



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

THIRD SECTION

DECISION

Application no. 42334/06
Vladimir Antonovich GUBAREV and Aleksandr Fedorovich
SERDYUKOV
against Russia

The European Court of Human Rights (Third Section), sitting on 18 June 2019 as a Committee composed of:

Georgios A. Serghides, *President*,

Branko Lubarda,

Erik Wennerström, *judges*,

and Fatoş Aracı, *Deputy Section Registrar*,

Having regard to the above application lodged on 8 August 2006,

Having regard to the observations submitted by the respondent Government and the observations in reply submitted by the second applicant,

Having deliberated, decides as follows:

THE FACTS

1. The applicants, Mr Vladimir Antonovich Gubarev (“the first applicant”) and Mr Aleksandr Fedorovich Serdyukov (“the second applicant”), are Russian nationals who were born in 1944 and 1940 respectively and lived in Belgorod at the time of the events. In 2007 Mr Gubarev died.

2. The Russian Government (“the Government”) were represented initially by Mr G. Matyushkin, the Representative of the Russian Federation to the European Court of Human Rights, and then by his successor in that office, Mr M. Galperin.

3. The facts of the case, as submitted by the parties, may be summarised as follows.

A. Proceedings concerning a private company and its shareholders

4. In 1994 State enterprise B. was privatised and converted into an open joint-stock company, OAO “Belgorodavtodor” (“the company”). On unspecified dates the first applicant became the chairman of the company’s board of directors, and the second applicant the director general of the company.

5. The company and the authorities were parties to several rounds of proceedings concerning a title to an educational and laboratory building in Belgorod (“the building”). In accordance with the company’s privatisation plan of 1994, the building remained State property but was transferred under the company’s economic control. On 11 February 1998 the Commercial Court of the Belgorod Region granted the authorities’ claims against the company, declared the transfer of the building under the company’s economic control invalid and ordered the company to return it to the State.

6. In the meantime several shareholders of the company, including the first applicant, brought proceedings against the regional State Property Management Committee (“the Committee”) before the courts of general jurisdiction, claiming to include the building into the company’s authorised capital stock. The second applicant was not among the claimants.

7. On 23 September 1998 the Oktyabrskiy District Court of the Belgorod Region found in favour of the claimants. It declared invalid the Committee’s decision on the privatisation plan in the part concerning the State title to the building. The court ordered the Belgorod Regional Assets Management Committee (“the debtor”) to include 1,226 sq.m. of the production area of the building into the company’s authorised capital stock, in accordance with law in force in 1994, at the time of the company’s registration. The judgment entered into force on 6 September 1999 and was not enforced.

8. The first applicant acted as a claimant in the enforcement proceedings. In 2004 the first applicant and the company requested copies of the writs of execution. The court granted the first applicant’s request but disallowed the company’s one, having found that the company was not a claimant in the enforcement proceedings.

9. In 2006 the debtor was replaced by its successor, the Department of Property and Land of the Belgorod Region.

10. On 6 April 2006 the Appeals Division of the Commercial Court of the Belgorod Region granted the authorities’ claim against the company and established that the building had never been included in a transfer and acceptance act and therefore had never been on the company’s balance sheet.

11. On 11 July 2006 the debtor requested to annul the judgment of 23 September 1998 on the basis of newly-discovered circumstances, referring to the above findings of the commercial court (see paragraph 10 above) and specifying that the building’s non-placement on the company’s

balance sheet had never been subject to examination of the domestic courts prior to the latest set of commercial proceedings in 2006.

12. On 8 February 2007 the Oktyabrskiy District Court of the Belgorod Region quashed the judgment of 23 September 1998 on account of the newly-established circumstances and remitted the matter for a fresh consideration.

13. On 18 May 2007 the Oktyabrskiy District Court examined the matter afresh and discontinued the proceedings as the dispute fell within the jurisdiction of commercial courts. That decision was upheld on appeal on 28 August 2007.

14. The company brought commercial proceedings against the authorities challenging the Committee's decision on the company's privatisation plan in the part concerning the State title to the building. By the judgment of 7 April 2008 (as subsequently upheld on 19 June and 16 October 2008) the Commercial Court of the Belgorod Region dismissed its action as lodged out of time. The court found that the second applicant, the company's director, learned of the alleged violation of the company's rights in 1994, but the issue was only raised before the courts in 1998.

15. Otherwise, according to the Government, in 2000-2010 the company was involved in no less than eight rounds of commercial court proceedings against the State concerning the building. Its claims were rejected by the commercial courts. The second applicant acted as the company's representative in some of those proceedings.

B. Subsequent events

16. On 24 October 2007 the first applicant Mr Gubarev died. In 2011, after the communication of the case, the second applicant informed the Court of Mr Gubarev's death.

17. After the communication of the case in 2011 the second applicant submitted the minutes of an extraordinary shareholder meeting of 20 June 2006. According to the minutes, twenty-three persons owning 80% of the company's shares had been present and voted unanimously to authorise the applicants "to apply to the European Court of Human Rights in the interests of the [company] as represented by all its shareholders, in the name and on authorisation of the shareholders".

18. According to a list of persons entitled to participate in an annual shareholders meeting of 18 April 2011, the second applicant owned 25 of the company's 2,313 shares which corresponded to 1.0808 % of the votes.

COMPLAINTS

19. The applicants complained under Article 6 of the Convention and Article 1 of Protocol No. 1 about the non-enforcement of the judgment of 23 September 1998.

20. By letter of 15 September 2010 the second applicant complained under Article 6 of a violation of the legal certainty principle on account of the quashing on 8 February 2007 of the judgment of 23 September 1998.

THE LAW

21. The applicants referred to Article 6 § 1 of the Convention and Article 1 of Protocol No. 1 to the Convention which, in so far as relevant, 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.

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.”

A. The parties' submissions

22. The Government submitted that the application was incompatible *ratione personae* with the provisions of the Convention within the meaning of Article 35 § 3. There were no exceptional circumstances justifying the applicants' claims to be victims in so far as the alleged violations of the company's rights were concerned. They considered that the application was to be struck out of the lists in the part concerning the first applicant, as no heirs had expressed their interest in maintaining the case. In any event, even if the first applicant had been among the claimants before the courts of general jurisdiction, the award of 23 September 1998 clearly determined the company's rights, but did not imply enforcement in his favour. The second applicant had failed to submit any evidence to show that he had indeed been a shareholder and to substantiate any personal material loss or interest

allegedly affected by the non-enforcement. With reference to the minutes of the 2006 shareholder meeting the Government noted that none of the applicants was either a sole owner of the company's shares or a majority shareholder. They further argued that the shareholders only authorised the applicants to represent them before the Court, but the applicants submitted the application forms on their own behalf, not on behalf of the company.

23. The second applicant maintained his complaint. With reference to the record of the shareholders' meeting of 20 June 2006 he claimed that the application had been submitted by him and Mr Gubarev "also in the name of all shareholders of the company". He stated that the non-enforcement and the quashing of the final judgment breached his Convention rights and legitimate interests, as well as those of Mr Gubarev and of the company represented by all its shareholders. He argued that the continued failure to return the real property pursuant to judgment amounted to a deprivation of the company's property and had a drastic effect on the company's solvability, as well as its financial and staff situation.

B. The Court's assessment

24. The Court notes that the application form was lodged by the two applicants personally in their own name, and that it concerned complaints about alleged violations of their own rights under the Convention.

1. Complaints by Mr Gubarev

25. The Court notes that in 2007 the first applicant died. The second applicant informed the Court of his death in 2011. No heirs or close relatives have expressed the wish to pursue the application on his behalf within the meaning of Article 37 § 1 (a) of the Convention. Furthermore, in accordance with Article 37 § 1 in fine, the Court finds no special circumstances regarding respect for human rights as defined in the Convention and the Protocols thereto which require the continued examination of the application.

26. Accordingly, the application should be struck out of the list in so far as it concerns the complaints brought by Mr Gubarev.

2. Complaints by Mr Serdyukov

27. As regards the complaints introduced by the second applicant, the Court reiterates that the term "victim" used in Article 34 of the Convention denotes the person directly affected by the act or omission which is in issue (see, among other authorities, *Vatan v. Russia*, no. 47978/99, § 48, 7 October 2004). It further reiterates that a person cannot complain of a violation of his or her rights in proceedings to which he or she was not a party, even if he or she was a shareholder and/or director of a company

which was party to the proceedings (see, among other authorities, *F. Santos, Lda. and Fachadas v. Portugal* (dec.), no. 49020/99, ECHR 2000-X, and *Nosov v. Russia* (dec.), no. 30877/02, 20 October 2005). Furthermore, while in certain circumstances the sole owner of a company can claim to be a “victim” within the meaning of Article 34 of the Convention where the impugned measures were taken in respect of his or her company (see, among other authorities, *Ankarcrona v. Sweden* (dec.), no. 35178/97, ECHR 2000-VI, and *Glas Nadezhda EOOD and Anatoliy Elenkov v. Bulgaria*, no. 14134/02, § 40, 11 October 2007), when that is not the case the disregarding of a company’s legal personality can be justified only in exceptional circumstances, in particular where it is clearly established that it is impossible for the company to apply to the Convention institutions through the organs set up under its articles of incorporation or – in the event of liquidation – through its liquidators (see *Centro Europa 7 S.r.l. and Di Stefano v. Italy* [GC], no. 38433/09, § 92, ECHR 2012, with further references).

28. The second applicant did not produce any evidence to show that he was in fact the sole shareholder of the company – as it follows from the minutes of the meeting of 20 June 2006 that he was clearly not a majority shareholder at the material time (see paragraph 17 above). In 2011 he owned about 1% of the company’s shares (see paragraph 18 above).

29. The Court further observes that, even though the proceedings at stake were brought by some shareholders, the judgment of 23 September 1998 obliged the debtor authority to take an action in the company’s favour (see paragraph 7 above). In any event, the second applicant was not a party to those proceedings (see paragraph 6 above), and it does it appear from the documents in the case-file that he ever attempted to join the proceedings in his personal capacity.

30. Further, the Court has established no exceptional circumstances which could justify the disregarding of the company’s legal personality. The company was clearly not undergoing the liquidation process, and, moreover, was a party to several rounds of commercial proceedings concerning essentially the same matter during the impugned period (see paragraphs 5, 14 and 15 above). There was no reason preventing the company from lodging an application with the Court.

31. In these circumstances, the Court has no basis to consider the second applicant a victim of the alleged violation of his Convention rights, within the meaning of Article 34 of the Convention.

32. It follows that this part of the application is incompatible *ratione personae* with the provisions of the Convention within the meaning of Article 35 § 3 (a) and must be rejected, pursuant to Article 35 § 4 of the Convention.

For these reasons, the Court, unanimously,

Decides to strike the application of the list in so far as it concerns the complaints brought by the first applicant Mr Gubarev;

Declares the remainder of the application inadmissible.

Done in English and notified in writing on 11 July 2019.

Fatoş Aracı
Deputy Registrar

Georgios A. Serghides
President