



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

FIRST SECTION

Applications nos 23818/04 and 42665/06
SROO SUTYAZHNIK against Russia
and SROO SUTYAZHNIK against Russia
lodged on 19 May 2004 and 7 October 2006 respectively

STATEMENT OF FACTS

1. The applicant is a non-profit public association SROO Sutyazhnik (“applicant association”). It is represented before the Court by its president, Mr S. I. Belyayev.

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

*1. Events related to re-registration of the applicant association
(application no. 23818/04, lodged on 19 May 2004)*

3. The applicant association was registered on 29 August 1994 by the Sverdlovsk Regional Justice Department of the Ministry of Justice of the Russian Federation (“Justice Department”). In 1995 a new Federal Law On non-governmental organisations came into force. The Law required that all NGOs established before 1995 be re-registered before 1 July 1999. On multiple occasions the applicant association applied to the Justice Department seeking re-registration, however, the applications were unsuccessful.

4. The applicant association brought an action before the commercial courts against the Justice Department seeking a judicial order to re-register the association. The decisions in the applicant association’s favour given by the trial and cassation courts were annulled and the proceedings were discontinued on 26 September 2000 by the Presidium of the Supreme Commercial Court of the Russian Federation. The Presidium ruled that the commercial courts lacked jurisdiction to consider disputes concerning registration of non-profit organisations.

5. Shortly thereafter the applicant association challenged before the courts of general jurisdiction the refusal of the Justice Department to re-register it. On 10 April 2002 the Kirovskiy District Court of Yekaterinburg ruled in favour of the applicant association and ordered re-registration by the Justice Department.

6. On 17 May 2002 the Government of the Russian Federation issued a decree, which transferred the management of the register of legal entities from the Ministry of Justice and its territorial bodies (justice departments) to the Ministry of Taxation and its territorial bodies from 1 July 2002.

7. The applicant association on 26 June 2002 submitted the documents necessary for re-registration to the Justice Department. By the letter of 24 July 2002 the Justice Department informed the applicant association that the judgment in its favour could not be enforced because an appeal against it was pending.

8. On 1 August 2002 the Sverdlovsk Regional Court upheld the trial court's judgment on appeal.

9. On 2 September 2002 the Kirovskiy District Court of Yekaterinburg issued a writ of execution ordering the Justice Department to re-register the applicant association.

10. On 5 November 2002 the president of the applicant association, Mr S. I. Belyayev, forwarded the writ of execution to the Bailiffs' Service for enforcement. He attached to his letter the new articles of association of the applicant association and also informed the bailiffs that the remainder of the documents necessary for re-registration had been already filed with the Justice Department.

11. On 23 December 2002 the Bailiffs' Service terminated the enforcement proceedings. It was stated that the Justice Department is unable to comply with the judgment because from 1 July 2002 the registration of legal entities was entrusted to the Ministry of Taxation and its territorial bodies. The applicant association was not informed of this decision.

12. SROO Sutyazhnik was incorporated in the register of legal entities by the Ministry of Taxation on 19 August 2002 as a legal person registered before 1 July 2002.

13. The applicant association unaware of the bailiffs' decision to terminate the proceedings lodged complaints regarding non-enforcement of the judgment with the Bailiffs' Service and the Justice Department. On 23 January 2004 and 28 January 2004 respectively the Justice Department and the Bailiffs' Service informed SROO Sutyazhnik that the enforcement proceedings were terminated without enforcement due to absence of powers to perform re-registration on the side of the Justice Department.

14. The applicant association lodged an action alleging unlawfulness of termination of enforcement proceedings by the Bailiffs' Service. On 1 March 2004 the Kirovskiy District Court of Yekaterinburg ruled in its favour in part and found termination of the proceedings to be unlawful. The judgment was upheld by the Sverdlovsk Regional Court on 10 June 2004.

15. Upon a number of subsequent requests of SROO Sutyazhnik on 20 October 2004 the Justice Department issued an order to re-register the applicant association, annul the registration certificate of 1994, and transfer the file to the Ministry of Taxation for incorporation of the data into the register of legal entities.

16. On 27 October 2004 the Ministry of Taxation informed the Justice Department that the applicant association was incorporated in the register of legal entities on 19 August 2002 and that the Federal Law On registration of legal entities of 2001 did not allow to insert a specific re-registration record in the register.

17. On 10 November 2004 the Justice Department informed SROO Sutyazhnik that it fully enforced the judgment. The applicant association disagreed and requested issuance of a registration certificate. The Justice Department on 16 December 2004 replied that issuance of a re-registration certificate is not possible, because no relevant record was inserted in the register of legal entities.

18. SROO Sutyazhnik challenged in court the inaction of the Justice Department concerning issuance of the certificate. On 18 March 2005 the Kirovskiy District Court of Yekaterinburg ruled against the applicant association. The District Court reasoned that SROO Sutyazhnik was effectively re-registered on 19 August 2002, no inaction of the state bodies could be established, and that the plaintiff failed to demonstrate that absence of the registration certificate impeded the daily operation of the association. The judgment was upheld on 30 August 2005 by the Sverdlovsk Regional Court.

19. In the meantime, on 11 May 2005 the applicant association requested and received the certificate of state registration from the Justice Department.

*2. Events related to re-organization of the applicant association
(application no. 42665/06, lodged on 7 October 2006)*

20. On 28 February 2003 the general assembly of SROO Sutyazhnik decided to adopt changes to the articles of association and to re-organize itself into an international public association, because its representation was established and registered in the State of New York.

21. On 19 March 2003 an application was forwarded to the Ministry of Justice along with supporting documents, including 1994 versions of the articles of association and the registration certificate, and the certificate of 19 August 2002 verifying incorporation of SROO Sutyazhnik in the register of legal entities.

22. On 29 April 2003 the Ministry of Justice informed the applicant association that the requested changes to the articles of association and the legal status of association may not be recorded, because it failed to supply the articles of association and registration certificate issued after 1 July 1999. Further the letter stated that the applicant association was due to be liquidated.

23. SROO Sutyazhnik challenged the decision of the Ministry of Justice in court and sought an order to proceed with registration of an international public association and incorporation of the relevant records in the register of legal entities by the territorial body of the Ministry of Taxation.

24. The relevant subsequent events in 2003-2005 are summarized in §§ 13-19 above.

25. On 26 December 2005 the Tverskoy District Court of Moscow ruled against the applicant association. The District Court reasoned that SROO Sutyazhnik at the moment it filed an application with the Ministry of

Justice in 2003 did not have the articles of association adopted after 1 July 1999 and registration certificate issued after the same date. Effectively, these documents were available for filing after 11 May 2005, and thus the Ministry of Justice properly concluded that the application for reorganization into an international public association could not be accepted.

26. On 11 April 2006 the Moscow City Court upheld the judgment on appeal.

COMPLAINTS

The applicant association complains under Article 6 § 1 of the Convention about lengthy non-enforcement of the judgement ordering its re-registration.

Further, the applicant association complains under Article 11 in conjunction with Article 6 § 1 of the Convention that the lengthy non-enforcement of the abovementioned judgment unduly interfered with the freedom of association by preventing it from obtaining the status of a registered association and precluded reorganization into an international public association.

Also, the applicant association submitted other complaints under Articles 6 and 11 of the Convention.

QUESTIONS TO THE PARTIES

1. Have the judgment given in the applicant associations' favour been fully enforced? If yes, what is the date of the full enforcement of the judgment?

2. Having regard to the manner in which the judgment to re-register the SROO Sutyazhnik was being enforced, has there been an interference with the applicant association's freedom of association, within the meaning of Article 11 § 1 of the Convention, as regards re-registration of SROO Sutyazhnik? If so, was that interference prescribed by law and necessary in terms of Article 11 § 2?

3. Has there been an interference with the applicant association's freedom of association, within the meaning of Article 11 § 1 of the Convention, as regards the attempt to re-organize SROO Sutyazhnik into an international public association? If so, was that interference prescribed by law and necessary in terms of Article 11 § 2?

4. In the circumstances of the case, did the actions of the national authorities regarding re-registration and re-organization of SROO Sutyazhnik comply with the requirements of Article 6 § 1 of the Convention taken in conjunction with Article 11 of the Convention?

5. Having regard to the manner in which the judgment to re-register the applicant association was being enforced, can it be said that the applicant has suffered a significant disadvantage within the meaning of Article 35 § 3 (b) of the Convention?