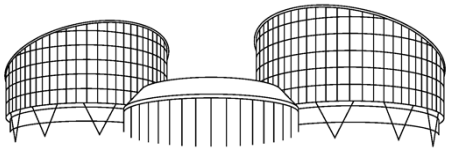

EUROPEAN COURT OF HUMAN RIGHTS
COUR EUROPÉENNE DES DROITS DE L'HOMME

FIRST SECTION

CASE OF KOKSHAROVA v. RUSSIA

(Application no. 25965/03)

JUDGMENT

STRASBOURG

2 October 2014

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

COUNCIL OF EUROPE
CONSEIL DE L'EUROPE

In the case of Koksharova v. Russia,

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

Khanlar Hajiyev, *President,*
Julia Laffranque,
Dmitry Dedov, *judges,*

and Søren Prebensen, *Acting Deputy Section Registrar,*

Having deliberated in private on 9 September 2014,

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

PROCEDURE

1. The case originated in an application (no. 25965/03) 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, Ms Sofya Mitrofanovna Koksharova ("the applicant"), on 19 June 2003.

2. The applicant was represented by N. Ya. Mozzhukhin, a lawyer practising in Archangelsk.

3. The Russian Government ("the Government") were represented by Mr P. Laptev and Ms V. Milinchuk, former Representatives of the Russian Federation at the European Court of Human Rights, and subsequently by Mr G. Matyushkin, Representative of the Russian Federation at the European Court of Human Rights.

4. On 1 September 2006 the application was communicated to the Government.

THE FACTS

I. THE CIRCUMSTANCES OF THE CASE

5. The applicant is a Russian national who was born in 1930 and lives in Arkhangelsk.

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

7. On 19 February 2001 the applicant brought a court action against the Social Security Fund of the Russian Federation (*Фонд социального страхования Российской Федерации*) for compensation of health damage.

8. On 4 April 2001 her claim was dismissed by the Oktyabrskiy District Court of Arkhangelsk. The decision was quashed on appeal and the case was remitted for a fresh examination to the same court.

9. On 3 June 2002 the Oktyabrskiy District Court of Arkhangelsk granted the applicant's claim and ordered the Social Security Fund (i) to calculate the amount of the lump-sum compensation for the period from 1 January 2000 to May 2002 and of the monthly compensation which should be paid from 1 June 2002, (ii) to pay these amounts to the applicant, and (iii) to index-link the monthly payments in future in accordance with national law.

10. The judgment was not appealed against and became final on 13 June 2002.

11. The applicant states that no lump-sum compensation was paid to her.

12. On 26 August 2002 the Social Security Fund calculated the monthly payments due to the applicant as of 15 November 2001.

13. On 18 December 2002 the President of the Arkhangelsk Regional Court lodged with the Presidium of that court an application for supervisory review of the judgment of 3 June 2002. He also suspended the execution of the judgment pending the supervisory review proceedings.

14. On the same date the Arkhangelsk Regional Court informed the applicant that the Presidium would examine her case on 25 December 2002.

15. On 25 December 2002 the Presidium quashed the judgment of 3 June 2002 stating that the first instance court had incorrectly applied domestic law: the lump-sum compensation should have been calculated from 15 November 2001 and not 1 January 2000. The case was remitted for a fresh examination to the first instance court.

16. On 25 June 2003 the Oktyabrskiy District Court dismissed the applicant's claim.

17. On 28 July 2003 the Arkhangelsk Regional Court upheld the judgment.

II. RELEVANT DOMESTIC LAW

18. For the relevant provisions on the supervisory review proceedings contained in the 1964 Code of Civil Procedure, which was in force at the material time, see the Court's judgment in the case of *Ryabykh v. Russia*, no. 52854/99, §§ 31-42, ECHR 2003-IX.

THE LAW

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

19. The applicant complained under Article 6 § 1 and Article 1 of Protocol No. 1 about the quashing by way of supervisory review of the final judgment of 3 June 2002. These Articles, insofar as relevant, 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."

20. The Government argued that the supervisory-review proceedings had been held in compliance with the domestic law requirements, and the Presidium had reversed the judgment because of a serious violation of substantive law. They provided detailed information on the material norms allegedly misinterpreted by the first instance court and concluded that the proceedings before the lower courts were tarnished with a fundamental defect. As regards the complaint under Article 1 of Protocol No. 1, the Government submitted that there was no violation since the sums paid pursuant to the quashed judgment had never been and would not be claimed back from the applicant.

21. The applicant maintained her claims and stated that in fact the payments awarded by the judgment of 3 June 2002 had not been fully made. In particular, she indicated that the payments were made for the period starting from 15 November 2002, and not 1 June 2002, as was set in the judgment, and the lump-sum compensation had not been paid at all.

A. Admissibility

22. 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 § 1 of the Convention

23. The Court reiterates that the quashing by way of supervisory review of a judicial decision which has become final and binding may render the litigant's right to a court illusory and infringe the principle of legal certainty (see, among many other authorities, *Ryabykh v. Russia*, no. 52854/99, §§ 56-58, ECHR 2003-IX). 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, and *Protsenko v. Russia*, no. 13151/04, §§ 25-34, 31 July 2008).

24. The Court observes that in the case at hand the judgment was set aside by way of a supervisory review solely on the ground that the lower courts had incorrectly applied the substantive law. The Court reiterates its constant approach that in the absence of a fundamental defect in the previous proceedings a party's disagreement with the assessment made by the first-instance and appeal courts is not a circumstance of a substantial and compelling character warranting the quashing of a binding and enforceable judgment and re-opening of the proceedings on the applicant's claim (see *Dovguchits v. Russia*, no. 2999/03, § 30, 7 June 2007, and *Kot*, cited above, § 29). The Government did not put forward any arguments which would enable the Court to reach a different conclusion in the present case.

25. There has been, accordingly, a violation of Article 6 § 1 of the Convention.

2. Article 1 of Protocol No. 1

26. 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 (see, among other authorities, *Androsov v. Russia*, no. 63973/00, § 69, 6 October 2005).

27. The Court further reiterates that the binding and enforceable judgment, though it did not indicate certain sums, unconditionally ordered the Social Security Fund to make the payments on a regular basis. The judgment thus created an asset within the meaning of Article 1 of Protocol No. 1 (see *Vasilopoulou v. Greece*, no. 47541/99, § 22, 21 March 2002, and *Malinovskiy v. Russia*, no. 41302/02, § 43, ECHR 2005-VII (extracts)).

28. The Court notes the Government's argument that the amounts paid to the applicant under the quashed judgment may not be claimed back, and rejects it for the following reasons. First, it was not contested by the

Government - and the Court accordingly finds it established - that the initial domestic judgment had remained unenforced in the part concerning the lump sum payment by the date of its quashing. As a result of the quashing the applicant was thus prevented from receiving that part of the award through no fault of her own. Second, although the applicant had received several payments of the monthly compensation, after the quashing of the judgment she was deprived of an opportunity to receive the money she had legitimately expected to receive on a monthly basis. The above frustrated the applicant's reliance on the binding judicial decision and deprived her of an opportunity to receive the judicial award (see *Tarnopolskaya and Others v. Russia*, nos. 11093/07 et al., § 37, 7 July 2009) 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 of 3 June 2002 by way of supervisory review placed an excessive burden on the applicant and was incompatible with Article 1 of Protocol No. 1.

29. There has therefore been a violation of that provision.

II. OTHER ALLEGED VIOLATIONS OF THE CONVENTION

30. The applicant also raised other complaints under Articles 4 and 6 of the Convention and Article 1 of Protocol No. 1.

31. However, in the light of all the material in its possession, and in so far as the matters complained of are within its competence, the Court finds that they do not disclose any appearance of a violation of the rights and freedoms set out in the Convention or its Protocols.

III. APPLICATION OF ARTICLE 41 OF THE CONVENTION

32. 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

33. The applicant did not submit a claim for just satisfaction within the specified time-limit. Accordingly, the Court considers that there is no call to award her any sum on that account.

B. Costs and expenses

34. The applicant did not seek reimbursement of her costs and expenses incurred before the domestic authorities and the Court. Accordingly, the Court does not make any award under this head.

FOR THESE REASONS, THE COURT, UNANIMOUSLY,

1. *Declares* the complaint under Article 6 of the Convention and Article 1 of Protocol No. 1 concerning quashing of the final judgment by way of supervisory review 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 quashing of the final judgment by way of supervisory review.

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

Søren Prebensen
Acting Deputy Registrar

Khanlar Hajiyev
President