CONSEIL DE L'EUROPE

COUNCIL OF EUROPE

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

FIRST SECTION

CASE OF OAO PLODOVAYA KOMPANIYA v. RUSSIA

(Application no. 1641/02)

JUDGMENT

STRASBOURG

7 June 2007

FINAL

12/11/2007

This judgment will become final in the circumstances set out in Article 44 § 2 of the Convention. It may be subject to editorial revision.

In the case of OAO Plodovaya Kompaniya v. Russia,

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

Mr C.L. ROZAKIS, *President*,
Mr L. LOUCAIDES,
Mrs F. TULKENS,
Mrs N. VAJIĆ,
Mr A. KOVLER,
Mrs E. STEINER,
Mr K. HAJIYEV, *judges*,
and Mr S. NIELSEN, *Section Registrar*,

Having deliberated in private on 15 May 2007,

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

PROCEDURE

1. The case originated in an application (no. 1641/02) 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 OAO Plodovaya Kompaniya, an open joint-stock company incorporated in Russia ("the applicant"), on 20 December 2001.

2. The applicant was represented by Mr M. de Guillenchmidt, a lawyer practising in Paris. The Russian Government ("the Government") were represented by Mr P. Laptev, Representative of the Russian Federation at the European Court of Human Rights.

3. The applicant alleged that the final decision in its civil case before the commercial courts was quashed by way of supervisory review in violation of Articles 6, 13 and 14 of the Convention and of Article 1 of Protocol No. 1 to the Convention.

4. By a decision of 23 May 2006, the Court declared the application admissible.

5. The applicant and the Government each filed further written observations (Rule 59 § 1). The Chamber having decided, after consulting the parties, that no hearing on the merits was required (Rule 59 § 3 *in fine*), the parties replied in writing to each other's observations.

THE FACTS

I. THE CIRCUMSTANCES OF THE CASE

6. In 1966 the Ministry of Foreign Trade of the USSR created a State Export and Import Agency "Soyuzplodoimport" (*Всесоюзное экспортно-импортное объединение «Союзплодоимпорт»*). Its assets included the trademarks to a number of brands of alcohol (such as Vodka Stolichnaya, Vodka Moskovskaya and their derivatives).

7. On 5 January 1990 the agency was reorganised into the State Foreign Trade Agency "Soyuzplodoimport" (*Всесоюзное внешнеэкономическое объединение «Союзплодоимпорт»*).

8. On 20 January 1992 the applicant company was set up in the form of a closed joint-stock company. It was called the "Foreign Trade Stock Company 'Soyuzplodoimport'" (*Внешнеэкономическое акционерное общество закрытого типа «Союзплодоимпорт»*, VAO "Soyuzplodoimport"), and was registered with the relevant state agency, namely the Moscow Registration Chamber. According to its memorandum of association, it was set up by several founders, including the State Foreign Trade Agency "Soyuzplodoimport", which held 3,880 of its 17,000 shares. The memorandum of association provided that the applicant company was a "successor" to the State Foreign Trade Agency "Soyuzplodoimport".

9. In 1998 the applicant company converted into an open joint-stock company.

10. On 24 December 1999 the general shareholders' meeting of the applicant company adopted a new memorandum of association. The company name was changed to OAO "Plodovaya Kompaniya" (*ОАО «Плодовая компания»*). The new memorandum of association contained a declaration that the applicant company was the successor of the State Foreign Trade Agency "Soyuzplodoimport".

11. In the above period the applicant company notified the trademark registration authority that the trademarks of the State Foreign Trade Agency "Soyuzplodoimport" had changed ownership through succession and consequently obtained trademark certificates in its own name. It subsequently used the trademarks as collateral in a number of commercial transactions with third parties.

12. On 31 October 2000 the Deputy Prosecutor General challenged the applicant company's new memorandum of association, particularly the declaration of succession, before the Commercial Court of Moscow.

13. On 21 December 2000 the Commercial Court of Moscow declared the provision on succession null and void. It held that the applicant company had had no legal grounds to claim succession to the State Foreign Trade Agency "Soyuzplodoimport". The applicant company had been set up

as a new company and not converted from an existing one. It held that a mere declaration by the applicant company in its founding memorandum of association was insufficient to enable it to become the successor of another company. Likewise, it found that, although the applicant company had *de facto* acted as a successor before the trademark registration authorities and courts of arbitration, this was irrelevant to the establishment of corporate succession.

14. On 19 February 2001 the Appellate Board of the Commercial Court of Moscow examined the applicant company's appeal. Without entering into the merits it quashed the first-instance judgment and terminated the proceedings on the ground that the prosecutor's office did not have standing to bring proceedings. This decision entered into force on the same day. It was not appealed against either by a cassation appeal or by a separate appeal.

15. On 18 April 2001 the Moscow Registration Chamber registered the change of name of the State Foreign Trade Agency "Soyuzplodoimport". Its new name was the Federal State Unitary Enterprise "Soyuzplodoimport" (*Федеральное государственное унитарное предприятие «Внешнеэкономическое объединение Союзплодоимпорт»*).

16. On 13 June 2001 the Deputy Prosecutor General submitted a request for supervisory review of the decision of 19 February 2001.

17. The applicant company was summoned to the hearing before the supervisory instance, but those summons were not served on it because it could not be found at its official address. The representatives of the applicant company learned about the hearing, however, submitted written comments on the merits of the case and attended the hearing.

18. On 16 October 2001 the Presidium of the Supreme Commercial Court of Russia examined the case in supervisory review proceedings. The applicant company was represented by the company's president, who made oral submissions before the Presidium.

19. The Presidium quashed the decision of 19 February 2001 and reinstated the first-instance judgment of 21 December 2000. On the procedural point, it held that the prosecutor's office was entitled by law to represent the State in proceedings before commercial courts where public or State interests were involved. It found that the proceedings at issue concerned State property, and that this provided sufficient grounds for the prosecutor to intervene. As to the merits of the case, the Presidium upheld the finding that the applicant company was not entitled to claim succession to the State Foreign Trade Agency "Soyuzplodoimport" because there had been no decision on the latter's conversion, and the applicant company itself had been created as a new entity and not as a result of any reorganisation of an existing legal person. Accordingly, the provisions on succession made in its memorandums of association were null and void. This decision entered into force on the same day and was not subject to further appeal.

II. RELEVANT DOMESTIC LAW

A. Corporate succession

20. The Civil Code of the Russian Federation provides that a legal person may be reorganised or liquidated upon a decision of its founders or its management body as authorised in its constitutional documents, or by a competent court in the circumstances provided for by law (Articles 57 and 61). In the event of reorganisation in a form of merger, conversion or accession, the assets of the legal person that ceases to exist are transferred pursuant to an act of transfer to a newly created legal person and, in the latter case – to an existing legal person. In the event of reorganisation in a form of division or separation, the assets of the reorganised legal person are divided and transferred pursuant to a separation balance sheet (Article 58). In the event of liquidation the legal person ceases to exist without succession (Article 61).

B. Supervision review in proceedings before commercial courts

21. The Code of Commercial Procedure (no. 70-FZ of 5 May 1995, in force at the material time) established that final judgments and decisions of all commercial courts of the Russian Federation were amenable to supervisory review initiated on an application by the President of the Supreme Commercial Court or his deputy or by the Prosecutor General of the Russian Federation or his deputy (Articles 180 and 181). The Code did not list the grounds for lodging an application for supervisory review: it merely specified that it could be lodged "also in connection with a request by a party to the proceedings" (Article 185 § 1). The summoning of parties to the hearing before the Presidium of the Supreme Commercial Court was to be at the discretion of the Presidium (Article 186 § 2). There was no time-limit for lodging an application for supervisory review, and, in principle, such applications could be lodged at any time after a judgment had become final.

THE LAW

I. ALLEGED VIOLATION OF ARTICLE 1 OF PROTOCOL No. 1 TO THE CONVENTION

22. The applicant company complained that there had been a violation of its right to the peaceful enjoyment of its possessions, in particular the assets of its alleged predecessor corporation. In particular, it contended that the supervisory review had resulted in their claim to be the holder of the alcohol trademarks being declared void. It relied on Article 1 of Protocol No. 1, which provides:

Article 1 of Protocol No. 1 (protection of property)

> "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."

23. The Government denied that there had been an interference with the applicant's possessions. They disputed the applicant's title to the disputed trademarks or to any other assets which it had allegedly acquired from the State Foreign Trade Agency "Soyuzplodoimport". Furthermore, they pointed out that the judicial decision quashed by the supervisory instance had been a procedural one and did not confer any right or entitlement on the applicant company and did not create any legitimate expectation to acquire them. Accordingly, its reversal could not deprive the applicant company of any possessions within the meaning of Article 1 of Protocol No. 1.

24. In contrast, the applicant company maintained that, as a result of the supervisory review proceedings and of the entire dispute resolution process before the commercial courts, it had been deprived of its possessions, notably of all the assets of its alleged predecessor, the State Foreign Trade Agency "Soyuzplodoimport".

25. The Court notes, firstly, that the subject matter of the parties' dispute before the domestic instances, and of the applicant's claims before the Court, was the existence of the universal legal succession between the State Foreign Trade Agency "Soyuzplodoimport" and the applicant company. The question of ownership of individual assets, such as trademarks, was not as such contested in the impugned proceedings and subsequently does not call for the Court's assessment.

26. The Court further notes that the applicant company laid claim to the alleged corporate succession, which presupposes the existence of a bilateral deed between two companies or a unilateral deed from a reorganised company by which assets are reassigned. However, the applicant company has not presented any proof of the intention of the State Foreign Trade Agency "Soyuzplodoimport" to convert itself into another company or to reorganise itself so as to separate from its assets in favour of the applicant company. On the contrary, the Court considers it established that the State Foreign Trade Agency "Soyuzplodoimport" continued to exist in its original corporate form until 2001, when it was re-registered as a Federal State Unitary Enterprise "Soyuzplodoimport".

27. The Court also finds it pertinent that the applicant company has never succeeded in having its title to the legal succession established in domestic judicial proceedings. No court judgment has determined this point in the applicant company's favour. In its decision of 19 February 2001, the appeal instance did not resolve the dispute in substance and took only a procedural decision to exclude the public prosecutor from participation in the proceedings. In this context, the Court reiterates its established case-law that a "claim" can constitute a "possession" within the meaning of Article 1 of Protocol No. 1 only if it is sufficiently established to be enforceable (see *Burdov v. Russia*, no. 59498/00, § 40, ECHR 2002-III and *Stran Greek Refineries and Stratis Andreadis v. Greece*, judgment of 9 December 1994, Series A no. 301-B, p. 84, § 59). In the circumstances of the instant case, it considers that at no stage of the domestic proceedings was there a judicial decision such as to establish the applicant company's claim to "possessions" within the meaning of Article 1 of Protocol No. 1.

28. Accordingly the decisions of the Russian courts cannot be considered as an interference with the applicant's "possessions" within the meaning of Article 1 of Protocol No. 1.

29. It follows that there has been no violation of Article 1 of Protocol No. 1 to the Convention.

II. ALLEGED VIOLATION OF ARTICLE 6 § 1 OF THE CONVENTION AND OF ARTICLES 13 AND 14 IN CONJUNCTION WITH ARTICLE 6 § 1 OF THE CONVENTION

30. The applicant company complained under Article 6 § 1 of the Convention and under Articles 13 and 14 in conjunction with Article 6 § 1 that the final decision of the Appellate Board of the Commercial Court of Moscow of 19 February 2001 had been quashed by way of supervisory review, in violation of the principle of legal certainty. It also complained that the proceedings before the Presidium of the Supreme Commercial Court of Russian Federation had been conducted in violation of the principle of equality of arms, in that the State, as a party to proceedings, had

exercised its extraordinary power to institute supervisory review whilst the applicant company had no such possibility. Finally, it complained that it had not been summoned to take part in the proceedings.

31. In so far as relevant, the Convention Articles relied on by the applicant provide:

Article 6 (right to a fair hearing)

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

Article 13 (right to an effective remedy)

> "Everyone whose rights and freedoms as set forth in [the] Convention are violated shall have an effective remedy before a national authority notwithstanding that the violation has been committed by persons acting in an official capacity."

Article 14 (prohibition of discrimination)

> "The enjoyment of the rights and freedoms set forth in [the] Convention shall be secured without discrimination on any ground such as sex, race, colour, language, religion, political or other opinion, national or social origin, association with a national minority, property, birth or other status."

32. The Government responded that there had been no violation of the applicant's right to a fair trial. They considered that it had been necessary to quash the decision of the appellate instance because it had been taken in breach of the domestic law. They also considered that the principle of legal certainty had not been violated, in that the supervisory review was instituted shortly after the appeal decision and thus constituted the next stage of the proceedings. They referred to Article 187 of the Code of Commercial Procedure, which provided that a case could be reviewed on points of law in supervisory review proceedings. Moreover, the applicant had been aware that such a possibility existed under domestic law and therefore it could not rely on the appeal decision as a final judicial act. They further added that the relevant legislation had changed, in particular through the 2002 Code of Commercial Procedure, which introduced time-limits for initiating supervisory review.

33. The applicant company maintained its complaints. It considered that the appellate court's decision had been quashed on supervisory review in violation of the principle of legal certainty.

34. The Court recalls that Article 6 § 1 extends only to a dispute ("contestation") over a "civil right" which can be said, at least on arguable grounds, to be recognised under domestic law. The dispute must be genuine and serious; it may relate not only to the existence of a right but also to its scope and the manner of its exercise; and, finally, the outcome of the proceedings must be directly decisive for the right in question (see *Hamer*

v. France, judgment of 7 August 1996, *Reports* 1996-III, pp. 1043-44, § 73; and *Zhigalev v. Russia*, no. 54891/00, §§ 159-62, 6 July 2006). As the Court has consistently held, mere tenuous connections or remote consequences are not sufficient to bring Article 6 § 1 into play (see *Balmer-Schafroth and Others v. Switzerland*, judgment of 26 August 1997, *Reports of Judgments and Decisions* 1997-IV, p. 1357, § 32; *Athanassoglou and Others v. Switzerland* [GC], no. 27644/95, § 43, ECHR 2000-IV; *Gorraiz Lizarraga and Others v. Spain*, no. 62543/00, § 43, ECHR 2004-III; and *Association de Défence des Intérêts du Sport v. France* (dec.), no. 36178/03, 10 April 2007).

35. The Court refers to its finding above that the applicant company was defending in commercial proceedings a claim of corporate succession which had no basis in domestic law (see paragraphs 25-27 above). In view of this finding the Court considers that for the purposes of Article 6 of the Convention the applicant did not have a "civil right" recognisable under domestic law. Therefore there was no basis for the rights guaranteed by Article 6 § 1 to arise.

36. It follows that there has been no violation of Article 6 § 1 of the Convention.

37. Having regard to the above conclusion the Court finds no separate issues under Articles 13 and 14 of the Convention.

FOR THESE REASONS, THE COURT

1. *Holds* unanimously that there has been no violation of Article 1 of Protocol No. 1 to the Convention;

2. *Holds* by six votes to one that there has been no violation of Article 6 of the Convention;

3. *Holds* unanimously that no separate issues arise under Articles 13 and 14 of the Convention.

Done in English, and notified in writing on 7 June 2007, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Søren NIELSEN
Registrar

Christos ROZAKIS
President

In accordance with Article 45 § 2 of the Convention and Rule 74 § 2 of the Rules of Court, the partly dissenting opinion of Mrs Tulkens is annexed to this judgment.

C.L.R.
S.N.

PARTLY DISSENTING OPINION OF JUDGE TULKENS

The majority of the Chamber found that the applicant failed to establish its right under domestic law and that, therefore, Article 6 *did not apply*. With all due respect, I do not share this view.

1. It is difficult to see how a dispute concerning the existence of a corporate succession, which was examined and determined on the merits by the commercial courts, did not constitute a "determination of ... civil rights and obligations".

Firstly, at least one party to the proceedings – the State – had a claim that was genuine and serious. Secondly, proceedings concerning the succession of companies were regarded as "civil" by the domestic law and the domestic courts. Lastly, a final and binding judicial decision on the merits of the case was taken preventing the applicant from laying any future claims to the assets of a State-owned company, and this decision had very important financial implications for the parties involved. Neither the domestic courts nor the Court itself argued that the applicant did not have a right to litigate on the matter or to act as a defendant in the proceedings at issue.

In this respect, to say that the "the applicant did not have a civil right recognisable under domestic law" (§ 35) is simply misleading. Such reasoning can be valid only to justify lack of access to a court to resolve claims that cannot be accepted for judicial examination. In cases such as the present one, if the domestic courts actually examined the claim on the merits and determined the rights and obligations of the parties, there would be no justification for excluding the proceedings from the protection of Article 6 on the grounds that the applicant's position did not stand up to judicial scrutiny. To decide otherwise would come close to finding that the applicability of Article 6 depends on whether the applicant has been successful in his or her litigation. In so far as the *Zhigalev v. Russia* judgment of 6 July 2006 was relied on, this criticism also extends to the summary reasoning of that case (§§ 160-61), which left room for random exclusions from the scope of Article 6.

Finally, I think the judgment of the majority goes against the spirit of the *Vilho Eskelinen and Others v. Finland* judgment of 19 April 2007. Where the domestic law grants access to court for a certain type of claim and regards the dispute as civil, why and on what grounds should our Court decide otherwise?

2. One line of argument that the Court could have explored more fruitfully, if it felt that there had been no violation of Article 6, would have been to examine the applicability of Article 6 to the part of the proceedings prior to the supervisory review. It could have been argued that the ruling of the Appellate Board of the Commercial Court of Moscow of 19 February 2001 was *procedural* and did not determine (at least definitely) civil rights and obligations. Indeed, without entering into the merits, it quashed the first-instance judgment and terminated the proceedings on the ground that the prosecutor's office did not have standing to bring proceedings. In such a situation the guarantees of Article 6 would begin to apply from the point when the case was accepted for supervisory review by the Presidium of the Supreme Commercial Court of Russia on 16 October 2001, as this was the instance which ruled finally on the *merits* of the case. Indeed, the Presidium quashed the decision of 19 February 2001 and reinstated the first-instance judgment of 21 December 2000.

In sum, the decision of 16 October 2001 by the Presidium of the Supreme Commercial Court did concern the “civil rights and obligations” of the applicant company. However, the decision it attacked, namely that of 19 February 2001, did not create any “legal certainty” under the first paragraph of Article 6. Therefore, the quashing of that decision by way of supervisory review on 16 October 2001 did not interfere with the applicant company's “right to a court” under Article 6 § 1, in contrast to many other Russian cases concerning the functioning of the supervisory review system (see, as a classic authority, the case of *Ryabykh v. Russia*, no. 52854/99, §§ 51 et seq., ECHR 2003-IX). Against this background, there would not have been any reason to conclude that the proceedings against the applicant company were “unfair” within the meaning of Article 6 of the Convention.