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. 73203/01
by Oleg Trofimovich SMARYGIN
against Russia

The European Court of Human Rights (First Section), sitting on 2 September 2004 as a Chamber composed of:

Mr C.L. ROZAKIS, *President*,
Mr P. LORENZEN,
Mr G. BONELLO,
Mrs N. VAJIĆ,
Mrs S. BOTOUCHAROVA,
Mr A. KOVLER,
Mr V. ZAGREBELSKY, *judges*,
and Mr S. Nielsen, *Section Registrar*,

Having regard to the above application lodged on 26 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, Mr Oleg Trofimovich Smarygin, is a Russian national, who was born in 1931 and lives in the Chita Region. The respondent Government are represented by Mr P. Laptev, the 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.

In 1973 the applicant, then a miner, was injured at work. In 1999 the applicant filed with the Chernyshevskiy District Court of the Chita Region two actions against his former employer, a private company. He claimed compensation for non-pecuniary damage (*возмещение морального вреда*) caused to him by the injury, and payment of a "lump-sum allowance" (*единовременное пособие*). This allowance pertained to victims of industrial accidents.

On 21 September 1999 the Chernyshevskiy District Court delivered two judgments in the applicant's favour. The Court granted RUR 11,582.80 for non-pecuniary damage and RUR 30,000 as the lump-sum allowance. The judgments were not appealed against and became final. Bailiffs instituted enforcement proceedings in this respect.

It appears that on an unspecified date the defendant applied to the President of the Chita Regional Court for "supervisory review" of the case (see the "Relevant Domestic Law" part below).

On 13 July 2000 the President of the Chita Regional Court lodged with the Regional Court an extraordinary appeal (*протест в порядке надзора*) against the judgments of 21 September 1999. A copy of the appeal was sent to the applicant. The President stated that the relevant provisions concerning compensation for non-pecuniary damage and payment of a "lump-sum allowance" had entered into force in 1992, while the injury had been inflicted in 1973. The President concluded that the lower court had erroneously applied the legislation.

On 10 August 2000 the Presidium of the Chita Regional Court examined the appeal under the presidency of the Court's President. The applicant, who was not present, submitted his objections in writing.

The Presidium found that the Chernyshevskiy District Court of the Chita Region had erroneously applied the legislation of 1992. As a result the Presidium quashed the two judgments of 21 September 1999 and adopted two new judgments, dismissing the applicant's claims in full.

B. Relevant domestic law

1. Execution of a judgment

According to Articles 13, 209 and 338 of the Code of Civil Procedure, a court judgment which has become effective is binding and must be executed.

Articles 208 and 284 of the Code provide that a first instance judgment, if it is not appealed, becomes effective ten days after pronouncement. After the judgment becomes effective, no party to the proceedings can submit, on the basis of the same facts, a claim which is essentially the same, or contest the legal or factual conclusions reached by the courts.

2. Supervisory review

Article 11 of the Code of Civil Procedure provides that regional and higher courts may conduct "supervisory review" of the decisions of the lower courts. This means, according to Articles 319, 320 and 327, that specific senior judicial officers may, at any time, on the request by a party or of their own motion, lodge with a higher court an "extraordinary appeal" (*npomecm*) against the final decision on all questions of fact and law. If an "extraordinary appeal" is lodged, the proceedings recommence and execution of the final judgment may be adjourned (Article 323). The "supervisory review" procedure is separate from proceedings for review on the basis of new facts (Articles 333 -337).

COMPLAINTS

The applicant complains that the judgments in his favour were quashed as a result of the supervisory review proceedings initiated by the President of the Chita Regional Court. He does not invoke any Article of the Convention.

THE LAW

The applicant complains that the award made in his favour was subsequently quashed by way of supervisory review upon the appeal of the President of the Chita Regional Court. This complaint falls to be examined under Article 6 and Article 1 of Protocol No. 1 to the Convention.

Article 6 of the Convention, in so far as relevant, provides as follows:

> "1. In the determination of his civil rights and obligations ... everyone is entitled to a fair and public hearing ... by an impartial tribunal ... "

Article 1 of Protocol no. 1 to the Convention provides 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 allege that the judgment in the applicant's favour was quashed by the Presidium of the Chita Regional Court with a view to correcting a judicial error. The Government refer to the fact that the applicant was injured in 1973. The legislation then in force did not provide for the compensation sought by the applicant. The legal provisions applied by the first instance court had entered into force in 1992 and could not be applied retrospectively. The Government further maintain that the supervisory proceedings complied with the Code of Civil Procedure, and therefore the quashing of the subordinate court's judgments cannot be said to have violated the applicant's right to fair trial. In the Government's opinion, the participation of the President of the Regional Court in the supervisory review proceedings "made no difference" because the rapporteur at the supervisory review hearing was a different judge. As to whether the applicant's property rights have been violated, the Government contend that the applicant had not acquired property since the judgments which conferred the title on him were unlawful. They conclude that neither Article 6 § 1 nor Article 1 of Protocol 1 has been violated by the quashing of the judgments in question.

The applicant contests the Government's allegation and maintains his complaints.

The Court considers, in the light of the parties' submissions, that the application raises serious issues of fact and law under the Article 6 § 1 of the Convention and Article 1 of Protocol 1 to the Convention, the determination of which requires an examination of the merits. The Court concludes therefore that the application 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.

For these reasons, the Court unanimously

Declares the application admissible, without prejudicing the merits of the case.

Søren NIELSEN
Registrar

Christos ROZAKIS
President