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

FIFTH SECTION

DECISION

Application no. 41444/05
RONLY HOLDINGS LTD
against Georgia

The European Court of Human Rights (Fifth Section), sitting on 7 November 2017 as a Committee composed of:

Síofra O'Leary, *President,*
Nona Tsotsoria,
Lətif Hüseynov, *judges,*

and Anne-Marie Dougin, *Acting Deputy Section Registrar,*

Having regard to the above application lodged on 18 November 2005,

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

1. The applicant, Ronly Holdings Ltd. ("the applicant company"), is a limited liability company, the registered office of which is in the United Kingdom. It was represented before the Court by Ms C. Calnan and Mr S. Fox, lawyers practising in London.

2. The Georgian Government ("the Government") were represented by their former Agent, Mr L. Meskhoradze of the Ministry of Justice.

3. Relying on Article 6 § 1 of the Convention and Article 1 of Protocol No. 1, the applicant company complained of its inability to enforce the arbitral award of 14 September 2004 on account of the Supreme Court's judgment of 20 May 2005.

A. The circumstances of the case

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

1. Background of the case

5. Together with a company called Fapet International Commercial Trading Inc. ("Fapet"), the applicant company signed a contract with a Georgian plant manufacturing ferrous alloys located in Zestaponi ("the Zestaponi plant") and with Redwater Overseas Ltd. The English version of the contract was signed by the parties on 30 September 1997. Under the terms of the contract, which concerned a period of two years, the applicant company undertook to supply and sell to the Zestaponi plant certain raw materials and electricity in exchange for the ferrous alloys produced. The applicant company also undertook to lend the Zestaponi plant 1,500,000 United States dollars (USD) interest free for furnace and roof repairs. The plant would repay the loan in three instalments of ferrous alloys.

6. Clause 22(1) of the contract stipulated that the relations between the parties were governed by UK law. Any dispute arising between the parties in the context of the contract had to be submitted to an arbitration tribunal in London, composed of three arbitrators.

2. Examination of the dispute by a sole arbitrator in London

7. When a dispute arose regarding a debt, the applicant company sent the Zestaponi plant a letter on 16 April 2002 requesting it to acknowledge its debt and submit its repayment proposals by 26 April 2002. The applicant company stated that if no reply were received, it would start arbitration proceedings in accordance with the contract of 30 September 1997. As the dispute was not resolved, the applicant company appointed an arbitrator in London on 8 May 2002. On 27 May 2002 the Zestaponi plant agreed to the choice of arbitrator to hear the dispute. Following an exchange of letters on 28 May 2002, the applicant company and the Zestaponi plant decided to amend the contract of 30 September 1997, agreeing that the dispute would be heard by a sole arbitrator in London. On the date of that amendment the Georgian State held 51% of the capital in the Zestaponi plant, a joint stock company.

8. On 22 July 2003 the arbitrator held a hearing on the merits of the case. The arbitrator considered all parts of the applicant company's claim well-founded. Accordingly, in his decision of 19 December 2003, the arbitrator stated that the Zestaponi plant owed the applicant company an aggregate sum of USD 16,083,772.40, of which USD 10,088,834.57 were payable immediately.

9. On 14 September 2004 the arbitrator amended his earlier decision, stating that the Zestaponi plant was to repay the applicant company the entire amount of the debt, on which, from 15 October 1999 and until the date of payment, a monthly late-payment interest rate had accrued. The Zestaponi plant was also ordered to pay costs and expenses of 36,425 pounds sterling (GBP), inclusive of all taxes and the arbitrator's fees.

3. Subsequent proceedings in Georgia, challenged in the context of the present application

10. On 22 April 2004 the Zestaponi plant brought proceedings in the Georgian courts, claiming that the arbitration clause inserted in the contract of 30 September 1997 and according to which disputes had to be submitted to an arbitration court was null and void under Georgian law. The Zestaponi plant requested that both the applicant company and N.A., its former managing director, reimburse it for the costs incurred in the arbitration proceedings in London and compensate it for the damage caused by the appointment of a sole arbitrator.

11. On 8 December 2004 the Kutaisi Court upheld that request on the grounds that the arbitration clause, as amended on 28 May 2002, was void under Georgian law. The court observed, among other things, that in accordance with the presidential order of 31 December 2001, companies in which the Georgian State held more than 50% of the capital and which submitted their disputes to a private arbitrator could not amend a contract without the prior approval of the Georgian Ministry of Justice. The court also observed that pursuant to Article 54 of the Georgian Civil Code, a contract that did not comply with the statutory rules or contravened public order or moral principles was void. Under Article 59 § 1 of that Code, a contract was also void if it was concluded without the necessary authorisation.

12. The court stated that apart from the above-mentioned statutory provisions, it took account of the judgment of 24 November 2003 convicting N.A. of forgery and the fact that N.B., director of the applicant company and signatory to the contract of 30 September 1997, was also the subject of criminal proceedings. Accordingly, in accordance with Article 992 of the Civil Code, the court ordered the applicant company and the former managing director of the Zestaponi plant jointly and severally to compensate the plant by paying it exactly the same sum as that due from the Zestaponi plant to the applicant company in accordance with the decision of the London arbitrator plus the costs and expenses incurred in the London proceedings.

13. The applicant company appealed on points of law. On 20 May 2005 the Supreme Court of Georgia overturned the part of the judgment of

8 December 2004 declaring the arbitration clause and its amendment of 28 May 2002 invalid. The Supreme Court upheld, however, the reasoning of the lower court based on N.A.'s conviction for forgery and use of forged documents and found that the amendment of the arbitration clause of 28 May 2002 was part of a criminal plan against the Zestaponi plant, particularly as the amendment had not been approved by the Ministry of Justice in accordance with the presidential order of 31 December 2001.

14. Consequently, the Supreme Court upheld the part of the judgment of 8 December 2004 relating to the order against the applicant company and N.A. to redress, pursuant to Article 992 of the Georgian Civil Code, the damage caused to the Zestaponi plant by the procedure before the sole arbitrator in London.

COMPLAINTS

15. The applicant company complained under Article 6 § 1 of the Convention and Article 1 of Protocol no. 1 of its inability to enforce the arbitral award of 14 September 2004 on account of the Supreme Court judgment of 20 May 2005.

THE LAW

16. The Government raised several preliminary objections of inadmissibility, arguing in the first place that the present application had to be dismissed as an abuse of the right of application because the applicant company had knowingly failed to provide all the facts relevant for the examination of the case. In particular, the Government submitted to the Court a so-called "Settlement Agreement executed on 28 November 2005 in Geneva, Switzerland by and between the applicant company, the Zestaponi plant, BNP Paribas and Seymour Limited" ("the settlement agreement"). According to the Settlement Agreement, the applicant company agreed to assign to BNP Paribas all amounts due under various arbitration awards including the one of 14 September 2004. Furthermore, according to clause 1, paragraph 1.1, the Zestaponi plant was to pay BNP the sum of USD 3,500,000 in full and final settlement of all sums due under the arbitration awards and the relevant court orders. The Zestaponi plant, for its part, waived any claims with respect to the applicant company. Referring to the above-mentioned clause and other relevant clauses of the settlement agreement, the Government submitted that the dispute at stake in the current case had been settled between the parties. By transferring all its claims under the relevant arbitration award to a third party, the applicant company

had waived its rights at stake in the current case. Most importantly, its failure to inform the Court about those developments clearly amounted to an abuse of the right of individual application within the meaning of Article 35 § 3 (a) of the Convention.

17. The applicant company did not challenge the validity of the settlement agreement. It claimed, however, that it was a purely commercial agreement, which had been concluded as a consequence of the company's significant debts to BNP Paribas. The agreement had entered into force on 28 November 2005, ten days after the application had been lodged with the Court, and simply sought to achieve partial mitigation of the applicant company's financial losses resulting from the Supreme Court's judgment of 20 May 2005. Accordingly, it had no bearing on the question as to whether the company's rights under the Convention had been violated by the respondent Government in the current case.

18. The Court notes that incomplete and therefore misleading information may amount to an abuse of the right of application, especially if the information concerns the very core of the case and no sufficient explanation is given for the failure to disclose that information (see, for instance, *Hadrabova v. the Czech Republic* (dec.), nos. 42165/02 and 466/03, 25 September 2007). The same applies if new, important developments have occurred during the proceedings before the Court and where, despite being expressly required to do so by Rule 47 § 7 (former Rule 47 § 6) of the Rules of Court, the applicant has failed to disclose that information to the Court, thereby preventing it from ruling on the case in full knowledge of the facts (see *Gross v. Switzerland* [GC], no. 67810/10, § 28, 30 September 2014).

19. Turning to the circumstances of the present case, the Court notes that under the relevant clauses of the settlement agreement, not only did the applicant company transfer all of its claims under, *inter alia*, the arbitral award of 14 September 2004 to a third party, but in addition the Zestaponi plant agreed to relinquish any claim against the applicant company, including for any sums which the courts had ordered to be paid. The Court is mindful of the fact that the settlement agreement explicitly stipulated that the payment in full of USD 3,500,000 to BNP would constitute "final settlement of all monetary amounts due under the Arbitration Awards and Court Orders referred to [above]." Without further addressing the legal nuances of the settlement agreement, the Court cannot but conclude that the settlement agreement was a major development in the applicant company's case; it concerned the very core of the application pending before the Court, without the knowledge of which it could not have been in a position to properly consider the case (compare with *S.C. Red Credit S.R.L. v. Romania* (dec.), no. 45879/09, §§ 41-48, 24 May 2016; *Nihat and Sanija Pulić v. Serbia* (dec.) [Committee], no. 34194/09, 6 September 2016; and contrast

with *Koka Hybro Komerc DOO Brojler v. Serbia* [Committee], no. 59341/09, § 21, 14 March 2017).

20. As to the second aspect, the Court considers that the applicant company failed to provide a sufficient explanation as to why it did not divulge the settlement agreement to the Court. While it is true that the agreement was signed ten days after the applicant company had submitted its initial application with the Court, it has to be noted that a full application form with the relevant annexes was sent, in reply to the Court's request, only on 24 February 2006, that is two months after the signing of the settlement agreement. Moreover, the application was communicated to the parties on 23 October 2008, thus allowing the applicant company two additional years and eight months to update the Court, according to Rule 47 § 6 of the Rules of Court, about any major developments regarding its case, including the signing of the impugned agreement.

21. Having regard to the importance of that information for the proper determination of the present case, the Court finds that the either deliberate or negligent conduct of the applicant company was contrary to the purpose of its right of individual petition as provided for in Article 34 of the Convention (compare, amongst many other authorities, with *Khvichia v. Georgia* (dec.), no. 26446/06, 23 June 2009; *Stojnić v. Bosnia and Herzegovina* (dec.), no. 24652/09, § 23, 6 October 2015; and also *S.C. S.E.A.C.I.D. S.R.L. v. Romania* (dec.) [Committee], no. 55365/09, §§ 24-26, 21 February 2017).

22. The application must accordingly be rejected as abusive, pursuant to 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 30 November 2017.

Anne-Marie Dougin
Acting Deputy Registrar

Síofra O'Leary
President