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

THIRD SECTION

DECISION

Application no. 16559/16
Vitaliy Viktorovich SAKHANOV
against Russia

The European Court of Human Rights (Third Section), sitting on 18 October 2016 as a Chamber composed of:

Luis López Guerra, *President,*
Helena Jäderblom,
Helen Keller,
Dmitry Dedov,
Branko Lubarda,
Pere Pastor Vilanova,
Alena Poláčková, *judges,*

and Stephen Phillips, *Section Registrar,*

Having regard to the above application lodged on 16 March 2016,

Having deliberated, decides as follows:

THE FACTS

1. The applicant, Mr Vitaliy Viktorovich Sakhanov, is a Russian national who was born in 1969 and lives in Moscow.

A. The circumstances of the case

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

3. From 25 December 2009 to 20 December 2011 the applicant was the director general of a Russian limited liability company, OOO VA INVEST (hereinafter "the company").

4. On 16 November 2012 the Commercial Court of Moscow declared the company bankrupt and opened liquidation proceedings. The proceedings were closed on 25 June 2013.

5. On 4 July 2013 the Commercial Court of Moscow considered a request from the Federal Tax Service to hold the applicant jointly liable for the company's debts because of the company's inability to cover all its debts with its remaining assets. Although duly notified, the applicant was not present at the hearing.

6. The Federal Tax Service's request was granted and the applicant was found liable to pay 1,194,434 Russian rubles (RUB, approximately 27,732 euros).

7. On 27 August 2013 the company officially went into liquidation.

8. The applicant only became aware of the outcome of the proceedings against him in May 2014 when money was seized from his bank account.

9. The applicant appealed against the decision of the Commercial Court of Moscow of 4 July 2013.

10. The 9th Commercial Court of Appeal considered the appeal on the merits and on 6 November 2014 discontinued the appeal proceedings. With reference to the position of the Supreme Commercial Court, the appeal court concluded that it was impossible to adjudicate bankruptcy-related disputes concerning a company that had already gone into liquidation. The operative part of the appeal decision stated that the applicant could file a cassation appeal.

11. On 22 December 2014 the Commercial Court of Moscow Region dismissed a cassation appeal of the applicant. Reasoning adopted by the appeal court was upheld in full. The applicant did not appeal further against that decision.

12. In 2015 the applicant attempted to initiate a separate set of proceedings before the Constitutional Court of Russia, but his complaint was found inadmissible.

B. Relevant domestic law

1. Constitutional amendments of 2014

13. On 6 February 2014 several amendments to the Constitution introduced by the Constitutional Amendment Act No. 2-FKZ (*Закон РФ о поправке к Конституции РФ от 05.02.2014 No. 2-ФКЗ*) entered into force. Among other things, the amendments provided that the Supreme Commercial Court was to be abolished following a provisional period of six months and all its functions were to be gradually transferred to the Supreme Court.

2. Amendments to the Code of Commercial Procedure

(a) Overview of the cassation review procedure

14. With some material and procedural exceptions, final court decisions issued by a first-instance and appeal courts in commercial cases may be challenged by way of cassation appeal before a commercial court of a Circuit (Article 273 of the Code).

15. On 6 August 2014 amendments to the Code of Commercial Procedure ("the Code") came into effect. The Supreme Court was empowered to consider cassation and supervisory review appeals against the final decisions of commercial courts. There were no specific transitional provisions. For a detailed description of the procedure in force before the amendments refer to *Kovaleva and Others v. Russia* ((dec.), no. 6025/09, 25 June 2009).

(b) Cassation review by Circuit courts

16. A cassation appeal may be lodged within two months after the last impugned court decision became final (Article 276 of the Code). A panel of judges examines a cassation appeal within two months (Articles 284-285 of the Code). The scope of review includes the issues of legality as raised by the parties and, *proprio motu*, the following issues: issues relating to the composition of the court; examination of the case in the absence of a party or another interested person, due to deficient notification; violation of the secrecy of deliberations (Article 286 of the Code). The cassation court also "verifies whether the conclusions reached by the lower courts concerning application of a legal rule correspond to the circumstances of the case and the available evidence" (Article 286 § 3 of the Code).

(c) Cassation review by the Supreme Court

17. Article 291.1 § 1 of the Code provides that final judicial decisions of commercial courts that have already been subjected to review in a cassation appeal by regional courts may be challenged further in cassation appeal proceedings before the Chamber of the Supreme Court. The proceedings may be taken by the parties to a case and by others whose rights or legal interests have been adversely affected by those decisions.

18. According to Article 291.2 § 1 cassation appeals may be filed within two months of the date the last judicial decision in the case became legally binding.

19. Article 291.2 § 2 sets out that the deadline for submitting a cassation appeal may be extended in exceptional circumstances at the request of the appellant. An extension, however, is only possible if the request is submitted either by a party to the proceedings within six months of the date the last judicial decision in the case became legally binding, or by a third

party affected by the case within six months of the date he or she became aware of a violation of his or her rights.

20. Article 291.6 §§ 1 and 7 provide that the admissibility of a cassation appeal is considered by a single judge of the Supreme Court. The judge can either find the cassation appeal inadmissible or refer it to the Chamber of the Supreme Court for consideration.

21. According to Article 291.7 §§ 1 and 2 the admissibility of a cassation appeal is to be considered within two months if the case file has not been requested from the lower court, and within three months if the file has been requested. That time-limit excludes the period between the request for the case file and its receipt. The time-limits may be extended by two months by the President of the Supreme Court or his or her deputy.

22. Article 291.12 § 1 states that the Chamber of the Supreme Court is to examine the case within two months of the date of the admissibility decision.

23. Article 291.14 § 1 provides that following examination of the case, the Chamber of the Supreme Court may, among other things, quash wholly or in part one or all of the judgments previously delivered in the case by the first-instance, appeal or cassation courts and remit the case for reconsideration by any of those courts.

(d) Supervisory review by the Supreme Court

(i) Before August 2014

24. Chapter 26 of the Code provided that final judgments could be challenged by way of supervisory review before the Supreme Commercial Court of Russia (see further *Kovaleva and Others v. Russia* (dec.), cited above). When the Supreme Commercial Court of Russia ceased to exist, the review of final judgments in commercial cases was assigned to the Supreme Court of Russia according to the rules of new Chapter 36.1 of the Code.

(ii) Since August 2014

25. A newly introduced chapter, Chapter 36.1, provides that the Presidium of the Supreme Court of the Russian Federation can consider applications from parties for supervisory review of binding judgments issued by lower judicial instances.

26. According to Article 308.1 § 3 (3), in an ordinary civil case where the proceedings started at a first-instance commercial court, parties may lodge an application for supervisory review only if their case has previously been examined in cassation proceedings by the Chamber of the Supreme Court. Such applications may be brought within three months of the date on which the impugned decision became binding (Article 308.1 § 4).

27. According to Article 308.4 § 1 and 308.5 the admissibility of an application is decided by a single judge of the Supreme Court, who may

dismiss the application or transfer it for examination by the Presidium. That decision must be taken within two months if the case file has not been requested and within three months if it has been requested. The time-limit excludes the period between the request for the case file and its receipt.

28. Article 308.4 § 7 provides that a decision by a single judge to dismiss an application may be overruled by the President or Deputy President of the Supreme Court. The Code contains no explicit time-limit for the exercise of that power.

29. Following examination of a case the Presidium of the Supreme Court may, in accordance with Article 308.11 § 1, uphold, vary or quash any of the judgments previously delivered in a case, be it by the first-instance, appeal or cassation courts. If it does so, the Presidium may adopt a new decision or send the case back for reconsideration. Article 308.8 provides that binding decisions may be quashed on supervisory review if they breach: (1) human rights and freedoms enshrined in the Constitution or principles of international law and international treaties to which the Russian Federation is a party; (2) the rights and legitimate interests of an undefined group of people or other public interests; (3) the uniformity of case-law.

30. Article 208.9 § 5 states that the Presidium of the Supreme Court is to examine cases within two months of the date of the admissibility decision.

COMPLAINTS

31. The applicant complained under Articles 6 and 13 of the Convention and under Article 1 of Protocol No. 1 about the outcome of the proceedings before the commercial courts and, in particular, the fact that he had been held to have subsidiary liability for the company's debts.

THE LAW

32. The Court notes the applicant's dissatisfaction with the outcome of the proceedings before the commercial courts. However, it does not consider it necessary to go into an examination of each separate Convention complaint in view of its finding below that the application is overall inadmissible on the grounds of non-exhaustion of domestic remedies.

33. The Court observes that the new cassation and supervisory review proceedings introduced for Russian commercial courts by the new legislation (see paragraphs 13-30 above) are very similar to the cassation and supervisory review proceedings in place for courts of general jurisdiction (for a detailed description see *Abramyan and Others v. Russia* ((dec.), nos. 38951/13 and 59611/13, §§ 31-45, 12 May 2015). In particular,

the second cassation appeal before the Supreme Court allows potential applicants to submit their grievances to the highest judicial body of the Russian Federation, which is able to consider any complaint about an alleged violation of the Convention in commercial cases and remedy any such violation at the domestic level prior to examination of the case by the Court (see, in the same vein, *Roberts v. the United Kingdom* (dec.), no. 59703/13, § 43, 5 January 2016).

34. The Court therefore considers it appropriate to apply its conclusions in *Abramyan and Others* (cited above, *mutatis mutandis*, §§ 87-103) regarding the effectiveness of cassation and supervisory review proceedings before the Supreme Court to the present case. It thus finds that an application for cassation review before the Chamber of the Supreme Court, based as it is on strict time-limits in granting access to the Supreme Court, constitutes an effective remedy capable of also providing redress in commercial disputes. The Court considers it appropriate and justified to require any individual who intends to lodge an application in respect of a violation of his or her Convention rights to use the remedies offered by the new cassation procedure.

35. With respect to supervisory review in commercial proceedings the Court notes that it cannot be seen as an effective remedy within the meaning of Article 35 of the Convention (see *Abramyan and Yakubovskiye*, cited above, §§ 42-45).

36. Turning to the facts of the present case, the Court observes that the applicant did not lodge an application for cassation review with the Chamber of the Supreme Court. It therefore follows that this application must be rejected under Article 35 §§ 1 and 4 of the Convention for non-exhaustion of domestic remedies.

For these reasons, the Court unanimously

Declares the application inadmissible.

Done in English and notified in writing on 17 November 2016.

Stephen Phillips
Registrar

Luis López Guerra
President