



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

FIRST SECTION

CASE OF VOTINTSEVA v. RUSSIA

(Application no. 44381/04)

JUDGMENT

STRASBOURG

11 February 2010

FINAL

11/05/2010

This judgment has become final under Article 44 § 2 of the Convention. It may be subject to editorial revision.

In the case of Votintseva v. Russia,

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

Christos Rozakis, *President*,

Anatoly Kovler,

Khanlar Hajiyeu,

Dean Spielmann,

Sverre Erik Jebens,

Giorgio Malinverni,

George Nicolaou, *judges*,

and Søren Nielsen, *Section Registrar*,

Having deliberated in private on 21 January 2010,

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

PROCEDURE

1. The case originated in an application (no. 44381/04) 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 Olga Aleksandrovna Votintseva (“the applicant”), on 23 November 2004.

2. The applicant was represented by Mr O. Prokhorov, a lawyer practising in Nizhniy Novgorod. 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

3. On 9 November 2006 the President of the First Section decided to give notice of the application to the Government. It was also decided to examine the merits of the application at the same time as its admissibility (Article 29 § 3).

THE FACTS

I. THE CIRCUMSTANCES OF THE CASE

A. Initial proceedings and supervisory review

4. In 2001 the applicant purchased a flat from a private company P.

5. In September 2002 another company, N., lodged a civil action against the company P., the applicant and several other persons claiming title to the flat.

6. On 25 July 2003 the Nizhegorodskiy District Court of Nizhniy Novgorod rejected the claim.

7. On 19 December 2003 the Nizhniy Novgorod Regional Court upheld the judgment on appeal and it became final and binding.

8. The courts found, *inter alia*, that when the company N. claimed title to the flat the latter had been already in the applicant's possession, and therefore, under the relevant law, could not be given to the claimant.

9. On unspecified date the company N. applied for supervisory review of the judgments of 25 July 2003 and 19 December 2003.

10. On 9 March 2004 a judge of the Nizhniy Novgorod Regional Court refused to refer the case to the Presidium for consideration by way of supervisory review.

11. On 28 April 2004 the acting President of the Regional Court disagreed and requested the case from the District Court. On 25 May 2004 he referred the case to the Presidium of the Nizhniy Novgorod Regional Court.

12. On 17 June 2004 the Presidium of the Nizhniy Novgorod Regional Court quashed the judgment of 25 July 2003 and the appeal judgment of 19 December 2003 for incorrect interpretation of the domestic law, and remitted the case for a fresh examination. It found, *inter alia*, that the inferior courts did not take into account that the flat was given to the applicant under a void agreement, and therefore the applicant's possession of the flat did not preclude the company N. from claiming a title to it.

B. Subsequent proceedings

13. On 5 April 2005 the Nizhegorodskiy District Court of Nizhniy Novgorod found against the applicant. On 6 September 2005 the Nizhniy Novgorod Regional Court upheld the judgment on appeal.

14. On 30 March 2006, under the applicant's initiative, the Presidium of the Nizhniy Novgorod Regional Court quashed these judgments by way of supervisory review and remitted the case for fresh consideration.

15. On 2 February 2007 the Nizhegorodskiy District Court of Nizhniy Novgorod held against the applicant. It deprived the applicant of the title to the disputed flat on the grounds that the sales agreement had been null and void. The court also ordered that company P. pay the applicant compensation for the flat and that the applicant and her daughter be evicted from the flat.

16. On 24 April 2007 the Nizhniy Novgorod Regional Court upheld the judgment on appeal.

II. RELEVANT DOMESTIC LAW

17. The relevant domestic law governing the supervisory review procedure in the material time is summed up in the Court's judgment in the case of *Sobelin and Others* (see *Sobelin and Others v. Russia*, nos. 30672/03, et seq., §§ 33-42, 3 May 2007).

THE LAW

I. ALLEGED VIOLATION OF ARTICLE 6 OF THE CONVENTION

18. The applicant complained under Article 6 of the Convention that the final judgment in her favour had been quashed by way of supervisory review. In so far as relevant, this Article reads as follows:

Article 6 § 1

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

19. The Government contested that argument. They argued, *inter alia*, that the supervisory review had been compatible with the Convention as the application for supervisory review had been lodged by a party to the proceedings. They also referred to that the applicant herself had subsequently successfully applied for supervisory review.

A. Admissibility

20. The Court notes that the 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

21. The Court reiterates that for the sake of legal certainty implicitly required by Article 6, final judgments should generally be left intact. They may be disturbed only to correct fundamental errors. The mere possibility of there being two views on the subject is not a ground for re-examination (see *Ryabykh v. Russia*, no. 52854/99, §§ 51-52, ECHR 2003-IX).

22. The Court reiterates that it has frequently found violations of the principle of legal certainty and of the right to a court in the

supervisory-review proceedings governed by the Code of Civil Procedure in force since 2003 (see, among other authorities, *Sobelin and Others*, cited above, §§ 57-58, and *Bodrov v. Russia*, no. 17472/04, § 31, 12 February 2009).

23. In the present case the judgments were quashed because the Presidium disagreed with the assessment made by the inferior courts (see paragraph 12 above), which is not in itself an exceptional circumstance warranting the quashing (see *Kot v. Russia*, no. 20887/03, § 29, 18 January 2007).

24. The fact that the decision of the Presidium was subsequently quashed on a further application for supervisory review could not be said to improve legal certainty in the applicant's case (see *Volkova v. Russia*, no. 48758/99, § 33, 5 April 2005).

25. Accordingly, there has been a violation of Article 6 § 1 of the Convention.

II. APPLICATION OF ARTICLE 41 OF THE CONVENTION

26. 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

27. The applicant claimed 3,000 euros (EUR) in respect of non-pecuniary damage.

28. The Government contested this claim.

29. As to pecuniary damage, the Court makes no award as there was no relevant claim made by the applicant.

30. As to non-pecuniary damage, the Court considers that the applicant must have suffered distress and frustration resulting from the quashing of the final and binding judgments in her favour. Making its assessment on an equitable basis, the Court grants the applicant's claim and awards her EUR 3,000 in respect of non-pecuniary damage, plus any tax that may be chargeable.

B. Costs and expenses

31. The applicant made no claims under this head. Accordingly, the Court will make no award under this head.

C. Default interest

32. 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 UNANIMOUSLY

1. *Declares* the application admissible;
2. *Holds* that there has been a violation of Article 6 of the Convention in respect of the quashing by way of supervisory review of the final judgments in the applicant's favour;
- 3 *Holds*
 - (a) that the respondent State is to pay the applicant, within three months from the date on which the judgment becomes final in accordance with Article 44 § 2 of the Convention, EUR 3,000 (three thousand euros), plus any tax that may be chargeable, in respect of non-pecuniary damage, to be converted into Russian roubles at the rate applicable at the date of settlement;
 - (b) that from the expiry of the above-mentioned three months until settlement simple interest shall be payable on the above amounts at a rate equal to the marginal lending rate of the European Central Bank during the default period plus three percentage points;
- 4 *Dismisses* the remainder of the applicant's claim for just satisfaction.

Done in English, and notified in writing on 11 February 2010, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Søren Nielsen
Registrar

Christos Rozakis
President