



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

FIRST SECTION

Applications nos 38951/13 and 59611/13
Robert Mikhaylovich ABRAMYAN against Russia
and Sergey Vladimirovich YAKUBOVSKIY and Aleksey Vladimirovich
YAKUBOVSKIY against Russia
lodged on 5 June 2013 and 21 April 2013 respectively

STATEMENT OF FACTS

The applicants are Russian citizens living in Sochi, Krasnodar Region. Mr Robert Mikhaylovich Abramyan (“the first applicant”) was born on 6 February 1958. He lodged his application with the Court on 5 June 2013 (date on which his complaint reached the Registry by fax). Mr Sergey Vladimirovich Yakubovskiy (“the second applicant”) and Mr Alexey Vladimirovich Yakubovskiy (“the third applicant”) were born on 20 June 1988 and on 18 June 1979 respectively. Their application was lodged with the Court on 21 April 2013 (date of their first application form).

A. The circumstances of the case

The facts of the case, as submitted by the applicants, may be summarised as follows.

The applicants are members of a cooperative “*Maliy Akhun*”, a non-commercial partnership of sea boat users located in Sochi (*Потребительский лодочный кооператив «Малый Ахун»*, hereinafter referred to as “the Cooperative”).

1. The applicants’ title to the boathouses

The Cooperative was established as a legal person under Russian law on 9 October 1991 by a decision of the Executive Committee of the Khostinskiy District Council of People Deputies (“the Executive Committee”). The above decision registered the Cooperative’s articles and the list of its members, allowing it to build 30 boathouses on a plot of land of 0.2 hectare which was adjacent to the beach of the Maliy Akhun Black Sea Resort.

On 16 July 1993 the Municipality of Sochi (“the Municipality”) allowed the Cooperative to build further boathouses along the sea coast line equal to 60 meters, which was free of any construction at the relevant time.

From 1992 to 1998 a number of boathouses were built on that land by members of the Cooperative.

On 29 September 1998 a State Commission composed of the competent authorities inspected the Cooperative’s constructions and considered them suitable for use.

On 10 December 1998 the Municipality upheld the above decision by the State Commission and ordered the Technical Inventory Bureau of Sochi to register the Cooperative as the owner of a boat station for 42 boats totalling 3.626 square meters located on a plot of land of 0.34 hectare next to the Maliy Akhun beach. Consequently, the authorities issued the technical and cadastral licences (*технический и кадастровый паспорт*) for each boathouse.

On 11 December 1998 the Municipality granted the Cooperative a non-transferable right to use a plot land of 3.444 square meters along 90 meters of the sea coast. The decision specified that the right was granted for a period of 49 years and allowed the Cooperative building 42 boathouses on the land concerned. On the same date the Cooperative’s right was registered in the land cadastre and it remains there up to date.

Subsequently the Cooperative asked on several occasions that the Municipality issue the appropriate documents certifying the applicants’ right to use the land but those requests remained without response.

In 1999 the prosecutor’s office contested the lawfulness of the Cooperative’s buildings and sought their liquidation.

On 12 January 2000 the Commercial Court of the Krasnodar Region dismissed the prosecutor’s claims and upheld the lawfulness of the Cooperative’s title to the property concerned. The Commercial Court of Appeal and the Federal Commercial Court of the Northern-Caucasian Circuit upheld that decision on 23 February 2000 and 4 July 2000, respectively, relying *inter alia* on the Municipality’s decision of 10 December 1998 (see above).

From 1998 to 2013 the applicants used the above plot of land and the boathouses built on it without any interruption or hindrance, considering themselves as lawful owners of that property. They paid periodically their charges to the Cooperative. Since 2005 the Cooperative systematically honoured tax payments for the use of land and property in response to the tax claims made by the Russian authorities.

2. Judicial review of the applicants’ title to boathouses and their demolition

On 30 August 2010 the President of the Russian Federation instructed the Prosecutor General together with the Krasnodar Regional and Sochi municipal authorities to identify and demolish unlawful constructions on the sea coast of Sochi.

(a) Lawsuit in commercial court

On an unspecified date the Municipality sued the Cooperative and its members before the Commercial Court of the Krasnodar Region,

demanding them to demolish the boathouses and to clear the area. The Municipality argued that the constructions were unlawful and the area was arbitrarily occupied by the applicants.

On 11 August 2011 the court decided that it lacked jurisdiction to consider the case since the Cooperative was a non-profit partnership and did not exercise a commercial activity as its main purpose.

(b) Lawsuit in courts of general jurisdiction

On an unspecified date the Municipality lodged a civil action against the applicants with the Khostinskiy District Court of Sochi. While referring to its own decisions of 10 and 11 December 1998, the Municipality argued that the Cooperative's right to property had never been properly registered and that no contract regulating the use of that land had been concluded as required by law.

On 16 March 2012 the District Court granted the Municipality's claim, ordering the applicants to demolish their boathouses and to clear the area. The court considered that the Cooperative's alleged right to use the land along the sea coast in Sochi was granted in breach of Russian law, and in particular the Government's Decree of 10 February 1994 which had conferred the right to administrate that land to the federal authorities. It noted at the same time that the property rights over the land at issue had been transferred by the federal authorities to the Municipality on 27 April 2010 and that the latter had standing to sue the applicants in the public interest. Lastly, the court referred to the Russian President's instruction and noted that the Cooperative's constructions were damaging the town's exterior as a capital of the Winter Olympics 2014. It concluded that the applicants' boathouses were unauthorised constructions that had to be demolished by their own means.

On 3 July 2012 the Krasnodar Regional Court quashed the above judgment on appeal and upheld the applicants' property rights on the boathouses. Referring to the Municipality's decisions of 1991 and 1993, it found that the district court had ignored the evidence that the boathouses had been duly authorised by the local authorities in accordance with the Russian law applicable at the material time. The regional court specified that no separate permit for construction of boathouses had been required by the law at the time in accordance with the Supreme Court decision of 27 September 2002 (case No. 56-Г02-28). It dismissed as ill-founded the district court's conclusion that the land at issue had been put at the Cooperative's disposal in breach of the law. In the regional court's view, the Executive Committee's decision of 10 October 1991 was fully compatible with the Local Self-Government Act of 6 July 1991 and the changes in the Russian legislation adopted in 1995 could not retroactively affect the lawfulness of the local authorities' decisions taken in 1991 and 1993. Lastly, it found that the Municipality's failure to conclude a contract with the Cooperative regulating the use of that land despite the Cooperative's repeated requests to do so had not rendered the boathouses unauthorised constructions. The judgment of the Krasnodar Regional Court became binding ("acquired binding force" – *вступило в законную силу*) on the same date in accordance with new Article 329 § 5 of the Code of Civil Procedure in force since 1 January 2012.

On 8 August 2012 the Municipality lodged a cassation appeal with the Presidium of the Krasnodar Regional Court, asking it to quash the judgment issued on appeal and uphold the first instance judgment. On 20 August 2012 a judge of the Regional Court decided to refer the case for consideration by the Presidium of that court.

On 29 August 2012 the Presidium granted the cassation appeal and upheld the first-instance judgment in the Municipality's favour on all points. The decision stated that all parties had been duly informed of the hearing, while the applicants alleged that most of them had only learnt about the proceedings in the Presidium after its decision.

The applicants' brought a fresh cassation appeal against those judgments with the Supreme Court of the Russian Federation.

On 5 October 2012 a judge of the Supreme Court refused to refer the case for consideration by the Civil Chamber of the Supreme Court.

On 27 December 2012 the Deputy President of the Supreme Court of the Russian Federation responded to a fresh complaint by the applicants against the impugned judgments. Referring to Articles 381 § 3 and 387 of the Code of Civil Procedure, the Deputy President decided that there was no ground to disagree with the decision of 5 October 2012 taken by a judge of the same court.

From 10 to 20 March 2013 the bailiffs ensured the enforcement of the judgments against the applicants as the boathouses were demolished at the State's costs.

B. Relevant domestic law

1. The right to property under the Constitution of the Russian Federation

According to Article 35 § 3 of the Constitution no one shall be deprived of his possessions otherwise than by a court decision. Any forcible deprivation of one's possessions for the State's needs is subject to prior and equivalent compensation.

2. The use of land, constructions and related titles

The Local Self-Government Act of RSFSR of 6 July 1991 empowered the local district authorities to administrate the natural resources in accordance with the law (Section 55 § 14), including the allocation of land plots for building and other purposes (Section 60 § 1).

According to the Decree of 12 April 1993 adopted by the Presidium of the Supreme Soviet and the Council of Ministers of Russia (No. 4766-I/337) the town of Sochi was granted special status as a federal resort.

The Law on the special protected natural areas of 14 March 1995 (No. 33-FZ) declared the federal resorts to be federal property.

The Government's Decree No. 96 of 10 February 1994 established the modalities for delegation of powers in respect of the federal property. According to the Decree, the federal state property is administrated in accordance with the law by the Government of the Russian Federation, the Committee for Administration of the State Property and its territorial agencies. The committee was empowered, in particular, to decide about

possible transfer of the rights over the federal state property to legal persons for possession, management or lease and to conclude agreements to that effect. The committee was entitled to delegate its powers to its territorial agencies.

Under Article 218 § 4 of the Civil Code of the Russian Federation members of a cooperative acquire the property title to an apartment, a summer house, a garage or other facilities they receive from the cooperative, once they have fully paid their share to the latter.

In a joint Ruling issued on 29 April 2010 (No. 10/22) the Supreme Court and the Supreme Commercial Court of the Russian Federation stated with reference to Section 8 § 2 of the Civil Code that the right to real property, which is liable to registration by the State, shall arise from the moment of the registration of that right, unless otherwise stipulated by the law. They specified that another procedure for acquisition of the property rights is established, in particular, in respect of the members of a cooperative, who acquire their title to real property with the full payment of their share contributions.

According to Article 51 of the Urban Planning Code of the Russian Federation (adopted by Law No. 190-FZ on 29 December 2004) the construction of real estate is subject to a construction permit except in certain cases stipulated by the Code. The construction permit is a document stating that the construction project and the related documents comply with the urban planning requirements. The construction permits are issued by a local authority except otherwise stipulated by the federal legislation. The Decree of 24 November 2005 (No. 698) established a unified form of construction permit.

The Supreme Court of the Russian Federation found in its decision of 27 September 2002 (case No. 56-G02-28) that under Article 22 of the Urban Planning Code, as in force at the material time, the regional authorities were competent to establish a procedure for authorisation of building on the region's land with the exception of the buildings subject to the special federal regulations. The Supreme Court also held that the municipalities were competent to authorise the construction of real estate in accordance with Article 23 § 1 of the Urban Planning Code, as in force at the material time.

The Water Code of Russia in force since 1 January 2007 provides that the seas situated on the Russian territory are federal property (Article 8), and that any economic and other activities on the shoreline are subject to special regulations (Article 65).

3. New procedure for review of the judgments delivered by courts of general jurisdiction

On 9 December 2010 the relevant parts of the Code of Civil Procedure concerning the review of judgments delivered by the courts of first instance were amended by Federal Law no. 353-FZ, with effect from 1 January 2012.

In Part III of the Code ("Procedure for review at second instance") a new Chapter 39 was inserted, introducing a new appeal procedure in respect of judgments by the courts of first instance that had not become binding ("had not acquired binding force" - *не вступившие в законную силу*). The newly

enacted appeal procedure (*процедура апелляционного обжалования*) in respect of such judgments replaced the former cassation appeal procedure (*процедура кассационного обжалования*) which was governed by Chapter 40 of the Code until 1 January 2012. While modifying various features of the review at second instance, including its scope and consequences, the new appeal procedure maintained the principle whereby decisions taken by the second-instance courts on appeal acquired binding force immediately (new Articles 329 § 5), as did formerly the decisions taken by the same courts on cassation appeals (former Article 367).

Part IV of the Code governs the procedure for review of judgments that have become binding. The former Chapter 41 (“Supervisory review procedure”) has been split into two new chapters, Chapter 41 (“Cassation review procedure”) and Chapter 41.1 (“Supervisory review procedure”).

The rules governing the new cassation appeal proceedings follow very closely those governing supervisory review proceedings conducted by the presidia of the regional courts and the Civil Chamber of the Supreme Court of the Russian Federation since 7 January 2008 (see details in *Martynets v. Russia* (dec.), no. 29612/09, 5 November 2009).

According to those rules, judgments delivered by courts of general jurisdiction may be challenged in cassation appeal proceedings within six months of the date on which they become legally binding. Cassation review proceedings may be taken by parties to a case and by other persons whose rights or legal interests have been adversely affected by these decisions, but only if other available avenues of appeal have been exhausted before the decision becomes legally binding (Article 376).

The presidia of the regional courts conduct a review in cassation of judgments and decisions delivered by the lower courts and by the regional courts themselves acting as appeal instances (Article 377 § 2(1)). In addition, the Civil Chamber of the Supreme Court of the Russian Federation conducts a review in cassation of judgments and decisions including those taken by the presidia of the regional courts (Article 377 § 2(3)).

Cassation appeals to the regional courts are considered by the President or Deputy President of the court or by a judge delegated for this purpose (Article 380.1 § 1). Cassation appeals to the Supreme Court of the Russian Federation are considered by a judge of that court (Article 380.1 § 2). A decision by a judge of the Supreme Court of the Russian Federation dismissing a cassation appeal may be overruled by its President or Deputy President (Article 381 § 3).

The time-limits for consideration of cassation appeals are laid down in Article 382 and 386. The grounds for the quashing or varying of binding judgments by the presidia of the regional courts and the Civil Chamber of the Supreme Court, acting as cassation instances, are identical to those previously applicable to the supervisory review exercised by the same instances, that is, “significant violations of substantive or procedural law which influenced the outcome of the proceedings and must be corrected in order to restore and protect rights, freedoms and lawful interests and to safeguard public interests protected by law” (Article 387).

The new Chapter 41.1 (new Articles 391.1-391.13) provides that the Presidium of the Supreme Court of the Russian Federation remains competent to consider applications from the parties for the supervisory

review (*пересмотр в порядке надзора*) of binding judgments issued by lower judicial instances. It may, *inter alia*, reverse decisions taken on cassation appeals by the Civil Chamber of the Supreme Court of the Russian Federation (Article 391.1 § 2(6)). A supervisory review application may be brought within three months of the date on which the impugned decision becomes binding (Article 391.2). The application is examined by a judge of the Supreme Court of the Russian Federation, who may dismiss the application or send it for examination by the Presidium of that court. The decision by a judge to dismiss the application may be overruled by the President or Deputy President of the Supreme Court of the Russian Federation (Article 391.5). Binding decisions may be quashed on supervisory review if they breach: (1) human rights and freedoms enshrined in the Constitution, principles of international law and international treaties of the Russian Federation; (2) the rights and legitimate interests of an undefined group of people or other public interests; (3) the uniformity of the case-law (Article 391.9).

Moreover, following a request by the parties or the prosecutor, the President or Deputy President of the Supreme Court of the Russian Federation may initiate supervisory review proceedings (*пересмотр в порядке надзора*) in respect of binding judgments in order to remedy, *inter alia*, fundamental defects in the application of the substantive or procedural legal provisions affecting the exercise of fundamental rights enshrined in the Code (Article 391.11). Applications for supervisory review may be lodged with the President or his deputy within six months of the date on which the impugned judicial decisions become binding.

COMPLAINTS

Referring to Article 1 of Protocol No. 1 the applicants complain that their property rights were violated by a *de facto* expropriation of their boathouses in breach of the domestic law and without any compensation. The applicants also complain under Article 6 of the Convention that the Presidium of the Krasnodar Regional Court quashed a binding judgment delivered on appeal in their favour in breach of the legal certainty requirement. They further complain under the same provision that the Presidium heard the case within an extremely short time without informing most of the applicants of the hearing and without giving them an adequate possibility of responding to the Municipality's cassation appeal in adversarial proceedings.

QUESTIONS TO THE PARTIES

A. As to the admissibility of the applications

1. Did the applicants comply with the Convention requirement to lodge their applications within six months after a final domestic decision? Which judicial decision in the applicants' case should be considered as a final domestic decision? The Government is invited to explain in this connection if the amendments to the Code of Civil Procedure in force since 1 January 2012 have remedied the shortcomings inherent in the former supervisory review procedure, in particular, within the Supreme Court of the Russian Federation (see *Martynets v. Russia* (dec.), no. 29612/09, 5 November 2009).

B. As to the merits

1. Was there a violation of the legal certainty requirement enshrined in Article 6 of the Convention on account of the quashing by the Presidium of the Krasnodar Regional Court of the binding judgment of 3 July 2012 issued by that court on appeal in the applicants' favour (see, *mutatis mutandis*, *Ryabykh v. Russia*, no. 52854/99, §§ 56-57, ECHR 2003-X, and *Kot v. Russia*, no. 20887/03, § 30, 18 January 2007)?

2. Was there a violation of the applicants' right to a fair trial under Article 6 of the Convention on account of the Presidium's alleged failure to inform them of the hearing and to give them an adequate possibility of responding to another party's cassation appeal in adversarial proceedings?

3. Did the State deprive the applicants of their property in the public interest? If so, how should this deprivation of property be qualified under the Russian law and under Article 1 of Protocol No.1 of the Convention? Was the deprivation of property in accordance with the Russian law and the general principles of international law, as required by Article 1 of Protocol No. 1? Did it upset a fair balance that must be struck between the demands of the public or general interest of the community and the requirements of the protection of the individual's fundamental rights (see, among many others, *Gladysheva v. Russia*, no. 7097/10, §§ 65-67, 80 and 82, 6 December 2011)?