



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

FIRST SECTION

CASE OF SUKHORUBCHENKO v. RUSSIA

(Application no. 69315/01)

JUDGMENT

STRASBOURG

10 February 2005

FINAL

10/05/2005

This judgment will become final in the circumstances set out in Article 44 § 2 of the Convention. It may be subject to editorial revision.

In the case of Sukhorubchenko v. Russia,

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

Mr C.L. ROZAKIS, *President*,

Mr P. LORENZEN,

Mrs N. VAJIĆ,

Mrs S. BOTOUCHAROVA,

Mr A. KOVLER,

Mr K. HAJIYEV,

Mr S.E. JEBENS, *judges*,

and Mr S. NIELSEN, *Section Registrar*,

Having deliberated in private on 20 January 2005,

Delivers the following judgment, which was adopted on the last-mentioned date:

PROCEDURE

1. The case originated in an application (no. 69315/01) 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 Aleksey Petrovich Sukhorubchenko, on 11 January 2001.

2. The Russian Government (“the Government”) were represented by their Agent, Mr P. Laptev, Representative of the Russian Federation at the European Court of Human Rights.

3. The applicant alleged, in particular, a violation of his right to a court under Article 6 § 1 of the Convention because of excessively long examination of his claim and the lack of effective remedies against the delays, as required by Article 13 of the Convention. He also complained under Article 1 of Protocol No. 1 that the length of the proceedings had made the enforcement impossible.

4. The application was allocated to the First Section of the Court (Rule 52 § 1 of the Rules of Court). Within that Section, the Chamber that would consider the case (Article 27 § 1 of the Convention) was constituted as provided in Rule 26 § 1.

5. By a decision of 15 January 2004, the Court declared the application partly admissible.

6. The applicant and the Government each filed observations on the merits (Rule 59 § 1).

7. On 1 November 2004 the Court changed the composition of its Sections (Rule 25 § 1). This case was assigned to the newly composed First Section (Rule 52 § 1).

THE FACTS

I. THE CIRCUMSTANCES OF THE CASE

8. The applicant was born in 1954 and lives in the town of Shakhty in the Rostov-on-Don Region.

A. The applicant's claim against an investment company

9. In 1994 the applicant deposited his savings with "Hermes-Finance", a Russian investment company. In 1995, when the applicant came to Moscow to recover his deposit, he found the company's offices closed.

10. On 12 August 1995 the applicant lodged a civil action against the company in the Taganskiy District Court of Moscow. The court disallowed the applicant's action for lack of territorial jurisdiction.

11. On 31 October 1995 the applicant brought an action against the company before the Khoroshevskiy District Court of Moscow. Citing lack of territorial jurisdiction, on 17 November 1995 the Khoroshevskiy District Court transferred the case to the Tushinskiy District Court of Moscow. The Government submitted that there was no indication in the case-file of the receipt of the claim by the Tushinskiy District Court. The applicant challenged this statement, referring to the "forwarding note" of 17 November 1995, from the Khoroshevskiy District Court to the Tushinskiy District Court, which had been copied to him.

12. On 14 February 1996 the applicant sent a letter to the Tushinskiy District Court with a request to explain the delay in examination of his case. No answer was given.

13. In April 1996 the applicant lodged yet another action against the company with the Moscow City Court. It was not accepted for lack of hierarchical jurisdiction.

14. On 27 June 1996 the applicant brought an action against the company before the Supreme Court of the Russian Federation. On 9 August 1996 the Supreme Court forwarded the applicant's statement of claim to the Moscow City Court, which, in turn, sent the claim on 22 August 1996 to the Tushinskiy District Court of Moscow.

15. On 5 May 1998 the Convention entered into force in respect of the Russian Federation.

B. Proceedings on the applicant's claims

16. The parties offered different versions of further proceedings.

1. The applicant's submissions

17. On 8 June 1998 the applicant received a summons to appear before the Tushinskiy District Court of Moscow on the same day at 2.10 p.m. The summons was delivered by regular mail and put in his letter box.

18. On 29 September 1998 the applicant found in his letter box a summons to appear before the Tushinskiy District Court of Moscow on 21 September 1998.

19. On 25 November 1998, on coming home from the office, the applicant found in his letter box a summons to appear before the Tushinskiy District Court of Moscow on 26 November 1998 at 2 p.m.

20. The applicant submitted to the Court copies of the above summonses certified by a notary public.

21. The applicant did not receive any further summonses or communications from the Tushinskiy District Court.

22. On 29 March 2000 the applicant sent a letter to the Tushinskiy District Court, requesting it to account for the delay in the proceedings. On 13 April 2000 the applicant's letter was returned to him with a handwritten request to specify the date when the action had been lodged. The applicant wrote the date on the same letter and sent it back on 20 April 2000. No answer was received.

2. The Government's submissions

23. The Government denied the applicant's submission that the hearings had been listed for 8 June and 29 [sic] September 1998 as not supported with the case-file materials.

24. According to them, the first hearing on the applicant's claim was fixed for 22 October 1998. As the parties failed to appear, the hearing was adjourned until 26 November 1998. The applicant was advised of the new date and he received the summons on 30 November 1998.

25. On 26 November 1998 the hearing was adjourned until 24 December 1998, as both parties were absent. The applicant received the notice about the adjournment on 21 December 1998.

26. On 24 December 1998 the Tushinskiy District Court of Moscow left the applicant's claim "without examination", finding as follows:

"The parties failed to appear twice, on 26 November and 24 December 1998; they were notified of the hearing date; the plaintiff does not ask for a default judgment, he did not produce the original documents and receipts, the copies submitted are not properly certified; the court does not consider it possible to examine the case on the basis of the materials in the file."

27. The decision indicated that an appeal lay to the city court against it within ten days.

28. At the Court's request, the Government enclosed a copy of the decision of 24 December 1998 with their additional observations of 19 April 2004.

29. In support of their statements the Government produced the front and back pages of the case-file.

30. The front page contains the name of the court, the names of the parties and the following handwritten notes:

"Received: 21 September 1998.
Examined: 22 October 1998 at 2.15 p.m.
26 November 1998 at 2 p.m.
24 December 1998 at 9.10 a.m.
filed on 19 February 1999."

31. The back page contains the following handwritten notes:

"Summons for 26 November 1998
Summons for 24 December 1998
[Copy of the decision sent] to the plaintiff on 19 February 1999
24 February 1999 – Archive."

II. RELEVANT DOMESTIC LAW

32. Article 99 of the Russian Civil Procedure Code of 11 June 1964 (in force at the material time) provided that civil cases were to be prepared for a hearing no later than seven days after the action had been lodged with the court. In exceptional cases, this period could be extended for up to twenty days. Civil cases were to be examined no later than one month after the preparation for the hearing had been completed.

33. Article 106 provided that summonses were to be served on the parties and their representatives in such way so that they would have enough time to appear timely at the hearing and prepare their case. If necessary, the parties could be summoned by a phone call or a telegram.

34. Article 221 § 5 provided that the court could make an interim decision to leave the claim "without examination" (*определение об оставлении заявления без рассмотрения*), in particular, if the parties had not waived their right to be present and had failed to appear for the second time and the court did not consider it possible to determine the claim on the basis of the case-file. Article 222 required the judge to include in the decision specific instructions on how to eliminate the obstacles to the examination of the claim. Upon removal of the circumstances on which the decision to leave the claim without examination was founded, an interested party could request the court to resume the proceedings. The court could reverse its decision to leave the claim without examination if the parties proved that they had had valid reasons for the absence.

35. Article 213 required a copy of an interim decision to leave the claim without examination to be sent to the absent party no later than three days after it had been made.

THE LAW

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

36. The applicant complained under Article 6 § 1 of the Convention that his claim had not been determined within a “reasonable time”. Article 6 § 1 provides as follows:

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

A. Arguments by the parties

37. The applicant submitted that between his first application to the Tushinskiy District Court on 12 August 1995 and the present date he had only received three summons (8 June, 29 September and 25 November 1998) and his returned request to explain the delay in the proceedings (on 13 April 2000). He only became aware of the decision of 24 December 1998 upon receipt of the Government’s observations on 3 July 2003. He considered that at present it would be irrational to apply to the Tushinskiy District Court with a request to resume the proceedings because the defendant had meanwhile divested itself of its assets and made enforcement impossible.

38. The Government, in their observations on the admissibility and merits of the application of 1 July 2003, acknowledged that the length of the civil proceedings in the applicant’s case had been in breach of the “reasonable time” requirement of Article 6 § 1.

39. In their additional observations of 19 April 2004, the Government submitted that the applicant had failed to prove that a copy of the decision of 24 December 1998 had not been served on him. In particular, the applicant failed to obtain a certificate from the Moscow postal service showing that no registered mail enclosing a copy of that decision had been sent to him. In this connection, the Government invited the Court to reconsider the issue of the applicant’s compliance with the six-months rule in Article 35 § 1 of the Convention. They contended that there had been no violation of the applicant’s rights.

40. The Court will examine the Government's preliminary objection as to the compliance with the six-months rule together with the merits of the application.

B. Compliance with Article 6 § 1 of the Convention

1. Right of access to a court

41. The Court reiterates that the procedural guarantees laid down in Article 6 secure to everyone the right to have any claim relating to his civil rights and obligations brought before a court or tribunal; in this way it embodies the "right to a court", of which the right of access, that is the right to institute proceedings before courts in civil matters, constitutes one aspect (see *Golder v. the United Kingdom*, judgment of 21 February 1975, Series A no. 18, pp. 13-18, §§ 28-36).

42. The Court observes that the applicant in the present case had the possibility of lodging a civil action against the defaulting financial institution; after several unsuccessful attempts, his claim against the investment company was accepted for examination by the Tushinskiy District Court. Although the parties suggested different dates as the starting date of the proceedings, the Court, as it has already noted in its decision as to the admissibility of the application of 19 January 2004, does not consider it necessary to determine the exact date, that period lying, in any event, outside its competence *ratione temporis*. In this context it is sufficient to establish that on the date when the Convention entered into force in respect of Russia, the applicant's claim had been pending for some time before the district court.

43. The institution of proceedings does not, in itself, satisfy all the requirements of Article 6 § 1. The Court recalls that the Convention is intended to guarantee not rights that are theoretical or illusory but rights that are practical and effective. The right of access to a court includes not only the right to institute proceedings but also the right to obtain a "determination" of the dispute by a court. It would be illusory if a Contracting State's domestic legal system allowed an individual to bring a civil action before a court without ensuring that the case would be determined by a final decision in the judicial proceedings. It would be inconceivable for Article 6 § 1 to describe in detail procedural guarantees afforded to litigants – proceedings that are fair, public and expeditious – without guaranteeing the parties that their civil disputes will be finally determined (see *Multiplex v. Croatia*, no. 58112/00, § 45, 10 July 2003; *Kutić v. Croatia*, no. 48778/99, § 25, ECHR 2002-II). The Court has found a violation of the right of access to a court in cases where the proceedings, including their enforcement stage, were stayed for a significant period of time by operation of law (see *Multiplex v. Croatia*, cited above, §§ 53-55;

Kutić v. Croatia, cited above, §§ 32-33; *Immobiliare Saffi v. Italy* [GC], no. 22774/93, § 70, ECHR 1999-V).

44. In the present case the proceedings were stayed on 24 December 1998 after the Tushinskiy District Court of Moscow had decided to leave the applicant's claim "without examination" because the parties had not appeared on two occasions, the applicant had not waived his right to be present and the case had not been ready for examination on the basis of the available materials. The Court will first examine whether the decision to stay the proceedings impaired the applicant's right of access to a court.

45. As regards the factual circumstances of the case, the Government's submissions as to the hearing dates appear to be inconsistent or incomplete. While they did not contest the authenticity of the three copy summonses produced by the applicant, they denied that any hearings had been listed for the dates to which the summonses referred. It further appears that the only source of the Government's information about the proceedings at issue is the handwritten notes on the front and back covers of the case-file. While the Contracting States enjoy a wide margin of appreciation in determining logistical arrangements for the administration of justice, the keeping of accurate court records is one of the foundations of the fair hearing guarantees enshrined in Article 6 § 1 of the Convention. In the instant case the accuracy of these records is open to doubt. Although the Government previously accepted that the proceedings had begun in 1996, there are no notes related to the period between 1996 and 21 September 1998 on which date the file was "received" from an unidentifiable place (see paragraph 30 above). Nor is there any mention of the hearings listed for July and September 1998, in respect of which the applicant has submitted certified copy summonses. Finally, it does not appear that copies of the summonses were kept in the case-file.

46. Furthermore, the Government did not indicate whence they obtained information about the delivery dates of the summonses. They were not sent by registered mail or in any other traceable manner and the decision of 24 December 1998 did not state whether and when the summonses had been served on the applicant, limiting the scope of the inquiry to the finding that the summonses had been despatched.

47. In these circumstances, the Court lends more credence to the applicant's factual submissions because the dates suggested by him match the postmarks of the Shakhty post office, stamped on the envelopes in which the summonses had been sent.

48. The Court observes that the applicant received three summonses, two of which were belated and the last one afforded him less than a day to reach Moscow, more than a thousand kilometres from his town. However, at no point in time did he inform the district court registry, by mail or phone, of the belated service of summons, this being a valid reason for his absence. Moreover, each summons contained a printed reminder that the

applicant was to submit the original documents to the court. The applicant did not comply with this request. The Court recalls in this context that it is incumbent on the interested party to display special diligence in the defence of his interests (see *Teuschler v. Germany* (dec.), no. 47636/99, 4 October 2001). It considers that, in the circumstances of the present case, the authorities' assumption that the applicant had lost interest in pursuing his claim had a sufficient basis and that the decision of 24 December 1998 did not as such violate the applicant's right of access to a court.

49. The Court further notes that the decision of 24 December 1998 did not entail the conclusive termination of the proceedings. It rather had suspensive effect as the proceedings could be resumed if it were quashed by a higher court or if the same district court determined that the parties had had valid reasons for the absence. It is therefore necessary to ascertain whether the applicant was afforded an adequate opportunity to ensure continuation or resumption of the proceedings.

50. The Court notes, firstly, that the decision of 24 December 1998 was not sent to the applicant within three days upon its delivery as required by the domestic law (see paragraph 35 above). Instead, it took the district court almost two months to despatch it. The Government did not offer any explanation for this delay. Furthermore, they did not produce any evidence, apart from a handwritten note on the back page of the file, showing that on 19 February 1999 the decision had indeed been served on the applicant. The Court distinguishes therefore the present application from those cases in which the Government supported their assertions with a copy of the cover letter accompanying the document sent to the applicant (see *Novoselov v. Russia* (dec.), no. 66460/01, 8 July 2004; *Bogonos v. Russia* (dec.), no. 68798/01, 5 February 2004).

51. Furthermore, the nature of the applicant's written inquiry of 29 March 2000 about the state of the proceedings made it sufficiently clear to the domestic authorities that the applicant was not aware of the existence or contents of the decision of 24 December 1998. However, after he had supplied, at the court registry's request, the information required for identification of the proceedings, no response was given. Indeed, it does not appear that after 19 February 1999 any steps were taken to inform the applicant of the decision taken. Finally, it is to be noted that the Government did not enclose a copy of the decision of 24 December 1998 with their memorandum of 1 July 2003 and it was not until 19 April 2004 that its text was made available to the Court and to the applicant.

52. As regards the Government's preliminary objection, having regard to the foregoing, the Court considers that they did not produce any new piece of evidence, warranting a fresh consideration of their objection as to the compliance with the six-months rule, which the Court had already dismissed in the decision as to the admissibility of the present application on 15 January 2004.

53. As regards the merits of the complaint, the Court considers that a litigant's right of access to a court would be illusory if he or she were to be kept in the dark about the developments in the proceedings and the court's decisions on the claim, especially when such decisions are of the nature to bar further examination, as happened in the present case. The decision in question was not sent to the applicant within the time-limit established in the domestic law, if at all, and his further attempts to obtain any information on the status of his claim proved to be futile. As a consequence, he did not take cognisance of the existence of the decision of 24 December 1998 until more than four and a half years later when the Government first mentioned it in their memorandum.

54. The Court finds therefore that the long period during which the applicant was prevented from having his civil claim determined by the domestic court as a consequence of the defective notification entailed a violation of Article 6 § 1 of the Convention.

2. Length of proceedings

55. The Court notes that all delays in the proceedings during the period under consideration are due to the defective service of the decision of 24 December 1998. The Court has already taken this aspect into account in its examination of the applicant's right of access to a court above. Having regard to its findings on that point, it considers that the issue of the length of the proceedings must be regarded as having been absorbed by the issue of access to a court.

56. The Court therefore finds that it is not necessary to examine separately the issue of the length of the proceedings.

II. ALLEGED VIOLATION OF ARTICLE 13 OF THE CONVENTION

57. The applicant complained that no effective remedy had been available to him before a national authority to challenge the excessive duration of the civil proceedings brought by him. He relied on Article 13 of the Convention, which is worded as follows:

“Everyone whose rights and freedoms as set forth in [the] Convention are violated shall have an effective remedy before a national authority notwithstanding that the violation has been committed by persons acting in an official capacity.”

58. The Government, in their observations on the admissibility and merits of the application of 1 July 2003, accepted that there had been a violation of Article 13. In their additional observations of 19 April 2004 they did not express any opinion on the matter.

59. The applicant maintained his claims.

60. The Court recalls that, as regards the right of access to a court, Article 6 § 1 is to be considered as constituting a *lex specialis* in relation to

Article 13 (see, most recently, *Jalloh v. Germany* (dec.), no. 54810/00, 26 October 2004; *Carnduff v. the United Kingdom* (dec.), no. 18905/02, 10 February 2004). In view of its finding of a violation of the applicant's right of access to a court and its decision not to examine the length issue separately, the Court does not consider it necessary to examine the complaint under Article 13 of the Convention.

III. ALLEGED VIOLATION OF ARTICLE 1 OF PROTOCOL NO. 1

61. The applicant complained that the excessively long examination of his claim against the investment company deprived him of an opportunity to recover the deposited money because the company had meanwhile hidden its assets. He invoked Article 1 of Protocol No. 1 which reads as follows:

“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.”

62. The Government, in their observations on the admissibility and merits of the application of 1 July 2003, accepted that there had been a violation of Article 1 of Protocol No. 1. In their additional observations of 19 April 2004 they did not express any opinion on the matter.

63. The applicant made no further comments on this aspect of the case.

64. The Court observes that in the present case the applicant's “possession” for the purposes of Article 1 of Protocol No. 1 was the amount which he had deposited with a private investment company. His title to that amount was never challenged, but he was unable to recover it because the investment company had disappeared without a trace. The Court recalls that the State cannot be normally held responsible for acts or omissions of a private company. Accordingly, to substantiate his property complaint the applicant has to prove that he has lost the chance of recovering his deposit or a certain part of it and that the loss of opportunity could be ascribed to a State act or omission (see *Krivosnogo v. Russia* (dec.), no. 74694/01, 1 April 2004).

65. The Court notes that the loss alleged by the applicant is based on the assumption that, had the award in his favour been made within a “reasonable time”, the enforcement would have been more effective. However, no evidence has been adduced to support this hypothesis. On the contrary, the Court observes that the company offices had closed long before the applicant lodged his claim and therefore the length of the

proceedings does not appear to have had a decisive impact on the company's realisable assets. It further recalls that Article 1 of Protocol No. 1 does not oblige a State to maintain the purchasing power of amounts deposited with financial institutions (see *Ryabykh v. Russia*, no. 52854/99, § 63, ECHR 2003-X; *Appolonov v. Russia* (dec.), no. 47578/01, 29 August 2002).

66. Having regard to the particular circumstances of the case, the Court finds that there has been no violation of Article 1 of Protocol No. 1.

IV. APPLICATION OF ARTICLE 41 OF THE CONVENTION

67. 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

68. The applicant claimed 5,500,000 Russian roubles and 1,000,000 US dollars as compensation for pecuniary and non-pecuniary damage.

69. The Government contested these claims as unsubstantiated and excessive. They considered that a token amount would constitute equitable satisfaction for the non-pecuniary damage suffered by the applicant.

70. The Court does not discern any causal link between the violation found and the pecuniary damage alleged by the applicant. It makes no award in this respect. However, it considers that the applicant may be considered to have suffered some non-pecuniary damage as a result of the breach of his right of access to a court which cannot be compensated by the Court's finding of a violation. The particular amount claimed is, however, excessive. Making its assessment on an equitable basis, as required by Article 41 of the Convention, the Court awards the applicant the sum of 1,500 euros (“EUR”), plus any tax that may be chargeable on that amount.

B. Costs and expenses

71. The applicant did not claim costs and expenses and, accordingly, there is no cause to make an award under this head.

C. Default interest

72. 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. *Holds* that there has been a violation of Article 6 § 1 of the Convention as a consequence of the defective service of the court decision of 24 December 1998;
2. *Holds* that no separate examination of the issue of the length of proceedings is required;
3. *Holds* that no separate examination of the complaint under Article 13 of the Convention is required;
4. *Holds* that there has been no violation of Article 1 of Protocol No. 1;
5. *Holds*
 - (a) that the respondent State is to pay the applicant, within three months from the date on which the judgment becomes final according to 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;
6. *Dismisses* the remainder of the applicant's claim for just satisfaction.

Done in English, and notified in writing on 10 February 2005, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Søren NIELSEN
Registrar

Christos ROZAKIS
President