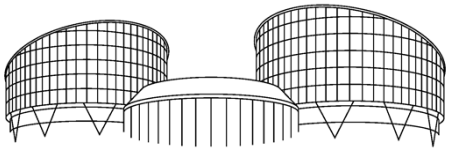

EUROPEAN COURT OF HUMAN RIGHTS
COUR EUROPÉENNE DES DROITS DE L'HOMME

FIRST SECTION

CASE OF KUZMIN v. RUSSIA

(Application no. 30212/06)

JUDGMENT

STRASBOURG

28 May 2014

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

COUNCIL OF EUROPE
CONSEIL DE L'EUROPE

In the case of Kuzmin v. Russia,

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

Khanlar Hajiyev, *President,*
Julia Laffranque,
Erik Møse, *judges,*

and André Wampach, *Deputy Section Registrar,*

Having deliberated in private on 6 May 2014,

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

PROCEDURE

1. The case originated in an application (no. 30212/06) 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 Viktor Mikhaylovich Kuzmin ("the applicant"), on 5 June 2006.

2. The applicant was represented by Mr P.V. Sedlyar, a lawyer practising in Novocherkassk. 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 18 March 2013 the application was communicated to the Government.

THE FACTS

I. THE CIRCUMSTANCES OF THE CASE

4. The applicant was born in 1937 and lives in Novocherkassk, the Rostov Region. He is a retired military serviceman.

5. On 25 March 2003 the Justice of the Peace of the 2nd Court Circuit of Novocherkassk ordered the recovery of the applicant's pension arrears for the period 1 January 1995 to 31 January 2003 and for the amount owed to be adjusted in line with the rate of inflation. The Justice of the Peace awarded him 40,356.67 Russian roubles (RUB), to be paid by the Military Commissariat of the Rostov Region ("the respondent authority"). The judgment was enforced.

6. The applicant brought a second claim against the respondent authority seeking a further adjustment to his pension as calculated by the judgment of

25 March 2003, because of an increase to the minimum wage. His claim was backdated to include the period 1995 to 1998.

7. By a judgment of 15 September 2004 the Novocherkassk Town Court allowed the claim. The court observed, in particular, that the amount awarded on 25 March 2003 had been adjusted to take into account the rise in inflation, but not the increase to the minimum wage for the specified period. The court awarded the applicant RUB 265,594.27, to be paid by the respondent authority, and ordered that the judgment be executed immediately. Representatives of the respondent authority were present at court.

8. On 12 October 2004 the applicant's representative sent a copy of the judgment and a writ of execution to the respondent authority. According to its incoming correspondence log (item no. 11734), the documents were registered as having been received.

9. On an unspecified date the respondent authority lodged a statement of appeal with the Town Court. It appears that on 9 November 2004 (the exact date is unclear) the Novocherkassk Town Court refused to examine the application because the authority had failed to pay the court fee.

10. On 11 November 2004 the respondent authority withdrew its statement of appeal.

11. On 24 November 2004 the respondent authority requested a re-examination of the case in the light of newly discovered circumstances. On 10 February 2005 the Novocherkassk Town Court dismissed the application.

12. In September 2005 the respondent authority applied for the case be re-examined by way of supervisory review.

13. On 29 December 2005 the Presidium of the Rostov Regional Court quashed the judgment of 15 September 2004 by way of supervisory review and transferred the case for fresh examination by a different court. The Presidium concluded that the first-instance court had erroneously applied the substantive law and had failed to verify whether the same claim had already been examined by the Justice of the Peace on 25 March 2003. It also found that the Novocherkassk Town Court had lacked territorial jurisdiction to hear the case. The Presidium noted that judgment had been awarded against the respondent authority and that the case should have been examined by a court in the district where the respondent authority was located.

14. The applicant did not attend the hearing and received a copy of the judgment on 17 February 2006.

15. On 17 March 2006 the Oktyabrskiy District Court of Rostov examined the applicant's claim against the respondent authority and rejected it as having no basis in law. No further appeal was brought.

II. RELEVANT DOMESTIC LAW AND PRACTICE

16. On 22 February 2001 the Federal Government adopted Decree no. 143, which contains special rules governing the enforcement of writs of execution against recipients of allocations from the federal budget. Sections 1 to 4 provide that a creditor is to send the necessary enforcement papers to the relevant branch of the Federal Treasury holding debtors' accounts (Sections 1 to 4).

17. In the Ministry of Finance's Explanatory Letter no. 03-01-01/12-303 of 29 October 2003, domestic judgments ordering a military commissariat to pay pension arrears to retired military servicemen were to be executed by the respective commissariat. The procedure set out in Decree no. 143 did not apply to such cases.

18. For a summary of the relevant provisions of Federal Law no. 68-FZ "On Compensation for violations of the right to a trial within a reasonable time or the right to enforcement of a judgment within a reasonable time" ("the Compensation Act"), see the case of *Nagovitsyn and Nalgiyev v. Russia* ((dec.), nos. 27451/09 and 60650/09, §§ 15-20, 23 September 2010).

19. For a summary of other relevant provisions of the domestic law, see the cases of *Murtazin v. Russia* (no. 26338/06, §§ 17-21, 27 March 2008), and *Streltsov and other "Novocherkassk military pensioners" cases v. Russia* (nos. 8549/06 et al., §§ 27-29, 29 July 2010).

THE LAW

I. ALLEGED VIOLATION OF ARTICLE 6 OF THE CONVENTION AND ARTICLE 1 OF PROTOCOL No. 1 ON ACCOUNT OF THE SUPERVISORY REVIEW

20. The applicant complained that because the binding judgment in his favour had been quashed, his rights under Article 6 of the Convention and Article 1 of Protocol No. 1 had been violated. The relevant parts of these Articles 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 ..."

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.

The preceding provisions shall not, however, in any way impair the right of a State to enforce such laws as it deems necessary to control the use of property in accordance with the general interest or to secure the payment of taxes or other contributions or penalties."

21. The Government contested that argument. They submitted that the decision to quash the judgment was justified, since the proceedings before the first-instance court had been tarnished with fundamental defects. Firstly, the Town Court had applied the pensions law incorrectly. Secondly, it had not taken into account the fact that the applicant's claims had already been determined by the judgment of the Justice of the Peace on 25 March 2003 and therefore an examination of the merits of his claim and the award made in his favour amounted to a "double recovery" (see, in so far as relevant, *Kotov v. Russia* [GC], no. 54522/00, § 129, 3 April 2012) and was in violation of the domestic rules of civil procedure.

22. The applicant disagreed. Firstly, referring to the similar cases of *Murtazin* and *Streltsov* (both cited above), he noted that the respondent authority could have raised exactly the same arguments by ordinary appeal, but had decided to withdraw its application. Secondly, the proceedings of 15 September 2004 concerned a different subject matter to that of 25 March 2003, since the former dealt with increasing his pension to the minimum wage and the latter with index-linking it to the rate of inflation.

A. Admissibility

23. The Court notes that this complaint is not manifestly ill-founded within the meaning of Article 35 § 3 (a) of the Convention. It further notes that it is not inadmissible on any other grounds. It must therefore be declared admissible.

B. Merits

1. Article 6 of the Convention

24. The Court reiterates that the quashing of a final and binding judicial decision by way of supervisory review may render the litigant's right to a court illusory and infringe the principle of legal certainty (see *Ryabykh v. Russia*, no. 52854/99, §§ 56-58, ECHR 2003-IX). In certain circumstances, legal certainty can be disturbed in order to correct a "fundamental defect" or a "miscarriage of justice". Departures from that principle are justified only when made necessary by circumstances of a substantial and compelling character (see *Kot v. Russia*, no. 20887/03, § 24, 18 January 2007; *Protsenko v. Russia*, no. 13151/04, §§ 25-34, 31 July

2008; and *Tishkevich v. Russia*, no. 2202/05, §§ 25-26, 4 December 2008). In such cases, the Court has to assess, in particular, whether a fair balance was struck between the interests of the applicants and the need to ensure the proper administration of justice (see, *mutatis mutandis*, *Kurinnyy v. Russia*, no. 36495/02, §§ 13 and 27-28, 12 June 2008). The judgment in question can be quashed exclusively in order to rectify an error of truly fundamental importance to the judicial system (see *Shchurov v. Russia*, no. 40713/04, § 21, 29 March 2011). The "right to a court" would be illusory if a Contracting State's domestic legal system allowed a final and enforceable judicial decision to be quashed by a higher court and the case be re-examined merely on the grounds that the higher court disagreed with the assessment made by the lower courts (see *Kot*, cited above, §§ 27-30).

25. The Court will now turn to the three grounds raised by the Government and referred to by the Presidium in its ruling in the present case: (i) that the judgment was not adopted in accordance with the rules of jurisdiction, (ii) that the lower court had failed to take into account the judgment of 25 March 2003, and (iii) that it had misinterpreted the substantive law.

26. As concerns the court's alleged lack of regard to the rules of jurisdiction, this issue has been examined in detail and rejected in the similar case of *Streltsov* (cited above, §§ 51-52), and the Court does not see any reason to depart from its findings in the present case. As concerns the first-instance court's alleged failure to examine whether the same issue had already been determined by the Justice of the Peace on 25 March 2003, the Court reiterates its settled approach, that it is primarily for the domestic courts to interpret and apply the domestic law. Nevertheless, the Court is compelled to note that the judgment of 15 September 2004 contains an explicit reference to the earlier judicial decision, and states that the amount awarded on 25 March 2003 had been calculated to take into account the rise in inflation, but not the increase to the minimum wage for the specified period. Accordingly, the reason the judgment was quashed was in fact confined to a disagreement between the lower court and the Presidium as to whether the two adjustment methods could have been applied in the case at hand. In the Court's view, that disagreement did not go beyond the issue of the interpretation of the substantive law as applied by the domestic courts (see paragraph 24 above). Lastly, as regards the Government's allegation about an incorrect application of the pensions law, the Court reiterates its settled approach, that in the absence of a fundamental defect in previous proceedings, a party's disagreement with the assessment made by the lower courts is not, in itself, a circumstance of substantial and compelling character warranting the quashing of a binding and enforceable judgment and a re-opening of the proceedings on the applicant's claim (see, among many other authorities, *Dovguchits v. Russia*, no. 2999/03, § 30, 7 June

2007). In any event, the Court does not consider it necessary to examine those arguments in further detail, for the following reason.

27. The Court observes that the alleged defects in the present case could have been rectified in the appeal proceedings. A situation where the final judgment in the applicant's favour was called into question could have been avoided, had the respondent authority pursued an ordinary appeal within the statutory time-limit. The Government did not point to any exceptional circumstances that would have prevented the respondent authority from making use of such an appeal (see *Murtazin*, cited above, §§ 27-29). It is clearly evident from the case file that the respondent authority had appealed against the judgment, but then for unspecified reasons withdrew its statement of appeal (see paragraph 10 above) and chose to make use of the extraordinary remedy of supervisory review.

28. In view of the above, the Court is not satisfied that a fair balance between the interests of the applicant and the need to ensure the proper administration of justice was ensured. The Court does not detect a specific reason which would justify the departure from the principle of legal certainty in the present case, especially given that the respondent authority omitted to make use of the ordinary remedy available to it.

29. Therefore, the Court finds that the Presidium of the Rostov Regional Court infringed the principle of legal certainty and the applicant's "right to a court" under Article 6 § 1 of the Convention. Accordingly, there has been a violation of that provision on account of the judgment being quashed.

2. Article 1 of Protocol No. 1

30. The Court observes that the quashing of the enforceable judgment frustrated the applicant's reliance on the 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 him and was incompatible with Article 1 of the Protocol No. 1 (see *Streltsov*, cited above, §§ 61-62, with further references). There has therefore been a violation of that provision on account of the judgment being quashed.

II. ALLEGED VIOLATION OF ARTICLE 6 OF THE CONVENTION AND ARTICLE 1 OF PROTOCOL No. 1 ON ACCOUNT OF NON-ENFORCEMENT

31. Relying on Article 6 § 1 of the Convention and Article 1 of Protocol No. 1, both cited above, the applicant complained that the judgment of 15 September 2004 in his favour had not been enforced.

32. The Government disagreed, stating that the applicant had not exhausted the domestic remedies available to him under domestic law, such as suing the authorities for negligence under Chapter 25 of the Code of Civil Procedure, bringing a claim for non-pecuniary damage under Chapter 59 of the Civil Code, or bringing a claim for compensation for delayed enforcement under the Compensation Act 2010. They further submitted that the applicant had failed to cooperate with the authorities, since he should have sent the writ of execution and his bank details to the Federal Treasury as required by Decree no. 143 (see paragraph 16 above) but had never done so.

33. The applicant submitted in reply that the remedies suggested had not been proven effective in practice and that the procedure required by Decree no. 143 did not apply to the execution of judgments concerning military pensions, as stipulated in the Ministry of Finance's Explanatory Letter of 29 October 2003 (see paragraph 17 above). He had duly sent the writ to the appropriate authority, the respondent commissariat, but the judgment had not been enforced.

A. Admissibility

34. As regards bringing a claim under the Compensation Act, the Court reiterates that when the existence of domestic remedies under Article 35 § 1 is at issue, it is the Government who bear the burden of proof. They must show that the remedy was effective, accessible, capable of providing redress, and that it offered reasonable prospects of success (see, *mutatis mutandis*, *Selmouni v. France* [GC], no. 25803/94, § 76, ECHR 1999-V). The Government did not demonstrate – either with reference to a specific provision of the Act or domestic case-law on the subject – that such an application would have had any reasonable prospect of success in a specific situation where the final judgment in the applicant's favour had been set aside by way of supervisory review and therefore ceased to be binding and enforceable in terms of the domestic law, more than four years before the entry into force of the Act and six months before the applicant's complaint to this Court. In the absence of further information on the matter, the Court rejects the above objection.

35. As regards the remaining remedies suggested by the Government, the Court has already found them to be ineffective (see, among others, *Burdov v. Russia (no. 2)*, no. 33509/04, §§ 103 and 106-16, ECHR 2009, with further references).

36. The Court further notes that this complaint is not manifestly ill-founded within the meaning of Article 35 § 3 (a) of the Convention. It further notes that it is not inadmissible on any other grounds. It must therefore be declared admissible.

B. Merits

37. 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 present case, the State avoided paying the judgment debt in the applicants' favour for more than a year and three months, which is prima facie incompatible with the requirements of the Convention (see, among others, *Kozodoyev and Others v. Russia*, nos. 2701/04 et al., § 11, 15 January 2009).

38. The Court further notes that the judgment of 15 September 2004 remained unexecuted up until the date of its annulment. 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 it (see *Sukhobokov v. Russia*, no. 75470/01, § 26, 13 April 2006). In the present case, the judgment in the applicant's favour was enforceable until the date it was quashed and it was incumbent on the State to comply with its terms (see *Streltsov*, cited above, § 71).

39. As regards the applicant's alleged failure to submit the enforcement papers in good time or to the Federal Treasury, the Court reiterates that where a judgment is against the State, the defendant State authority must be duly notified thereof and is thus well placed to take all necessary initiatives to comply with it or to transmit it to another competent State authority responsible for compliance (see *Akashev v. Russia*, no. 30616/05, § 21, 12 June 2008). Where the creditor's cooperation is required, it must not go beyond what is strictly necessary and in any case does not relieve the authorities of their obligation under the Convention to take timely and automatic action, on the basis of the information available to them, with a view to honouring the judgment against the State (ibid., § 22). The Court accepts the applicant's reliance on the Ministry of Finance's Explanatory Letter stating that in disputes concerning military pensions writs were to be sent to the respondent commissariat, not to the authority suggested by the Government. It transpires from the case file that the applicant had duly complied with the procedure in force at the material time (see paragraph 17 above) and had thus fulfilled his duty to cooperate. The Court further reiterates that the complexity of the domestic enforcement procedure cannot relieve the State of its obligation to enforce a binding judicial decision within a reasonable time (see *Burdov (no. 2)*, cited above, § 70).

40. Accordingly, there has been a violation of Article 6 § 1 of the Convention and Article 1 of Protocol No. 1 in the present case.

III. OTHER ALLEGED VIOLATIONS OF THE CONVENTION

41. Lastly, the applicant complained under Article 13 of the Convention that there had been no effective remedy at his disposal in respect of the non-enforcement and quashing of the initial domestic judgment in his favour.

42. Having regard to all the material in its possession in so far as this complaint falls within the Court's competence, it finds that it does 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 manifestly ill-founded, pursuant to Article 35 §§ 3 (a) and 4 of the Convention.

IV. APPLICATION OF ARTICLE 41 OF THE CONVENTION

43. 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

44. In respect of pecuniary damage, the applicant claimed 225,237.60 Russian roubles (RUB) representing the domestic award of 15 September 2004 less the amount paid under the judgment of 25 March 2003, plus RUB 52,792 in interest for the period until 29 December 2005, the date of the quashing. He calculated the interest on the basis of the consumer price index in the Rostov Region in the reference period. He submitted a detailed calculation of his claims and a certificate from the Rostov Regional Department of Federal Statistics specifying the consumer price index in the Rostov Region at the material time, on which his interest calculation was based. He claimed a further 4,300 euros (EUR) in respect of non-pecuniary damage.

45. The Government contested the claim for pecuniary damage, reiterating that the quashing of the judgment had been justified and that there had been no basis in law for the judgment debt and interest to be paid. They further challenged the applicant's claims for non-pecuniary damage as excessive and unsubstantiated.

46. As regards pecuniary damage, the Court observes that the award of 15 September 2004 remained unenforced and was subsequently set aside. The applicant was thus prevented from receiving the amount he had legitimately expected to receive under the binding and enforceable judgment in his favour. In a similar case, the Court considered it appropriate

to award the applicants the equivalent in euros of the sums they would have received had the judgments in their favour not been quashed (see *Streltsov*, cited above, § 86). The Court takes note that in the present case, the applicant claimed the judgment debt less the sum awarded to him on 25 March 2003, and accordingly awards him the equivalent in euros of that amount.

47. As regards the applicant's claim for interest, the Court reiterates its settled approach that the adequacy of compensation would be diminished if it were to be paid without reference to various circumstances liable to reduce its value, and accepts the claim relating to the loss of value of the domestic award since the delivery of the judgment in the applicant's favour (see, in so far as relevant, *Streltsov*, cited above, §§ 89-93). It further observes that the method of calculation and the period for which the interest is claimed is exactly the same as applied by the Court in *Streltsov* (ibid.), and that the Government did not challenge the method of calculation of the inflation loss chosen by the applicant. The Court decides to award the applicant the equivalent in euros of the interest claimed.

48. The Court therefore awards the applicant EUR 6,343 in respect of pecuniary damage, plus any tax that may be chargeable.

49. As regards non-pecuniary damage, the Court takes note of the award made in similar circumstances in *Streltsov* (cited above, § 96) and awards the applicant EUR 2,000 under this head, plus any tax that may be chargeable on that amount, and rejects the remainder of his claims in respect of non-pecuniary damage.

B. Costs and expenses

50. The applicant did not claim costs and expenses, and there is accordingly no need to make an award under this head.

C. Default interest

51. The Court considers it appropriate that the default interest rate 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 complaints under Article 6 of the Convention and Article 1 of Protocol No. 1 thereto concerning non-enforcement and supervisory review of the judgment of 15 September 2004 admissible and the remainder of the application inadmissible;

2. *Holds* that there has been a violation of Article 6 of the Convention and Article 1 of Protocol No. 1 on account of the non-enforcement of the judgment of 15 September 2004 in the applicant's favour;

3. *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 the judgment of 15 September 2004 by way of the supervisory-review procedure;

4. *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:
(i) EUR 6,343 (six thousand three hundred and forty-three euros), plus any tax that may be chargeable, in respect of pecuniary damage;
(ii) EUR 2,000 (two thousand euros), plus any tax that may be chargeable, in respect of non-pecuniary damage;
(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;

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

Done in English, and notified in writing on 28 May 2014, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

André Wampach
Deputy Registrar

Khanlar Hajiyev
President