CONSEIL DE L'EUROPE

COUNCIL OF EUROPE

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

THIRD SECTION

DECISION

AS TO THE ADMISSIBILITY OF

Application no. 73043/01
by Zinaïda ARSHINCHIKOVA
against Russia

The European Court of Human Rights (Third Section), sitting on 5 April 2005 as a Chamber composed of:

Mr B.M. ZUPANČIČ, *President*,
Mr L. CAFLISCH,
Mr C. BÎRSAN,
Mr A. KOVLER,
Mrs A. GYULUMYAN,
Ms R. JAEGER,
Mr E. MYJER, *judges*,
and Mr M. VILLIGER, *Deputy Section Registrar*,

Having regard to the above application lodged on 15 January 2001,

Having regard to the observations submitted by the respondent Government and the observations in reply submitted by the applicant,

Having deliberated, decides as follows:

THE FACTS

The applicant, Ms Zinaïda Pavlovna Arshinchikova, is a Russian national who was born in 1940 and lives in Saratov. The applicant is the head and legal representative of the farming enterprise "Katyusha" (*крестьянское хозяйство «Катюша»*, "the farm") located in the Saratov Region. The respondent Government are represented by Mr P. Laptev, Representative of the Russian Federation at the European Court of Human Rights.

A. The circumstances of the case

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

1. Lease and purchase of the constructions and the land

(a) Lease and purchase of the constructions

On 15 March 1991 the applicant on behalf of the farm entered into a lease purchase option agreement with the State road maintenance company "Saratovavtrodor" (*Саратовское ДРСУ ПРСО «Саратовавтодор»*, "the road company") in respect of certain constructions, including a 12-flat house, adjacent to the road near Polchaninovka village in the Saratov Region (*дорожно-ремонтный пункт с. Полчаниновка*, "the constructions"). The agreement provided, in particular, that the purchase option was to be exercised upon payment of the rent equal to the book value of the property, which at the material time had been set at 383,944 Russian roubles (RUR).

On 1 July 1993 the lease purchase option agreement was amended: the Property Management Committee of the Saratov Region (*Комитет по управлению имуществом Саратовской области*, "the property committee") replaced the original lessor as a party to the agreement. The other terms and conditions of the agreement were not affected.

On 19 August 1993 the farm exercised the purchase option under the lease agreement. It credited RUR 306,339 to the bank account of the property committee.

(b) Purchase of the land

On 27 February 1991 the Presidium of the Tatishchevo district council of people's deputies granted the applicant 30 hectares of land.

On 2 December 1993 the applicant signed a land purchase agreement with the Land Resources and Planning Committee of the Tatishchevo district for the transfer of title to the land plot.

On 26 June 1998 the applicant's title to the land was formalised by the Land Resources and Planning Committee of the Tatishchevo district.

It appears that the constructions are situated on the land owned by the applicant.

2. Action for nullity of the lease agreement

(a) Statements of claim

On 6 July 1999 the property committee brought a civil action against the farm. The committee submitted that under the 1992 State Privatisation

Programme the property managed by State road companies could not be privatised and, accordingly, the agreement of 1 July 1993 was void *ab initio* because it had been entered into in contravention of the law. The committee sought a judicial declaration of the nullity of the 1993 agreement.

On 23 July 1999 the applicant sent a written response to the claim. She submitted that, in her opinion, the transaction had not been void *ab initio*, but voidable and therefore the action was time-barred (the statutory time-limit is ten years for void transactions and one year for voidable transactions).

On 30 August 1999 the committee filed a supplement to the claim. It requested the court to order the applicant to return all proceeds from the void transaction to the current owner of the constructions, the Committee for Construction and Maintenance of Roads of the Saratov Region ("the road committee").

(b) Judgment of the first instance court

On 27 September 1999 the Saratov Regional Commercial Court (*Арбитражный суд Саратовской области*) allowed the committee's action against the farm. The Commercial Court held that the agreement of 1 July 1993 was made in respect of State property which had not been subject to privatisation under Section 2.1.14 of the 1992 State Privatisation Programme. Therefore the court concluded that the agreement had been invalid as incompatible with the law and void *ab initio*. The court ordered the farm to return all proceeds from the 1993 agreement to the road committee and bear one half of court fees.

On 15 October 1999 the applicant's representative asked the court to clarify the legal grounds for restitution of the property, define the property items to be returned and explain the procedure for restitution.

On 19 October 1999 the Saratov Regional Commercial Court ruled that the judgment was governed by Article 168 of the Civil Code ("Invalidity of unlawful transactions"), the farm was ordered to return the property set out in the annex to the 1993 agreement and the provisions on restitution were not applicable because the farm had received State property.

(c) Judgment of the appeal court

On 25 October 1999 the applicant's representative appealed against the first instance judgment. He submitted, in particular, that the court had not made it clear whether the agreement in question had been void or voidable.

On 15 December 1999 the Appellate Collegium of the Saratov Regional Commercial Court upheld the judgment of 27 September 1999. The Panel repeated the arguments of the first instance court and based its judgment on the Presidential Decree of 29 December 1991, which approved the 1992 State Privatisation Programme.

On 10 January 2000 a court bailiff of the Tatishchevo District opened the enforcement proceedings. The applicant was invited to return the property by 15 January.

On 14 January 2000 the applicant requested suspension of the enforcement, citing the vagueness of the judgments. She submitted, in particular, that the construction were situated on land to which she had clear title, and that the method of their return was not clear.

On 18 January 2000 the enforcement was suspended until 27 January.

(d) Judgment of the Federal Commercial Court

On 12 January 2000 the applicant's representative filed an appeal on points of law (*кассационная жалоба*). He also asked for the enforcement to be suspended.

On 20 January 2000 the Federal Commercial Court of the Volga Circuit (*Федеральный арбитражный суд Поволжского округа*) granted the suspension request and fixed a hearing.

On 31 January 2000 the court bailiff imposed on the applicant a fine (RUR 50, approximately EUR 1.5) for non-enforcement of the judgment. It appears that the fine was lifted after the applicant produced the Federal Commercial Court's decision of 20 January 2000.

On 10 February 2000 a deputy prosecutor of the Tatishchevo District advised the applicant to file a civil action for the recovery of the value of enhancements in the contested constructions, if any.

On 15 February 2000 the Federal Commercial Court of the Volga Circuit quashed the judgments of 27 September and 15 December 1999 and made a new determination of the claim. The court ruled that the agreement of 1 July 1993 had not been a new transaction, but rather a novation of the agreement of 16 March 1991 involving the substitution of the lessor. As to the 1991 agreement, it had been concluded before the regulations, on which the first instance and appeal courts based their judgments, came into force. The 1991 agreement was governed by the USSR Fundamentals on Lease of 23 November 1989 that had not contained any restrictions on the purchase of the leased property. The court pointed out that the restrictions invoked were introduced after 16 March 1991 when the contested agreement had been signed and it was open to the property committee not to sign the novated agreement in 1993, but seek its termination instead. Finally, the court established that pursuant to the Law on Privatisation of 3 July 1991 the privatisation agreements were voidable and, accordingly, the lower courts should have declared the action time-barred on the applicant's request. The Federal Commercial Court dismissed the claim of the property committee.

The judgment became final and no ordinary appeal lay against it.

(e) Review of the judgments by way of supervisory-review

On 13 June 2000 Judge Arifullin, a deputy President of the Supreme Commercial Court of the Russian Federation, lodged an application for supervisory review (*протест в порядке надзора*) against the judgment of 15 February 2000. The application was based on the arguments originally advanced by the property committee in support of its claim and it reproduced verbatim the text of the appeal court's judgment of 15 December 1999.

The applicant filed her observations on the application. She maintained that the application should not be considered because the application did not advance any new reasons that would warrant a review of the existing judgments and because the deputy President of the Supreme Commercial Court was not competent to lodge such an application.

On 5 September 2000 the Presidium of the Supreme Commercial Court of the Russian Federation quashed, by way of supervisory review, the judgment of 15 February 2000 and reinstated the judgments of 27 September and 15 December 1999. The Presidium ruled that the 1992 State Privatisation Programme had prohibited privatisation of road constructions and, accordingly, the 1993 lease agreement had been invalid and void *ab initio*.

3. Registration of the applicant's title to the constructions

On an unspecified date the applicant applied for State registration of her title to the house which formed a constituent part of the disputed constructions.

On 9 October 2000 the Saratov Regional Registration Chamber (*Саратовская областная регистрационная палата*) issued an official certificate formalising the applicant's title to the house acquired under the 1993 lease purchase option agreement.

4. Subsequent enforcement proceedings

(a) Applicant's attempt to pay the value of the property

On 5 October 2000 the farm made a wire transfer of RUR 306.34 to the account of the property committee. The purpose of the payment was indicated as “reimbursement of the value of the property pursuant to the judgment of the commercial court”.

On 4 December 2000 a court bailiff of the Tatishchevo District opened the enforcement proceedings on the basis of a writ of execution of 30 November 2000 and ordered the applicant to return the constructions by 12 December 2000.

On 19 and 20 December 2000 the applicant notified the court bailiff and the Saratov Region Commercial Court that the writ of execution was not to

be enforced because she had already reimbursed the property committee for the property.

(b) First imposition of a fine on the applicant

On 3 January 2001 the court bailiff imposed a fine of 10 minimum wages (approximately EUR 35) for non-enforcement of the judgment and set a new deadline for enforcement to 9 January.

On 5 January 2001 the applicant again wrote to the court bailiff that the judgment had been enforced by way of reimbursement and that the property committee had agreed to such enforcement because it had issued her the ownership certificate on 10 October 2000.

On 10 January 2001 the court bailiff approved an act on the impossibility to enforce (*акт о невозможности взыскания*). The act confirmed that the return of the property in kind was not possible because the applicant had already enforced the judgment by paying the reimbursement.

(c) Bailiff's attempt to amend the operative part of the judgment

On 25 January 2001 the court bailiff of the Tatishchevo District filed an application for modification of the form and procedure for enforcement of the judgment. The bailiff submitted that the applicant had in fact executed the judgment because she had credited the value of the property to the committee's account and on that basis she had received the ownership certificate in respect of the house. The bailiff also indicated that the applicant had consented to a transfer of all other constructions provided that they would be removed from her land plot.

On 20 April 2001 the Saratov Region Commercial Court dismissed the bailiff's application. The court ruled that the bailiffs service had not been diligent enough in the enforcement of the judgment and, in any event, the circumstances to which the bailiff referred had not impeded the enforcement proceedings.

(d) Second attempt to reimburse the value of the property

On 23 April 2001 the farm again made a bank transfer of RUR 304.36 to the account of the property committee. The applicant wrote to the property committee that this was a perfectly valid form of enforcement of the judgment of 27 September 1999 and reminded the State officials that they had never returned her the amounts which she had paid for the exercise of the purchase option.

On 10 May 2001 the court bailiff invited the applicant to enforce the judgment of 27 September 1999 by 15 May.

On 25 May 2001 the applicant responded to the bailiffs that the return of the property “in kind” had been impossible and that they had been perfectly aware of it, yet since their application had been dismissed by a court they had never attempted in good faith to resolve the practical problems of the

enforcement. She also complained about the whole situation to the regional prosecutor.

On 1 June 2001 the property committee informed the applicant that the judgment of 27 September 1999 had ordered the property to be returned to the road committee and the reimbursement of its value had not been a valid form of enforcement. Accordingly, the applicant was reminded that she had to comply with the judgment, failing which she would be criminally liable.

(e) Second imposition of a fine on the applicant

On 5 June 2001 the court bailiff imposed a fine of 100 "minimum wages" (EUR 400) on the applicant and seized metal piping on her farm to secure the payment of the fine. The applicant verbally assaulted the bailiff and physically prevented him from accessing the piping in the farm shed.

(f) First set of criminal proceedings against the applicant for non-enforcement

On 19 June 2001 a criminal investigation into the applicant's refusal to enforce a court judgment was opened. On 17 July 2001 the applicant was charged under Article 315 of the Criminal Code ("Failure to execute a court judgment, a court decision or any other court order").

On 9 August 2001 a justice of the peace of the Tatishchevo District ordered an additional investigation of the charge against the applicant. The prosecution appealed against this decision. On 30 January 2002 the Tatishchevo District Court of the Saratov Region terminated the criminal prosecution of the applicant on the basis of a general act of amnesty for women and minors passed by the Russian legislature on 30 November 2001.

(g) Civil action against the bailiffs for non-enforcement

On 20 December 2001 the road committee filed a civil action against the court bailiffs for their failure to enforce the judgment.

On 31 January 2002 the court bailiff again invited the applicant to enforce the judgment by 6 February 2002. The applicant responded that she had already enforced the judgment by transferring the money and, in any event, the constructions could not be returned because they sat on her own land.

After many adjournments on the requests of the road committee, on 15 July 2002 the Saratov Regional Commercial Court granted the road committee's action against the bailiffs and ordered the bailiffs to enforce the judgment against the applicant in full.

On 18 July 2002 a court bailiff of the Tatishchevo District invited the applicant to enforce the judgment by 23 July. In response the applicant raised the same objections as before.

(h) Third and fourth imposition of fines on the applicant

On 23 July 2002 the court bailiff fined the applicant for 100 "minimum wages" (approximately EUR 400). On 30 July 2002 the bailiff fined the applicant again for the same amount. On 6 August 2002 the bailiff seized metal pipes belonging to the applicant to secure the payment of fines.

(i) Second set of criminal proceedings against the applicant

On 16 September 2002 a court bailiff sent a formal warning to the applicant that her failure to enforce a court judgment would result in criminal proceedings against her under Article 315 of the Criminal Code.

On 7 October 2002 acting prosecutor of the Tatishchevo District opened a criminal case against the applicant and assigned it to investigator G. The applicant challenged investigator G. on the ground that he had been a former court bailiff and therefore an interested party. Her challenge was dismissed as unsubstantiated. On 17 October 2002 the applicant was charged under Article 315 of the Criminal Code.

On 11 November 2002 a justice of the peace of the Tatishchevo District acquitted the applicant of the charge. The justice found that the applicant was a self-employed businessperson (a special status under the Russian law) and therefore she could not be tried *ratione personae* for the offence under Article 315 of the Criminal Code. The acquittal was upheld by the Tatishchevo District Court on 25 December 2002 and by the Criminal Division of the Saratov Regional Court on 27 February 2003.

(j) Termination of the enforcement proceedings

On 21 November 2002 a court bailiff of the Tatishchevo District closed the enforcement proceedings against the applicant and returned the writ of execution to the property committee.

5. Challenge to the applicant's title

On 4 March 2002 the property committee filed a civil action against the Saratov Regional Registration Chamber and the farm. The property committee claimed that the registration of the applicant's title to the house of 9 October 2000 be declared void because it had been grounded on the already invalidated agreement.

On 12 April 2002 the applicant filed her observations on the claim.

After several adjournments of the proceedings, on 18 November 2002 the property committee withdrew its claim. On 2 December 2002 the Commercial Court of the Saratov Region declared the proceedings closed.

B. Relevant domestic law

Article 1 of the Law on Farming Enterprises (no. 348-I of 22 November 1990, in force at the material time) defines a farming enterprise as an independent business entity represented by a citizen, a family or a group of persons who manufacture, process and sell agricultural products using the property to which they have title or a right *in rem*. Under Article 257 of the Civil Code of the Russian Federation, title to the property of a farming enterprise is held jointly by its members unless otherwise agreed.

The Code of Commercial Procedure (no. 70-FZ of 5 May 1995, in force at the material time) established that final judgments and decisions of all commercial courts of the Russian Federation were amenable to supervisory review initiated on an application by the President of the Supreme Commercial Court or his deputy or by 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, it only specified that it could be lodged "also in connection with a request by a party to the proceedings" (Article 185 § 1). Summoning of parties to the hearing before the Presidium of the Supreme Commercial Court was a discretionary right of the Presidium (Article 186 § 2).

COMPLAINTS

The applicant complains under Article 6 § 1 of the Convention that the judgments of the domestic courts and, in particular, that of the Presidium of the Supreme Commercial Court, were not based on relevant and sufficient reasons.

The applicant complains under Article 1 of Protocol No. 1 that the domestic courts ordered the return of the property without taking into account that the contested constructions could not be severed from the land part to which the applicant had clear title.

The applicant complains under Article 14 of the Convention that she was discriminated against as the head of a farming enterprise.

THE LAW

1. The applicant complains under Article 6 § 1 of the Convention about the unfairness of the judgments in her case and, in particular, that of the Presidium of the Supreme Commercial Court. The relevant parts of Article 6 § 1 read as follows:

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

The Government submit that the then current Code of Commercial Procedure provided for contestation and review of final judgments by way of supervisory-review proceedings. In the instant case, the supervisory-review proceedings were instituted at a request of a party to the case, the Property Management Committee of the Saratov Region. The applicant should have been aware of the possibility of supervisory-review proceedings and had the right to appear before the Presidium of the Supreme Commercial Court. The Government claim that in the Russian legal system, especially in commercial litigation, the judicial decisions become final only upon completion of the supervisory-review proceedings. In the instant case the proceedings were continuous because the decision to initiate supervisory review was made in June 2000, four months after the Federal Commercial Court had issued its judgment.

The applicant claims that the domestic courts and, in particular, the Presidium of the Supreme Commercial Court misapplied the law. She submits that the judgment of the Federal Commercial Court clearly stated that it was not amenable to further appeal and that she could not have reasonably foreseen the institution of supervisory-review proceedings. In any event, her observations on the supervisory-review application were not examined and she was not informed of the hearing date before the Presidium. She considers that her right to a fair trial was breached.

The Court considers, in the light of the parties' submissions, that the complaint raises serious issues of fact and law under the Convention, the determination of which requires an examination of the merits. The Court concludes therefore that this complaint is not manifestly ill-founded within the meaning of Article 35 § 3 of the Convention. No other ground for declaring it inadmissible has been established.

2. The applicant complained under Article 1 of Protocol No. 1 that the decisions of the domestic courts failed to respect her right to the peaceful enjoyment of her possessions. Article 1 reads as follows:

> "Every natural or legal person is entitled to the peaceful enjoyment of his possessions. No one shall be deprived of his possessions except in the public interest and subject to the conditions provided for by law and by the general principles of international law.
>
> The preceding provisions shall not, however, in any way impair the right of a State to enforce such laws as it deems necessary to control the use of property in accordance with the general interest or to secure the payment of taxes or other contributions or penalties."

The Government submit that the applicant's claim to the contested property had no legal basis because the lease agreement had been in flagrant contradiction with the privatisation laws and therefore had been void *ab initio*. The judgments of the Russian courts were based on relevant domestic

laws, such as the 1992 State Privatisation Programme and President's decree no. 2284 of 24 December 1993. There was an "obvious public interest" in the strict observance of the privatisation laws prohibiting the transfer of motorways and the property of road maintenance organisations into private ownership. The Government consider that there is no room for the application of Article 1 of Protocol No. 1 because the applicant was not the legal owner of the contested property.

The applicant considers that the judgments of the domestic courts were incorrect and unlawful. At the material time the farm was the lawful owner of the constructions in issue and the judgment of the Presidium of the Supreme Commercial Court deprived it of its property. Incorrect judgments led to a paradoxical result as it was materially impossible to enforce them. Furthermore, they imposed an excessive burden on her as their enforcement would have inevitably led to disintegration of the farm, the discontinuation of agricultural business and destitution of her family.

The Court considers, in the light of the parties' submissions, that the complaint raises serious issues of fact and law under the Convention, the determination of which requires an examination of the merits. The Court concludes therefore that this complaint is not manifestly ill-founded within the meaning of Article 35 § 3 of the Convention. No other ground for declaring it inadmissible has been established.

3. Lastly, the applicant complains under Article 14 of the Convention that she was discriminated against as the head of a farming enterprise. Article 14 provides:

> "The enjoyment of the rights and freedoms set forth in [the] Convention shall be secured without discrimination on any ground such as sex, race, colour, language, religion, political or other opinion, national or social origin, association with a national minority, property, birth or other status."

The Court recalls at the outset that Article 14 complements the other substantive provisions of the Convention and its Protocols. It has no independent existence, since it has effect solely in relation to the rights and freedoms safeguarded by those provisions. There can be no room for application of Article 14 unless the facts of the case fall within the ambit of one or more of such provisions (*Inze v. Austria*, judgment of 28 October 1987, Series A no. 126, § 36). Even assuming that the applicant intended to invoke Article 14 in conjunction with either Article 6 of the Convention or Article 1 of Protocol No. 1, the Court does not find any indication of discrimination in her submissions.

It follows that this complaint is manifestly ill-founded and must be rejected in accordance with Article 35 §§ 3 and 4 of the Convention.

For these reasons, the Court unanimously

Declares admissible, without prejudging the merits, the applicant's complaints concerning the quashing of the final judgment in her favour by way of supervisory-review proceedings;

Declares inadmissible the remainder of the application.

Mark VILLIGER
Deputy Registrar

Boštjan M. ZUPANČIČ
President