



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

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FIRST SECTION

CASE OF SUTYAZHNIK v. RUSSIA

(Application no. 8269/02)

JUDGMENT

STRASBOURG

23 July 2009

FINAL

10/12/2009

This judgment may be subject to editorial revision.

In the case of Sutyazhnik v. Russia,

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

Christos Rozakis, *President*,

Anatoly Kovler,

Elisabeth Steiner,

Dean Spielmann,

Sverre Erik Jebens,

Giorgio Malinverni,

George Nicolaou, *judges*,

and Mr Søren Nielsen, *Section Registrar*,

Having deliberated in private on 2 July 2009,

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

PROCEDURE

1. The case originated in an application (no. 8269/02) 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 a Russian NGO, Sutyazhnik (“the applicant association”), on 21 January 2002.

2. The applicant association, which had been granted legal aid, was represented by Ms L. Churkina, a lawyer practising in Yekaterinburg. The Russian Government (“the Government”) were represented by Mr P. Laptev and Mrs V. Milinchuk, the former Representatives of the Russian Federation at the European Court of Human Rights.

3. The applicant association alleged that by the quashing of a judgment of 17 June 1999 the authorities had breached its “right to a court”, enshrined in Article 6 of the Convention.

4. By a decision of 2 March 2006 the Court declared the application admissible.

5. The Government, but not the applicant association, filed further written observations (Rule 59 § 1). The Chamber decided, after consulting the parties, that no hearing on the merits was required (Rule 59 § 3 *in fine*).

THE FACTS

I. THE CIRCUMSTANCES OF THE CASE

6. The applicant association was registered in 1994 by the Sverdlovsk Regional Department of Justice (“the Department”) at the following address: 10, Revolution Place, Verkh-Neyvinskiy, Sverdlovsk Region. However, the applicant association has since moved to 11-1, Turgenev Street, Yekaterinburg. As appears from the materials of the case, in particular, from the letter of 11 May 1999, the Department was aware of the applicant association’s actual address.

7. In 1995 a new Law on non-governmental organisations was enacted. The Law required that all NGOs established before 1995 be re-registered before 1 July 1999. The applicant association applied twice to the Department seeking re-registration. However, its applications were refused.

8. The applicant association brought an action against the Department seeking re-registration of the association. On 17 June 1999 the Commercial Court of the Sverdlovsk Region allowed the applicant association’s claim and ordered the Department to register the applicant association. The Court also ordered the reimbursement by the Department of the court fees paid by the applicant association. That decision was upheld by the Federal Commercial Court of the Ural Circuit on 18 October 1999.

9. On 22 August 2000 the Vice-President of the Supreme Commercial Court brought an extraordinary appeal (*надзорная жалоба*) against the decisions of 17 June and 18 October 1999. As appears from the letter of the registry of the Supreme Commercial Court of 19 November 2001, on 29 August 2000 a copy of the appeal was sent to the applicant association’s previous address, which appeared in the association’s official registration documents. On 7 September 2000 the letter from the registry reached its destination, but it was returned to the sender marked by the postman as follows: “no [such] public organisation is registered [at this address]”.

10. On 26 September 2000 the Presidium of the Supreme Commercial Court of the Russian Federation quashed the lower courts’ decisions by way of a supervisory review. The reasoning of the Presidium reads as follows:

“Pursuant to Article 22 of the Code of Commercial Procedure commercial courts could determine economic disputes arising from civil, administrative and other legal relationships.

Under Articles 50 and 117 of the Civil Code, as well as Article 5 of the Law On Public Associations a public association is a non-profit organisation.

Disputes concerning [State] registration or re-registration of non-profit organisations are not economical by their nature and [hence] do not fall within the competence of the commercial courts.”

As a result, the proceedings were discontinued. The hearing took place in the absence of the parties.

11. On 10 October 2000 a copy of the decision of the Supreme Commercial Court was sent to the applicant association's previous address. This document was delivered on 17 October 2000; however it was also returned to the registry marked as follows: "[this is] the address of the village council, the receptionist refused to take delivery [of this letter]".

12. According to the applicant association, on several occasions it applied to the Commercial Court of the Sverdlovsk Region with a view to urging the Department of Justice to enforce the judgment of 17 June 1999, as upheld on 18 October 1999, and register the association, but to no avail. In October 2001 a law clerk of the Commercial Court of the Sverdlovsk Region informed the applicant association of the annulment of the decision of 17 June 1999, as upheld on 18 October 1999. On 22 October 2001 the applicant association wrote a letter to the President of the Supreme Commercial Court asking for a copy of the decision of that court. The applicant association received it on 28 November 2001.

13. Shortly thereafter the applicant association challenged the refusal of the Department of Justice before the courts of general jurisdiction. By a final decision of 1 August 2002 the Sverdlovsk Regional Court allowed the applicant association's claim, ordering the Department of Justice to register the applicant association.

14. In 2003 the applicant association challenged the relevant provisions of the Code of Commercial Proceedings before the Constitutional Court of the Russian Federation. On 18 December 2003 the Constitutional Court declared this complaint inadmissible. The Court found that, although the provisions challenged did not establish any time-limits for bringing an extraordinary appeal, the time within which the appeal was brought in the applicant's case had not exceeded the "reasonable time", and, therefore, the applicant's rights had not been breached by it.

II. RELEVANT DOMESTIC LAW

15. The Law On Public Associations (No. 82-FZ of 19 May 1995, as amended), concerning non-profit NGOs, provided that the refusal of the competent Department of Justice to register a public association could be challenged before a court (Section 23 of the Law).

16. Since the 1990s the Russian judicial system has comprised of three elements – courts of general jurisdiction, commercial courts and constitutional courts. The Code of Commercial Procedure of 1995 (No. 70-FZ of 5 May 1995, in force at the material time but repealed on 1 September 2002, hereafter "the old Code") stated that the commercial courts could determine "economic disputes arising from civil, administrative and other legal relationships ... between legal persons ..." (Section 22 § 1 of the old

Code). Article 22 § 2 of the old Code provided that “economic disputes ... include disputes challenging the refusal of a State body to register a legal person where such registration is required by the Law”.

17. The Code of Commercial Procedure of 2002 (in force from 1 September 2002, hereafter “the new Code”) contains a similar provision which defined the competence of the commercial courts based on two criteria: the subject matter of the dispute (“economic disputes”) and the status of the litigants (“legal persons”). Article 33 of the new Code stipulates that disputes concerning the creation, reorganisation and liquidation of legal persons was within the competence of the commercial courts.

18. Under section 9 of the Law On Commercial Courts of the Russian Federation (No. 1-FKZ, of 28 April 1995, as in force at the material time), the Supreme Commercial Court had, *inter alia*, the right to issue recommendations deriving from case-law (*разъяснения по вопросам судебной практики*). On 9 December 2002 the Supreme Commercial Court issued Recommendation no. 11, “On certain issues arising in connection with the enactment of the Code of Commercial Procedure”, which interpreted *inter alia* Article 33 of the new Code. In Section 5 of the Recommendation, the Supreme Commercial Court specified that the disputes concerning registration of non-profit organisations fall outside the competence of the commercial courts.

19. The Code provided that the judgments of commercial courts of first instance could be appealed within one month of the date of their adoption (Article 147). Decisions of the courts of appeal were amenable to appeal to the court of cassation also within one month of the date of their adoption (Article 164).

20. Chapter 22 of the Code also established that any judgment or decision of any commercial court of the Russian Federation (except for the decisions of the Presidium of the Supreme Commercial Court) was amenable to supervisory review initiated on application by the President of the Supreme Commercial Court, or his deputy, or 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, or the time-limits for doing so. It specified that it could be lodged either on the initiative of the relevant State official or “in connection with a request by a party to the proceedings” (Article 185 § 1). The summoning of parties to a hearing before the Presidium of the Supreme Commercial Court was a discretionary right of the Presidium (Article 186 § 2).

21. The Presidium of the Supreme Commercial Court was the court of final instance within the commercial court system; no appeal lay against its decisions (Article 180 § 1 of the Code).

THE LAW

I. THE GOVERNMENT'S PRELIMINARY OBJECTION

22. The Government contended that the application was lodged outside the six-month time-limit established by Article 35 § 1 of the Convention. First, they reiterated their argument that the applicant association had failed to inform the authorities of its new address. Furthermore, the Government claimed that the decision of the Supreme Commercial Court of 26 September 2000 was published in no. 12 of its official bulletin for 2000 and then included in the electronic databases of legal material. Thus, the applicant should have learned of the decision of the Supreme Commercial Court shortly after its official publication.

23. The Court reiterates that it examined the question of compliance with the six-month rule in its decision on admissibility of 2 March 2006 and dismissed the Government's objection. The Court does not in the circumstances of the case see any reason to return to it now. The Court accordingly dismisses the preliminary objection.

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

24. The applicant association complained that its "right to a court", enshrined in Article 6 of the Convention, had been breached by the quashing of the decision of 17 June 1999, as upheld on 18 October 1999. Article 6 of the Convention, in so far as relevant, reads as follows:

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

A. The submissions by the parties

25. The Government indicated that the applicant association's right to a court had not been breached. First, the supervisory review had been instigated within a reasonable time after the decision of the Federal Commercial Court. Second, the Presidium of the Supreme Commercial Court had acted in compliance with the Code on Commercial Procedure and, thus, the applicant association had not been unprepared for such a development. Finally, the supervisory review had aimed at remedying a fundamental defect of the proceedings before the lower courts, namely the lack of jurisdiction of the commercial courts to decide on that category of disputes.

26. The applicant association maintained its complaint.

B. The Court's assessment

27. The Court notes that the central issue of the present case is whether the supervisory review procedure was compatible with Article 6 and, more specifically, whether on the facts of the present case the principle of legal certainty was respected.

28. The Court notes that supervisory review procedure within the commercial court system was at the relevant time very similar to the supervisory review in civil proceedings which was brought into focus in the *Ryabykh* judgment and subsequent cases (see *Ryabykh v. Russia*, no. 52854/99, ECHR 2003-IX). It had the same characteristics which on many occasions have led the Court to conclude that supervisory review in civil proceedings was against the “legal certainty” principle protected by Article 6, namely that decisions of the lower courts in the commercial court system were “liable to challenge indefinitely”, and “on an application made by a State official”, without a request by a party (see *Ryabykh* *ibid.*, § 56). In sum, the Court acknowledges that the structural procedural problems which it has identified in previous cases were present in the present case as well.

29. In the present case the Government put forward three groups of argument to justify the departure from the principle of legal certainty. First, they claimed that the supervisory review was instigated within a “reasonable time”. The Court notes that more than ten months elapsed from the decision of the Federal Commercial Court until the instigation of the supervisory review. In the opinion of the Court, that delay may arguably by itself raise an issue under Article 6 of the Convention, especially given that the time-limits for bringing an “ordinary” appeal or a cassation appeal were limited to one month. In any event, the Court considers that it was the absence of any time-limit in respect of the possible reopening of the case which created the uncertainty for the litigants. The fact that it took the authorities less than one year to instigate the review in the present case does not affect this fundamental problem of uncertainty.

30. The second argument of the Government is that the applicant association knew that the decision in its favour was liable to challenge by way of supervisory review. However, in the eyes of the Court the crux of the problem was that the applicant association could not have foreseen when the supervisory review would take place if it would take place at all. Therefore, this argument should also be dismissed as also in this respect the problem of uncertainty persisted.

31. Finally, the Government claimed that the supervisory review of the decision in the applicant association's favour had been justified because the lower courts had acted outside their jurisdiction, and thus aimed at remedying a fundamental defect.

32. The Court would refer to its finding in the case of *Ryabykh* (cited above) where it held as follows, in so far as relevant to the instant case:

“51. ... 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...”

52. Legal certainty presupposes respect for the principle of *res judicata* ..., that is the principle of the finality of judgments. This principle underlines that no party is entitled to seek a review of a final and binding judgment merely for the purpose of obtaining a rehearing and a fresh determination of the case. ...

56. ... The right of a litigant to a court would be ... illusory if a Contracting State’s legal system allowed a judicial decision which had become final and binding to be quashed by a higher court on an application made by a State official.”

33. The Court, however, stresses that the *Ryabykh* judgment contained an important reservation, which, at least implicitly, admitted that supervisory review could be justified in particular circumstances. The Court said (see § 52 *ibid*):

“... The review should not be treated as an appeal in disguise, and the mere possibility of there being two views on the subject is not a ground for re-examination. A departure from that principle is justified only when made necessary by circumstances of a substantial and compelling character”.

34. In the case of *Kot v. Russia* (no. 20887/03, § 29, 18 January 2007), the Court developed that logic. It held as follows:

“It is unavoidable that in civil proceedings the parties would have conflicting views on application of the substantive law. ... The Court observes that before an application for supervisory review was lodged, the merits of the applicant’s claim had been examined... by the first-instance and appeal courts. It has not been claimed that the courts acted outside their competences or that there was a fundamental defect in the proceedings before them. The fact that the Presidium disagreed with the assessment made by the first-instance and appeal courts was not, in itself, an exceptional circumstance warranting the quashing of a binding and enforceable judgment and re-opening of the proceedings on the applicant’s claim.”

35. Thus, the Court accepts that in certain circumstances legal certainty can be disturbed in order to correct a “fundamental defect” or a “miscarriage of justice”. However, these notions do not lend themselves to precise definition. The Court has to decide, in each case, to what extent the departure from the principle of legal certainty is justified (see, in the context of criminal proceedings, the case of *Radchikov v. Russia*, no. 65582/01, § 44, 24 May 2007; in the context of civil proceedings, see the cases of *Protsenko v. Russia*, no. 13151/04, §§ 31 et seq., 31 July 2008; and *Tishkevich v. Russia*, no. 2202/05, §§ 25-26, 4 December 2008).

36. Turning to the present case, the Court notes that the reason for quashing the decisions of the lower courts was the fact that the dispute between the applicant association and the Department was outside the commercial courts’ jurisdiction. The Court has already held that

jurisdictional errors, in principle, may be regarded as a “fundamental defect” susceptible to correction by way of supervisory review (see *Luchkina v. Russia*, no. 3548/04, § 21, 10 April 2008). The question arises whether in the particular circumstances of the case the breach of the rules of jurisdiction may be considered as a “fundamental defect” calling for the review of the decision which the applicant considered to be *res judicata*.

37. The Court observes that, in Russia, disputes concerning the official registration of legal entities are, as a rule, examined by the commercial courts. Registration disputes involving public associations are, however, exempted from the jurisdiction of the commercial courts, seemingly because of the “non-economic” character of those disputes. That reading of the old Code was proposed by the Supreme Commercial Court, and the Court does not see any reason to disagree with it. However, it is noteworthy that both the applicant association and the defendant (the Department of Justice) considered that the commercial courts did have the power to decide on the case. Moreover, the commercial courts, at two levels of jurisdiction, accepted the case and examined it on the merits. That shows that the relevant provisions of the old Code, taken in conjunction with the Law On Public Associations, were ambiguous at best. The rules of jurisdiction were only clarified in 2002, in connection with the enactment of the new Code, when the Supreme Commercial Court specified that disputes concerning registration of non-profit organisations fall outside the competence of the commercial courts (see the “Relevant domestic Law” part above).

38. Thus, the Court is satisfied that the decision of 17 June 1999, as upheld on 18 October 1999 appeared to be lawful. The effects of the judgment of 17 June 1999 were very limited: it concerned only the parties involved in the proceedings, and did not conflict with any other judicial decision. The Court agrees that, as a matter of principle, the rules of jurisdiction should be respected. However, in the specific circumstances of the present case the Court does not detect any pressing social need which would justify the departure from the principle of legal certainty. The judgment was quashed primarily for the sake of legal purism, rather than in order to rectify an error of fundamental importance to the judicial system.

39. In sum, in the circumstances of the case the quashing of the judgment of 17 June 1999, as upheld on 18 October 1999, was a disproportionate measure and respect for legal certainty should have prevailed. There has therefore been a violation of Article 6 § 1 of the Convention.

III. APPLICATION OF ARTICLE 41 OF THE CONVENTION

40. 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

41. The applicant association claimed 3,000 euros (EUR) in respect of non-pecuniary damage. It claimed that for several years it had been unable to obtain re-registration and, therefore, was at risk of liquidation.

42. The Government considered that claim excessive. They indicated that the fear of eventual liquidation was groundless. They submitted that a finding of a violation would constitute sufficient just satisfaction.

43. The Court notes that that it is possible to make an award in respect of non-pecuniary damage to a legal person in connection with the “prolonged uncertainty” and “inconvenience” it has suffered in relation to a violation found by the Court (see *Comingersoll S.A. v. Portugal* [GC], no. 35382/97, § 36, ECHR 2000-IV).

44. The Court accepts that the quashing of the judgment of 17 June 1999, as upheld on 18 October 1999, caused the applicant association some inconvenience. At the same time, it appears that the discontinuation of the proceedings ordered by the Presidium of the Supreme Commercial Court had little effect on the functioning of the applicant association, which furthermore had the possibility to present its request to a court with proper jurisdiction and finally obtained a favourable judgment from such a court. Ruling on an equitable basis, as provided for by Article 41, the Court awards the applicant association EUR 500 for the non-pecuniary damage sustained.

B. Costs and expenses

45. The applicant association did not claim reimbursement of its costs and expenses incurred before the domestic authorities and the Court. Accordingly, the Court does not make any award under this head.

C. Default interest

46. The Court considers it appropriate that the default interest 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

1. *Dismisses* unanimously the Government's preliminary objection;
2. *Holds* by five votes to two that there has been a violation of Article 6 of the Convention.
3. *Holds* by five votes to two
 - (a) that the respondent State is to pay the applicant association, within three months from the date on which the judgment becomes final in accordance with Article 44 § 2 of the Convention, EUR 500 (five hundred Euros) in respect of non-pecuniary damage, to be converted into Russian roubles at the rate applicable at the date of settlement, plus any tax that may be chargeable;
 - (b) that from the expiry of the above-mentioned three months until settlement simple interest shall be payable on the above amount at a rate equal to the marginal lending rate of the European Central Bank during the default period plus three percentage points;
4. *Dismisses* unanimously the remainder of the applicant association's claim for just satisfaction.

Done in English, and notified in writing on 23 July 2009, 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 joint dissenting opinion of Judges Kovler and Steiner is annexed to this judgment.

C.L.R.
S.N

JOINT DISSENTING OPINION OF JUDGES KOVLER AND STEINER

To our regret, we do not share the opinion of the majority that there has been a violation of Article 6 of the Convention.

In this particular case, the supervisory review – even under the old system of the arbitration (commercial) procedure – was intended to remedy a fundamental error in the proceedings before the lower courts. As the Court reiterates in the present judgment (see paragraphs § 33-34 of the judgment), a departure from the principle of legal certainty is justified only when this is made necessary by circumstances of a substantial and compelling character (see, *inter alia*, *Ryabykh v. Russia*, no. 52854/99, § 52, ECHR 2003-IX, and *Kot v. Russia*, no. 20887/03, § 29, 18 January 2007). In other words, the requirement of legal certainty is not absolute. The Court is consistent in accepting that legal certainty may be disturbed in order to correct a “fundamental defect” or a “miscarriage of justice” (see paragraph 35, with relevant references).

The reason for quashing the lower courts’ decisions was the fact that the dispute between the applicant association and the Regional Department of Justice lay outside the commercial courts’ jurisdiction: we agree with the Court’s conclusion that the relevant provisions of the old Code of Commercial Procedure, taken in conjunction with the Law on Public Associations, were ambiguous at best. Thus, the task of the Supreme Commercial Court was, precisely, to remedy the situation and to give instructions concerning the registration of non-profit organisations, which was clearly outside the jurisdiction of the commercial courts.

That lack of jurisdiction was at its most fundamental and strict, as it meant a complete absence of authority to determine the case. Consequently, the judicial decisions adopted by the lower courts in the applicant association’s favour were not only objectionable from the perspective of procedural or substantive legislation: they were simply void. The lower courts’ decisions affected the whole organisation of the judicial system and the separation of powers within it. Our Court recognises that the rules of jurisdiction were clarified in 2002: disputes concerning the registration of non-profit organisations fall outside the competence of the commercial courts. To a certain extent the initiative by the Vice President of the Supreme Commercial Court anticipated this clarification. With all due respect to the opinion of our colleagues, we do not agree that “the judgment was quashed primarily for the sake of legal purism, rather than in order to rectify an error of fundamental importance to the judicial system” (see paragraph 38). On this occasion we regret that the respondent State opposed the relinquishment of the case to the Grand Chamber, where the concept of “fundamental error” could have been clarified further.

As to the applicant association, it appears that the discontinuation of proceedings ordered by the Presidium of the Supreme Commercial Court had little effect on its functioning. Furthermore, the applicant association had a possibility to submit its request to a court that did have proper jurisdiction, and ultimately obtained a favourable judgment from such a court (see paragraph 13). We would also point out that the Constitutional Court of the Russian Federation found that, although the provisions challenged did not establish any time-limits for bringing an extraordinary appeal, the time within which the appeal was brought in the applicant's case had not exceeded the "reasonable time" and the applicant's rights had not been breached by it (see paragraph 14). Thus, the quashing of wrongly rendered judgments in the circumstances of the case was not a disproportionate measure.

Last but not least: the applicant association is an association whose aim is to protect the rule of law and human rights. The protection of legal order comprises the correction of fundamental errors within that order, even if such correction places one or other of the persons concerned in an uncomfortable situation. We trust that our position will be understood.