



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

FIRST SECTION

CASE OF PROTSENKO v. RUSSIA

(Application no. 13151/04)

JUDGMENT

STRASBOURG

31 July 2008

FINAL

26/01/2009

This judgment may be subject to editorial revision.

In the case of Protsenko v. Russia,

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

Christos Rozakis, *President*,

Nina Vajić,

Anatoly Kovler,

Elisabeth Steiner,

Khanlar Hajiyeu,

Giorgio Malinverni,

George Nicolaou, *judges*,

and Søren Nielsen, *Section Registrar*,

Having deliberated in private on 8 July 2008,

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

PROCEDURE

1. The case originated in an application (no. 13151/04) 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 Alla Petrovna Protsenko (“the applicant”), on 11 March 2004.

2. The applicant was represented by Ms E. Kiryanova, Mr A. Kiryanov and Mr K. Lugantsev, lawyers practising in Taganrog. The Russian Government (“the Government”) were represented by Mr P. Laptev, the former Representative of the Russian Federation at the European Court of Human Rights, and subsequently by their Representative, Mrs V. Milinchuk.

3. The applicant complained about the quashing of the final judgment in her favour by way of supervisory review.

4. On 15 November 2005 the Court decided to give notice of the application to the Government. Under the provisions of Article 29 § 3 of the Convention, it decided to examine the merits of the application at the same time as its admissibility.

THE FACTS**I. THE CIRCUMSTANCES OF THE CASE**

5. The applicant was born in 1951 and lives in Taganrog, the Rostov Region.

6. On 12 March 2003 the applicant purchased a recreation centre (“the centre”), comprising a group of cottages, from a private company. The centre was situated on a plot of land belonging to a collective farm.

7. The applicant asked the Registration Office to register the transfer of the title to the centre from the company to her. However, the applicant’s request was dismissed, because the company had not duly registered its title to the centre, and therefore was unable to transfer it to the applicant.

8. The applicant brought proceedings against the company seeking to obtain acknowledgement of her title to the centre.

9. On 7 April 2003 the Neklinovskiy District Court of the Rostov Region granted the applicant’s claim.

10. No ordinary appeal was lodged against the judgment.

11. On 18 April 2003 the judgment became final and enforceable.

12. On 23 June 2003 the Registration Office registered the applicant’s title to the centre.

13. On an unspecified date in 2003 the collective farm lodged an application for supervisory review of the judgment of 7 April 2003. It alleged that the said judgment was unfounded since, even though the collective farm owned the plot on which the centre in question was situated, it had not been invited to take part in the proceedings and its interests had not been taken into consideration by the domestic court.

14. On 3 December 2003 the Rostov Regional Court remitted the supervisory-review application for examination on its merits by the Presidium.

15. On 25 December 2003 the Presidium of the Rostov Regional Court held a supervisory-review hearing. It held that the first-instance court adopted the judgment with significant violations of substantive and procedural law. In particular, the Presidium pointed out that the first-instance court did not investigate the circumstances of the case, that it failed to identify all the parties to the proceedings, to invite the owner of the land to participate in the proceedings and that it had pronounced judgment by which the rights of the latter were considerably affected. On these grounds the Presidium quashed the judgment of 7 April 2003 and remitted the matter for a fresh examination.

16. On 25 January 2005 the Neklinovskiy District Court of the Rostov Region dismissed the applicant’s claim, declared the purchase agreement void, annulled the registration of the applicant’s title to the centre and restored the parties to their original position.

17. On 30 March 2005 the Rostov Regional Court upheld the above judgment on appeal.

II. RELEVANT DOMESTIC LAW

18. The Code of Civil Procedure of the Russian Federation (“the new Code”) was enacted on 14 November 2002 and replaced the RSFSR Code of Civil Procedure (“the old Code”) from 1 February 2003. It provides as follows:

Article 376. Right to apply to a court exercising supervisory review

“1. Judicial decisions that have become legally binding, with the exception for judicial decisions by the Presidium of the Supreme Court of the Russian Federation, may be appealed against ... to a court exercising supervisory review, by parties to the case and by other persons whose rights or legal interests have been adversely affected by these judicial decisions.

2. Judicial decisions may be appealed against to a court exercising supervisory review within one year after they became legally binding ...”

Article 387. Grounds for quashing or altering judicial decisions by way of supervisory review

“Judicial decisions of lower courts may be quashed or altered by way of supervisory review on the grounds of substantial violations of substantive or procedural legal provisions.”

Article 390. Competence of the supervisory-review court

“1. Having examined the case by way of supervisory review, the court may ...

(2) quash the judicial decision issued by a court of first, second or supervisory-review instance in whole or in part and remit the matter for a fresh examination; ...

(5) quash or alter the judicial decision issued by a court of first, second or supervisory-review instance and issue a new judicial decision, without remitting the matter for a fresh examination, if substantive legal provisions have been erroneously applied or interpreted.”

THE LAW

I. ALLEGED VIOLATION OF ARTICLE 6 § 1 OF THE CONVENTION ON ACCOUNT OF THE QUASHING OF THE JUDGMENT

19. The applicant complained that the quashing of the final judgment in her favour by way of supervisory review had breached the principle of legal

certainty and her “right to a court” under Article 6 § 1 of the Convention, which reads as follows:

Article 6 § 1

“In the determination of his civil rights and obligations ..., everyone is entitled to a fair ... hearing within a reasonable time ... by [a] ... tribunal ...”

A. Admissibility

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

B. Merits

1. Arguments by the parties

21. The Government submitted that when rendering the judgment of 7 April 2003 the District Court had not established all the circumstances of the case. In particular, the court had not ascertained the owner of the plot occupied by the recreation centre and failed to find out the reasons for the company’s not having registered its property rights to the centre before the transaction had taken place. The Government further submitted that the District Court failed to invite the owner of the plot to take part in the proceedings. As a result, it delivered a judgment which adversely affected the interests of the owner of the land. For the above reasons, as soon as the owner of the land became aware of the judgment of 7 April 2003, which by that time had already entered into force, it lodged an application for its review within the supervisory review procedure pursuant to Article 376 of the Code of Civil Procedure of the Russian Federation.

22. The Government laid special emphasis on the fact that, contrary to the *Ryabykh* case (see *Ryabykh v. Russia*, no. 52854/99, ECHR 2003-IX), in which the supervisory-review procedure was initiated by a State official on the ground that the first-instance court had misinterpreted the relevant laws, in the instant case the supervisory review was initiated by someone whose rights and legitimate interests had been grossly violated by the judgment of 7 April 2003 and who had no other means to protect its rights.

23. The Government concluded that there had been, therefore, no violation of the principle of legal certainty and the applicant’s right to a court under Article 6 § 1 of the Convention.

24. The applicant maintained her claims.

2. The Court's assessment

25. 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 declares, in its relevant part, 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, in principle, not be called into question (see *Brumărescu v. Romania*, judgment of 28 October 1999, *Reports of Judgments and Decisions* 1999-VII, § 61).

26. This principle insists that no party is entitled to seek re-opening of the proceedings merely for the purpose of a rehearing and a fresh decision of the case. Higher courts' power to quash or alter binding and enforceable judicial decisions should be exercised for correction of fundamental defects. The mere possibility of two views on the subject is not a ground for re-examination. Departures from that principle are justified only when made necessary by circumstances of a substantial and compelling character (see *Ryabykh v. Russia*, no. 52854/99, § 52, ECHR 2003-X, and *Kot v. Russia*, no. 20887/03, § 24, 18 January 2007).

27. The Court reiterates that Article 6 § 1 secures to everyone the right to have any claim relating to his or her 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 and binding judicial decision to be quashed by a higher court merely on the ground of disagreement with the assessment made by lower courts (see *Kot*, cited above, §§ 27-30).

28. The Court has found a violation of an applicant's "right to a court" guaranteed by Article 6 § 1 of the Convention in many cases in which a judicial decision that had become final and binding was subsequently quashed by a higher court with the view of carrying out a fresh examination (see *Dovguchits v. Russia*, no. 2999/03, §§ 26-31, 7 June 2007; *Kudrina v. Russia*, no. 27790/03, §§ 15-20, 21 June 2007; *Sidorenko v. Russia*, no. 3519/05, §§ 12-19, 26 July 2007; and *Kot v. Russia*, cited above, §§ 23-30).

29. The Court has to assess whether in the present case the quashing of the final judgment in the applicant's favour by way of supervisory review was justified by the circumstances and whether a fair balance between the interests of the applicant and the need to ensure the proper administration of justice, which includes the interest of the third party, has been achieved.

30. The Court observes that the judgment of 7 April 2003 in the applicant's favour was set aside by way of a supervisory review on the ground that the District Court had failed to establish all the circumstances of

the case, to identify all the parties to the proceedings and to invite the owner of the land to participate in the proceedings, with the result that the rights of the latter were adversely affected by the above judgment.

31. The Court further observes that the third person knew about the judgment of 7 April 2003 only after it had become final and that, in any event, being no party to the proceedings the owner of the land could not lodge an ordinary appeal against it.

32. Therefore, through no fault of the third person who was not a party to the proceedings the domestic court rendered a judgment which directly affected his rights.

33. The Court considers that the circumstances referred to were in their nature and significance such as to justify the quashing of the final judgment and that this was not inconsistent with the principle of legal certainty.

34. The Court finds, therefore, that in the circumstances of this particular case the quashing of the final judgment of 7 April 2003 by the Presidium of the Rostov Regional Court by way of supervisory review did not deprive the applicant of the “right to a court” under Article 6 § 1 of the Convention. There has been accordingly no violation of that Article.

FOR THESE REASONS, THE COURT UNANIMOUSLY

1. *Declares* the application admissible;
2. *Holds* that there has been no violation of the applicant’s right to a court as guaranteed by Article 6 § 1 of the Convention.

Done in English, and notified in writing on 31 July 2008, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Søren Nielsen
Registrar

Christos Rozakis
President