CONSEIL DE L'EUROPE

COUNCIL OF EUROPE

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

FIRST SECTION

CASE OF ROSELTRANS v. RUSSIA

(Application no. 60974/00)

JUDGMENT

STRASBOURG

21 July 2005

FINAL

21/10/2005

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 Roseltrans 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,
Mr P. LORENZEN,
Mrs N. VAJIĆ,
Mrs S. BOTOUCHAROVA,
Mr A. KOVLER, *judges*,
and Mr S. QUESADA, *Deputy Section Registrar*,

Having deliberated in private on 30 June 2005,

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

PROCEDURE

1. The case originated in an application (no. 60974/00) 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 *Rossiyskiy Electrotransport*, also known as Roseltrans, a Russian open joint-stock company ("the applicant company"), on 14 August 2000.

2. The applicant company was represented by Mr A.A. Pavlov, a lawyer practising in Moscow. The Russian Government ("the Government") were represented by Mr P.A. Laptev, Representative of the Russian Federation at the European Court of Human Rights.

3. The applicant company alleged, in particular, that a judgment in its favour was quashed in supervisory review proceedings, in breach of Article 6 § 1 of the Convention.

4. The application was allocated to the First Section of the Court (Rule 52 § 1 of the Rules of Court). Within that Section, the Chamber that would consider the case (Article 27 § 1 of the Convention) was constituted as provided in Rule 26 § 1.

5. By a decision of 27 May 2004, the Court declared the application partly admissible.

6. The applicant company and the Government each filed observations on the merits (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.

7. On 1 November 2004 the Court changed the composition of its Sections (Rule 25 § 1). This case was assigned to the newly composed First Section (Rule 52 § 1).

THE FACTS

I. THE CIRCUMSTANCES OF THE CASE

8. The applicant is a Russian open joint-stock company which was set up in Moscow in 1994 by the Federal Ministry of State Property Management ("the Ministry") in pursuance of a directive from the President of Russia and a Government decree. Its purpose was to hold shares of former state enterprises which produced electrical equipment for the railways. The applicant company's initial capital was formed by State property. Various individuals and private companies also became shareholders at a subsequent point.

9. On 14 November 1995, following a directive to that effect by the President of Russia, the Ministry adopted a resolution by which the applicant company was liquidated and a liquidation committee was appointed.

10. The applicant company, represented by its director general, joined proceedings brought by one of its minority shareholders before the Lyublinskiy District Court of Moscow seeking to have the Ministry's resolution of 14 November 1995 and a number of follow-up resolutions declared void.

11. The applicant company asked the District Court to issue an interim injunction prohibiting liquidation pending a trial and to strip the liquidation committee of its powers. On 29 October 1998 the District Court issued the injunction. It also prohibited the liquidation committee from acting on behalf of the applicant company in legal proceedings.

12. On 17 May 2000 the District Court found in favour of the applicant company and its co-plaintiffs. The court noted that the decision to liquidate the applicant company was one that could be taken only by a general assembly of its shareholders. The Ministry held less than 50% of the applicant company's shares at the material time, and its decision to liquidate the applicant company ran counter to the law. The court held that the resolution of 14 November 1995 and the follow-up resolutions were void and ordered the Ministry to annul them. The Ministry did not appeal and the judgment came into force on 28 May 2000.

13. Some time later the Ministry successfully applied for intervention in the proceedings by the Moscow public prosecutor. On 10 April 2001 the prosecutor lodged an application for supervisory review (*протест в порядке надзора*) of the judgment of 17 May 2000, seeking to have it set aside.

14. On 10 May 2001, further to the prosecutor's request, the Presidium of the Moscow City Court, which was composed of five judges, reviewed the case. The court heard submissions from the acting public prosecutor of

Moscow, who supported the request. The applicant company did not attend the hearing as it had not been informed that it was to be held.

15. Referring to the outcome of other proceedings before different courts in 1997-1999, the Presidium of the Moscow City Court stated that the Ministry had been the sole shareholder of the applicant company at the material time. It was thus empowered to take a decision on liquidating the applicant company in accordance with the relevant substantive law. The director general had no authority to bring proceedings on behalf of the applicant company, since his authority had been ended by the ministerial resolutions in dispute. The District Court should have ensured that the liquidation committee took part in the proceedings. Its failure to do so had made it impossible to establish all the facts which were relevant for the proper examination of the case.

16. The Presidium of the Moscow City Court granted the prosecutor's request, quashed the judgment of 17 May 2000 and ordered a fresh examination of the case by the Lyublinskiy District Court, with a different composition.

17. The applicant company was not served with either a copy of the prosecutor's request or a copy of the decision of 10 May 2001. It learned of those developments in October 2001.

18. Following jurisdictional changes the case was transferred to the Commercial Court of Moscow, which examined it on 25 March 2003. That court held that the fact that the proceedings had been brought by the applicant company, in the person of its director general, was consistent with the applicant company's regulations. The director general had never been relieved of his post through an established procedure. The dispute originated in the liquidation of the applicant company and concerned, *inter alia*, the lawfulness of the liquidation committee's appointment. That being the case, the applicant company could not be deprived of its right to a court and its action ought to be examined. The court further held that the Ministry had not been the sole shareholder of the applicant company and that it had had no authority under the legislation to liquidate the applicant company unilaterally.

19. By a decision of 25 March 2003, the Commercial Court of Moscow found for the applicant company and its co-plaintiffs. It declared void the resolution of 14 November 1995 and the follow-up resolutions and ordered the Ministry to annul them. The Ministry did not appeal and the judgment entered into force on 25 April 2003.

II. RELEVANT DOMESTIC LAW

20. The Court's judgment in the case of *Ryabykh v. Russia* contains the following description of the relevant domestic law concerning supervisory

review proceedings, which also applied in the present case (see *Ryabykh v. Russia*, no. 52854/99, §§ 31-42, ECHR 2003-IX):

"Under the 1964 Code of Civil Procedure, which was in force at the material time, judgments became final as follows:

Article 208
Coming into force of judgments

'Court judgments shall become legally binding on the expiration of the time-limit for lodging a cassation appeal if no such appeal has been lodged. If the judgment is not quashed following a cassation appeal, it shall become legally binding when the higher court delivers its decision. ...'

The only further means of recourse was the special supervisory review procedure that enabled courts to reopen final judgments (пересмотр в порядке судебного надзора):

Article 319
Judgments, decisions and rulings amenable to supervisory review

'Final judgments, decisions and rulings of all Russian courts shall be amenable to supervisory review on an application lodged by the officials listed in Article 320 of the Code.'

The power of officials to lodge an application (протест) depended on their rank and territorial jurisdiction:

Article 320
Officials who may initiate supervisory review

'Applications may be lodged by:

(1) the Prosecutor General – against judgments, decisions and rulings of any court;

(2) the President of the Supreme Court – against rulings of the Presidium of the Supreme Court and judgments and decisions of the Civil Division of the Supreme Court acting as a court of first instance;

(3) Deputy Prosecutors General – against judgments, decisions and rulings of any court other than rulings of the Presidium of the Supreme Court;

(4) Vice-Presidents of the Supreme Court – against judgments and decisions of the Civil Division of the Supreme Court acting as a court of first instance;

(5) the Prosecutor General, Deputy Prosecutor General, the President and Vice-Presidents of the Supreme Court – against judgments, decisions and rulings of any court other than rulings of the Presidium of the Supreme Court;

(6) the President of the Supreme Court of an autonomous republic, a regional court, a city court, a court of an autonomous region or a court of an autonomous district, the public prosecutor of an autonomous republic, a region, a city, an autonomous region or an autonomous district – against judgments and decisions of district (city) people's courts and against decisions of civil divisions of, respectively, the Supreme Court of an autonomous republic, regional court, city court, court of an autonomous region or court of an autonomous district that examined the case on appeal.'

The power to lodge such applications was discretionary, that is to say it was solely for the official concerned to decide whether or not a particular case warranted supervisory review.

Under Article 322 officials listed in Article 320 who considered that a case deserved closer examination could, in certain circumstances, obtain the case file in order to establish whether good grounds for lodging an application existed.

Article 323 of the Code empowered the relevant officials to stay the execution of the judgment, decision or ruling in question until the supervisory review proceedings had been completed.

Article 324 of the Code provided that the official concerned should draft the application and forward it – in sufficient copies for each of the parties – with the case file to the relevant court.

Article 325 read as follows:

'The parties ... shall be served copies of the application. If circumstances so require, the parties ... shall be informed of the time and place of the hearing.

The copies of the application shall be served on the parties by the court [examining the application]. The court shall give the parties sufficient time before the hearing to submit a written reply to the application and any additional material.'

Under Article 328 of the Code, proceedings on an application for supervisory review were normally oral and the parties were invited to make comments once the judge concerned had reported to the court.

Courts hearing applications for supervisory review had extensive jurisdiction in respect of final judgments:

Article 329
Powers of supervisory review courts

'The court that examines an application for supervisory review may:

(1) uphold the judgment, decision or ruling and dismiss the application;

(2) quash all or part of the judgment, decision or ruling and order a fresh examination of the case at first or cassation instance;

(3) quash all or part of the judgment, decision or ruling and terminate the proceedings or leave the claim undecided;

(4) uphold any of the previous judgments, decisions or rulings in the case;

(5) quash or vary the judgment of the court of first or cassation instance or of a court that has carried out supervisory review and deliver a new judgment without remitting the case for re-examination if substantive laws have been erroneously construed and applied.'

The grounds for setting aside final judgments were as follows:

Article 330
Grounds for setting aside judgments on supervisory review

'...

(1) wrongful application or interpretation of substantive laws;

(2) significant breach of procedural rules which led to the delivery of an unlawful judgment, decision or ruling ...'

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

1. ALLEGED VIOLATION OF ARTICLE 6 § 1 OF THE CONVENTION

21. The applicant company complained under Article 6 § 1 of the Convention that the decision of the Presidium of the Moscow City Court of 10 May 2001 had set aside the judgment in its favour by the Lyublinskiy District Court of 17 May 2000. It also complained that the proceedings before the Presidium of the Moscow City Court had been unfair in that the decision had been taken in its absence and that it had not been afforded an opportunity to submit observations in response to the prosecutor's request that the judgment be quashed.

The relevant part of Article 6 § 1 reads as follows:

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

22. The Government stated that the Presidium of the Moscow City Court had quashed the judgment in question and ordered a fresh examination of the case because the substantive law had been wrongly applied and there

had been fundamental breaches of procedural law. That decision had complied fully with Article 330 of the Code of Civil Procedure.

23. The applicant company maintained its complaint. It submitted, *inter alia*, that the proceedings before the Presidium of the Moscow City Court had not been adversarial and that that court's decision had been in breach of the domestic law.

A. Supervisory review procedure: substantive issues

24. The Court reiterates that the right to a fair hearing before a tribunal as guaranteed by Article 6 § 1 of the Convention must be interpreted in the light of the Preamble to the Convention, which, in its relevant part, declares the rule of law to be part of the common heritage of the Contracting States. One of the fundamental aspects of the rule of law is the principle of legal certainty, which requires, among other things, that where the courts have finally determined an issue, their ruling should not be called into question (see *Brumărescu v. Romania* [GC], no. 28342/95, § 61, ECHR 1999-VII).

25. Article 6 § 1 secures to everyone the right to have any claim relating to his civil rights and obligations brought before a court or tribunal. In this way it embodies the "right to a court", of which the right of access, that is the right to institute proceedings before courts in civil matters, constitutes one aspect. However, that right would be illusory if a Contracting State's domestic legal system allowed a final, binding judicial decision to remain inoperative to the detriment of one party. It would be inconceivable that Article 6 § 1 should describe in detail procedural guarantees afforded to litigants – proceedings that are fair, public and expeditious – without protecting the implementation of judicial decisions; to construe Article 6 as being concerned exclusively with access to a court and the conduct of proceedings would be likely to lead to situations incompatible with the principle of the rule of law which the Contracting States undertook to respect when they ratified the Convention (see *Hornsby v. Greece*, judgment of 19 March 1997, *Reports* 1997-II, pp. 510-11, § 40).

26. The Court has found a violation of the above principle of legal certainty and of the right to a court in the case of *Ryabykh v. Russia*, where a final and binding judgment in the applicant's favour was set aside, on the ground of misinterpretation of the law, by a higher court in supervisory review proceedings following an application by a president of a regional court, whose power to make such applications was not subject to any time-limit, so that judgments were liable to challenge indefinitely (see *Ryabykh v. Russia*, cited above, §§ 51-58).

27. In the present case, the supervisory review of the judgment of 17 May 2000, which had become final and binding under Article 208 of the Code of Civil Procedure, was set in motion by the Moscow public prosecutor. The latter was not a party to the proceedings. He enjoyed the

power to intervene by virtue of Articles 319 and 320 of the Code of Civil Procedure, and could exercise it without any time-limit. By its decision of 10 May 2001, the Presidium of the Moscow City Court quashed the judgment of 17 May 2000 and ordered a fresh examination of the case, putting forward reasons which appear to represent a view on the subject matter of the dispute which was not shared by the other domestic courts involved in determining the case (see paragraphs 12, 18 and 19 above). It is true that as a result of the fresh examination of the case the applicant's claims were granted by the judgment of the Commercial Court of Moscow of 25 March 2003. However, the applicant had to endure legal uncertainty for more than a year and ten months after the final judgment of 17 May 2000 was quashed.

28. The Court finds no reason to depart from its judgment in the aforementioned *Ryabykh* case. It concludes that the setting aside of the judgment of 17 May 2000 in supervisory review proceedings violated Article 6 § 1 of the Convention.

B. Supervisory review procedure: procedural issues

29. With regard to the complaint about the procedural defects of the proceedings before the Presidium of the Moscow City Court, the Court finds that, having concluded that there has been an infringement of the applicant company'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 *Ryabykh v. Russia*, cited above, § 59).

2. APPLICATION OF ARTICLE 41 OF THE CONVENTION

30. 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."

31. The Court points out that under Rule 60 of the Rules of Court any claim for just satisfaction must be submitted in writing together with the relevant supporting documents or vouchers, "failing which the Chamber may reject the claim in whole or in part".

32. On 2 June 2004, after the present application had been declared partly admissible, the Court invited the applicant company to submit its claims for just satisfaction by 20 September 2004. No such claims were submitted within the specified time-limit.

33. In these circumstances, the Court makes no award under Article 41.

FOR THESE REASONS, THE COURT UNANIMOUSLY

1. *Holds* that there has been a violation of Article 6 § 1 of the Convention;

2. *Decides* to make no award under Article 41 of the Convention.

Done in English, and notified in writing on 21 July 2005, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Santiago QUESADA
Deputy Registrar

Christos ROZAKIS
President