. The parties' submissions

30. The Government submitted that the applicant had no standing to bring the case before the Court. The applicant had not inherited the claim in respect of the judgment debt since he had not registered succession as required by the Civil Code. Moreover, the applicant's representative had recovered the judgment debt on 30 August 2001 and the applicant had an opportunity to dispose thereof. Lastly, the applicant had not informed the domestic courts of his father's death and had not been a party to the domestic proceedings. His representative had always acted on his father's behalf before the domestic courts. Therefore, the Government stated that the applicant had abused the right of application and could not claim to be a "victim" within the meaning of Article 34 of the Convention.

31. The applicant maintained his submissions. He argued that he was entitled to claim the judgment debt in accordance with the succession certificate issued by the notary on 1 June 2005.

B. The Court's assessment

32. The Court notes that the applicant lodged his application with the Court after the death of his father (see, *a contrario*, *Streltsov and other "Novocherkassk military pensioners" cases v. Russia*, nos. 8549/06 et al., § 32, 29 July 2010, where applicants wished to pursue the proceedings brought before the Court by their deceased relatives). Referring to Article 6 and Article 1 of Protocol No. 1, he complained of the non-enforcement and subsequent quashing of the judgment delivered in his late father's favour on 26 June 2002, final as of 21 August 2002. He also alleged that the authorities had failed to afford him an opportunity to be present at the supervisory-review hearing and study the respondent's review request. In view of the above, the Court considers that an issue may consequently arise as to the applicant's standing to bring the proceedings before the Court.

33. As regards the applicant's victim status, the Court recalls that under Article 34 of the Convention, "the Court may receive applications from any person ... claiming to be the victim of a violation by one of the High Contracting Parties of the rights set forth in the Convention or the Protocols thereto ...". The Court interprets the concept of "victim" autonomously and irrespective of domestic concepts such as those concerning an interest or capacity to act *(*see *Micallef v. Malta* [GC], no. 17056/06, § 48, ECHR 2009-..., and *Sanles Sanles v. Spain* (dec.), no. 48335/99, ECHR 2000-XI).

34. Turning to the facts of the present case, the Court observes that at the latest on 1 June 2005, the date of delivery of the succession certificate, the applicant inherited his deceased father's rights under the binding and enforceable judgment. His father died on 9 October 2002. Thereafter the applicant legitimately considered that the judgment debt would be paid to him as the sole heir, which was confirmed by the above-mentioned succession certificate. Thus, between the acknowledgment of the applicant's succession rights on 1 June 2005 and the quashing of the judgment on 30 November 2006, the judgment remained unenforced for nearly one year and six months. Given that the Court has already found that the State's failure to pay off a judgment debt for more than a year is incompatible with the Convention requirements (see, among others, *Kozodoyev and Others v. Russia*, no. 2701/04 et al., § 11, 15 January 2009), the Court does not find it necessary to examine whether the applicant was affected by non-enforcement prior to 1 June 2005. The applicant thus may legitimately claim to be a "victim" of non-enforcement.

35. In these circumstances, the Court considers that the quashing of the judgment of 26 June 2002 by way of supervisory review personally affected

the applicant, frustrating his reliance on binding and enforceable judgment (compare *Streltsov and other "Novocherkassk military pensioners" cases*, cited above, § 40). The Court is therefore persuaded that the applicant may also legitimately claim to be a "victim" of the violation of the legal certainty requirement. Furthermore, the Court notes that the allegations of procedural unfairness in the supervisory-review proceedings are closely related to the legal-certainty complaint and are, as such, concerned the determination of the applicant's rights. Therefore, the Court is prepared to recognise that the applicant had the standing as regards these grievances.

36. In view of the above, and having particular regard to the close interrelation of the complaints in the present case, the Court considers that the applicant may claim to be a "victim" for the purposes of Article 34 of the Convention and has a legitimate interest in pursuing the complaints under Article 6 and Article 1 of Protocol No. 1.

II. ALLEGED VIOLATION OF ARTICLE 6 AND ARTICLE 1 OF PROTOCOL No. 1 ON ACCOUNT OF SUPERVISORY REVIEW

37. The applicant complains under Article 1 of Protocol No. 1 about the quashing of the judgment of 26 June 2002, final as of 21 August 2002, by way of supervisory review. In particular, he alleges defective notification of the review hearing. He further contends that he was not able to attend it and present his arguments and that he was not provided with a copy of the other party's review request.

38. The Court considers that the above complaints fall to be examined under Article 6 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 and public 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..."

A. Submissions by the parties

39. As regard the supervisory-review proceedings resulting in the quashing of the judgment of 26 June 2002, as upheld on 21 August 2002,

the Government argued that they had been lawful and justified. They aimed at remedying procedural and factual errors and correcting misapplication of relevant domestic law by the lower courts.

40. As regards the failure to notify the applicant of the review hearing, the Government disputed that his rights had been violated since the applicant had not been a party to the proceedings. The Government further affirmed that the applicant's representative had been apprised of all hearings, without enclosing any relevant notification with their submissions.

41. The Government did not offer any specific comment regarding the lack of opportunity for the applicant to comment on the respondent's review request.

42. The applicant maintained his complaints. He argued that the judgment of 26 June 2002, as upheld on 21 August 2002, was lawful. The Presidium had quashed the judgment more than four years after it had become binding. The reason for the quashing was the mere disagreement of the respondent authority with the conclusions of the lower courts.

B. The Court's assessment

1. Admissibility

43. The Court considers that these complaints are not manifestly ill-founded within the meaning of Article 35 § 3 of the Convention. It further notes that they are not inadmissible on any other grounds. They must therefore be declared admissible.

2. Merits

(a) Supervisory review: substantive issues under Article 6 § 1 and Article 1 of Protocol No. 1

44. 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, and *Ryabykh v. Russia*, no. 52854/99, §§ 51-52, ECHR 2003-IX).

45. 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 circumstances (see *Sergey Petrov v. Russia*,

no. 1861/05, 10 May 2007; *Parolov v. Russia*, no. 44543/04, 14 June 2007; and *Kulkov and Others*, no. 25114/03 et al., 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.

46. 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 a monetary award, which was determined in fair adversarial proceedings at the fist-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).

47. 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.

48. The Court further reiterates that the binding and enforceable judgment 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 judgment in breach of the principle of legal certainty frustrated the applicant's reliance on the binding judicial decision and deprived him of an opportunity to receive the judicial award 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.

(b) Supervisory review: procedural issues under Article 6 § 1

49. With regard to the complaint about the procedural defects of the hearing before the Presidium, the Court finds that, having concluded that there had been an infringement of the applicant's "right to a court" by the very use of the supervisory review procedure, it is not necessary to consider whether the procedural guarantees of Article 6 of the Convention were

available in those proceedings (see, for example, *Volkova v. Russia*, no. 48758/99, § 39, 5 April 2005, and *Ryabykh*, cited above, § 59).

III. ALLEGED VIOLATION OF ARTICLE 6 § 1 AND ARTICLE 1 OF PROTOCOL No. 1 ON ACCOUNT OF NON-ENFORCEMENT

50. The applicant complains under Article 1 of Protocol No. 1 about the non-enforcement of the judgment of 26 June 2002, as upheld on 21 August 2002.

51. The Court considers that the above complaint falls to be examined under Article 6 and Article 1 of Protocol No. 1. The relevant parts of these provisions are cited above.

A. Submissions by the parties

52. The Government argued that the applicant's rights under Article 6 § 1 and Article 1 of Protocol No. 1 had not been breached by the non-enforcement of the judgment of 26 June 2002 since he had not been a "victim" within the meaning of the Convention (see paragraph 30). Moreover, the applicant's representative had recovered the judgment debt on 30 August 2001 and the applicant had an opportunity to dispose thereof. The complaint was thus manifestly ill-founded.

53. The applicant maintained his claim. He pointed out that the judgment of 26 June 2002 should have been enforced immediately and that he had not been at fault as regards the non-execution of the award.

B. The Court's assessment

1. Admissibility

54. The Court has already found that the applicant had the standing to bring the claims under Article 6 § 1 and Article 1 of Protocol No. 1 before the Court (see paragraphs 32-

36). The Court further notes that the payment made on 30 August 2001 represented partial enforcement of the judgment of 7 May 2001, final as of 18 June 2001 (see paragraphs 8-10). The remaining part should have been paid to the applicant pursuant to the judgment of 26 June 2002 (see paragraph 12), which remained unexecuted until its subsequent quashing.

55. The Court further notes that the applicant's non-enforcement 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.

2. Merits

56. The Court reiterates that an unreasonably long delay in the enforcement of a binding judgment may breach the Convention (see *Burdov v. Russia*, no. 59498/00, ECHR 2002-III). In the case at hand the Court has already found that between the acknowledgment, on 1 June 2005, of the applicant's rights under the judgment of 26 June 2002 and its quashing on 30 November 2006, the judgment stayed inoperative for nearly one year and six months (see paragraph 34). Such a delay is incompatible with the Convention requirements (see, among others, *Kozodoyev and Others,* cited above, § 11).

57. The Court reiterates that the quashing of a judgment in a manner which has been found to have been incompatible with the principle of legal certainty and the applicant's "right to a court" cannot be accepted as justification for the failure to enforce that judgment (see *Sukhobokov v. Russia*, no. 75470/01, § 26, 13 April 2006). Therefore, it was incumbent on the State to abide by the terms of the enforceable judgment in the applicant's favour until at least the date of its quashing (see *Velskaya v. Russia*, no. 21769/03, § 18, 5 October 2006).

58. There has, accordingly, been a violation of Article 6 § 1 of the Convention and Article 1 of Protocol No. 1 in the applicant's respect.

IV. APPLICATION OF ARTICLE 41 OF THE CONVENTION

59. 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

1. Pecuniary damage

60. The applicant claimed 1,585 euros (EUR) which represented the equivalent in euros of the judgment debt. He did not claim any interest thereon.

61. The Government contested the applicant's entitlement to the judgment debt.

62. The Court recalls that the most appropriate form of redress in respect of the violations found would be to put the applicants as far as possible in the position they would have been if the Convention requirements had not been disregarded (see *Piersack v. Belgium* (Article 50), 26 October 1984, Series A no. 85, p. 16, § 12, and, *mutatis mutandis, Gençel v. Turkey*, no. 53431/99, § 27, 23 October 2003). The Court observes that the judgment in the applicant's favour had remained unenforced until its quashing and he was thus prevented from receiving the amount he had legitimately expected to receive under that judgment. Accordingly, the Court considers appropriate to award the applicant the equivalent in euros of the sum that he would have received if the judgment in his favour had not been quashed (see *Bolyukh v. Russia*, no. 19134/05, § 39, 31 July 2007). The Court awards the applicant the equivalent in euros of the unenforced judgment debt as claimed, i.e. EUR 1,585, plus any tax that may be chargeable on that amount. Since the applicant did not claim interest, the Court does not consider it necessary to grant any amount in this respect of its own motion.

2. Non-pecuniary damage

63. The applicant claimed 100,000 United States dollars (USD) in respect of non-pecuniary damage.

64. The Government contested the claim as unsubstantiated.

65. Having regard to the nature of the breach in this case, making its assessment on an equitable basis, the Court awards to the applicant the 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

66. The applicant also claimed 21,109 Russian roubles (RUB) in respect of costs and expenses. In support of his claim he submitted a number of postal receipts and lawyer's bills.

67. The Government considered that only a part of expenses amounting to RUB 9,300 was justified.

68. 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 350, plus any tax that may be chargeable.

C. Default interest

69. 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. *Holds* that the applicant may claim to be a "victim" for the purposes of Article 34 of the Convention;

2. *Declares* the application admissible;

3. *Holds* that there has been a violation of Article 6 of the Convention and Article 1 of Protocol No. 1 in respect of the non-execution of the judgment 26 June 2002, final as of 21 August 2002, in the applicant's favour;

4. *Holds* that there has been a violation of Article 6 of the Convention and Article 1 of Protocol No. 1 on account of the quashing by way of supervisory review of the judgment 26 June 2002, final as of 21 August 2002, in the applicant's favour;

5. *Holds* that it is not necessary to consider separately the allegation of procedural unfairness in the supervisory review proceedings;

6. *Holds*
   (a) that the respondent State is to pay the applicant, within three months, the following amounts, to be converted into Russian roubles at the rate applicable at the date of settlement, plus any tax that may be chargeable:
      (i) EUR 1,585 (one thousand five hundred and eighty-five euros) in respect of pecuniary damage;
      (ii) EUR 3,000 (three thousand euros) in respect of non-pecuniary damage;
      (iii) EUR 350 (three hundred and fifty 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.

7. *Dismisses* the remainder of the applicant's claim for just satisfaction.

Done in English, and notified in writing on 5 April 2011, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

André Wampach
Deputy Registrar

George Nicolaou
President