CONSEIL DE L'EUROPE

COUNCIL OF EUROPE

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

FIRST SECTION

DECISION

AS TO THE ADMISSIBILITY OF

Application no. 69582/01
by Aleksandr SARDIN
against Russia

The European Court of Human Rights (First Section), sitting on 12 February 2004 as a Chamber composed of:

Mr P. LORENZEN, *President*,
Mrs F. TULKENS,
Mrs N. VAJIĆ,
Mr E. LEVITS,
Mrs S. BOTOUCHAROVA,
Mr A. KOVLER,
Mr V. ZAGREBELSKY, *judges*,
and Mr S. NIELSEN, *Section Registrar*,

Having regard to the above application lodged on 15 March 2001,

Having deliberated, decides as follows:

THE FACTS

The applicant, Mr Aleksandr Petrovich Sardin, is a Russian national, who was born in 1947 and lives in Omsk.

A. The circumstances of the case

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

Between May 1968 and September 1969 the applicant performed military service near the Semipalatinsk nuclear tests site. On 25 May 1998 the Ministry of Defence of Kazakhstan issued the applicant with a certificate confirming that he had been exposed to radioactive emissions during his military service.

In 1998 and 1999 the applicant unsuccessfully applied to various Russian authorities to be granted the status of a victim of the Semipalatinsk nuclear tests.

In October 1999 the applicant lodged a civil action against the Social Security Agency of the Omsk Regional Administration ("the Agency"). He challenged the refusal of the Agency to issue him with a certificate for citizens who had been exposed to radioactive emissions as a result of nuclear tests on the Semipalatinsk test site ("the Semipalatinsk certificate").

On 23 March 2000 the Tsentralniy District Court of Omsk granted the applicant's action and ordered the Agency to provide him with the Semipalatinsk certificate confirming his entitlement to certain social benefits. The Agency did not appeal against the judgment and it became final on 3 April 2000.

On 20 June 2000 the court bailiffs opened enforcement proceedings.

The Agency did not execute the judgment and requested the Omsk Regional prosecutor's office to bring an application for supervisory review.

On 6 July 2000 the Omsk Regional prosecutor's office ordered the court bailiffs to suspend the enforcement proceedings and lodged an application for supervisory review (*протест в порядке надзора*) with the Presidium of the Omsk Regional Court. The prosecutor submitted that the area where the applicant had served was not in the Russian list of areas that had suffered from radioactive emissions and the Kazakh legislation could not be applied by analogy.

On 20 July 2000 the applicant received a court summons advising him that the hearing on the prosecutor's complaint would take place on 1 August 2000. The applicant submits that on 25 July 2000 he filed written observations, but they were not accepted and he was promised that he would be given time to make oral submissions.

On 1 August 2000 the Presidium of the Omsk Regional Court held a hearing. According to the applicant, his representatives were not given an opportunity to speak before the court and the written memorandum was only accepted by the court registrar after the hearing finished. The Presidium of the Omsk Regional Court, by way of supervisory review, quashed the judgment of 23 March 2000 on procedural and substantive grounds and remitted the case for a new examination.

On 26 September 2000 the Tsentralniy District Court of Omsk made a new determination of the applicant's action against the Agency and dismissed it as having no grounds in the domestic law.

On 31 January 2001 the Civil Chamber of the Omsk Regional Court upheld, on the applicant's appeal, the judgment of 26 September 2000.

B. Relevant domestic law

The Law "On the social protection of citizens who had been exposed to radioactive emissions as a result of nuclear tests on the Semipalatinsk test site" (no. 149-FZ of 19 August 1995), which was in force at the material time, provided that certain benefits and compensation available to the Chernobyl victims should be extended to those citizens who had lived in the area surrounding the Semipalatinsk test site and their descendants of the first and second generations. Articles 2 and 3 specified that the scope of the benefits and compensations should be determined by reference to a person's exposure to radioactive emissions. These benefits and privileges included, in particular, free medical treatment, free medical insurance, housing maintenance subsidies, special payments to offset the loss of potential earnings, preferential treatment under labour laws, etc.

Under Article 5 the Semipalatinsk certificates were the documents confirming a person's entitlement to benefits and compensations set out in the Law.

COMPLAINTS

1. The applicant complains under Article 6 § 1 of the Convention about the quashing of a final judgment in his favour. Under the same provision the applicant complains about the unfairness of the proceedings on his civil action against the Agency in that the domestic courts wrongly interpreted the law on the social protection of Semipalatinsk tests victims.

2. The applicant complains under Article 1 of Protocol No. 1 to the Convention about the deprivation of benefits, to which he would be entitled as a victim of the Semipalatinsk nuclear tests. He also alleges that the outcome of his action against the Agency deprived him of free medical treatment and other benefits and privileges.

3. The applicant complains under Articles 13 and 14 of the Convention that he did not have an effective remedy in respect of his civil claim against the Agency and that he was discriminated against in the course of the proceedings.

THE LAW

1. The applicant complains under Article 6 § 1 of the Convention and Article 1 of Protocol No. 1 that the decision of the Presidium of the Omsk Regional Court of 1 August 2000 to quash the judgment of 23 March 2000 and remit the case frustrated his right to a fair trial and deprived him of the fruits of the litigation. Article 6 § 1 of the Convention provides, in the relevant part, as follows:

> "In the determination of his civil rights and obligations... everyone is entitled to a fair... hearing ... by [a]... tribunal established by law..."

Article 1 of Protocol No. 1 reads, in the relevant part, as follows:

> "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..."

An issue arises as to whether the proceedings concerning the recognition of the applicant's status as a victim of nuclear tests involved the determination of his "civil" rights within the meaning of Article 6 of the Convention (cf. *Burkov v. Russia* (dec.), no. 46671/99, 30 January 2001). However, the Court finds it unnecessary to determine this question as this part of the application should in any event be rejected for the following reason.

The Court recalls its constant case-law to the effect that the quashing by a higher court, by way of supervisory review on application of a prosecutor or another State official, of a judicial decision which had become final and binding may render the litigant's right to a court illusory and infringe the principle of legal certainty (see *Brumărescu v. Romania* [GC], no. 28342/95, § 62, ECHR 1999-VII; *Ryabykh v. Russia*, no. 52854/99, §§ 56-58, 24 July 2003). Furthermore, quashing such a judgment after it has become final and unappealable will constitute an interference with the judgment beneficiary's right to the peaceful enjoyment of his possessions (see *Brumărescu v. Romania*, cited above, § 74; *Ryabykh v. Russia*, cited above, § 61). 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, *mutatis mutandis*, *Voloshchuk v. Ukraine* (dec.), no. 51394/99, 14 October 2003).

The Court recalls that, in accordance with Article 35 § 1 of the Convention, it may only examine complaints in respect of which domestic remedies have been exhausted and which have been submitted within six months from the date of the "final" domestic decision. If there is no adequate remedy against a particular act, which is alleged to be in breach of the Convention, the date when that act takes place is taken to be "final" for

the purposes of the six months' rule (see, e.g., *Valašinas v. Lithuania* (dec.), no. 44558/98, 14 March 2000).

The Court notes that at the material time the Russian law of civil procedure did not provide for any ordinary appeal against a ruling adopted by way of supervisory review by the Presidium of a regional court or the Presidium of the Supreme Court of the Russian Federation. Such ruling could subsequently be quashed by way of new supervisory-review proceedings and the original judgment could be reinstated. However, a new round of supervisory-review proceedings could not be set in motion by a party itself and its granting depended on the exercise of discretionary powers of a State official. In any event, the Court has previously considered any subsequent attempts to conduct supervisory review in the matter which had been once determined in a final judgment that was later quashed, not to be conducive to an improvement of legal certainty (see *Ryabykh v. Russia* (dec.), no. 52854/99, 21 February 2002).

In the absence of an effective remedy the Court concludes that it was the very act of quashing of the final judgment of 23 March 2000 that triggered the start of six-month time limit for lodging this part of the application to the Court. In the present case the final judgment was quashed by the Presidium of the Omsk Regional Court on 1 August 2000 and the applicant lodged his application on 15 March 2001. Nothing in the applicant's submissions indicates that he was not immediately aware of the ruling, especially bearing in mind that his representative was present at the hearing.

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

2. The applicant complains under the same Convention provisions that in the new examination of his case following the ruling of the Presidium of the Omsk Regional Court of 1 August 2000 the domestic courts failed to give a correct interpretation to the Semipalatinsk law and the outcome of his action deprived him of certain medical and social benefits, for which he considered himself eligible.

Even assuming that Article 6 of the Convention applies under its civil head to the proceedings in question, the Court recalls that it is not called upon to examine the alleged errors of facts and law committed by the domestic judicial authorities, insofar as no unfairness of the proceedings can be detected and the decisions reached cannot be considered arbitrary. On the basis of the materials submitted by the applicant, the Court notes that the applicant was able to introduce all necessary arguments in defence of his interests and the judicial authorities gave them due consideration.

As to the applicant's complaint about an alleged deprivation of medical and other benefits, the Court recalls that Article 1 of Protocol No. 1 does not guarantee the right to acquire possessions (see, *mutatis mutandis*, *Marckx v.*

Belgium, judgment of 13 June 1979, Series A no. 31, p. 23, § 50; *Van der Mussele v. Belgium*, judgment of 23 November 1983, Series A no. 70, p. 23, § 48) and therefore it could not be construed as guaranteeing a favourable outcome of the litigation over social benefits.

It follows that this complaint is manifestly ill-founded and must be rejected in accordance with Article 35 §§ 3 and 4 of the Convention.

3. Finally, the Court has examined the applicant's complaints under Articles 13 and 14 of the Convention. The Court notes that the applicant has benefited from a judicial determination of his civil action against the Agency and therefore he has had an effective domestic remedy required by Article 13 of the Convention. As to the complaint under Article 14 of the Convention, the applicant did not provide any arguments in support of his discrimination claim.

It follows that these complaints are manifestly ill-founded and must be rejected in accordance with Article 35 §§ 3 and 4 of the Convention.

For these reasons, the Court unanimously

Declares the application inadmissible.

Søren NIELSEN
Registrar

Peer LORENZEN
President