



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

FOURTH SECTION

CASE OF YAKOVLEV v. RUSSIA

(Application no. 72701/01)

JUDGMENT

STRASBOURG

15 March 2005

FINAL

06/07/2005

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 Yakovlev v. Russia,

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

Sir Nicolas BRATZA, *President*,

Mr J. CASADEVALL,

Mr M. PELLONPÄÄ,

Mr R. MARUSTE,

Mr K. TRAJA,

Mr A. KOVLER,

Mr L. GARLICKI, *judges*,

and Mr M. O'BOYLE, *Section Registrar*,

Having deliberated in private on 22 February 2005,

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

PROCEDURE

1. The case originated in an application (no. 72701/01) 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 Yevgeniy Vladimirovich Yakovlev, on 21 May 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, that he was unable to take part in the appeal hearing because of the belated service of the summons.

4. The application was allocated to the Fourth 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 19 October 2004 the Court declared the application partly admissible.

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

7. The Government, but not the applicant, filed observations on the merits (Rule 59 § 1).

THE FACTS

I. THE CIRCUMSTANCES OF THE CASE

8. The applicant was born in 1954 and at the material time lived in Katav-Ivanovsk in the Chelyabinsk Region. The applicant now lives in the village of Sanovka in the Ryazan Region.

9. In 1987 the applicant took part in the clean-up works at the Chernobyl nuclear accident site. On 23 March 1993 he was granted the disability status of the second category (“unfit for work”). In June 1994 the classification of his disability was changed to the third category (“fit for light work”).

10. On 26 December 1997 the applicant brought an action against the Medical and Social Expert Examination Service of the Chelyabinsk Region. He sought to reverse the 1994 decision on reclassification of his disability.

11. On 31 March 2000 the Tsentralniy District Court of Chelyabinsk dismissed the applicant’s action and confirmed the lawfulness of the Medical Service’s decision.

12. The applicant appealed to the Chelyabinsk Regional Court. He complained that the proceedings before the district court had been a “travesty of justice” and that his arguments had not been given due consideration.

13. On 31 July 2000 the Chelyabinsk Regional Court upheld the judgment of 31 March 2000. It appears from the Regional Court’s judgment that the matter was determined on the basis of the case-file with the presiding judge acting as the rapporteur. Neither party was present at the appeal hearing.

14. On 4 August 2000 the applicant received a summons for the hearing before the Regional Court that had taken place on 31 July 2000. The summons was dated 21 July 2000 and despatched on 31 July 2000, according to the postmark. It contained a printed clause indicating that parties’ attendance was not required.

15. The applicant submitted, and the Government did not contest it, that he had only received the judgment of the Regional Court on 16 November 2000.

II. RELEVANT DOMESTIC LAW

16. Article 106 of the RSFSR Code of Civil Procedure of 11 June 1964 (in force at the material time) provided that a summons was to be served on the parties and their representatives in such a way that they would have enough time to appear at the hearing and prepare their case. Where necessary, the parties could be summoned by a phone call or a telegram.

Pursuant to Articles 108 and 109, court summonses were to be sent by mail or by courier and served on the person who was a party to the case.

Article 144 required that civil cases be heard in a court session with mandatory notification to all parties to the case.

Pursuant to Article 157, if a party to the case failed to appear and there was no evidence that the party had been duly summoned, the hearing had to be adjourned.

THE LAW

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

17. The applicant complained that he was not apprised of the appeal hearing in good time. The Court has considered that this complaint falls to be examined under Article 6 § 1 of the Convention which provides as follows:

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

18. The Government accepted that the applicant had not been notified of the hearing before the Chelyabinsk Regional Court in such a way as to have an opportunity to attend it. The registry only despatched the summons on 28 July 2000 and, according to the postmarks on the envelope, the applicant did not receive it until 4 August 2000. The Government averred, however, that there was no longer any need for the applicant’s personal presence before the appeal court because there had been an oral hearing before the first-instance court, the dispute had been rather technical and the statement of appeal had presented the applicant’s arguments in sufficient detail.

19. The Court reiterates that the entitlement to a “public hearing” in Article 6 § 1 necessarily implies a right to an “oral hearing”. However, the obligation under Article 6 § 1 to hold a public hearing is not an absolute one. Thus, a hearing may be dispensed with if a party unequivocally waives his or her right thereto and there are no questions of public interest making a hearing necessary. A waiver can be done explicitly or tacitly, in the latter case for example by refraining from submitting or maintaining a request for a hearing (see, among other authorities, *Håkansson and Sturesson v. Sweden*, judgment of 21 February 1990, Series A no. 171-A, § 66; and *Schuler-Zgraggen v. Switzerland*, judgment of 24 June 1993, Series A no. 263, § 58).

Furthermore, a hearing may not be necessary due in the particular circumstances of the case, for example when it raises no questions of fact or law which cannot be adequately resolved on the basis of the case-file and

the parties' written observations (see, *mutatis mutandis*, *Fredin v. Sweden* (no. 2), judgment of 23 February 1994, Series A no. 283-A, § §§ 21-22; *Fischer v. Austria*, judgment of 26 April 1995, Series A no. 312, § 44).

20. The Court observes that at the material time the Russian rules of civil procedure provided for an oral hearing before the appeal court. However, the parties' attendance was not mandatory and, if a party did not appear at the hearing without a valid reason after it had been duly notified thereof, the court could proceed with the examination of the appeal. The Court considers that these provisions were not, in themselves, incompatible with the fair trial guarantees of Article 6 § 1.

21. The Court further recalls that the Convention is intended to guarantee not rights that are theoretical or illusory but rights that are practical and effective (see, e.g., *Multiplex v. Croatia*, no. 58112/00, § 44, 10 July 2003). It considers that the right to a public hearing would be devoid of substance if a party to the case were not apprised of the hearing in such a way so as to have an opportunity to attend it, should he or she decide to exercise the right to appear established in the domestic law (see para. 16 above).

22. Turning to the present case, the Court observes that the applicant only received the summons for the appeal hearing four days after it had taken place. The Government did not deny that the summons had been sent too late to reach the applicant on time and they acknowledged that the applicant had been effectively deprived of an opportunity to attend the hearing. The Court also notes that the appeal court failed to examine whether the applicant had been duly summoned and, if he had not, to adjourn the examination of the appeal.

23. It follows that there was a violation of the applicant's right to a public hearing enshrined in Article 6 § 1 of the Convention.

II. APPLICATION OF ARTICLE 41 OF THE CONVENTION

24. 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

25. The applicant claimed 3,400,379,190 Russian roubles ("RUR", approximately a hundred million euros) in respect of pecuniary damage which represented the unpaid pension and various compensations for his

health injury. He also claimed ten times that amount in respect of non-pecuniary damage.

26. The Government contested the claims as excessive and unreasonable. They considered that a finding of a violation or, alternatively, a token amount would be adequate just satisfaction in the applicant's case.

27. The Court discerns no causal link between the violation found and the alleged pecuniary damage. It rejects therefore the applicant's claim in respect of pecuniary damage. It considers, however, that the applicant must have suffered frustration and a feeling of injustice as a consequence of the domestic authorities' failure to apprise him of the appeal hearing in good time. The Court finds that the applicant suffered non-pecuniary damage, which would not be adequately compensated by the finding of a violation. Accordingly, making its assessment on an equitable basis, it awards the applicant 1,000 euros, plus any tax that may be chargeable on that amount.

B. Costs and expenses

28. The applicant did not seek reimbursement of costs and expenses relating to the proceedings before the domestic courts or the Convention organs and this is not a matter which the Court has to examine of its own motion (see *Motière v. France*, no. 39615/98, § 26, 5 December 2000).

C. Default interest

29. 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;
2. *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 1,000 (one thousand 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;

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

Done in English, and notified in writing on 15 March 2005, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Michael O'BOYLE
Registrar

Nicolas BRATZA
President