



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

FIRST SECTION

Application no. 5744/07
Valeriy Georgiyevich KOSTENKO and
Sergey Vladimirovich KASMYLIN
against Russia
lodged on 11 November 2006

STATEMENT OF FACTS

1. The applicants, Mr Valeriy Georgiyevich Kostenko and Mr Sergey Vladimirovich Kasmylin, are Russian nationals, who were born in 1954 and 1960 respectively and live in Tuapse, the Krasnodar Region.

A. The circumstances of the case

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

3. They invested the money in the company B., which undertook to build the apartments for them. In 2002 bankruptcy proceedings were initiated against the company B. and the trustee in bankruptcy transferred an unfinished apartment building to company T. under previously concluded agreement. The applicants missed the deadline for joining the register of creditors and were included in it after it was closed in the last order of payments. As the result of the bankruptcy proceedings the applicants did not receive any payments due to lack of funds of the company B.

4. In 2004 the commercial courts invalidated the transfer of the unfinished apartment building to the company T. on procedural grounds, but did not put in doubt its property rights to it. On unspecified date the company T. was reorganized into the company N.

5. Alleging that the unfinished apartment building may be regarded as an asset of the bankrupt company B., the applicants lodged a lawsuit against the company N. seeking recovery of their investments.

6. On 16 September 2005 the Tuapsinskiy Town Court of the Krasnodar Region ruled in favour of the applicants and ordered payment of 1,002,655 Russian roubles in damages to each of them. The company N. lodged a cassation appeal. On 17 November 2005 the Krasnodar Regional Court dismissed the cassation appeal and the judgment of the trial court became final.

7. The company N. lodged a supervisory review complaint against the cassation judgment of the Krasnodar Regional Court of 17 November 2005. It was alleged that the cassation court based its judgment on fundamental errors in substantive and procedural law.

8. On 11 May 2006 the Presidium of the Krasnodar Regional Court annulled the cassation judgment and remanded the case to the trial court. The supervisory review court reasoned that the cassation court (1) failed to consider that the applicants joined the bankruptcy proceedings after the register of creditors was closed and did not establish whether all the claims of the registered creditors (who have priority) were satisfied, and (2) ignored the fact that the unfinished apartment building is the property of company N. and its investors.

9. The applicants lodged a supervisory review complaint against the annulment of the judgment, but it was dismissed by the Supreme Court of the Russian Federation on 5 July 2006.

10. On 10 December 2007 the Tuapsinskiy Town Court of the Krasnodar Region upon fresh consideration of the case dismissed the applicants' claims. On 4 March 2008 the Krasnodar Regional Court upheld the judgment on cassation.

11. Subsequent attempts of the applicants to lodge supervisory review complaints were unsuccessful.

B. Relevant domestic law

The relevant domestic law governing the supervisory review procedure at the material time is summed up in the Court's judgment in the case *Sobelin and Others* (see *Sobelin and Others v. Russia*, nos. 30672/03 et al., §§ 33-42, 3 May 2007).

COMPLAINTS

The applicants complain under Article 6 § 1 of the Convention about annulment of the binding judgments in supervisory review proceedings. The applicants also submit other complaints under Articles 6 of the Convention.

QUESTIONS TO THE PARTIES

1. Has there been a breach of the applicants' rights under Article 6 § 1 of the Convention as a result of the annulment of the final judgment in their favour by way of supervisory review (see e.g. *Ryabykh v. Russia*, no. 52854/99, 24 July 2003)?

2. Was the annulment of the final judgment in the applicants' case justified by circumstances of a substantial and compelling character, such as correction of fundamental defects or miscarriage of justice (see *Brumărescu v. Romania* [GC], no. 28342/95, § 61, ECHR 1999-VII, and *Protsenko v. Russia*, no. 13151/04, § 26, 31 July 2008)?