



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

FIRST SECTION

CASE OF ITSLAYEV v. RUSSIA

(Application no. 34631/02)

JUDGMENT

STRASBOURG

9 October 2008

FINAL

09/01/2009

This judgment may be subject to editorial revision.

In the case of Itslayev 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,

Giorgio Malinverni,

George Nicolaou, *judges*,

and André Wampach, *Deputy Section Registrar*,

Having deliberated in private on 18 September 2008,

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

PROCEDURE

1. The case originated in an application (no. 34631/02) 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 Dokka Saydaminovich Itslayev (“the applicant”), on 23 August 2002.

2. The applicant was represented before the Court by himself and by lawyers of the Memorial Human Rights Centre. The Russian Government (“the Government”) were represented by Mr P. Laptev, former Representative of the Russian Federation at the European Court of Human Rights.

3. The applicant alleged that he had been denied effective access to a court with regard to his action for recovery of wage arrears contrary to Article 6 § 1 of the Convention.

4. On 6 July 2005 the Court decided to communicate the complaint concerning the alleged lack of access to a court 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.

THE FACTS**I. THE CIRCUMSTANCES OF THE CASE**

5. The applicant was born in 1959. Formerly a resident of the village of Goysskoye of the Urus-Martan District in the Chechen Republic, he is

currently living in the town of Nazran in Ingushetiya. He is a lawyer at the Memorial Human Rights Centre.

A. Background to the case

6. In April 1996 the applicant was appointed head of the administration of Goyskoye. In June 1996 the district administration stopped paying his salary because of lack of funds.

7. In August 1996 Chechen rebel fighters took power in Grozny, the capital of the Chechen Republic.

8. In December 1999 the Russian federal government regained control over the Urus-Martan District. In spring 2000 the district administration was re-established and the applicant applied for payment of his salary. He states that the administration promised to pay his salary as soon as the money arrived from the federal budget.

9. In December 2000 the Urus-Martan Town Court (“the Town Court”) started functioning, but it was located in Gudermes, the administrative centre of the Gudermes District of Chechnya, about 80 km from Goyskoye. The applicant submitted that he could not go to Gudermes to lodge his claim because of the poor overall security situation and a curfew imposed by the military. Moreover, he had no money for travel and accommodation there.

10. On 25 June 2001 the applicant again applied to the district administration for payment of his salary. On 15 July 2001 he received a reply from the head of the administration dated 4 July 2001 in which the latter informed him that the salary would be paid as soon as funds were available.

11. Sometime after July 2001 the Town Court moved from Gudermes to Urus-Martan.

B. Proceedings over the salary arrears

12. On 9 October 2001 the applicant brought a court action with the Town Court against the district administration for payment of salary arrears over the period between June 1996 and April 1997.

13. On the same date he lodged a formal request for reinstatement of time-limits for lodging his claim. It read as follows:

“Courts started functioning in the Chechen Republic in December 2000. Therefore, I could lodge a claim against the administration of the Urus-Martan District for salary arrears due for my work as head of administration of Goyskoye in 1996 only from that moment. However, in the beginning the court was located in Gudermes and it was difficult to go there because of numerous checkpoints, curfew and lack of money for travel. Furthermore, on numerous occasions I have applied to the administration of the Urus-Martan District with requests to pay me the salary arrears, considering that my claims were lawful. On 4 July 2001 I received a letter signed by the head of the administration of the Urus-Martan District, from which it emerged that the payment of

salary arrears had again been postponed. Until the last moment I hoped that the salary arrears would be paid to me voluntarily, as it was an obligation of any state authority.

For the above reasons I missed the time-limits for lodging a claim against the administration of Urus-Martan for salary arrears.

Taking into consideration the above statements and in accordance with Article 105 of the Code of Civil Procedure of RSFSR I request [the Town Court] to restore the procedural time-limit for lodging a claim for salary arrears.”

14. On 16 October 2001 the Town Court held a hearing in the applicant’s case. According to the record of the hearing, the applicant gave the following explanation as regards his failure to comply with the time-limits:

“I applied to a court only on 9 October 2001 as I did not know that law established the time-limits for applying to a court. I request the court to reinstate the time-limits for applying to a court and to recover salary arrears ...”

The defendant accepted the applicant’s salary claims only for the period between June and August 1996 and submitted that the applicant would receive the arrears as soon as funds were available.

On the same date the Town Court adopted a judgment in the case, which in its relevant part provided as follows:

“... [Mr Itslayev] applied to the court only on 9 October 2001 because he did not know that law established the time-limits for applying to a court and he requests the court to reinstate the time-limit for applying to the court and to recover salary arrears ...

The defendant’s representative submitted that ... the Administration of the Urus-Martan District agreed to pay the applicant salary arrears for the period between June and August 1996 as soon as the funds were available.

Having regard to the parties’ submissions and having read the materials of the case, the court comes to the following conclusion:

... According to Article 211 of the Labour Code of the Russian Federation an application concerning the settlement of a labour dispute is to be lodged with a district court within three months of the date when an employee knew or should have known about the violation of his right. In violation of this statutory provision, the applicant did not apply to a court between December 2000, when the courts started functioning in Chechnya, and 9 October 2001. The court considers that the applicant’s arguments that he had missed the time-limits because the head of administration of the Urus-Martan District had promised to pay him salary and that he was not aware of time-limits are unsubstantiated.

Therefore the court comes to a conclusion that the applicant missed the time-limit without any valid reason and that there are no grounds to restore it.”

15. The applicant alleged that the presiding judge had relied on an order from “higher” authorities not to accept claims similar to that of the applicant’s for examination on the merits and that he had to seek advice

from judge B. of the Supreme Court of the Chechen Republic (“the Supreme Court”). The applicant also indicated that the presiding judge had been appointed for a period of one year and therefore he could not be considered independent.

16. The applicant provided the Court with a copy of the decision delivered by the Town Court on 17 October 2001 in a case of a certain M., who had claimed from the district administration salary arrears due to his wife. He submitted that his wife had been killed in April 2001 and that he was in a very difficult financial situation because he had borrowed money to bury her. The Town Court restored the time-limit for lodging his claim and examined it on the merits. It held as follows:

“... the court finds that the plaintiff missed the time-limit for a valid reason, because no courts were functioning in Chechnya between August 1996 and December 2000, and between January and July 2001 the court was based in Gudermes and he could not have applied there for lack of funds ...”

17. On 6 November 2001 the applicant lodged an appeal with the Supreme Court against the judgment of 16 October 2001. In so far as he contested the application of time-limits in his case, the applicant made two arguments.

In the first place he submitted that he had applied for the reinstatement of time-limits because the Town Court requested him to do so. However, Article 211 of the Labour Code could not be applied in his case, as the anti-terrorist operation was still going on in the Chechen Republic. On 15 July 2001 he had received a letter from the head of the district administration by which he was informed that his salary arrears would be paid as soon as funds were available. Therefore his right had been infringed at the end of July. The three-month time-limit had started to run from the end of July and he had applied to the court in due time.

Secondly, assuming that he had missed the time-limit, the Town Court could and should in accordance with Article 105 of the Code of Civil Procedure accept that he had missed the time-limit for valid reasons which were as follows:

“(a) I was appointed head of a rural administration in April 1996 and worked in this position in very difficult conditions, sometimes at risk to my life.

(b) I think that it is a matter of honour for the Russian state to pay at least salary arrears to heads of administrations of communities which were appointed in that period and who had worked with federal authorities.

(c) On numerous occasions I have applied orally to the Administration of Urus-Martan. And when I was told that there were no funds, that I would have to wait and that I would be paid, I continued to wait, believing the authorities and understanding the situation which existed in the Republic.

(d) The Town Court should not have punished me, as it did, and taken the side of those who in that period killed and continue to kill people who work for the state. As a

matter of fact, the Urus-Martan Town Court have now punished me for my work for the state in 1996.

(e) There existed no legal conditions in the Chechen Republic to apply Article 211 of the Labour Code in labour disputes involving state authorities because of the circumstances which existed in previous years.”

The applicant requested the appeal court to take into account the above circumstances, to quash the judgment of 16 October 2001 and deliver a new decision in his case.

18. On 26 February 2002 the Supreme Court, comprising judges B. and A. and presided over by Judge S., upheld the judgment of 16 October 2001. It held as follows:

“... Having regard to the materials of the case and to the submissions by the plaintiff, the Civil Chamber finds that the judgment is lawful and reasoned.

According to Article 211 of the Labour Code of the Russian Federation an application concerning the settlement of a labour dispute is to be lodged with a court within three months of the date when an employee knew or should have known about the violation of his right. However, since December 2000 the plaintiff has not made such an application to a court.

The [Town] court has thoroughly examined the submitted evidence and reasonably found that the reasons advanced by the plaintiff for missing the time-limit were not valid and refused to restore the time-limit.”

The applicant was present at the hearing. He alleged that Judge B., to whom, the Town Court judge had allegedly referred, was a member of the court. Furthermore, according to the applicant, his appeal was not examined in a public hearing, but took place in one of the rooms in the Supreme Court building.

II. RELEVANT DOMESTIC LAW AND PRACTICE

19. Article 211 of the Russian Labour Code of 1971 (in force at the material time) provided in its relevant part that an application concerning the settlement of a labour dispute had to be lodged with a district court within three months of the date when an employee knew or should have known about the violation of his right. In instances where the periods established in that Article lapsed for justifiable reasons, they could be reinstated by a court.

20. Article 105 of the Russian Civil Procedure Code of 1964 (in force at the material time) provided in its relevant parts that in cases where individuals missed the statutory time-limits for reasons which the court considered valid, the time-limits could be restored by a court. An application for reinstatement of time-limits had to be lodged with a court with jurisdiction to take a procedural decision on the matter, and had to be

examined in a hearing. A claim in respect of which the time-limits had expired had to be lodged together with the application for reinstatement of the time-limits.

21. Ruling of the plenary session of the Supreme Court of the Russian Federation of 22 December 1992 No. 16 (applied until 17 March 2004) “On Some Issues related to the Application by Courts of the Russian Federation of Legislation when resolving Labour Disputes” provided in relevant parts of paragraph 8 that a judge could not refuse to accept a claim for consideration on the ground of expiration of time-limits, as Article 211 of the Labour Code did not provide for such a possibility. Where a court considered that the time-limits had not been respected for valid reasons, it had to restore them. In cases where a court, after having thoroughly examined the materials of the case, established that the time-limits had not been complied with for a non-valid reason, it had to dismiss the claim.

THE LAW

I. ALLEGED VIOLATION OF ARTICLE 6 § 1 OF THE CONVENTION IN RESPECT OF THE APPLICANT’S RIGHT OF ACCESS TO A COURT

22. The applicant complained that his action for the payment of his salary had been dismissed as lodged out of time. The Court considers that this complaint falls to be examined under Article 6 § 1 of the Convention, which, in so far as relevant, reads as follows:

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

A. Admissibility

23. The Government submitted that the complaint was incompatible *ratione materiae* with the provisions of the Convention on the ground Article 6 § 1 was not applicable to the proceedings between the applicant and the district administration. They referred to the Court’s judgment in the case of *Pellegrin v. France* ([GC], no. 28541/95, ECHR 1999-VIII).

24. The applicant contested their arguments.

25. The Court reiterates that Article 6 § 1 secures to everyone “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 only (see *Golder v. the United Kingdom*, judgment of 21 February 1975, Series A no. 18, § 36). This right extends only to disputes (“*contestations*”) over

“civil rights and obligations” which can be said, at least on arguable grounds, to be recognised under domestic law (see, among other authorities, *James and Others v. the United Kingdom*, judgment of 21 February 1986, Series A no. 98, pp. 46-47, § 81). The dispute must be genuine and serious; it may relate not only to the actual existence of a right but also to its scope and the manner of its exercise. The outcome of the proceedings must be directly decisive for the right in question, mere tenuous connections or remote consequences not being sufficient to bring Article 6 § 1 into play (see, for instance, *Werner v. Austria*, judgment of 24 November 1997, Reports 1997-VII, § 34).

26. In the above-mentioned *Pellegrin* judgment the Court held that the employment disputes between the authorities and public servants, whose duties typify the specific activities of the public service, in so far as the latter is acting as the depository of public authority responsible for protecting the general interests of the State, are not “civil” and are excluded from the scope of Article 6 § 1 of the Convention.

27. However, in a recent judgment (*Vilho Eskelinen and Others v. Finland* [GC], no. 63235/00, § 62, 19 April 2007) the Court established two criteria of applicability of Article 6 to such disputes. According to this judgment Article 6 under its “civil” head shall be applicable to all disputes involving civil servants, unless the national law expressly excludes access to a court for the category of staff in question, and this exclusion is justified on objective grounds.

28. Turning to the facts of the present case, the Court firstly notes that it was common ground that the applicant had raised a genuine and serious dispute over a “right” within the meaning of Article 6 § 1. The only issue is whether the right in question was a “civil” one.

29. The Court observes that the dispute in the present case concerned the applicant’s right to claim the salary arrears. Under national law the applicant had a right to bring proceedings against his employer and to claim his salary. He made use of that right and introduced an action against his employer. The domestic courts dismissed his claim on the ground that it was time-barred. They did not find that the domestic law excluded access to a court to the post which the applicant had occupied. Accordingly, the dispute between the applicant and the district administration over the salary arrears involved determination of a “civil right” and Article 6 § 1 is applicable to the proceedings in the present case.

30. The Court considers that this 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

31. According to the Government, the national courts refused to examine the applicant's claim in substance because of his failure to comply with the statutory time-limit for lodging his claim. They applied Article 211 of the Russian Labour Code of 1971 (see "Relevant Domestic Law and Practice") and considered that the applicant should have brought his action within a three-month period which started to run in December 2000, the date on which courts of general jurisdiction started functioning in the Chechen Republic. The applicant did not lodge his claim until 9 October 2001. The courts refused to restore the time-limit because the applicant failed to advance any valid reason for missing it. The applicant's right of access to a court had not been infringed.

32. The applicant contested the Government's submissions. Firstly, the Town Court had infringed domestic law because it had applied a time-limit on its own initiative. Secondly, the national courts had wrongly applied provisions governing application of time-limits. They had considered that the time-limit had started to run in December 2000, when the Town Court had started to function in Gudermes. However, that court had not been accessible to him, as it had been dangerous to go there and he had no means for travel. In the case of a different person, the Town Court had restored the time-limits having found that the court had not been accessible to the plaintiff (see paragraph 16 above). The domestic courts could have suspended the running of the time-limit as the situation which existed in Chechnya at the material time could be considered exceptional. Finally, he could not be obliged to apply to a court situated in a different district.

33. The Court reiterates that the right of access to a court secured by Article 6 § 1 is not absolute but may be subject to limitations; these are permitted by implication since the right of access by its very nature calls for regulation by the State, which may vary in time and in place according to the needs and resources of the community and of individuals. In laying down such regulation, the Contracting States enjoy a certain margin of appreciation, but the final decision as to observance of the Convention's requirements rests with the Court. Limitations on the right to a court are compatible with Article 6 only if they do not restrict or reduce the access left to the litigant in such a way or to such an extent that the very essence of the right is impaired; lastly such limitations will not be compatible with Article 6 § 1 if they do not pursue a legitimate aim or if there is not a reasonable relationship of proportionality between the means employed and the aim sought to be achieved (see *Ashingdane v. the United Kingdom*, judgment of 28 May 1985, Series A no. 93, § 57).

34. Furthermore, it is not the Court's task to take the place of the domestic courts. It is primarily for the national authorities, notably the courts, to resolve problems of interpretation of domestic legislation. The

Court's role is confined to ascertaining whether the effects of such an interpretation are compatible with the Convention (see *Edificaciones March Gallego S.A. v. Spain*, judgment of 19 February 1998, *Reports* 1998-I, p. 290, § 33). This applies in particular to the interpretation by courts of rules of a procedural nature such as time-limits governing the filing of documents or lodging of appeals (see, among other authorities, *Pérez de Rada Cavanilles v. Spain*, judgment of 28 October 1998, *Reports* 1998-VIII, § 43).

35. Turning to the present case the Court firstly notes that the requirement to lodge a judicial claim within a statutory time-limit is not in itself incompatible with Article 6 § 1 of the Convention. The Court has held on numerous occasions that such a requirement pursued a legitimate aim of proper administration of justice and of compliance, in particular, with the principle of legal certainty (see, for example, *Pérez de Rada Cavanilles*, cited above, § 45, and *Miragall Escolano and Others v. Spain*, no. 38366/97, § 33, ECHR 2000-I). The Court considers that there is no reason to find otherwise in the present case. However, the manner in which the time-limits were applied to the applicant in the particular circumstances of the case is a relevant factor in determining whether or not he enjoyed an effective access to a court.

36. The applicant firstly argued that the Town Court had infringed the domestic law by raising the issue of the time-limits on its own initiative. The Court observes that on 9 October 2001 the applicant lodged a formal request for the reinstatement of time-limits in accordance with Article 105 of the Code of Civil Procedure in force at the material time (see "Relevant Domestic Law and Practice"). In that request he expressly acknowledged that he had missed the statutory time-limit for lodging his action. He signed the request and submitted it together with his statement of claim. Under Article 105 the domestic courts had to examine such a request at the hearing, as they did in the present case. It follows that the applicant raised the issue of time-limits on his own initiative and that the domestic courts acted in accordance with law.

37. The applicant further argued that the domestic court had wrongly applied the time-limit, refused to reinstate it or to suspend it, in spite of the fact that he had missed it for valid reasons. The Court observes that the domestic courts had carefully examined the reasons referred to by the applicant at two levels of jurisdiction and found that they had not been such as to justify his failure to lodge his action in due time. In doing so they relied on the relevant provisions of the domestic law and practice. Having regard to the judgment of 16 October 2001 and the appeal decision of 26 February 2002, the Court considers that those decisions do not appear arbitrary or unreasonable. The Court notes that the domestic courts took into account the fact that no courts were functioning in Chechnya until December 2000 and calculated the three-month time-limits from that date.

Furthermore, the fact that in the case of M. (see § 16 in the Facts) the Town Court allowed the request for the reinstatement of time-limits is not relevant to the present case, as there is no evidence that the applicant was in a similar situation to M. Finally, the applicant argued that he could not be obliged to lodge his action in a court situated in a different district. It is true that between December 2000 and July 2001 the only possibility for the applicant to lodge his claim was to apply to the Town Court situated in Gudermes. The Court considers that Russian authorities could have experienced some difficulties in putting a judicial system in place in the Chechen Republic at the time of events. However, there had been a court to which the applicant could have applied. The Court considers that the fact that the applicant had to apply to a court situated in a different district did not put an excessive burden on him and did not affect his right of access to a court.

38. Accordingly, having regard to the above considerations and taking into account the legitimate aim served by the statutory time-limits for lodging claims and the margin of appreciation accorded to States in regulating the right of access to a court, the Court considers that in the present case the applicant did not suffer a disproportionate restriction on his right of access to a court and finds that there was no violation of Article 6 § 1 of the Convention.

II. OTHER ALLEGED VIOLATIONS OF THE CONVENTION

39. The applicant further complained under Article 6 § 1 of the Convention that the Town Court had not been independent and impartial, had not been established in accordance with law, that the hearing before the appeal court had not been public and oral, and that the proceedings had been unreasonably long. He complained under Article 1 of Protocol No. 1 to the Convention that his property rights had been violated as he had not received salary arrears as a result of the domestic courts' failure to examine his claim.

40. Having regard to all the material in its possession, and in so far as these complaints fall within its competence, the Court finds that they do not disclose any appearance of a violation of the rights and freedoms set out in the Convention or its Protocols. It follows that this part of the application must be rejected as being manifestly ill-founded, pursuant to Article 35 §§ 3 and 4 of the Convention.

FOR THESE REASONS, THE COURT UNANIMOUSLY

1. *Declares* the complaint concerning the lack of effective access to court admissible and the remainder of the application inadmissible;

2. *Holds* that there has been no violation of Article 6 § 1 of the Convention in respect of the applicant's right of access to a court;

Done in English, and notified in writing on 9 October 2008, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

André Wampach
Deputy Registrar

Christos Rozakis
President