



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

THIRD SECTION

CASE OF BERESTOV v. RUSSIA

(Application no. 17342/13)

JUDGMENT

Art 6 § 1 (civil) • Fair hearing • Domestic courts' failure to demonstrate that they made reasonable efforts to duly summon applicant to the hearing in civil proceedings against him • No reasonable opportunity to present case without being in a substantial disadvantage vis-à-vis the other party • Absence in practice of appropriate means for applicant to secure a fresh adversarial hearing

STRASBOURG

18 May 2021

FINAL

18/08/2021

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

In the case of Berestov v. Russia,

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

Paul Lemmens, *President*,

Georgios A. Serghides,

Dmitry Dedov,

Georges Ravarani,

Darian Pavli,

Anja Seibert-Fohr,

Peeter Roosma, *judges*,

and Olga Chernishova, *Deputy Section Registrar*,

Having regard to:

the application (no. 17342/13) 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 Yevgeniy Yuryevich Berestov (“the applicant”), on 16 February 2013;

the decision to give notice to the Russian Government (“the Government”) of the complaint concerning fair trial and to declare inadmissible the remainder of the application;

the parties’ observations;

Having deliberated in private on 13 April 2021,

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

INTRODUCTION

1. The case concerns the domestic courts’ failure to adequately ensure that proceedings had been served on the applicant as respondent.

THE FACTS

2. The applicant was born in 1986 and lives in Samara.

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

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

5. The applicant was living for some period of time at Nekrasovskaya Street, Samara (“address no. 1”).

6. On 4 December 2007 he deregistered from address no. 1 and lived instead at Tushinskaya Street, Samara (“address no. 2”).

7. On 29 February 2008 the applicant registered at Lenin Avenue, Kurumoch Village, Volzhskiy District, Samara Region (“address no. 3”) but it seems that he continued living at address no. 2.

8. On 17 January 2009 Ms S. was run over by a car driven by the applicant. She had a cerebral contusion and had to undergo medical treatment. However, even after the treatment Ms S. was unable to fully recover.

9. On 4 April 2011 she instituted civil proceedings against the applicant before the Samarskiy District Court of Samara, asking it to award her compensation for damage on account of her reduced capacity to work. She indicated the applicant's address as address no. 1.

10. On 4 May 2011 the judge of the Samarskiy District Court of Samara established that from 29 February 2008 the applicant had been registered at address no. 3. This information was provided by the migration authorities. The Samarskiy District Court of Samara decided to refer the case to the Volzhskiy District Court of the Samara Region ("the District Court").

11. On 3 June 2011 the District Court issued a summons, sending it to address no. 1, address no. 2 and address no. 3. At the same time, it sent a request to the Administration of the Kurumoch Village of the Volzhskiy District Municipality ("the Administration"), asking it to serve the summons on the applicant in person.

12. On 22 June 2011 the Administration sent a letter to the District Court stating that it had tried to serve the summons on the applicant at address no. 3. However, it had transpired that the applicant did not live there. The District Court received the letter on 29 June 2011.

13. On 24 June 2011 a staff member of the Administration called the District Court to inform it that the applicant had not been found at address no. 3 and that, according to the applicant's mother, he lived at address no. 1.

14. On the same day the District Court allowed Ms S.'s claim in her presence and in the applicant's absence. It held that the applicant had been duly informed of the hearing and that he had not provided any reasons for his absence or made any submissions.

15. On 17 August 2012 the applicant received the court's decision of 24 June 2011 from the bailiffs.

16. On 21 August 2012 the applicant applied to the District Court to have the decision of 24 June 2011 quashed, stating that he had not received any summons and that he could have refuted the plaintiff's allegations with evidence which he had attached to his application. He also submitted that, from 31 July 2012, he had been living at Tennisnaya Street, Samara ("address no. 4"). On 10 August 2012 he was deregistered from address no. 3.

17. The hearing was scheduled for 30 August 2012.

18. On 22 August 2012 the District Court drafted a summons and indicated address no. 4 as the applicant's address.

19. From 26 to 28 August 2012 the applicant was in Moscow on personal business.

20. On 30 August 2012 a judge of the District Court considered in the applicant's absence his application to have the decision of 24 June 2011 quashed. Ms S. and her representative attended the hearing. The judge held that there was no reason to quash the decision as the applicant had failed to provide any valid justification for his non-attendance or any evidence which could have had an impact on the outcome of the proceedings.

21. On 11 September 2012 the applicant found out about the hearing when studying materials concerning the case at the District Court's registry.

22. The applicant lodged an appeal against the decision of 30 August 2012, stating that he had not been notified of the hearing.

23. On 10 October 2012 the Samara Regional Court dismissed his appeal, stating that a summons had been sent to the applicant on 22 August 2012 but had been returned to the sender by post on 7 September 2012.

RELEVANT LEGAL FRAMEWORK AND PRACTICE

24. Domestic provisions governing notification of litigants in civil proceedings are described in *Gankin and Others v. Russia* (nos. 2430/06 and 3 others, § 16, 31 May 2016). In particular, according to Article 113 of the Code of Civil Procedure ("the Code"), a summons or other form of notification is to be served on parties in such a way as to ensure that they have enough time to prepare their case and to appear at the hearing.

25. In accordance with Article 233 of the Code, if a defendant who has been notified of the date and place of a court hearing does not appear in court, and if he does not provide valid reasons for his failure to attend and does not ask for the case to be examined in his absence, the court may examine the case *in absentia*.

26. In accordance with Article 237 of the Code, a defendant may file with the court which examined the case *in absentia* an application for quashing of the default judgment within seven days from the day on which he received the judgment.

27. A default judgment may also be challenged by the parties to proceedings before an appellate court within one month after the expiry of the time-limit for submitting an application for quashing of the default judgment, and if such an application has been submitted, within a month from the date of the court's decision to dismiss it.

28. Article 241 of the Code provides that a court may issue a decision ordering that an application for quashing of a default judgment be dismissed or that the case be re-examined and submitted to the same or new judges.

29. In accordance with Article 242 of the Code, the default judgment may be quashed if the court establishes that the defendant was absent from the hearing for a valid reason which he could not bring to the court's attention in good time, and if the defendant refers to facts and submits evidence which may influence the outcome of proceedings.

30. The domestic court must quash the default judgment if there is no evidence in the case file that the defendant has been duly informed of the place and date of the hearing at the address indicated by him (Decision of Moscow City Court of 22 October 2012, no. 4g/9-9486/2012).

THE LAW

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

31. The applicant complained under Article 6 § 1 of the Convention that he had not been duly informed of hearings in civil proceedings against him. The relevant parts of Article 6 § 1 read as follows:

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

A. Admissibility

32. The Court notes that this complaint is neither manifestly ill-founded nor inadmissible on any other grounds listed in Article 35 of the Convention. It must therefore be declared admissible.

B. Merits

33. The applicant argued that he had never learnt of the civil proceedings against him while they had been pending, and had only become aware of them on 17 August 2012 when bailiffs had handed him the judgment of 24 June 2011. He had not attended the hearing on 24 June 2011 owing to the fault of the authorities and had not been able to have that defect corrected at a later stage because he had not been properly summoned to the hearing held on 30 August 2012. He contended that the authorities had not informed his mother of the hearing as the Government had stated in their observations. He also specified that before 31 July 2012 he had lived at address no. 2 and had been available at that address all the time before that date.

34. The Government submitted that by sending summons to the applicant's various addresses and contacting the applicant's mother, the domestic authorities had complied with their duty to inform the applicant of the hearings.

35. The Court reiterates that the principle of equality of arms would be devoid of substance if a party to the case were not notified of the hearing in such a way as to have an opportunity to attend it, should he or she decide to exercise a right to appear that was established in domestic law (see *Zagorodnikov v. Russia*, no. 66941/01, § 30, 7 June 2007). In determining

issues of fairness of proceedings for the purposes of Article 6 of the Convention, it must consider the proceedings as a whole, including the decision of the appellate court (see *C.G. v. the United Kingdom*, no. 43373/98, § 35, 19 December 2001).

36. In cases such as the present one, where civil proceedings had been conducted without the applicant ever having been informed of them, the Court will verify: (i) whether the authorities acted diligently in informing the applicant of the proceedings, and whether the applicant could be considered to have waived his right to appear before the courts and to defend himself; and, if the response is negative, (ii) whether domestic law provided the applicant with the appropriate means to secure a fresh adversarial hearing, once he had learnt of the default judgment against him (see *Aždajić v. Slovenia*, no. 71872/12, § 53, 8 October 2015, and *Gyuleva v. Bulgaria*, no. 38840/08, § 38, 9 June 2016).

37. Even if the parties to proceedings demonstrate a certain lack of diligence, the Court has held that the consequences attributed to their behaviour by the domestic courts must be commensurate to the gravity of their failings and take heed of the overarching principle of fair hearing (see *Aždajić*, cited above, § 71). Domestic courts must make reasonable efforts to summon the parties to a hearing (see *Babunidze v. Russia* (dec.), no. 3040/03, 15 May 2007).

38. In the present case, as regards address no. 1, the domestic court received confirmation that the applicant did not live at that address, made appropriate arrangements to ascertain the applicant's place of residence, recorded the relevant information in its decision of 4 May 2011 and referred the case to another court (see paragraph 10 above). Subsequently, that court sent the summons to three of the applicant's different addresses of which it was aware and additionally asked the Administration to serve the summons on the applicant (see paragraph 11 above).

39. By 24 June 2011, the date of the hearing on merits at the District Court, the court had received confirmation from the Administration that the applicant was not available at address no. 3 and that his mother had stated that he was living at address no. 1 (see paragraph 13 above).

40. It seems that on 24 June 2011 the applicant was registered at address no. 3 but lived at address no. 2 (see paragraphs 5-7 above). Despite the fact that the domestic authorities made efforts to deliver the summons, the conclusion cannot be made that they complied with their duty to duly notify the applicant of the hearing. The domestic court did not verify whether the summons were delivered to address no. 2 or returned to the sender, nor did it attempt to resolve the confusion arising from the contradictory information about the applicant's place of residence (see *Gyuleva*, cited above, § 41).

41. There is nothing in the text of the judgment of 24 June 2011 to suggest that the District Court examined the question whether the applicant

had been duly summoned, and, if not, whether the examination of the case should have been adjourned. To the contrary, despite the fact that the District Court became aware on 24 June 2011 that the applicant did not live at his registered address, it proceeded with the judgment on the same day. The court's reasoning in this respect was confined to a finding that the applicant had been duly summoned to the hearing (see paragraph 14 above).

42. The Court has found a violation of Article 6 of the Convention in many Russian cases similar to the present one, where domestic courts did not check whether or not proof of receipt had been obtained and confined their analysis to a general observation that the party had been "duly notified", unsupported by any evidence of delivery. Domestic courts have a duty to examine the proof of receipt, which may or may not be in their possession, and to record their findings in the text of the judgment (see *Kolegovy v. Russia*, no. 15226/05, § 41, 1 March 2012, and *Gankin and Others*, cited above, § 36).

43. It follows that the domestic authorities did not demonstrate that they had made reasonable efforts to duly summon the applicant to the hearing.

44. In addition, the Court cannot conclude that the applicant waived his right to defend himself in the proceedings as the main precondition for waiving such a right is that the person concerned is aware of the related proceedings (see *Dilipak and Karakaya v. Turkey*, nos. 7942/05 and 24838/05, § 87, 4 March 2014).

45. Finally, the Court has to examine whether the applicant was afforded an opportunity by domestic law to have his case re-examined once he had learnt of the judgment against him.

46. The Code provided that parties who had been unduly deprived of the opportunity to participate in proceedings could seek the setting aside of the impugned judgment and the reopening of the proceedings (see paragraphs 26-29 above). However, even though those provisions could have offered adequate redress to a person against whom a default judgment had been handed down, this did not happen in the applicant's case.

47. One of the conditions for quashing a default judgment provided for in Russian law was a valid reason for non-attendance of the hearing (see paragraph 29 above). On 30 August 2012 the District Court held that the applicant had failed to provide a valid reason for not attending the hearing on 24 June 2011. However, it is difficult to support this conclusion, given that the applicant was unable to attend also the hearing of 30 August 2012.

48. At the hearing held on 30 August 2012, the domestic court once again failed to ascertain whether the applicant had received the summons in due time and, if not, whether the hearing had to be adjourned while it did not have any acknowledgment of receipt at its disposal. The summons was sent to the applicant only on 22 August 2012 and it does not appear that any effort has been made to find out whether it was realistically possible for him to be informed of the hearing in such a short time. As it happens, the

summons was returned to the court on 7 September 2012, that is, after the hearing had been held (see paragraph 23 above). As a result, the applicant had no opportunity to be heard by the judge, to explain what were the valid reasons for his absence from the hearing held on 24 June 2011 and to provide evidence which could be decisive for the outcome of the proceedings. Therefore, the proceedings following the applicant's request of 21 August 2012 did not remedy the violation of his right to a fair hearing in the initial proceedings (see, by contrast, *Vyacheslav Korchagin v. Russia*, no. 12307/16, § 80, 28 August 2018).

49. Litigants must take appropriate measures to ensure effective receipt of correspondence the domestic courts may send them (see *Perihan and Mezopotamya Basın Yayın A.Ş. v. Turkey*, no. 21377/03, § 38, 21 January 2014; *Gankin and Others*, cited above, § 27; and *Boyko v. Ukraine* (dec.), no. 17382/04, 23 October 2007).

50. In the present case, the Court is mindful that it was difficult for the authorities to notify properly the applicant about civil proceedings against him due to the fact that he had changed his addresses several times and that the summonses sent to these addresses did not reach him or were not received by him. However, the consequences which the domestic judicial authorities attributed to the applicant's conduct, both in assessing whether or not the applicant had been properly apprised of the proceedings instituted against him, and in dismissing his request for re-examination of his case, appear disproportionate in the circumstances, having regard to the prominent place which the right to a fair trial holds in a democratic society within the meaning of the Convention (see *Aždajić*, cited above, § 71). As a result, the applicant was not afforded a reasonable opportunity to present his case, including evidence, under conditions that did not place him at a substantial disadvantage vis-à-vis the other party.

51. The Court concludes accordingly that no appropriate means to secure a fresh adversarial hearing were in practice available to the applicant once he learnt of the judgment against him.

52. There has therefore been a violation of Article 6 § 1 of the Convention.

II. APPLICATION OF ARTICLE 41 OF THE CONVENTION

53. 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

54. The applicant claimed 105,960 Russian roubles (RUB) in respect of pecuniary damage and RUB 500,000 in respect of non-pecuniary damage.

55. The Government stated that just satisfaction should not be awarded to the applicant because his claims were ill-founded, excessive and unreasonable.

56. The Court does not discern any causal link between the violation found and the pecuniary damage alleged; it therefore rejects this claim. The Court further considers that the applicant has suffered non-pecuniary damage on account of his exclusion from the proceedings to which he was a party. Making its assessment on an equitable basis, the Court awards the applicant 1,500 euros (EUR) in respect of non-pecuniary damage, plus any tax that may be chargeable.

B. Costs and expenses

57. The applicant also claimed RUB 10,000 for translation services, RUB 2,034 and RUB 4,123 for postal expenses, RUB 1,000 for copying case materials and RUB 17,339 for legal expenses.

58. The Government submitted that there were no documents supporting the translation costs, although the postal and copying expenses had been duly confirmed by the applicant.

59. Regard being had to the documents in its possession and to its case-law, the Court considers it reasonable to award the sum of EUR 240 for costs and expenses incurred.

C. Default interest

60. 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 application admissible;
2. *Holds* that there has been a violation of Article 6 § 1 of the Convention on account of the applicant's absence from hearings in civil proceedings against him;
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, the following amounts, to be converted into the currency of the respondent State at the rate applicable at the date of settlement:

- (i) EUR 1,500 (one thousand five hundred euros), plus any tax that may be chargeable, in respect of non-pecuniary damage;
- (ii) EUR 240 (two hundred and forty euros), plus any tax that may be chargeable to the applicant, in respect of costs and expenses;
- (b) that from the expiry of the above-mentioned three months until settlement simple interest shall be payable on the above amounts 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 18 May 2021, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Olga Chernishova
Deputy Registrar

Paul Lemmens
President