CONSEIL DE L'EUROPE

COUNCIL OF EUROPE

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

FIRST SECTION

DECISION

AS TO THE ADMISSIBILITY OF

Application no. 33408/03
by Anatoliy Aleksandrovich DENISOV
against Russia

The European Court of Human Rights (First Section), sitting on 6 May 2004 as a Chamber composed of:

Mr C.L. ROZAKIS, *President*,
Mr P. LORENZEN,
Mr G. BONELLO,
Mrs F. TULKENS,
Mr A. KOVLER,
Mr V. ZAGREBELSKY,
Mrs E. STEINER, *judges*,
and Mr S. NIELSEN, *Section Registrar*,

Having regard to the above application lodged on 8 October 2003,

Having deliberated, decides as follows:

THE FACTS

The applicant, Mr Anatoliy Aleksandrovich Denisov, is a Russian national, who was born in 1950 and lives in Gatchina.

A. The circumstances of the case

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

On 20 August 2002 the applicant brought proceedings against a local authority alleging that the authority had not ensured a good upkeep of his house.

On 30 September 2002 the Gatchina Town Court refused to initiate the proceedings because the applicant had not paid a court fee.

On 13 November 2002 the Leningrad Regional Court quashed this decision on appeal as insufficiently reasoned.

On 20 November 2002 the Gatchina Town Court again demanded the applicant to accompany his action with a court fee.

On 25 December 2002 the Leningrad Regional Court upheld this decision on appeal.

On an unspecified date the applicant lodged a supervisory-review complaint against these decisions.

On 11 April 2003 a judge of the Leningrad Regional Court refused to lodge an application for supervisory review.

On 10 September 2003 the acting President of the Leningrad Regional Court upheld the decisions, including that of 11 April 2003.

B. Relevant domestic law

On 14 November 2002 a new Code of Civil Procedure ("CCivP") was enacted to replace that of 1964. The CCivP entered into force on 1 February 2003. Section 4 of the CCivP defines the procedures by which judicial acts which have come into force may be re-examined. Chapter 41 defines the supervisory-review procedure:

Article 376. Right of appeal to a supervisory-review court

"1. Judicial acts which have come into force ... may be appealed against ... in a supervisory-review court by parties to litigation and other persons if their rights and legal interests are affected by the judicial acts.

2. Judicial acts may be appealed against in a supervisory-review court one year after they come into force.

3. Where a public prosecutor participated in litigation, officials of the prosecutor's office ... shall have the right to appeal to a supervisory-review court against judicial acts which have come into force."

Article 377. Lodging of [supervisory-review applications]

"2. A [supervisory-review application] against:

i) ... a cassation judgment of ... a Regional Court; ... a judgment of a District Court ... [shall be brought] before the Presidium of a ... Regional Court...;

ii) ... a cassation judgment of ... a Regional Court; ... a judgment of a District Court ... [shall be brought] before the Civil Section of the Supreme Court, if the Presidium of a ... Regional Court has dismissed applications against these judgments;...

3. [Supervisory-review complaints] against supervisory-review judgments of the Civil Chamber of the Supreme Court ... shall be brought to the Presidium of the Supreme Court if such judgments disrupt the unity of court jurisprudence."

Article 381. Examination of [supervisory-review applications]

"2. After examination of a [supervisory-review application] a judge shall decide as follows: either

i) to obtain the case-file, if there are doubts as to the lawfulness of the judicial act; or,

ii) not to obtain the case-file, if under the federal law the reasons of the [supervisory-review application] cannot entail the quashing of the judicial act.

6. The President of the [competent] court may overrule the judge's decision not to obtain the case-file. In this case the President of the relevant court ... shall give his own decision to obtain the case-file."

Article 382. Examination of cases obtained by the supervisory-review court

"2. After examination of the case obtained by the supervisory-review court a judge shall decide as follows: either

i) not to pass the case for consideration on the merits by the supervisory-review court; or,

ii) to pass the case for examination of the [supervisory-review application] by the supervisory-review court."

Article 383. Decision on refusal to pass the case for consideration on the merits by the supervisory-review court

"2. The President of the [competent] court may overrule the judge's decision not to pass the case for consideration on the merits by the supervisory-review court. In this case the President of the relevant court ... shall give his own decision to pass the case for consideration on the merits by the supervisory-review court."

Article 386. Examination of cases by supervisory-review courts

"3. The court hearing may be attended by parties to litigation, their counsel, other persons who have lodged the supervisory-review application ... if their rights and legal interests are directly affected by the judicial act appealed against...

[A representative of a prosecutor's office] may attend the hearing if a public prosecutor participated in the case.

5. If the persons listed in p. 3 of the present Article appear in the court hearing, they may make oral submissions on the case...”

Article 387. Grounds for quashing or varying judicial acts in supervisory-review proceedings

“The grounds for quashing or varying judicial acts of lower courts in supervisory-review proceedings shall be significant violations of substantive or procedural law.”

Article 389. Supervisory review of judicial acts on the initiative of the President or a Deputy President of the Supreme Court

“The President or a Deputy President of the Supreme Court may lodge with the Presidium of the Supreme Court a reasoned application for supervisory-review of judicial acts to ensure the unity of court jurisprudence and legality.”

Article 390. Scope of the authority of a supervisory-review court

“1. After examination of a case under the supervisory-review procedure, a court may:

i) uphold the decision of the court of first, second or supervisory-review instance and dismiss the [supervisory-review application];

ii) quash the decision of the court of first, second or supervisory-review instance in full or in part and remit the case for a fresh examination;

iii) quash the decision of the court of first, second or supervisory-review instance in full or in part and shelve the case or close the proceedings;

iv) leave in force one of judicial acts passed in the case;

v) quash or vary the decision of the court of first, second or supervisory-review instance and pass a new decision without remitting the case for a fresh examination if there has been a mistake in the application and interpretation of substantive law...”

COMPLAINT

The applicant complained under Article 6 § 1 of the Convention that his access to justice was arbitrarily blocked in that the domestic courts required him to pay a prohibitive court fee.

THE LAW

The applicant complained under Article 6 § 1 that the domestic courts refused to examine his civil action.

The Court considers it appropriate first to determine whether the applicant has complied with the admissibility requirements defined in Article 35 § 1 of the Convention, which stipulates:

> "1. The Court may only deal with the matter after all domestic remedies have been exhausted, according to the generally recognised rules of international law, and within a period of six months from the date on which the final decision was taken."

The Court points out that the rule of exhaustion of domestic remedies referred to in Article 35 § 1 of the Convention obliges those seeking to bring their case against the State before an international judicial or arbitral organ to use first the remedies provided by the national legal system. Consequently, States are dispensed from answering before an international body for their acts before they have had an opportunity to put matters right through their own legal system (see *Akdivar and Others v. Turkey*, judgment of 16 September 1996, *Reports of Judgments and Decisions* 1996-IV, § 65).

The Court observes that the requirements contained in Article 35 § 1 concerning the exhaustion of domestic remedies and the six-month period are closely interrelated.

Lastly, the Court observes that the purpose of the six-month rule is to promote security of the law and to ensure that cases raising issues under the Convention are dealt with within a reasonable time. Furthermore, it ought also to protect the authorities and other persons concerned from being under any uncertainty for a prolonged period of time. Finally, it should ensure the possibility of ascertaining the facts of the case before that possibility fades away, making a fair examination of the question at issue next to impossible (see *Kelly v. the United Kingdom*, no. 10626/83, Commission decision of 7 May 1985, Decisions and Reports (DR) 42, p. 205; *Baybora and Others v. Cyprus* (dec.), no. 77116/01, 22 October 2002).

In the present case the Court notes that the decision requesting the applicant to pay the court fee was upheld on appeal by the Leningrad Regional Court on 25 December 2002. Subsequently, the applicant submitted an application seeking supervisory review of the decision, pursuant to the rules set out in Chapter 41 of the CCivP. This application was rejected on 11 April 2003 by a judge of the Leningrad Regional Court, and on 10 September 2003 by the acting President of the Leningrad Regional Court.

The application to the Court was introduced on 8 October 2003, i.e. less than six months from the dates of the decisions to refuse the supervisory-review application, but more than six months after the date of the appeal decision of the Leningrad Regional Court. It follows that the Court may only deal with the application if supervisory review is considered a remedy

within the meaning of Article 35 § 1 of the Convention, in which case the six-month period provided for in that Article should be calculated from the date of the decision to refuse the supervisory-review complaint.

The Court notes that it has jurisdiction in every case to assess in the light of the particular facts whether any given remedy appears to offer the possibility of effective and sufficient redress within the meaning of the generally recognised rules of international law concerning the exhaustion of domestic remedies and, if not, to exclude it from consideration in applying the six-month time-limit.

The Court refers, further, to the extensive case-law to the effect that an application for retrial cannot, as a general rule, be taken into account for the purpose of applying Article 35 of the Convention (see, for example, *R. v. Denmark*, no. 10326/83, Commission decision of 6 October 1983, DR 35, p. 218; *Tumilovich v. Russia* (dec.), no. 47033/99, 22 June 1999).

In the present case the Court notes, on the one hand, that pursuant to Article 376-2 of the CCivP there exists a one-year time-limit for lodging supervisory-review applications against judicial acts.

On the other hand, if supervisory-review proceedings have been instituted within this time-limit, they may terminate with a judge's decision not to obtain the case-file for examination, or not to pass the case for consideration on the merits by a supervisory-review court. Pursuant to Articles 381-6 and 383-2 of the CCivP, the President of the competent court may overrule the judge's decision, and the exercise of this right is not subject to a time-limit.

Furthermore, pursuant to Article 377-2 of the CCivP, if the Presidium of a Regional Court dismisses a supervisory-review complaint, it may be re-submitted to the Civil Section of the Supreme Court. Pursuant to Article 377-3, if the Civil Section of the Supreme Court dismisses a supervisory-review complaint, and the case is inconsistent with the jurisprudence, the complaint may be re-submitted to the Presidium of the Supreme Court. The procedure in these two additional levels of supervisory-review adjudication would be similar to the first level in that the President of the relevant court may also overrule a judge's decisions without any time-limit.

Lastly, pursuant to Article 389 of the CCivP, the President and a Deputy President of the Supreme Court may lodge an application for supervisory-review of any judicial act to the Presidium of the Supreme Court. The exercise of this right is not subject to a time-limit either.

The Court therefore finds that the supervisory-review procedure, once launched, may last indefinitely. Therefore, if it were considered a remedy to be exhausted, the uncertainty thereby created would render nugatory the six-month rule.

In these circumstances the Court finds that a supervisory-review application is akin to an application for retrial and similar remedies which

should not normally be taken into consideration as a remedy under Article 35 § 1 of the Convention. The Court finds no special circumstances which could justify a different conclusion.

The Court therefore considers that the "final" decision in the present case was the appeal decision of the court of cassation instance, that is the decision of the Leningrad Regional Court of 25 December 2002. The applicant's attempts to obtain a supervisory review cannot bring the application within the six-month time-limit laid down in Article 35 § 1.

Since the decision of the court of cassation instance was delivered more than six months before the date on which the application was lodged with the Court, it follows that the application has been introduced out of time and must be rejected pursuant to Article 35 §§ 1 and 4 of the Convention.

For these reasons, the Court unanimously

Declares the application inadmissible.

Søren NIELSEN
Registrar

Christos ROZAKIS
President