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

THIRD SECTION

DECISION

Application no. 31548/09
Aleksandr Tikhonovich MIGASHKIN
against Russia

The European Court of Human Rights (Third Section), sitting on 3 November 2016 as a Committee composed of:

Helena Jäderblom, *President,*
Dmitry Dedov,
Branko Lubarda, *judges,*
and Fatoş Aracı, *Deputy Section Registrar,*

Having regard to the above application lodged on 16 May 2009,

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

Having regard to the comments submitted by the Government,

Having deliberated, decides as follows:

THE FACTS

1. The applicant, Mr Aleksandr Tikhonovich Migashkin, is a Russian national, who was born in 1940 and lives in Volgodonsk.

2. The Russian Government ("the Government") were represented by Mr G. Matyushkin, the Representative of the Russian Federation to the European Court of Human Rights.

A. The circumstances of the case

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

4. In 2007 the applicant sued the Savings Bank of the Russian Federation (the "Bank") in relation to the deposit he opened in 1996 in his granddaughter's name.

5. On 12 November 2007 the Volgodon Town Court found for the applicant.

6. On 18 February 2008 the Rostov Regional Court upheld the findings of the first instance court.

7. On an unspecified date the Bank lodged a supervisory review application before the Supreme Court of Russia.

8. On 30 December 2008 the Supreme Court of Russia quashed the judgments of lower instance courts and remitted the case for fresh consideration.

B. Relevant domestic law and practice

9. The relevant domestic provisions governing the supervisory review procedure in force between 2008 and 2012 is summed up in the Court's judgment in the case of *Trapeznikov and Others v. Russia* (nos. 5623/09, 12460/09, 33656/09 and 20758/10, 5 April 2016).

COMPLAINTS

10. The applicant is understood to complain under Article 6 of the Convention and Article 1 of the Protocol No. 1 to the Convention about the quashing by way of supervisory review of the final judgment delivered in his favour.

11. The applicant further complained about the excessive length of the proceedings and lack of the equality of arms. He finally invoked Article 13 of the Convention.

THE LAW

A. Alleged violation of Article 6 of the Convention and Article 1 of Protocol No. 1 to the Convention

12. The applicant complained that the quashing by way of supervisory review of the final judgments delivered in his favour had not been justified by circumstances of a substantial and compelling character, and therefore violated the principle of legal certainty. He relied on Article 6 of the Convention and Article 1 of Protocol No. 1 to the Convention. Both provisions, insofar as relevant, read as follows:

Article 6 § 1

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

Article 1 of Protocol No. 1

"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 ..."

13. The Government argued that the supervisory review proceedings resulting in the quashing of the judgment delivered in the applicant's favour were applied in accordance with the legislation in force.

14. The Court reiterates that it is not its task to review a particular way of appeal *in abstracto*, but to determine whether the manner in which it was applied in the applicant's case gave rise to a violation of the Convention (see *Kaufmann v. Italy*, no. 14021/02, § 33, 19 May 2005). The Court thus considered as regards the supervisory review procedure in force between 2008 and 2012 that the issue to be addressed by it was not whether this procedure was compatible as such with the Convention but whether its application in the circumstances of a particular case, resulted in a violation of the applicant's right to a fair trial (see *Trapeznikov and Others,* cited above*,* § 35).

15. Turning to the circumstances of the present case the Court observes that the domestic judgment of 12 November 2007 delivered in the applicant's favour was quashed by the Supreme Court of Russia upon the defendant party's request lodged within relatively short time-limits and, in any event, within those provided by the Code of Civil Procedure on the grounds that it was contrary to the law (compare with *Yanakiev v. Bulgaria*, no. 40476/98, § 65, 10 August 2006, and see, by contrast, *Ryabykh v. Russia*, no. 52854/99, §§ 56, ECHR 2003-IX). The supervisory review proceedings in this case did not last indefinitely and was not tarnished by any deficiency identified by the Court in its previous case-law (see *Trapeznikov and Others,* cited above*,* § 27). As a result, the supervisory review as applied in the particular circumstances of this case was not incompatible with the principle of legal certainty enshrined in the Convention (see, *mutatis mutandis*, *MPP Golub v. Ukraine* (dec.), no. 6778/05, ECHR 2005-XI, and *Trapeznikov and Others,* cited above*,* § 37).

16. Consequently, this part of the application must be rejected as manifestly ill-founded, pursuant to Article 35 §§ 3 (a) and 4 of the Convention.

17. Since the applicant's complaint of an infringement of his property rights is only limited to the quashing of the final domestic judgments in his favour, the Court considers that no separate examination is required under

Article 1 of Protocol No. 1 to the Convention (see *Trapeznikov and Others,* cited above*,* § 41).

B. Other alleged violations of the Convention

18. Relying on Article 6 of the Convention, the applicant further complained about length of the proceedings and the lack of equality of arms.

19. As regards the complaint relating to the length of proceedings, it results from the materials submitted to the Court that they lasted one year, four months and fourteen days when the case was examined at three levels of jurisdiction. Such period cannot be considered as incompatible with the requirements of Article 6 of the Convention (see *Biryukov v. Russia* (dec.) no. 63972/00, 9 December 2004).

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

21. As regards the applicant's complaint about lack of equality of arms the Court notes that the applicant failed to submit any evidence in this respect. Thus, this complaint is unsubstantiated and must be rejected in accordance with Article 35 §§ 3 (a) and 4 of the Convention.

For these reasons, the Court, unanimously,

Declares the application inadmissible.

Done in English and notified in writing on 24 November 2016.

Fatoş Aracı
Deputy Registrar

Helena Jäderblom
President