



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

FIRST SECTION

CASE OF GROSHEV v. RUSSIA

(Application no. 69889/01)

JUDGMENT

STRASBOURG

20 October 2005

FINAL

20/01/2006

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 Groshev v. Russia,

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

Mr C.L. ROZAKIS, *President*,

Mr L. LOUCAIDES,

Mrs F. TULKENS,

Mr P. LORENZEN,

Mrs N. VAJIĆ,

Mrs S. BOTOUCHAROVA,

Mr A. KOVLER, *judges*,

and Mr S. NIELSEN, *Section Registrar*,

Having deliberated in private on 29 September 2005,

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

PROCEDURE

1. The case originated in an application (no. 69889/01) 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 Yuriy Vasilyevich Groshev, on 31 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. On 27 September 2004 the Court decided to communicate the application to the Government. Under the provisions of Article 29 § 3 of the Convention, it decided to examine the merits of the application at the same time as its admissibility.

4. The Government objected to the joint examination of the admissibility and merits of the application. The Court examined their objection and dismissed it.

THE FACTS

I. THE CIRCUMSTANCES OF THE CASE

5. The applicant was born in 1941 and lives in Klimovsk in the Moscow Region.

6. In February 1999 the applicant brought an action against the Moscow Region health department, seeking to declare invalid some data in his

medical records. The disputed information related to the applicant's degree of disability and affected his pension entitlement and fitness for work.

7. On 1 September 1999 the Presnenskiy District Court of Moscow dismissed the applicant's claims.

8. On 10 September 1999 the applicant filed an appeal. The appeal hearing was listed for 28 March 2000.

9. On 20 March 2000 the applicant was admitted to a hospital for inpatient treatment. On 27 March 2000 his acquaintance asked the Moscow City Court, by a telegram sent on the applicant's behalf, for an adjournment of the hearing. The Government denied that the telegram had been sent.

10. On 28 March 2000 the Moscow City Court adjourned the appeal hearing until 4 April 2000. The Government submitted that the hearing had been adjourned because there had been no information that the applicant had been duly summoned.

11. On 30 March 2000 the Moscow City Court mailed to the applicant a new summons for the hearing listed for 4 April. According to the postmark, it reached the applicant's address on 5 April.

12. On 4 April 2000 the Moscow City Court examined the appeal and rejected it. Neither party was present.

13. On 7 April 2000 the applicant left the hospital.

14. On 31 August 2000 the Moscow City Court informed the applicant that his appeal had been rejected on 4 April 2000.

II. RELEVANT DOMESTIC LAW

15. 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 (Article 106).

16. Court summonses were to be sent by mail or by courier and served on the person who was a party to the case (Articles 108 and 109).

17. 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 (Article 299).

18. The appeal court delivered its judgment in accordance with the rules established for the first-instance courts (Article 304). The court was required to announce the operative part of its decision in the final hearing and to indicate the date when the parties would be able to take cognisance of the entire text of the judgment (Article 203).

THE LAW

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

19. The applicant complained that the examination of the appeal without giving him an effective opportunity to attend violated his right to a fair hearing under Article 6 § 1 of the Convention, which reads as follows:

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

A. Admissibility

20. The Government submitted that the applicant had failed to introduce the application before 4 October 2000, that is within six months after the final judgment had been made. Even assuming that he only took cognisance of the City Court’s decision on 31 August 2000, he still had more than a month to lodge the application. In any event, the failure to take cognisance of the City Court’s decision is entirely attributable to the applicant’s own conduct. He left the hospital on 7 April 2000 but made no inquiries about the contents of the decision until August 2000.

21. The applicant responded that the Moscow City Court had failed in its duty to inform him of the developments in the proceedings.

22. The Court recalls its constant case-law, according to which the object and purpose of Article 35 § 1 of the Convention are best served by counting the six-month period as running from the date of service of the written judgment in cases where the applicant is entitled, pursuant to domestic law, to be served *ex officio* with a written copy of the final domestic decision, irrespective of whether that judgment was previously delivered orally (see *Soares Fernandes v. Portugal*, no. 59017/00, §§ 15 and 17, 8 April 2004; *Sukhorubchenko v. Russia* (dec.), no. 69315/01, 15 January 2004).

23. The Court notes that the date of delivery of the complete text of the appeal judgment was to be determined at the appeal hearing (see paragraph 18 above). The Government did not indicate the date that had been fixed as the delivery date. Nor did they claim that a copy of the appeal judgment had been served on the applicant before 31 August 2000 or that it had been available for inspection at the registry on an earlier date. The Court accepts therefore that the applicant first obtained the appeal judgment of the Moscow City Court on 31 August 2000. As he lodged the application with the Court within six months of that date, the application was introduced in time. For these reasons, the Court dismisses the Government’s objection.

24. The Court notes that the complaint is not manifestly ill-founded within the meaning of Article 35 § 3 of the Convention. It further notes that it is not inadmissible on any other grounds. It must therefore be declared admissible.

B. Merits

25. The Government claimed that the applicant's points of appeal had not contained any information that could have led to the quashing of the first-instance judgment. The applicant's presence was not indispensable as the appeal court could decide on the basis of the case-file and his written submissions.

26. The applicant maintained that he had been apprised of the appeal hearing before the City Court in a belated fashion and that he had been denied an effective opportunity to be heard.

27. The Court reiterates that 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).

28. 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 (see *Yakovlev v. Russia*, no. 72701/01, § 20, 15 March 2005).

29. 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. It considers that the right to a fair and 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 guaranteed in the domestic law (see *Yakovlev*, cited above, § 21).

30. Turning to the present case, the Court observes that, according to the postmark, the applicant received the summons for the appeal hearing one day after it had taken place. The Government did not deny that the summons had not reached the applicant on time. The Court also notes that there is nothing in the appeal judgment to suggest that the appeal court examined

the question whether the applicant had been duly summoned and, if he had not, whether the examination of the appeal should have been adjourned.

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

II. OTHER ALLEGED VIOLATIONS OF THE CONVENTION

32. The applicant also complained under Article 6 § 1 of the Convention that the domestic courts had not complied with the procedural time-limits at all stages of the proceedings and that they had given an arbitrary assessment of evidence and of his arguments.

33. The Court recalls that the observance of domestic time-limits is only one of the aspects for its assessment of compliance with the "reasonable time" requirement of Article 6 § 1. In the present case the global duration of the proceedings, which lasted one year and six months, cannot be said to have exceeded a "reasonable time". As to the complaint concerning the assessment of evidence, the Court reiterates that Article 6 does not lay down any rules on the admissibility of evidence or the way it should be assessed, which are therefore primarily matters for regulation by national law and the national courts. Having regard to the facts, as submitted by the applicant, the Court finds no appearance of a violation of that provision.

34. It follows that this part of the application is manifestly ill-founded and must be rejected in accordance with Article 35 §§ 3 and 4 of the Convention.

III. APPLICATION OF ARTICLE 41 OF THE CONVENTION

35. 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."

36. The applicant did not submit a claim for just satisfaction. Accordingly, the Court considers that there is no call to award him any sum on that account.

FOR THESE REASONS, THE COURT UNANIMOUSLY

1. *Declares* the complaint concerning the domestic authorities' failure to apprise the applicant of the appeal hearing in good time, admissible and the remainder of the application inadmissible;

2. *Holds* that there has been a violation of Article 6 § 1 of the Convention;
3. *Decides* not to make an award under Article 41 of the Convention.

Done in English, and notified in writing on 20 October 2005, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Søren NIELSEN
Registrar

Christos ROZAKIS
President