



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

FIRST SECTION

CASE OF ZYLKOV v. RUSSIA

(Application no. 5613/04)

JUDGMENT

STRASBOURG

21 June 2011

FINAL

21/09/2011

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

In the case of Zylkov v. Russia,

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

Nina Vajić, *President*,

Anatoly Kovler,

Peer Lorenzen,

Elisabeth Steiner,

Khanlar Hajiyev,

George Nicolaou,

Mirjana Lazarova Trajkovska, *judges*,

and Søren Nielsen, *Section Registrar*,

Having deliberated in private on 31 May 2011,

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

PROCEDURE

1. The case originated in an application (no. 5613/04) 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 Konstantin Zylkov (“the applicant”), on 6 January 2004.

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 been denied access to court.

4. On 11 March 2009 the President of the First Section decided to give notice of the application to the Government. It was also decided to rule on the admissibility and merits of the application at the same time (Article 29 § 1).

THE FACTS

I. THE CIRCUMSTANCES OF THE CASE

5. The applicant was born in 1952 and lives in Vilnius, Lithuania.

6. The applicant, a retired serviceman, considered himself eligible to receive child allowance payable by the Russian Federation to parents with minor children.

7. On 15 January 2003 he applied for the allowance to the social security division of the embassy of the Russian Federation in Vilnius, Lithuania.

8. On 20 January 2003 the social security division refused his request. They noted that the applicant, being a permanent resident of Lithuania, was not eligible to receive the allowance.

9. On an unspecified date the applicant challenged the decision of the social security division. He lodged a complaint before the Presnenskiy District Court of Moscow.

10. On 29 April 2003 the District Court dismissed the applicant's complaint without consideration on the merits. In particular, the court ruled as follows:

“This statement of claim cannot be admitted for consideration by the Presnenskiy District Court of Moscow given that it was submitted in contradiction of the rules of procedure on jurisdiction ... Pursuant to the applicable legislation ..., the claims are to be submitted to the court with jurisdiction over the region where the claimant resides or where the State authority ... whose action is challenged is located.

Pursuant to the [applicant's] statement, the respondent authority in the case is the social security division of the Embassy of the Russian Federation in the Lithuanian Republic whose registered address is in [Vilnius, Lithuania], that is, a region outside the jurisdiction of the Presnenskiy District Court of Moscow.

The applicant resides in [Vilnius, Lithuania], which is also not within the jurisdiction of the Presnenskiy District Court of Moscow.

Having regard to the fact that [the applicant] has no ground to introduce his statement of claim before the Presnenskiy District Court of Moscow and in compliance with Articles 24-27 and 254 § 2 of the Russian Code of Civil Procedure, the court hereby

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that the statement of the claims be returned to [the applicant] and he be advised to lodge it before the relevant court in Vilnius, Republic of Lithuania.”

11. On 30 July 2003 the Moscow City Court upheld the decision of 29 April 2003 on appeal reiterating the reasoning of the District Court.

II. RELEVANT DOMESTIC LAW

12. The Russian Code of Civil Procedure (Article 254) provides that the claim against a State authority should be submitted to a court with territorial jurisdiction over the claimant's place of residence or the location of the State authority in question.

13. The Russian Code of Civil Procedure (Article 28) provides that the claim against a legal entity should be submitted to a court with territorial jurisdiction over the legal entity in question.

14. The Russian Civil Code (Article 54) defines the location of a legal entity as the place of its incorporation which is to be indicated in its founding documents.

15. Pursuant to the Regulations on the Embassy of the Russian Federation as approved by Decree no. 1497 of the President of the Russian Federation of 28 October 1996, the embassy of the Russian Federation is to be established by the Decision of the Government of Russia in accordance with the Decree of the President of Russia. The embassy is a legal entity which forms part the system of the Ministry of Foreign Affairs of the Russian Federation.

III. RELEVANT INTERNATIONAL DOCUMENTS

A. Vienna Convention on Diplomatic Relations

16. As regards the immunity from jurisdiction of diplomatic agents, the Vienna Convention on Diplomatic Relations provides as follows:

Article 31

“1. A diplomatic agent shall enjoy immunity from the criminal jurisdiction of the receiving State. He shall also enjoy immunity from its civil and administrative jurisdiction, except in the case of:

(a) A real action relating to private immovable property situated in the territory of the receiving State, unless he holds it on behalf of the sending State for the purposes of the mission;

(b) An action relating to succession in which the diplomatic agent is involved as executor, administrator, heir or legatee as a private person and not on behalf of the sending State;

(c) An action relating to any professional or commercial activity exercised by the diplomatic agent in the receiving State outside his official functions.

Article 32

1. The immunity from jurisdiction of diplomatic agents ... may be waived by the sending State.

2. Waiver must always be express...”

B. Agreement between the Government of the Russian Federation and the Government of the Lithuanian Republic On provision of social guarantees to retired servicemen who are nationals of the Russian Federation residing permanently in the Lithuanian Republic

17. Pursuant to the Agreement entered into by the Russian Federation and Lithuanian Republic on 18 November 1993 (Article 2), it is for the social security division of the Russian embassy in Lithuania to deal with the questions pertaining to the payment, recalculation and entitlement to pension and social benefits for retired Russian servicemen. The relevant funding shall be effected through the Russian embassy in Lithuania.

THE LAW

I. ALLEGED VIOLATION OF ARTICLE 6 § 1 OF THE CONVENTION

18. The applicant complained under Article 6 § 1 of the Convention that he had been denied access to court because the Moscow courts had refused to examine his claims. Article 6 in the relevant part provides as follows:

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

19. The Government contested that argument. They submitted that it had been impossible for them to verify in full the applicant’s argument because the case file had been destroyed after the expiry of the statutory period for its storage. In any event, they considered that the applicant had not been eligible to receive the child allowance as provided for by Federal Law No. 81-FZ On State Allowance to the Persons with Children of 19 May 1995. Referring to the Russian Code of Civil Procedure and the treaty between Russia and Lithuania on mutual legal assistance, the Government submitted, in particular, as follows:

“...[the applicant] submitted his claim ... to the social security division of the Embassy of the Russian Federation in the Republic of Lithuania, which is an independent legal entity, as set forth in the Regulations on the Embassy of the Russian Federation approved by Decree no. 1497 of the President of the Russian Federation of 28 October 1996.

Pursuant to Article 28 of the Russian Code of Civil Procedure, claims against a legal entity should be submitted to a court with territorial jurisdiction over the legal entity in question. Pursuant to Article 54 § 2 of the Russian Civil Code, the location of the legal entity is defined as the place of its incorporation. The place of the incorporation

and the actual location of the social security division of the Embassy of the Russian Federation in the Republic of Lithuania is the Republic of Lithuania.

Having regard to the above and in accordance with Article 254 § 2 of the Russian Code of Civil Procedure that stipulates that [the claimant] may submit his claims against [the State authority] to the court with [territorial] jurisdiction over his place of residence or the location of the State authority in question, [the District Court] has dismissed the applicant's claims without consideration on the merits.

In view of the fact that the respondent State authority in the present case was the social security division of the Embassy of the Russian Federation in the Republic of Lithuania which is located in [Vilnius, Lithuania], that is, in a region outside the jurisdiction of the Presnenskiy District Court of Moscow, and that the applicant also resides in [Vilnius, Lithuania], on 29 April 2003 the Presnenskiy District Court of Moscow decided to return the statement of claim to [the applicant] and advised him to apply to a relevant court in Vilnius.

The decision of the Presnenskiy District Court of Moscow of 29 April 2003 was upheld on appeal by the Moscow City Court on 30 July 2003.

In view of the above, the applicant has applied to a Russian court in contravention of the rules of territorial jurisdiction and his claims have been lawfully dismissed without consideration on the merits."

20. The applicant maintained his complaint.

A. Admissibility

21. In so far as the Government may be understood to argue that the applicant had no right or entitlement to the child allowance sought by him and that his complaint was therefore incompatible *ratione materiae* with the Convention in this regard, the Court notes the national courts did not dismiss the applicant's claims as lacking any basis in law. While it is true that his claims were rejected, the Russian courts merely suggested that they were outside their jurisdiction. The Court considers that against such a background the applicant could claim to have a right on arguable grounds (see, *mutatis mutandis*, *Vilho Eskelinen and Others v. Finland* [GC], no. 63235/00, § 41, ECHR 2007-IV).

22. 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

23. The Court reiterates that Article 6 § 1 secures to everyone the right to have any claim relating to his civil rights and obligations brought before a court or tribunal. In this way, that provision embodies the "right to court",

of which the right of access, that is, the right to institute proceedings before a court in civil matters, constitutes one aspect only; however, it is an aspect that makes it possible to benefit from the further guarantees laid down in paragraph 1 of Article 6 (see *Sergey Smirnov v. Russia*, no. 14085/04, § 25, 22 December 2009, and *Teltronic-CATV v. Poland*, no. 48140/99, § 45, 10 January 2006).

24. The “right to court” is not absolute but may be subject to limitations. The Court must be satisfied that the limitations applied do not restrict or reduce the access afforded to the individual in such a way or to such an extent that the very essence of that right is impaired. Furthermore, the Court underlines that a limitation will not be compatible with Article 6 § 1 unless it pursues a legitimate aim and there is a reasonable relationship of proportionality between the means employed and the legitimate aim sought to be achieved (see *Sergey Smirnov*, cited above, §§ 26-27; *Jedamski and Jedamska v. Poland*, no. 73547/01, § 58, 26 July 2005; and *Kreuz v. Poland*, 19 June 2001, no. 28249/95, §§ 54-55, ECHR 2001-VI).

25. Finally, the Court further reiterates that it is not its task to take the place of the domestic courts. It is primarily for the national authorities, notably the courts, to resolve problems of interpretation of domestic legislation. The Court’s role is confined to ascertaining whether the effects of such an interpretation are compatible with the Convention (see *Société Anonyme Sotiris and Nikos Koutras Attee v. Greece*, no. 39442/98, § 17, ECHR 2000-XII).

26. In the present case the applicant attempted to challenge in court a decision by a social security division of the Russian Embassy in Vilnius, Lithuania, concerning his entitlement to child allowance under Russian law. The Presnenskiy District Court in Moscow refused to consider the claim lodged by the applicant, a Russian national, against a Russian State authority, incorporated under the laws of Russia, suggesting that the matter be subject to the jurisdiction of a court in Lithuania.

27. The Court notes from the outset that the Government have not suggested that the applicant wrongly interpreted the applicable rules of procedure on jurisdiction and that he should have lodged his complaint with another court in Russia. It is the position of the Government that the dispute over entitlement to a social benefit as set forth in the Russian legislation should have been decided by a court in Lithuania.

28. The Court is not convinced by the Government’s line of reasoning that a Lithuanian court did in fact have jurisdiction over a dispute between a Russian national and a Russian diplomatic legal entity governed by Russian law. In this connection, it observes that, when absolving itself from the consideration of the dispute, the Russian courts failed to refer to any law binding on the Lithuanian courts to be competent to resolve the matter. Nor did they proffer any view on how their position that the matter was to be considered by a foreign court complied with the principles of international

law on State immunity, and, in particular, with the principle *par in parem non habet jurisdictionem*. A referral to the domestic jurisdictional rules in force within the Russian Federation or the treaty on mutual legal assistance between Russia and Lithuania is of no significance, in the circumstances of the case. The Court finds it striking that the Russian judicial authorities advised the applicant to apply to a foreign court without even considering whether such an act would be feasible in view of the relevant provisions of the Vienna Convention on Diplomatic Relations or the agreement between Russia and Lithuania (see paragraphs 16 and 17 above).

29. In the Court's view, such a situation amounts to a denial of justice which impaired the very essence of the applicant's right of access to court secured by Article 6 § 1 of the Convention. There has, accordingly, been a violation of that provision.

II. OTHER ALLEGED VIOLATION OF THE CONVENTION

30. The applicant complained under Article 1 of Protocol No. 1 that the Russian authorities had refused to pay him the child allowance.

31. Having regard to all the material in its possession, the Court finds that the complaint reiterates in substance the applicant's grievances under Article 6 § 1 and does not raise any separate issue related to the peaceful enjoyment of his possessions. It follows that this part of the application must be rejected pursuant to Article 35 §§ 3 and 4 of the Convention.

III. APPLICATION OF ARTICLE 41 OF THE CONVENTION

32. 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

33. The applicant claimed 1,500 euros (EUR) in respect of non-pecuniary damage.

34. The Government contended that, given that the applicant's rights under the Convention had not been infringed, his claims for damages should be rejected in full. Alternatively, they proposed that a finding of a violation would constitute sufficient just satisfaction for any such violation. In any event, they considered that the applicant had failed to prove the causal link between the violation alleged and the damaged claimed.

35. The Court considers that the applicant must have suffered distress and frustration as a result of the refusal of the domestic courts to entertain his claims. In these circumstances, the Court considers that the applicant's suffering and frustration cannot be compensated for by a mere finding of a violation. Making its assessment on an equitable basis, the Court awards the applicant the amount sought, namely, EUR 1,500 in respect of non-pecuniary damage, plus any tax that may be chargeable on that amount.

B. Costs and expenses

36. The applicant also claimed EUR 250 for the costs and expenses incurred before the Court.

37. The Government noted that the applicant had failed to demonstrate that he had actually incurred those expenses and proposed that the applicant's claim should be dismissed.

38. According to the Court's case-law, an applicant is entitled to the reimbursement of costs and expenses only in so far as it has been shown that these have been actually and necessarily incurred and are reasonable as to quantum. In the present case, regard being had to the documents in its possession and the above criteria, the Court rejects the claim for costs and expenses.

C. Default interest

39. The Court considers it appropriate that the default interest 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 domestic courts' refusal to consider the applicant's claim on the merits 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*
 - (a) that the respondent State is to pay the applicant, within three months from the date on which the judgment becomes final in accordance with Article 44 § 2 of the Convention, EUR 1,500 (one thousand five hundred 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;

4. *Dismisses* the remainder of the applicant's claim for just satisfaction.

Done in English, and notified in writing on 21 June 2011, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Søren Nielsen
Registrar

Nina Vajić
President