



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

FIRST SECTION

CASE OF RYAKIB BIRYUKOV v. RUSSIA

(Application no. 14810/02)

JUDGMENT

STRASBOURG

17 January 2008

FINAL

07/07/2008

In the case of Ryakib Biryukov v. Russia,

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

Christos Rozakis, *President*,

Nina Vajić,

Anatoly Kovler,

Elisabeth Steiner,

Khanlar Hajiyeu,

Dean Spielmann,

Sverre Erik Jebens, *judges*,

and Søren Nielsen, *Section Registrar*,

Having deliberated in private on 22 November and 11 December 2007,

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

PROCEDURE

1. The case originated in an application (no. 14810/02) 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 Ryakib Ismailovich Biryukov (“the applicant”), on 3 January 2002.

2. The applicant was represented by Mr A. Chebotarenko, a lawyer practising in Togliatti. The Russian Government (“the Government”) were represented at the material time by Mr P. Laptev, Representative of the Russian Federation at the European Court of Human Rights.

3. The applicant alleged that the requirement of the public pronouncement of judgments guaranteed by Article 6 of the Convention had been violated in his civil case.

4. By a decision of 24 November 2005, the Court declared the application partly admissible.

THE FACTS

I. THE CIRCUMSTANCES OF THE CASE

5. The applicant was born in 1977 and lives in Togliatti, Samara Region.

6. In May 1999 the applicant was injured in a road accident; in particular, his arm was broken. Immediately after the accident he was taken

to hospital, where he was given first aid. Several days later his arm was amputated.

7. In October 1999 the applicant brought proceedings for damages against the hospital before the Nikolaevskiy District Court of the Ulyanovsk Region. He claimed that the hospital's medical staff had failed to provide him with appropriate medical care and that their negligence had led to the loss of his arm.

8. On 2 April 2001 the court examined the case in a public hearing at which the applicant, his representative and the defendant were present. It heard the parties and witnesses and examined other evidence.

9. At the close of the hearing the court read out the following operative part of the judgment:

“On 2 April 2001 the Nikolayevskiy District Court, composed of ..., having examined in an open court session a civil case which originated in an application by Biryukov Ryakib Ismailovich against the Nikolaevskaya [Hospital] for compensation for bodily harm, on the basis of Article 1064 of [the Civil Code of the Russian Federation] and being governed by Articles 14, 50, 191, 194-97 of [the Code of Civil Procedure of the Russian Soviet Federative Socialist Republic],

decided:

To reject the claims by Biryukov Ryakib Ismailovich against the Nikolaevskaya Central District Hospital of the Ulyanovsk Region for compensation for bodily harm.

An appeal or a protest against the judgment to the Ulyanovsk Regional Court can be lodged with the Nikolayevskiy District Court within ten days.”

10. A copy of the reasoned judgment was served on the applicant on 6 April 2001. It stated that, according to Article 1064 of the Civil Code, harm inflicted on the person or property of an individual is to be reimbursed in full by the person who inflicted the harm. After a description of the evidence examined by the court, the judgment contained the court's finding that there had been no malpractice on the part of the hospital staff and no causal link between the treatment and the amputation of the applicant's arm. For those reasons the applicant's claims were rejected.

11. The applicant appealed, *inter alia*, on the grounds that the district court had not read out the full text of the judgment at the hearing.

12. On 3 July 2001 the Ulyanovsk Regional Court examined the case on appeal at a public hearing. Having heard the parties, it dismissed the applicant's appeal and upheld the judgment. It noted that by reading out the operative provisions of the judgment at the hearing and providing the applicant with a copy of the reasoned judgment within the established time-limit the district court had fully complied with the Code of Civil Procedure, notably Article 203.

13. According to the Government, the Regional Court read out the operative provisions of its decision at the hearing in the applicant's presence and later served a copy of its reasoned decision on the applicant.

II. RELEVANT DOMESTIC LAW

A. Judgments

14. Article 9 of the Code of Civil Procedure of 1964, in force at the material time, provided:

“... Judgments shall always be pronounced publicly.”

15. Article 203 of the Code read:

“Judgment shall be delivered immediately after the examination of a case. In exceptional circumstances, in extremely complex cases, the preparation of a reasoned judgment may be postponed for not more than three days, providing that the operative part of the judgment is pronounced at the same hearing in which the examination of the case has ended. At the same time the court shall announce when participants to the proceedings and representatives may become acquainted with the reasoned judgment. The announced operative part of the judgment shall be signed by all judges and included in the case file.”

16. Under Article 197 of the Code, judgments were to include an introductory part (the time and place of the delivery of judgment, the name and composition of the court in question, the registrar, parties, the subject matter of the dispute, etc.), a descriptive part (the claims and parties' submissions), reasons (the circumstances of a case as established by the court, the evidence on which the court based its conclusions, the reasons for which the court rejected one or another piece of evidence, and the statutes by which the court was governed) and an operative part (the court's conclusion whether to grant or reject the suit, instructions as to how court costs should be divided and explanations concerning an appeal against the judgment).

17. Under Article 213 of the Code, copies of judgments were sent to parties and other participants in proceedings who were not present at the court hearing. Those persons who were present and participated in the examination of the case could receive copies of judgments if they so requested (paragraph 18 of Resolution no. 7 of the Plenary Session of the Supreme Court of the USSR of 9 July 1982 “On court judgments”).

18. Under Article 301 of the Code, the examination of a case on appeal begins with a report by one of the judges, who gives an account of the circumstances of the case, the content of the first-instance court's judgment, points of appeal and observations in reply, the content of new materials

submitted to the court and any other information necessary for assessment of the judgment.

B. Access to a case file

19. By virtue of sections 30 and 31 of the federal law of 1996 on the judicial system of the Russian Federation and sections 1 and 6 of the federal law of 1998 on the Courts Administration Office at the Supreme Court of the Russian Federation, the Courts Administration Office at the Supreme Court provides administrative support for district and regional courts. In particular, it organises their clerical work, including archives. Thus, at the material time, the clerical work in a district court was governed by the Courts Administration Office's Instruction no. 8 of 29 January 1999.

20. Paragraph 181 of the Instruction set out an exhaustive list of persons who could consult a case file in a court building. It was limited to the parties to the proceedings, their representatives, other participants in the proceedings, judges and officers of higher courts, public prosecutors and officers of the Courts Administration Office.

21. Paragraph 184 of the Instruction set out an exhaustive list of persons who could be given, at the discretion of a president of a court or a judge, a copy of documents from a case file. It included the parties to a civil case, an accused person, a convicted person, an acquitted person and a victim in criminal proceedings, and their representatives.

22. By a final decision of 3 April 2003, the Supreme Court of the Russian Federation refused to examine an appeal lodged by two individuals who were seeking to have the Instruction declared void. It found that the Instruction, as an instrument which concerned human rights, freedoms and obligations, had not been registered at the federal Ministry of Justice and officially published and could not therefore be considered an instrument issued by a federal authority, the lawfulness of which would fall within the jurisdiction of the Supreme Court.

23. Instruction no. 169 of the Courts Administration Office of 28 December 1999 (paragraphs 16.1 and 16.4) concerning regional courts and the new Instruction no. 36 of the Courts Administration Office of 29 April 2003 (paragraphs 12.1 and 12.4) concerning district courts, which are currently in force, contain provisions identical to those of paragraphs 181 and 184 of the above-mentioned Instruction no. 8.

24. These two Instructions were challenged in the Supreme Court by a journalist, who argued that they violated the principles of open and public administration of justice, in that they restricted public access to court decisions and other court documents in case files. In its decision of 2 November 2004, the Supreme Court found that the Instructions complied fully with the Code of Civil Procedure of 2002 and the Code of Criminal Procedure, which vested a right to consult a case file and receive a copy of

court decisions and other documents only in the participants in the proceedings. It noted that journalists could have access to court documents to the extent and in the order prescribed by the relevant legislation. The journalist argued that the existing order did not ensure free access to court documents and that some court officers prevented journalists from exercising their right of access to information. The Court replied that in such instances the journalist was free to complain by way of an appeal to a court. It dismissed the application. On 13 January 2005 the decision was upheld by the Cassation Division of the Supreme Court.

C. Other provisions

25. Under the Mass Media Act of 27 December 1997 (sections 40 and 58), restrictions on journalists' access to information are not allowed and entail responsibility, save in cases concerning State secrets, commercial secrets or other confidential information protected by law.

26. Under the Information, Computerisation and Protection of Information Act of 20 February 1995, in force at the material time, and Presidential Decree no. 188 of 6 March 1997, information about the facts, events and circumstances of an individual's life which makes it possible to identify that individual is confidential. Under the Decree, confidential information further includes information containing the secrecy of the investigation and court proceedings, and official, professional (medical secrecy, information protected by lawyer-client privilege, etc.) and commercial secrecy.

27. Article 1064 of the Civil Code of the Russian Federation provides:

Article 1064

General grounds giving rise to liability for the infliction of harm

“1. Harm inflicted on the person or property of an individual ... shall be reimbursed in full by the person who inflicted the harm.

A law may oblige a person who is not a tortfeasor to reimburse the harm.

A law or a contract may establish an obligation of a tortfeasor to pay the victim compensation in addition to the reimbursement of the harm.

2. The person who inflicted the harm shall be liable for it unless he proves that the harm was inflicted through no fault of his. A law may provide for the reimbursement of harm in the absence of the tortfeasor's fault.

3. Harm caused by lawful actions shall be subject to compensation in cases provided by law.

Reimbursement of harm may be refused if the harm was caused at the request or with the consent of the victim, and the torfeasor's actions do not violate the moral principles of society."

THE LAW

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

28. The applicant complained that the reasoned judgment in his case had not been "pronounced publicly", as required by Article 6 § 1 of the Convention, the relevant parts of which provide:

"In the determination of his civil rights and obligations ..., everyone is entitled to a fair and public hearing ... by [a] ... tribunal ... Judgment shall be pronounced publicly but the press and public may be excluded from all or part of the trial in the interests of morals, public order or national security in a democratic society, where the interests of juveniles or the protection of the private life of the parties so require, or to the extent strictly necessary in the opinion of the court in special circumstances where publicity would prejudice the interests of justice."

29. The Government disagreed. They submitted that the operative part of the judgment of the Nikolaevskiy District Court of 2 April 2001 had been pronounced publicly at the hearing in the applicant's presence. The compilation of a reasoned judgment could be postponed for three days under Article 203 of the Code of Civil Procedure then in force. A copy of the reasoned judgment had been served on the applicant. The operative part of the decision of the Ulyanovsk Regional Court had been pronounced in the applicant's presence and a copy of the reasoned decision had been served on him later.

A. The general principles

30. The Court recalls that the public character of proceedings protects litigants against the administration of justice in secret with no public scrutiny; it is also one of the means whereby confidence in the courts, superior and inferior, can be maintained. By rendering the administration of justice visible, publicity contributes to the achievement of the aim of Article 6 § 1, namely a fair trial, the guarantee of which is one of the fundamental principles of any democratic society, within the meaning of the Convention (see *Pretto and Others v. Italy*, 8 December 1983, § 21, Series A no. 71, and *Axen v. Germany*, 8 December 1983, § 25, Series A no. 72).

31. The Contracting States enjoy considerable freedom in the choice of the appropriate means to ensure that their judicial systems comply with the requirements of Article 6 (see *Hadjianastassiou v. Greece*, 16 December 1992, § 33, Series A no. 252).

32. The Court has held in respect of the requirement of the public pronouncement of judgments that in each case the form of publicity given to the “judgment” under the domestic law of the respondent State must be assessed in the light of the special features of the proceedings in question, having regard to their entirety, and by reference to the object and purpose of Article 6 § 1 (see *Pretto and Others*, cited above, § 26; *Axen*, cited above, § 31; and *Sutter v. Switzerland*, 22 February 1984, § 33, Series A no. 74).

33. The former European Commission of Human Rights declared inadmissible a complaint that a judgment had not been pronounced publicly in a criminal case since only the sentence was read out at a public hearing and the reasons were subsequently filed in the registry. The Commission noted that it was “standard practice in State parties to the Convention that the reasons for a decision in a criminal case are often signed at a later date and only the sentences are read out during the public hearing”. It gave particular attention to the fact that the sentence, which was read out at the public hearing, contained the offence with which the applicants were charged, the finding of guilt, a decision on the presence of aggravating circumstances and the penalty imposed on the applicants. The Commission held that “the decision read out in Court, despite its concise nature, was sufficiently explicit and satisfied the requirements of Article 6 § 1 of the Convention” (see *Crociani and Others v. Italy*, nos. 8603/79, 8722/79, 8723/79 and 8729/79, Commission decision of 18 December 1980, Decisions and Reports 22, p. 147 at p. 228).

34. The Court has had on several occasions to assess situations in which the decisions of superior courts, dismissing appeals on points of law, were not pronounced in open court. In finding no violation of Article 6 § 1, the Court paid particular attention to the stage of the proceedings and the role of the courts in question, which was confined to the issues of law, and to their decisions, which made lower courts’ judgments final and changed nothing in respect of the consequences for the applicants. Having such considerations in mind, it found that the requirement of the public pronouncement of judgments was satisfied where the full text of the decision deposited in the court registry was available to everyone (see *Pretto and Others*, cited above, §§ 27-28), or where the lower court held public hearings and the lower court’s judgment was pronounced in open court (see *Axen*, cited above, § 32), or where anyone who established an interest could obtain the full text of judgments of the court, the most important judgments of which were subsequently published in an official collection (see *Sutter*, cited above, § 34).

35. The Court found no violation where a first-instance court held a public hearing but did not deliver its judgment publicly and the appellate court delivered its decision, which contained a summary of the first-instance court's judgment and made that judgment final, in public (see *Lamanna v. Austria*, no. 28923/95, §§ 33-34, 10 July 2001).

36. The requirement of the public pronouncement of judgments was held to be contravened where the decisions of courts of both levels of jurisdiction, before which a case concerning compensation for detention was heard in private, were not delivered publicly and were not otherwise accessible to the public (see *Werner v. Austria*, 24 November 1997, §§ 56-60, *Reports of Judgments and Decisions* 1997-VII). Lastly, in a case in which dispensing with a public hearing was found to be unjustified, the provision of access to the case file to those who established a legal interest in the case and the publication of decisions of special interest, mostly of the appellate courts or the Supreme Court, was held not to suffice in order to comply with the publicity requirement in question (see *Moser v. Austria*, no. 12643/02, § 103, 21 September 2006).

37. Lastly, the Court reiterates that "in a democratic society within the meaning of the Convention, the right to a fair administration of justice holds such a prominent place that a restrictive interpretation of Article 6 § 1 would not correspond to the aim and the purpose of that provision" (see *Delcourt v. Belgium*, 17 January 1970, § 25, Series A no. 11).

B. Application in the present case

38. In the present case the Nikolayevskiy District Court, acting as a first-instance court, examined the applicant's case on the merits at a public hearing. At the close of the hearing it read out the operative provisions of the judgment, by which the applicant's claims were dismissed with a reference to Article 1064 of the Civil Code (see paragraphs 9, 16 and 27 above). The reasoned judgment was served on the applicant later (see paragraph 10 above).

39. The Court's task in the present case therefore differs from its previous cases. It has to decide whether the reading out of only the operative part of the judgment in open court in the applicant's civil case complied with Article 6 § 1. In doing so the Court has to examine, as the above-mentioned principles established in the Convention case-law on the subject suggest, whether the public had access to the reasoned judgment in the applicant's case by means other than its reading out in open court, and, if so, to consider the modalities of the form of publicity given to the reasoned judgment to ensure its public scrutiny.

40. The Court observes at the outset that the applicant's complaint about the failure of the Nikolayevskiy District Court to read out the reasoned judgment at the hearing was examined on appeal by the Ulyanovsk

Regional Court. The appeal court dismissed the complaint, holding that the District Court had fully complied with Article 203 of the Code of Civil Procedure, which allowed courts in exceptionally complex cases to pronounce only the operative provisions of a judgment at the hearing and to compile a reasoned judgment later. The public pronouncement of the appeal court's judgment was also limited to its operative part (see paragraph 13 above).

41. The Government did not suggest that publicity of the judgment had been ensured by means other than having it read out loud. Nor does the Court's assessment of the domestic legal situation at the material time identify any such possibility.

42. Thus, Article 203 of the Code of Civil Procedure, to which the appeal court in the domestic proceedings and the Government in the present proceedings referred, mentioned only the participants to the proceedings and their representatives as persons entitled to become acquainted with a reasoned judgment prepared after the public pronouncement of its operative part (see paragraph 15 above). An obligation to serve a copy of a judgment was also limited to the parties and other participants to the proceedings (see paragraph 17 above). As regards depositing court judgments with a court registry, the relevant regulations restricted public access to the texts of judgments. Such access was normally given only to the parties and other participants to the proceedings (see paragraphs 19-24 above).

43. It follows that the reasons on which the District Court based its judgment on the merits of the case (see paragraph 10 above), except for the reference to Article 1064 of the Civil Code, were inaccessible to the public.

44. Article 1064 of the Civil Code established general grounds giving rise to liability for the infliction of harm (see paragraph 27 above). The operative part of the judgment contained no indication as to the applicable principle derived from Article 1064, and was thus not informative to members of the public who did not have the relevant legal knowledge.

45. The Court considers that the object pursued by Article 6 § 1 in this context – namely, to ensure scrutiny of the judiciary by the public with a view to safeguarding the right to a fair trial – was not achieved in the present case, in which the reasons which would make it possible to understand why the applicant's claims had been rejected were inaccessible to the public.

46. The Court finds that there has been a violation of Article 6 § 1 in that the State failed to comply with the requirement of the publicity of judgments.

II. APPLICATION OF ARTICLE 41 OF THE CONVENTION

47. 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

48. The applicant claimed 679,894.64 Russian roubles (RUB) in lost wages as a result of his invalidity and RUB 60,000 for reimbursement of the cost of an artificial arm. He also claimed 150,000 United States dollars in respect of non-pecuniary damage caused by the physical and mental suffering resulting from his invalidity and unemployment.

49. The Government submitted that there was no causal link between the applicant's claims and the alleged violation of the Convention and that the finding of a violation would therefore constitute sufficient just satisfaction.

50. The Court notes that there is no causal link between the violation of the Convention complained of and the alleged pecuniary damage. As to possible non-pecuniary damage, the Court considers it sufficiently compensated by the finding of a breach of Article 6 § 1.

B. Costs and expenses

51. As the applicant did not claim costs and expenses, the Court makes no award under this head.

FOR THESE REASONS, THE COURT UNANIMOUSLY

1. *Holds* that there has been a violation of Article 6 § 1 of the Convention;
2. *Holds* that the finding of a violation constitutes in itself sufficient just satisfaction for the non-pecuniary damage sustained by the applicant;
3. *Dismisses* the remainder of the applicant's claim for just satisfaction.

Done in English, and notified in writing on 17 January 2008, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Søren Nielsen
Registrar

Christos Rozakis
President