



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

FIRST SECTION

CASE OF ROZHIN v. RUSSIA

(Application no. 50098/07)

JUDGMENT

STRASBOURG

6 December 2011

FINAL

06/03/2012

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

In the case of Rozhin 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,

Linos-Alexandre Sicilianos,

Erik Møse, *judges*,

and André Wampach, *Deputy Section Registrar*,

Having deliberated in private on 15 November 2011,

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

PROCEDURE

1. The case originated in an application (no. 50098/07) 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 Igor Yuryevich Rozhin (“the applicant”), on 8 November 2007.

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 given an opportunity to attend hearings before domestic courts and thus had been unable to present his civil case effectively.

4. On 18 May 2010 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). Further to the applicant’s request, the Court granted priority to the application (Rule 41 of the Rules of Court).

THE FACTS

I. THE CIRCUMSTANCES OF THE CASE

5. The applicant was born in 1963 and lives in Minusinsk.

6. On 28 December 2001 the Tomsk Regional Court found the applicant guilty of membership of an organised criminal group, several counts of

attempted aggravated murder, intentional destruction of property and arms possession and sentenced him to fourteen years' imprisonment, which he was sent to serve in correctional colony no. 2, Tomsk Region.

Proceedings concerning conditions of detention

7. On 11 November 2004 the applicant brought an action with the Asino Town Court, complaining of various violations of his rights by the administration of correctional colony no. 2. In particular, he complained that on a number of occasions in 2003 and 2004 the director of the correctional colony had ordered him to be placed in a punishment cell, which had entailed a serious worsening of the general conditions of his detention and limitation or deprivation of his rights as a detainee. The applicant also argued that the colony authorities had unlawfully seized his writing utensils, and had forbidden him to use the colony library and to purchase newspapers, magazines and books. He further alleged that they had not allowed him to have meetings with counsel and to make paid phone calls to his relatives, counsel and the European Court of Human Rights. His biggest grievance, however, was that the administration had refused to post his complaints to various authorities in Russia and had monitored or even intercepted his correspondence with the Court. The applicant also requested that the Town Court ensure that he could be present at a court hearing during the examination of his complaint.

8. Following a number of refusals by the Town Court to grant the applicant's request, and the subsequent revocation of those decisions by the Tomsk Regional Court, on 3 October 2006 the Asino Town Court granted leave to bring an action for an examination on the merits, and set a preliminary hearing for 6 October 2006. Subsequent hearings were held on 12 and 30 October 2006. The applicant was not informed of either of those hearings. In fact, on 17 October 2006 he was transferred to another correctional colony in the town of Verkhneural'sk, Chelyabinsk Region, more than 1,500 km from his previous place of detention.

9. On 26 January 2007 the applicant was transferred to detention facility no. 77/2 in Moscow.

10. On 12 February 2007 the Asino Town Court dismissed the applicant's complaint, having found that either the restrictions on the applicant's rights had been lifted following an inquiry by prosecution authorities or they had been warranted by the applicant's placement in the punishment cell, in view of numerous instances of unlawful behaviour on his part, such as refusal to keep his cell tidy, destruction of colony property, and so on. The applicant was not brought to the hearing. Representatives of the colony administration attended the hearings before the Town Court and made oral submissions.

11. By a separate decision issued on 12 February 2007 the Asino Town Court responded to the applicant's request to be present at the hearings. In particular, the Town Court held as follows:

“[The applicant], having been convicted by the judgment of 28 December 2001 of the Tomsk Regional Court, is currently serving his sentence. It appears from the case file materials that he was transferred outside the Tomsk Region. [The applicant] lodged a complaint about the actions of the head of [correctional colony no. 2], Tomsk Region...; accordingly, his complaint is being examined by the Asino Town Court within the civil procedure. The Execution of Sentences Act of the Russian Federation, in force at the material time, does not provide for an opportunity to transfer convicts to [ensure] their participation in court hearings in civil cases; therefore it is impossible for the court to ensure [the applicant's] presence at the hearings in the present civil case.”

12. The applicant appealed, arguing, *inter alia*, that the Town Court had unlawfully refused to ensure his presence at the hearings, despite the fact that the majority of the circumstances in dispute were exclusively within his personal knowledge and it was important for the Town Court to hear both parties to the proceedings, the applicant and the administration.

13. At a hearing on 22 May 2007, held in the applicant's absence, the Tomsk Regional Court upheld the judgment of 12 February 2007, endorsing the Town Court's reasoning, including that on the subject of the applicant's attendance.

II. RELEVANT DOMESTIC LAW

A. Provisions on attendance at hearings

14. The Code of Civil Procedure of the Russian Federation (CCP) provides that individuals may appear before a court in person or may act through a representative (Article 48 § 1).

15. The Penitentiary Code provides that convicted persons may be transferred from a correctional colony to an investigative unit if their participation is required as witnesses, victims or suspects in connection with certain investigative measures (Article 77 § 1). The Code does not mention any possibility for a convicted person to take part in civil proceedings, whether as a plaintiff or a defendant.

16. On several occasions the Constitutional Court has dismissed as inadmissible complaints by detainees whose requests for leave to appear were refused by civil courts. It reasoned that the relevant provisions of the Code of Civil Procedure and the Penitentiary Code did not, as such, restrict a detainee's access to court. The Constitutional Court has emphasised nonetheless that an imprisoned person should be able to make submissions to a civil court, either through a representative or in any other way provided

by law. If necessary, a hearing should be held at the convict's place of detention, or the court committed to hear the civil case may instruct the court with territorial jurisdiction over the convict's place of detention to obtain his/her submissions or to take any other procedural steps (decisions 478-O of 16 October 2003, 335-O of 14 October 2004 and 94-O of 21 February 2008).

B. Other relevant provisions of the CCP

17. Under Articles 58 and 184 of the CCP a court may hold a session elsewhere than in a court-house if, for instance, it is necessary to examine evidence which cannot be brought to the court-house.

18. Article 392 of the CCP contains a list of situations which may justify the reopening of a finalised case on account of newly discovered circumstances. By a ruling of 26 February 2010 the Russian Constitutional Court indicated that this Article should be interpreted as, in principle, allowing a procedure to be launched to have a final judgment re-examined on account of newly discovered circumstances, such as the finding of a violation of the European Convention on Human Rights in a given case by the European Court of Human Rights.

THE LAW

I. THE GOVERNMENT'S REQUEST FOR THE APPLICATION TO BE STRUCK OUT UNDER ARTICLE 37 OF THE CONVENTION

19. The Government sent the Court, in a letter dated 15 September 2010, a unilateral declaration intended to resolve the issues raised by the application in question.

20. The declaration read as follows:

"I, Georgy Matyushkin, the Representative of the Russian Federation at the European Court of Human Rights, hereby declare that the Russian authorities acknowledge [that] the right to a fair hearing of [the] applicant's civil case was breached.

The authorities are ready to pay the applicant *ex gratia* a sum of 500 EUR as just satisfaction, as in *Larin v. Russia* (application no. 15034/04, judgment of 20 May 2010).

The authorities therefore invite the Court to strike the present case out of the list of cases. They suggest that the present declaration might be accepted by the Court as 'any other reason' justifying the striking out of the case of the Court's list of cases, as referred to in Article 37 § 1 (c) of the Convention.

The sum referred to above, which is to cover any pecuniary and non-pecuniary damage as well as costs and expenses, will be free of any taxes that may be applicable. It will be payable within three months from the date of notification of the decision taken by the Court pursuant to Article 37 § 1 of the European Convention on Human Rights. In the event of failure to pay this sum within the said three-month period, the Government undertake to pay simple interest on it from the expiry of that period until settlement, at a rate equal to the marginal lending rate of the European Central Bank during the default period plus three percentage points.

This payment will constitute the final resolution of the case.”

21. In a letter of 17 January 2011 the applicant disagreed with the Government’s unilateral declaration, noting that the striking out of his application as the Government had requested would remove the opportunity for him to restore his right to “a fair hearing”, as the Russian law only provides for a reopening of the proceedings in cases where the European Court has found a violation of the Convention. He also argued that the amount of compensation provided in the Government’s unilateral declaration was too low.

22. The Court reiterates that in certain circumstances it may strike out an application under Article 37 § 1 (c) on the basis of a unilateral declaration by a respondent Government even if the applicant wishes the examination of the case to be continued. To this end, the Court will examine the declaration carefully in the light of the principles emerging from its case-law, in particular the *Tahsin Acar* judgment (see *Tahsin Acar v. Turkey* (preliminary issue) [GC], no. 26307/95, §§ 74-77, ECHR 2003-VI; *Swedish Transport Workers Union v. Sweden* (striking out), no. 53507/99, §§ 24-27, 18 July 2006; and *Van Houten v. the Netherlands* (striking out), no. 25149/03, §§ 34-37, ECHR 2005-IX).

23. The Court notes that the Government acknowledged in their unilateral declaration that the civil proceedings in the applicant’s case had not complied with the requirement of fairness, and proposed to award him 500 euros (EUR). However, the Court observes that the Government did not undertake to reopen the domestic proceedings, or to ensure that the new proceedings met all the requirements of fairness set out in Article 6 of the Convention. In this regard, the Court notes that the nature of the alleged violation in the present case is such that it would not be possible to eliminate the effects of the infringement of the applicant’s right to a fair hearing without reopening the domestic proceedings. Moreover, the Court observes that the domestic law allows the reopening of proceedings in the event of a finding of a violation of the Convention by the Court. However, it appears that there is no provision allowing for the reopening of domestic proceedings on account of a decision by the Court to strike a case out of the list (see paragraph 18 above).

24. Having regard to the content of the Government’s unilateral declaration, the Court finds that the Government have failed to establish a

sufficient basis for a finding that respect for human rights as defined in the Convention and its Protocols does not require the Court to continue its examination of the case (compare *Hakimi v. Belgium*, no. 665/08, § 29, 29 June 2010; *Kessler v. Switzerland*, no. 10577/04, § 24, 26 July 2007; and, most recently, *Pirali Orujov v. Azerbaijan*, no. 8460/07, §§ 27-32, 3 February 2011).

25. Therefore, the Court refuses the Government's request to strike the application out of its list of cases under Article 37 of the Convention, and will accordingly pursue its examination of the admissibility and merits of the case.

II. ALLEGED VIOLATION OF ARTICLE 6 OF THE CONVENTION

26. The applicant complained that both the Asino Town Court and the Tomsk Regional Court had refused to ensure his attendance. He relied on Article 6 § 1, which provided, in so far as relevant, as follows:

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

A. Submissions by the parties

27. The Government accepted that there had been a violation of the applicant's right to a fair determination of his civil case.

28. The applicant maintained his complaint.

B. The Court's assessment

1. Admissibility

29. The Court notes at the outset, and it is not in dispute between the parties, that at the national level there was “a genuine and serious dispute” over a “civil right” which could be said, at least on arguable grounds, to be recognised under domestic law. The Court therefore considers that the applicant's complaint concerning the conditions of his detention and restrictions to which he was subjected as a result of his detention in correctional colony no. 2 is compatible *ratione materiae* with the provisions of the Convention, since it relates to Article 6 under its civil head (see *Enea v. Italy* [GC], no. 74912/01, §§ 101-107, 17 September 2009).

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

2. Merits

31. The Court reiterates that the principle of adversarial proceedings and equality of arms, which is one of the elements of the broader concept of a fair hearing, requires that each party be given a reasonable opportunity to have knowledge of and comment on the observations made or evidence adduced by the other party and to present his case under conditions that do not place him or her at a substantial disadvantage *vis-à-vis* his or her opponent (see *Krčmář and Others v. the Czech Republic*, no. 35376/97, § 39, 3 March 2000, and *Dombo Beheer B.V. v. the Netherlands*, 27 October 1993, § 33, Series A no. 274).

32. Article 6 of the Convention does not expressly provide for a right to a hearing in one's presence; rather, it is implicit in the more general notion of a fair trial that a criminal trial should take place in the presence of the accused (see, for example, *Colozza v. Italy*, 12 February 1985, § 27, Series A no. 89). However, in respect of non-criminal matters there is no absolute right to be present at one's trial, except in respect of a limited category of cases, such as those where the personal character and manner of life of the person concerned is directly relevant to the subject matter of the case, or where the decision involves the person's conduct (see, for example, *Kabwe and Chungu v. the United Kingdom* (dec.), nos. 29647/08 and 33269/08, 2 February 2010).

33. The Court has previously found a violation of the right to a "public and fair hearing" in several cases against Russia, in which a party to civil proceedings was deprived of an opportunity to attend the hearing because of belated or defective service of the summons (see *Yakovlev v. Russia*, no. 72701/01, §§ 19 et seq., 15 March 2005; *Groshev v. Russia*, no. 69889/01, §§ 27 et seq., 20 October 2005; and *Mokrushina v. Russia*, no. 23377/02, 5 October 2006). It also found a violation of Article 6 in a number of cases where Russian courts refused leave to appear to imprisoned applicants who had wished to make oral submissions on their civil claims. For instance, in the case of *Kovalev v. Russia* (no. 78145/01, § 37, 10 May 2007), despite the fact that the applicant in that case was represented by his wife, the Court considered it relevant that his claim of ill-treatment by the police had been largely based on his personal experience and that his submissions would therefore have been "an important part of the plaintiff's presentation of the case and virtually the only way to ensure adversarial proceedings". In the case of *Khuzhin and Others v. Russia* (no. 13470/02, §§ 53 et seq., 23 October 2008) the Court found that, by refusing to ensure that the imprisoned applicants could attend hearings, and by failing to consider other legal means of ensuring their effective participation in the defamation proceedings, the Russian courts had violated the principle of equality of arms. A similar conclusion was reached by the Court in other cases against Russia where authorities had failed to secure the imprisoned applicants' appearance before civil courts examining their complaints about

the conditions of their detention (see, for instance, *Shilbergs v. Russia*, no. 20075/03, §§ 107-113, 17 December 2009; *Artyomov v. Russia*, no. 14146/02, §§ 204-208, 27 May 2010; and *Roman Karasev v. Russia*, no. 30251/03, §§ 65-70, 25 November 2010). In the cases cited above the Court consistently held that, given the nature of the applicants' claims which were, to a significant extent, based on their personal experience, the effective, proper and satisfactory presentation of the case could have only been secured by the applicants' personal participation in hearings. The applicants' testimony describing the conditions of detention of which only they themselves had first-hand knowledge would have constituted an indispensable part of the plaintiffs' presentation of the case.

34. The Court notes that the Government acknowledged that there had been a violation of Article 6 § 1 of the Convention in the applicant's case. Seeing no reason to disregard the Government's admission, the Court finds that there has been a violation of that provision on account of the authorities' failure to afford the applicant an adequate opportunity to present his case effectively before the civil courts.

III. OTHER ALLEGED VIOLATIONS OF THE CONVENTION

35. The Court has examined the other complaints submitted by the applicant. However, having regard to all the material in its possession, and in so far as these complaints fall within the Court's competence, it 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 manifestly ill-founded, pursuant to Article 35 §§ 3 and 4 of the Convention.

IV. APPLICATION OF ARTICLE 41 OF THE CONVENTION

36. 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

37. The applicant claimed compensation in respect of non-pecuniary damage, leaving the determination of the amount of compensation to the Court.

38. Relying on the Court's judgment in the case of *Larin v. Russia* (no. 15034/02, § 62, 20 May 2010), the Government considered that the

amount of 500 euros (EUR) was sufficient compensation for the non-pecuniary damage sustained by the applicant.

39. The Court, however, is of the opinion that the applicant must have suffered frustration and a feeling of injustice as a consequence of the courts' refusal to secure his attendance at the hearings. It considers that the non-pecuniary damage suffered by the applicant cannot be adequately compensated by the finding of a violation alone. In the circumstances of the present case, the Court considers that the applicant should be awarded EUR 1,000 in respect of non-pecuniary damage.

40. The Court further reiterates that when an applicant suffered the infringement of his rights guaranteed by Article 6 of the Convention, he should, as far as possible, be put in the position in which he would have been had the requirements of that provision not been disregarded, and that the most appropriate form of redress would, in principle, be the reopening of the proceedings, if requested (see, *mutatis mutandis*, *Öcalan v. Turkey* [GC], no. 46221/99, § 210 *in fine*, ECHR 2005-IV, and *Popov v. Russia*, no. 26853/04, § 264, 13 July 2006). The Court is particularly mindful, in this connection, that by virtue of the ruling of 26 February 2010 by the Russian Constitutional Court, Article 392 of the Russian Code of Civil Procedure must be interpreted as providing that civil proceedings may be re-opened if the Court finds a violation of the Convention (see paragraph 18 above).

B. Costs and expenses

41. Without indicating a sum or providing documents in support of his claim, the applicant also claimed compensation for costs and expenses incurred before the domestic courts and the Court.

42. The Government did not comment.

43. 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 applicant's failure to indicate the amount of costs and expenses incurred and to provide documents which could have enabled such a calculation of the sum to be made, the Court rejects the claim.

C. Default interest

44. 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 applicant's attendance in the civil proceedings 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 of the date on which the judgment becomes final in accordance with Article 44 § 2 of the Convention, EUR 1,000 (one thousand euros) in respect of non-pecuniary damage, to be converted into Russian roubles at the rate applicable on 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 6 December 2011, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

André Wampach
Deputy Registrar

Nina Vajić
President