



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

FIRST SECTION

CASE OF SHANDROV v. RUSSIA

(Application no. 15093/05)

JUDGMENT

STRASBOURG

15 March 2011

FINAL

15/06/2011

This judgment has become final under Article 44 § 2 of the Convention. It may be subject to editorial revision.

In the case of Shandrov v. Russia,

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

Nina Vajić, *President*,
Anatoly Kovler,
Christos Rozakis,
Peer Lorenzen,
Elisabeth Steiner,
Khanlar Hajiyev,
George Nicolaou, *judges*,

and Søren Nielsen, *Section Registrar*,

Having deliberated in private on 22 February 2011,

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

PROCEDURE

1. The case originated in an application (no. 15093/05) 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 Dmitriy Sergeyevich Shandrov (“the applicant”), on 31 March 2005.

2. The Russian Government (“the Government”) were represented by Mr G. Matyushkin, Representative of the Russian Federation at the European Court of Human Rights.

3. The applicant alleged, in particular, that he had not been duly apprised of the appeal hearing before the Stavropol Regional Court, and that the appeal had been considered in his absence.

4. On 11 September 2009 the President of the First Section decided to give notice of the application to the Government. It was also decided to examine the merits of the application at the same time as its admissibility (Article 29 § 1).

THE FACTS

I. THE CIRCUMSTANCES OF THE CASE

5. The applicant was born in 1976 and lives in Raduzhnyy, Moscow Region.

6. In the morning of 31 July 2001 Mr E., armed with a machine gun and explosives, took passengers in a bus hostage in the Stavropol Region. The applicant was amongst the hostages. In the evening of that day police forces stormed the bus, killed Mr E. and liberated the hostages. However, during the

storming Mr E. detonated a hand grenade and the applicant was injured. He was admitted to a local hospital. The next day, after having received medical assistance, he was discharged. During the criminal investigation into the hostage taking the applicant was granted the status of a victim of the crime.

7. On 5 May 2003 the applicant sued the Government of the Stavropol Region seeking compensation for non-pecuniary damage caused by the terrorist attack. The applicant relied on Section 17 of the Suppression of Terrorism Act, according to which regional authorities should compensate damage caused by a terrorist attack committed on their territory.

8. On 15 December 2003 the Kolomenskiy District Court of the Moscow Region granted the applicant's claims in part. The Government of the Stavropol Region appealed. They did not deny that the applicant had suffered as a result of a terrorist attack. However, in their view the law did not provide for strict liability on the part of the regional authorities for non-pecuniary damage caused by a third party, which in the applicant's case had resulted from the actions of Mr E.

9. On 16 February 2004 the Moscow Regional Court quashed the judgment and remitted the case to the first-instance court for fresh examination.

10. At a preliminary hearing on 28 April 2004 the Kolomenskiy District Court of the Moscow Region decided to transfer the case to the Leninskiy District Court of Stavropol pursuant to the rules of jurisdiction.

11. On 9 August 2004 the Leninskiy District Court of Stavropol rejected the applicant's claim in his absence. The applicant appealed.

12. In November 2004 the applicant learned that on 27 October 2004 the Stavropol Regional Court had held a hearing in his absence and rejected his appeal. The applicant received a copy of the decision of 27 October 2004 in December 2004.

13. The applicant made several unsuccessful attempts to institute supervisory review proceedings in his case. On 27 November 2006 the Presidium of the Stavropol Regional Court finally accepted the applicant's request for supervisory review.

14. On 18 December 2006 the Presidium of the Stavropol Regional Court quashed the judgment of 9 August 2004 and the decision of 27 October 2004 and remitted the case to the first-instance court for fresh examination.

15. On 28 May 2007 the Leninskiy District Court of Stavropol held a hearing in the applicant's absence. Having examined the evidence presented by the parties the court rejected the applicant's claims. The relevant extracts from the District Court's judgment read as follows:

“The applicant did not appear at the hearing. He was duly notified about the date and the place of the hearing. He asked the court to examine the case in his absence on the basis of the materials submitted [by him]. ...

The court has established that [the applicant] has never received any compensation from the regional authority or any other authority. This was confirmed by [the applicant]. He

does not raise any claim with respect to pecuniary damage. He seeks to recover non-pecuniary damage. ...

From the law cited above it follows that a person who did not cause the damage can be required to compensate the damage only when it is clearly indicated in the law. ...

In accordance with Sections 17 and 18 of the Suppression of Terrorism Act, damage caused by a terrorist act should be compensated for by the authorities of the federal constituency where the attack took place. However, there is no indication in the law about possible compensation for non-pecuniary damage by regional authorities. ...

Moreover, there is no legal basis in the budgets of the regional authorities for the allocation of funds to compensation for non-pecuniary damage. ...

It was not the Stavropol Region authorities' fault that [the applicant] sustained damage. From the case materials it follows that the damage was caused to [the applicant] by Mr E., who had taken people hostage in the bus ... on 31 July 2001. ...

The authorities of the Stavropol Region fulfilled their obligations: they provided assistance for the release of the hostages and identified victims. The claimant was transported to the Central District Hospital of Mineralniye Vody where he received the necessary medical care. ...

Section 17 of the Suppression of Terrorism Act does not provide for an obligation on the part of regional authorities to compensate non-pecuniary damage. Thus, there is no legal basis for compensation of non-pecuniary damage by the Stavropol Regional authority.

The court accepts the claimant's allegation that he sustained non-pecuniary damage. However, he failed to submit any evidence that such damage had been caused by fault on the part of the respondent. ...

In these circumstances, on the basis of established jurisprudence the court finds that there are no legal grounds for granting [the applicant's] claims. ...”

16. The applicant appealed against the judgment, alleging an incorrect interpretation of the domestic law by the first-instance court. It appears that the applicant did not ask the court of appeal to re-examine the evidence in the case-file or to admit new evidence.

17. On 22 August 2007 the applicant received a summons for the appeal hearing, which was scheduled at the Stavropol Regional Court on that very date. As a result he was unable to attend it. The appeal court held a hearing in the absence of both parties to the dispute.

18. Following the hearing in the absence of both parties the appeal court rejected the applicant's appeal and upheld the judgment of 28 May 2007. The relevant parts of the appeal court's judgment read as follows:

“In his appeal brief, the claimant seeks to have the judgement quashed due to the incorrect interpretation of the domestic law by the first-instance court. Having examined the case file and the appeal brief, the appeal court finds that the first-instance court's judgment was correct.

In the interests of legality, the court of appeal will review the judgment of the first-instance court in full, as provided for by [the relevant provisions of the CCP].

The first-instance court rejected [the applicant's] claims because the Suppression of Terrorism Act of 25 July 1998 did not provide for compensation for non-pecuniary damage. Section 18 of the new Counter-Terrorist Act, which entered into force from 1 January 2007 and replaced the Suppression of Terrorism Act, provides that non-pecuniary damage caused by a terrorist attack shall be compensated for by the individuals who committed that attack.

The (first-instance) court's conclusions are based on a complete and objective assessment of the evidence and on an application of the relevant material law ...

The court correctly found that the terrorist attack caused [the applicant] non-pecuniary damage ... However, [the applicant] did not prove that the damage was caused by the defendant. ...”

The Regional Court further analysed relevant legislation and the case-law of the Supreme Court and of the Constitutional Court of the Russian Federation on non-pecuniary damage. The Regional Court noted that strict liability on the part of the State can be relied upon only in the cases specifically described by law. Although Sections 17 and 18 of the Suppression of Terrorism Act provided that damage caused by a terrorist attack should be compensated for by the authorities, the Act did not explicitly mention non-pecuniary damage. Therefore, non-pecuniary damage was not covered by that Act. The applicant suffered damage as a result of the terrorist attack itself, and not because of the actions of the authorities. The authorities, on the contrary, had done everything possible to free the hostages and to provide medical assistance to them. In such circumstances, the court held that non-pecuniary damage should be compensated for by the wrongdoer (i.e. the terrorist), in accordance with the general provisions of tort law, and not by the State.

19. On 19 August 2008 the Stavropol Regional Court rejected the applicant's request to reopen the case by way of supervisory review due to non-compliance with the relevant time-limits.

II. RELEVANT DOMESTIC LAW

20. The Code of Civil Procedure of the Russian Federation (“the CCP”, as in force from 1 February 2003) reads as follows:

Section 113. Court summonses and notifications

“1. Parties ... are to be summonsed to court by a letter sent via registered mail with an acknowledgment of receipt, by a court summons with an acknowledgment of receipt, by telegram, by phone or fax, or by any other means of communication which guarantees recording of the fact that the court summonses or notifications were received by the parties.

2. A court summons is one of the forms of court notification. Parties are notified by court summonses of the date and place of a court hearing or of particular procedural actions ...

3. A summons or another form of notification is to be served on the parties in such a way [as to ensure] that they have enough time to prepare their case and to appear at the hearing.

4. A court notification, addressed to a party, is to be sent to the address indicated by that party or his representative. If a party does not reside at the indicated address, the court summons may be sent to his place of work ...”

Section 116. Receipt of a court summons

“1. A court summons ... to a person is to be served on him against his signature on a counterfoil of the summons, which is to be returned to the court ...”

Section 343. Actions of the first-instance court upon the receipt of the statement of appeal

“1. Upon the receipt of the statement of appeal ... the judge shall:

- (1) send to the parties copies of the statement of appeal and the enclosed written documents not later than the day after their receipt;
- (2) notify the parties of the time and place of the appeal hearing...”

Section 354. Consequences of the parties' and their representatives' failure to attend an [appeal] hearing

“1. If a party to the case fails to appear and there is no evidence that the party was duly summonsed, the hearing is to be adjourned ...”

21. The Suppression of Terrorism Act (*Федеральный закон от 25 июля 1998 г. № 130-ФЗ «О борьбе с терроризмом»*) provides as follows:

Section 17. Compensation of damage caused by a terrorist act.

“1. Damage caused by a terrorist act should be compensated by the authorities of the federal constituency where the attack took place...”

Section 18. Social rehabilitation of victims of a terrorist attack

1. Social rehabilitation of victims of a terrorist attack, the aim of which is to normalize their lives, shall involve legal, psychological, medical and professional assistance...
2. Social rehabilitation of victims of a terrorist attack should be paid for by the federal budget and the budget of the regional authority...”

22. The new Counter-Terrorist Act (*Федеральный закон от 6 марта 2006 г. № 35-ФЗ «О противодействии терроризму»*) provides as follows:

Section 18. Compensation of damage caused by a terrorist act.

“1. Non-pecuniary damage caused by a terrorist attack shall be compensated for by the individuals who committed that attack...”

THE LAW**I. ALLEGED VIOLATION OF ARTICLE 6 OF THE CONVENTION**

23. The applicant complained that he had not been afforded an opportunity to attend the appeal hearing of 22 August 2007 in his civil case in breach of Article 6 § 1 of the Convention, which reads as follows:

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

24. The Government claimed that the applicant had been notified of the appeal hearing in good time. He had been notified of that hearing by a letter sent by the Leninskiy District Court of Stavropol on 10 August 2007. The Government submitted a copy of that letter and a copy of the excerpt of the outgoing correspondence log of the Leninskiy District Court of Stavropol. The Government also noted that the State was not required to provide a perfectly functioning postal system (see *Zagorodnikov v. Russia*, no. 66941/01, § 31, 7 June 2007, and, *mutatis mutandis*, *Foley v. the United Kingdom* (dec.), no. 39197/98, 11 September 2001).

25. The applicant maintained that the domestic courts had failed in their duty to inform him of the appeal hearing. He further claimed that the summons should have been served on him against his signature or in such a manner as could have allowed the domestic courts to conclude that he had, in fact, been summoned. According to the postmark on the envelope, the summons had reached his local post office on 22 August 2007, the day of the hearing. He also noted that the distance between his place of residence and the place of the hearing was over 1,600 km.

A. Admissibility

26. The Court considers, in the light of the parties' submissions, that the complaint raises serious issues of fact and law under the Convention, the determination of which requires an examination of the merits. The Court concludes therefore that this complaint 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. It must therefore be declared admissible.

B. Merits

27. The Court reiterates that the entitlement to a “public hearing” in Article 6 § 1 necessarily implies a right to an “oral hearing” (*Fredin v. Sweden* (no. 2), 23 February 1994, §§ 21-22, Series A no. 283-A). The right to a public hearing would be devoid of substance if a party to the case were not apprised of the hearing in such a way so as to have an opportunity to attend it, should he or she decide to exercise the right to appear established in domestic law (see *Yakovlev v. Russia*, no. 72701/01, §§ 21, 15 March 2005).

28. The Court observes that at the material time the Russian rules of civil procedure provided for oral hearings before appellate courts. However, the parties' attendance was not mandatory and, if a party did not appear at the hearing without a valid reason after it had been duly notified thereof, the court could proceed with the examination of the appeal. An analysis of the provisions of Russian law on the service of court summonses suggests that, whichever specific form notification of the parties is chosen, the domestic courts should be in possession of evidence confirming the receipt of such notification by the addressee, otherwise the hearing is to be adjourned. It follows that the Government should have been in possession of such evidence. The Government provided a copy of the notification letter dispatched on 10 August 2007. However, the Government did not present any evidence, such as an acknowledgement of receipt or an envelope bearing postmarks or such like showing that it had reached the applicant in good time. The postmark on the envelope submitted by the applicant showed that it had reached him on 22 August 2007, on the very date of the appeal hearing.

29. In this connection, the Court recalls that Article 6 cannot be construed as conferring on litigants an automatic right to obtain a specific form of service of court documents, such as by registered mail (see *Bogonos v. Russia* (dec.), no. 68798/01, 5 February 2004). Nevertheless, the Court considers that in the interests of the administration of justice a litigant should be summoned to a court hearing in such a way as not only to have knowledge of the date and the place of the hearing, but also to have enough time to prepare his case and to attend the court hearing. A formal dispatch of a notification letter without any confidence that it will reach the applicant in good time cannot be considered by the Court as proper notification. Moreover, there is nothing in the text of the appeal judgment to suggest that the appeal court examined the question of whether the applicant had been duly summoned, and, if he had not, whether the examination of the appeal should have been adjourned. Furthermore, the Court also does not lose sight of the fact that the summons to the hearing of 22 August 2007 was sent to the applicant on 10 August 2007, i.e. twelve days in advance. The applicant resided 1,600 km away from the court. In such circumstances, even if the applicant had received the letter earlier, it is questionable whether he would have had time to prepare for the case, attend the hearing in person or find a lawyer. In these circumstances, the Court accepts the

applicant's allegation that the domestic courts failed to duly notify him of the appeal hearing, contrary to the provisions of the Russian CCP.

30. The Court points out that it has frequently found violations of Article 6 § 1 of the Convention in cases raising issues similar to the one in the present case (see, among other authorities, *Yakovlev v. Russia*, cited above, §§ 19 et seq.; *Groshev v. Russia*, no. 69889/01, §§ 27 et seq., 20 October 2005; *Mokrushina v. Russia*, no. 23377/02, §§ 20 et seq., 5 October 2006; and *Prokopenko v. Russia*, no. 8630/03, §§ 17 et seq., 3 May 2007).

31. Having examined the materials in its possession, the Court notes that the Government have not put forward any fact or argument capable of persuading it to reach a different conclusion in the present case. The Court has established that owing to the belated notification the applicant was deprived of the opportunity to attend the appeal hearing.

32. It follows that there has been a violation of the applicant's right to a fair hearing under Article 6 § 1 of the Convention.

II. OTHER ALLEGED VIOLATIONS OF THE CONVENTION

33. The applicant complained under Articles 6 § 1 and 13 of the Convention that the proceedings in his case had been excessively long. He also complained of the unfairness of the hearings of 9 August and 27 October 2004. The applicant further complained of the unfairness of the proceedings concerning the examination of his request for supervisory review.

34. Having regard to all the material in its possession and in so far as the complaints fall within its competence, the Court finds that they do not disclose any appearance of a violation of the rights and freedoms set out in the Convention or its Protocols. It follows that this part of the application must be rejected as being manifestly ill-founded, pursuant to Article 35 §§ 3 and 4 of the Convention.

III. APPLICATION OF ARTICLE 41 OF THE CONVENTION

35. 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

36. The applicant claimed 50,000 euros in respect of non-pecuniary damage. The Government submitted that the applicant's claims were unsubstantiated. The Court accepts that the impossibility for the applicant to appear in person before

the second instance court might have distressed the applicant. However, having regard to the circumstances of the case the Court finds that the finding of a violation constitutes in itself sufficient just satisfaction.

B. Costs and expenses

37. The applicant did not submit a claim for costs and expenses. Accordingly, the Court considers that there is no call to award him any sum on that account.

FOR THESE REASONS, THE COURT UNANIMOUSLY

1. Declares the complaint concerning the domestic authorities' failure to apprise the applicant of the appeal hearing of 22 August 2007 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 the finding of a violation constitutes in itself sufficient just satisfaction for any non-pecuniary damage sustained by the applicant;
4. Dismisses the remainder of the applicant's claim for just satisfaction.

Done in English, and notified in writing on 15 March 2011, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Søren Nielsen
Registrar

Nina Vajić
President