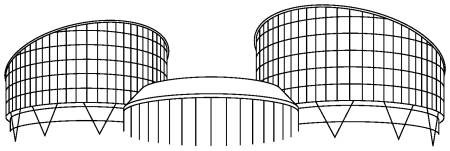

EUROPEAN COURT OF HUMAN RIGHTS
COUR EUROPÉENNE DES DROITS DE L'HOMME

FIRST SECTION

CASE OF SAMAROV v. RUSSIA

(Application no. 47388/06)

JUDGMENT

STRASBOURG

28 May 2014

This judgment is final but it may be subject to editorial revision

In the case of Samarov v. Russia,

The European Court of Human Rights (First Section), sitting as a Committee composed of:

Khanlar Hajiyev, *President,*
Julia Laffranque,
Erik Møse, *judges,*

and André Wampach, *Deputy Section Registrar,*

Having deliberated in private on 6 May 2014,

Delivers the following judgment, which was adopted on that date:

PROCEDURE

1. The case originated in an application (no. 47388/06) against the Russian Federation lodged with the Court under Article 34 of the Convention for the Protection of Human Rights and Fundamental Freedoms ("the Convention") by a Russian national, Mr Nikolay Ivanovich Samarov ("the applicant"), on 31 October 2006.

2. The applicant was represented by Mr V. O. Tryasuchkin, a lawyer practising in Penza. The Russian Government ("the Government") were represented by Mr G. Matyushkin, Representative of the Russian Federation at the European Court of Human Rights.

3. On 11 May 2010 the application was communicated to the Government.

THE FACTS

I. THE CIRCUMSTANCES OF THE CASE

4. The applicant was born in 1957 and lives in Penza.

5. The applicant sued the Penza town administration and the Penza committee for municipal property management ("the property management committee"), seeking to obtain free of charge the title to a plot of land under the office building he owned.

6. On 16 November 2005 the Leninskiy District Court of Penza ("the District Court") held for the applicant and ordered the town administration to establish his title to the land at issue. The judgment was not appealed against and became final within the statutory ten-day time-limit.

7. On 7 March 2006 the Penza town administration lodged an application for supervisory review.

8. On 19 June 2006 the Presidium of the Penza Regional Court quashed the judgment of 16 November 2005, considering that the District Court had incorrectly established the facts of the case and erroneously applied the domestic material law. It consequently remitted the case to the District Court for consideration anew.

9. On 10 August 2006 the District Court dismissed the applicant's claim in full. The applicant did not appeal and the judgment became final within the statutory ten-day time-limit.

II. RELEVANT DOMESTIC LAW

10. The relevant domestic law governing the supervisory review procedure at the material time is summed up in the Court's judgment in the case of *Kot v. Russia* (no. 20887/03, § 17, 18 January 2007).

THE LAW

I. ALLEGED VIOLATION OF ARTICLE 6 OF THE CONVENTION AND OF ARTICLE 1 OF PROTOCOL No. 1 ON ACCOUNT OF SUPERVISORY REVIEW

11. The applicant complained, under Article 6 § 1 of the Convention and Article 1 of Protocol No. 1, that the final judgment of 16 November 2005 had been quashed by way of supervisory review. In so far as relevant, those Articles read as follows:

Article 6 § 1

"In the determination of his civil rights and obligations ... everyone is entitled to a fair ... hearing ... by [a] ... tribunal ..."

Article 1 of Protocol No. 1

"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...".

A. Admissibility

12. The Court notes that this complaint is not manifestly ill-founded within the meaning of Article 35 § 3 (a) of the Convention. It further notes that it is not inadmissible on any other grounds. It must therefore be declared admissible.

B. Merits

1. Article 6

13. The Government submitted that the application for supervisory review of the judgment of 16 November 2005 had been lodged by a party to the proceedings less than a year after it had become legally binding. The Government further indicated that the Presidium of the Penza Regional Court had quashed the judgment in the public interest with a view to correcting a fundamental judicial error made by the District Court. According to the Government, the applicant, being in fact an individual entrepreneur, sought to use the possibility open to private persons to acquire free of charge ownership of the land under his immovable property and to avoid paying taxes to the municipal budget.

14. The Court reiterates that for the sake of legal certainty, a principle which is enshrined in Article 6, final judgments should in principle be left intact. They may be disturbed only to correct fundamental errors. The mere possibility of there being two views on the subject is not a ground for re-examination (see *Ryabykh v. Russia*, no. 52854/99, §§ 51-52, ECHR 2003-IX).

15. The Court further reiterates that it has frequently found violations of the principle of legal certainty and of the right to a court in the supervisory-review proceedings governed by the Code of Civil Procedure in force since 2003 (see, amongst other authorities, *Bodrov v. Russia*, no. 17472/04, § 31, 12 February 2009).

16. As regards the Government's arguments that the supervisory-review application had been lodged by a party to the proceedings and initiated less than a year after the entry into force of the final judgment, the Court has already addressed and dismissed them in previous cases (see, among many others, *Kaykhanidi v. Russia*, no. 32185/02, §§ 23-24, 10 October 2013).

17. The Court further notes that the judgment of 16 November 2005 in the applicant's favour was set aside on the ground that the District Court had wrongly applied substantive and procedural domestic law and incorrectly established the facts of the case. The Court reiterates that the incorrect application of domestic law or establishment of the facts do not on their own constitute a fundamental defect within the meaning of its case-law (see, amongst many other authorities, *Asmayev v. Russia*, no. 44142/05, § 55, 14 March 2013).

18. The Court is not persuaded by the Government's argument that in this particular case the departure from the principle of legal certainty was justified by the public interest. If the public interest was at stake, it was open to the town administration to act with due diligence and appeal against the first-instance court judgment within the statutory ten-day time-limit. However, it failed to do so and let the judgment become final and

enforceable. The Government did not provide any explanation in that respect.

19. Having regard to the above considerations, the Court does not find any reason for departing from its aforementioned case-law and considers that there has been a violation of Article 6 § 1 in respect of the quashing of the judgment of 16 November 2005 by way of supervisory review.

2. Article 1 of Protocol No. 1

20. The Government argued that the fact that the applicant had been denied the possibility to acquire ownership of the plot of land free of charge does not mean that he cannot use his property. The applicant can either acquire ownership of the plot of land against payment or rent it for an indefinite period of time.

21. The Court observes that in the judgment of 16 November 2005 the domestic court found that the applicant could acquire ownership of the plot of land free of charge. That judgment was subsequently quashed by way of supervisory review. It is true that the applicant may still acquire ownership of the land or continue to use it by signing a rent contract with the town administration. However, as indicated by the Government, such an acquisition or rental would neither be free of charge nor provide the applicant with the same range of rights. In those circumstances, the Court considers that the applicant's property rights were affected by the violation of the principle of legal certainty. It therefore finds no reason to depart from its case-law and accordingly finds a violation of Article 1 of Protocol No. 1.

II. OTHER ALLEGED VIOLATIONS OF THE CONVENTION

22. Relying on Article 6 § 1, the applicant also complained that the proceedings that ended on 10 August 2006 had been unfair.

23. The Court notes that the applicant did not appeal the judgment of 10 August 2006. It follows that this complaint must be rejected under Article 35 §§ 1 and 4 of the Convention for non-exhaustion of domestic remedies.

III. APPLICATION OF ARTICLE 41 OF THE CONVENTION

24. Article 41 of the Convention provides:

> "If the Court finds that there has been a violation of the Convention or the Protocols thereto, and if the internal law of the High Contracting Party concerned allows only partial reparation to be made, the Court shall, if necessary, afford just satisfaction to the injured party."

A. Damage

25. The applicant claimed that the quashing of a final and binding judgment in his favour caused him distress and frustration. He left the determination of the amount of non-pecuniary damage incurred to the Court's discretion.

26. The Government claimed that no just satisfaction should be awarded to the applicant because the quashing of the judgment delivered in his favour had been justified.

27. Having regard to the circumstances of the case and making its assessment on an equitable basis, as required by Article 41 of the Convention, the Court awards the applicant 2,000 euros (EUR) in respect of non-pecuniary damage.

B. Default interest

28. The Court considers it appropriate that the default interest rate should be based on the marginal lending rate of the European Central Bank, to which should be added three percentage points.

FOR THESE REASONS, THE COURT, UNANIMOUSLY,

1. *Declares* the complaint concerning the quashing of the judgment of 16 November 2005 by way of supervisory review admissible and the remainder of the application inadmissible;

2. *Holds* that there has been a violation of Article 6 § 1 of the Convention;

3. *Holds* that there has been a violation of Article 1 of Protocol No. 1;

4. *Holds*
   (a) that the respondent State is to pay the applicant, within three months, EUR 2,000 (two thousand euros) in respect of non-pecuniary damage, to be converted into Russian roubles at the rate applicable at the date of settlement, plus any tax that may be chargeable;
   (b) that from the expiry of the above-mentioned three months until settlement simple interest shall be payable on the above amount at a rate equal to the marginal lending rate of the European Central Bank during the default period plus three percentage points.

Done in English, and notified in writing on 28 May 2014, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

André Wampach
Deputy Registrar

Khanlar Hajiyev
President