



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

FIRST SECTION

CASE OF LITVINOVA v. RUSSIA

(Application no. 34489/05)

JUDGMENT

STRASBOURG

14 November 2008

FINAL

14/02/2009

This judgment may be subject to editorial revision.

In the case of Litvinova 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 Søren Nielsen, *Section Registrar*,

Having deliberated in private on 21 October 2008,

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

PROCEDURE

1. The case originated in an application (no. 34489/05) 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, Ms Larisa Ivanovna Litvinova (“the applicant”), on 25 August 2005.

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

3. On 15 March 2006 the President of the First Section decided to give notice of the application to the Government. It was also decided to examine the merits of the application at the same time as its admissibility (Article 29 § 3).

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

4. The applicant was born in 1968 and lives in the town of Belogorsk in the Amur Region.

5. On 31 December 2003 she brought proceedings against the Social Security Office of Belogorsk on account of a refusal by the latter to increase her child benefit payments according to a certain method of calculation and seeking compensation in respect of pecuniary damage. She also alleged that

the Office had not given her access to a number of documents concerning those payments.

6. By a judgment of 30 November 2004 the Belogorsk Town Court dismissed her claims as unfounded. The applicant's representative lodged an appeal against the judgment on 12 December 2004.

7. The Amur Regional Court scheduled a hearing for 25 February 2005. According to the Government, on 17 February 2005 the Town Court dispatched summonses to the parties. The Government submitted a copy of the cover letter dated 17 February 2005 and sent by the Town Court to the Regional Court and the parties, including the applicant and her representative. The letter bore the outgoing number "1779" and indicated that the Town Court was sending the case file to the Regional Court and that the appeal hearing had been listed for 25 February 2005, at 9 a.m. The Government also submitted a copy of an excerpt from the Town Court's outgoing correspondence log. The column entitled "outgoing number" contained the figure "1779", and that entitled "sent to" listed the Regional Court, the applicant, her representative and the respondent. The date below that record read "18 February 2005".

8. On 25 February 2005 the Amur Regional Court dismissed the applicant's appeal. Neither the applicant nor her representative was present. The judgment indicated that the appeal had been examined in a public session but did not specify whether the applicant or her representative had been notified of the hearing date.

9. On 17 March 2005 the applicant's representative made an inquiry to the Town Court about the state of the appeal proceedings. On 22 March 2005 the Town Court sent him a copy of the appeal judgment and indicated that he had been duly informed of the hearing date.

II. RELEVANT DOMESTIC LAW

10. The Code of Civil Procedure of the Russian Federation ("the CCP", in force from 1 February 2003) reads as follows:

Article 113. Court summonses and notifications

"1. Parties ... are to be summonsed to court by a letter sent via registered mail with an acknowledgment of receipt, a court summons with an acknowledgment of receipt, a telegram, by phone or fax or by any other means of communication which guarantees recording of the fact that the court summonses or notifications were received by the parties.

2. A court summons is one of the forms of court notification. Parties are notified by court summonses of the date and place of a court hearing or of particular procedural actions ...

3. A summons or another form of notification is to be served on parties in such a way [as to ensure] that they have enough time to prepare their case and to appear at the hearing.

4. A court notification, addressed to a party, is to be sent to the address indicated by that party or his/her representative. If a party does not reside at the indicated address, the court summons may be sent to his or her place of work ...”

Article 115. Service of court summonses and notifications

“1. Court summonses and other notifications are to be sent by mail or delivered by a person whom the court authorises to deliver them. The time of service is to be recorded as laid down by post office regulations or on a document which is to be returned to the court.

2. With a party’s consent, a judge can serve him/her with summonses or notifications to be delivered to another party. A person authorised by the judge to deliver a court summons or another notification is to return a counterfoil of the summons or a copy of the notification bearing the addressee’s signature recording receipt.”

Article 116. Receipt of a court summons

“1. A court summons ... to a person is to be served on him or her against his or her signature on a counterfoil of the summons, which is to be returned to the court ...

...

4. If the current place of residence of an addressee is unknown, an entry to this effect is to be made on the court summons, showing the date and time of the attempted service and the source of the information.”

Article 118. A change of address during the proceedings

“Parties are to inform the court of any change in their address in the course of the proceedings. If no such notification is provided, court summonses or notifications are to be sent to the addressee’s last known address and are considered to be delivered even if the addressee no longer lives or resides there.”

Article 119. Unknown place of residence of a defendant

“When a defendant’s place of residence is unknown, the court begins examination of a case once it has received information to that effect from the defendant’s last known place of residence.”

Article 338. Time-limits for lodging an appeal statement

“Parties to the case or the prosecutor may lodge an appeal statement within ten days after the judgment was delivered in the final form.”

Article 343. Actions of the first-instance court upon the receipt of the statement of appeal

“1. Upon the receipt of the statement of appeal ... the judge shall:

1) send to the parties copies of the statement of appeal and the enclosed written documents not later than the day after their receipt;

2) notify the parties of the time and place of the appeal hearing...

3) upon the expiry of the time-limit for appeal send the case file to the court of appeal ...”

Article 354. Consequences of the parties’ and their representatives’ failure to attend an [appeal] hearing

“1. If a party to the case fails to appear and there is no evidence that the party was duly summonsed, the hearing is to be adjourned ...”

THE LAW

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

11. The applicant complained that she had not been afforded the opportunity to attend the appeal hearing in her civil case, in breach of 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

12. The Court notes 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

13. The Government claimed that the applicant had been notified of the appeal hearing in good time. Her representative had inquired about the state of the proceedings only four months and seven days after he had lodged the appeal against the trial judgment. In any event, the applicant’s presence had

not been necessary as the appeal court could decide the case on the basis of the case file and her written submissions.

14. The applicant submitted that the courts had failed in their duty to inform her of the appeal hearing, that she had not received the letter of 17 February 2005 and that the Government had not provided any evidence to the contrary, although they must have had it at their disposal.

15. The Court observes that the appeal hearing was listed for 25 February 2005. The Government argued that the applicant had been notified of that hearing by a letter sent by the Town Court on 17 February 2005. They submitted a copy of that letter and a copy of the excerpt of the outgoing correspondence log of the Town Court which, according to them, had sent out the letter on the same day (see paragraph 7 above).

16. The Court has no reason to doubt that the letter of 17 February 2005 was, in fact, dispatched. It is also to be recalled that Article 6 cannot be construed as conferring on litigants an automatic right to obtain a specific form of service of court documents, such as by registered mail (see *Bogonos v. Russia* (dec.), no. 68798/01, 5 February 2004). At the same time, the analysis of Articles 113, 115 and 116 of the CCP suggests that, whichever specific form of the parties' notification is chosen, the domestic courts should be in possession of evidence confirming the receipt of such notification by the addressee (see paragraph 10 above). However, the Government adduced no evidence of receipt by the applicant of the notification about the appeal hearing (compare *Prokopenko v. Russia*, no. 8630/03, § 18, 3 May 2007). In these circumstances, the Court is not persuaded that the domestic authorities had notified the applicant of the appeal hearing in such a way as to provide her with an opportunity to attend it and prepare her case.

17. The Court reiterates that it has frequently found violations of Article 6 § 1 of the Convention in cases raising issues similar to the one in the present case (see *Yakovlev v. Russia*, no. 72701/01, § 19 et seq., 15 March 2005; *Groshev v. Russia*, no. 69889/01, § 27 et seq., 20 October 2005; *Mokrushina v. Russia*, no. 23377/02, § 20 et seq., 5 October 2006; *Prokopenko*, cited above, § 17 et seq., and *Subbotkin v. Russia*, no. 837/03, § 18 et seq., 12 June 2008).

18. Having examined the materials submitted to it, the Court notes that the Government have not put forward any fact or argument capable of persuading it to reach a different conclusion in the present case. The Court has established that owing to the non-notification the applicant has been deprived of the opportunity to attend the appeal hearing and plead her case in adversarial proceedings. The Court also notes that there is nothing in the appeal judgment to suggest that the court of appeal examined the question whether the applicant had been duly notified and, if she had not, whether the examination of the appeal should have been adjourned.

19. It follows that there has been a violation of the applicant's right to a fair hearing under Article 6 § 1 of the Convention.

II. OTHER ALLEGED VIOLATIONS OF THE CONVENTION

20. The applicant complained under Articles 6 and 10 of the Convention and Article 1 of Protocol No. 1 that the proceedings against the Social Security Office had been excessively long, that the trial court had dismissed her challenge to the judge and refused to obtain evidence at her request and that the judge had refused to apply a particular method of calculating the amount of benefits to be awarded.

21. Having regard to all the material in its possession and in so far as the 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 his part of the application must be rejected as being manifestly ill-founded, pursuant to Article 35 §§ 3 and 4 of the Convention.

III. APPLICATION OF ARTICLE 41 OF THE CONVENTION

22. 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

23. The applicant claimed 40,000 euros (EUR) in respect of unspecified damage.

24. The Government contested her claim as excessive.

25. The Court finds that the applicant must have suffered frustration and a feeling of injustice as a result of the domestic authorities' failure to apprise her of the appeal hearing in good time. Having regard to the nature of the violation found and making its assessment on an equitable basis, the Court awards the applicant EUR 1,000, plus any tax that may be chargeable on that amount.

B. Costs and expenses

26. The applicant claimed EUR 4,120 in respect of costs and expenses.

27. The Government submitted that the claims were excessive and unsubstantiated.

28. According to the Court's case-law, an applicant is entitled to the reimbursement of costs and expenses only in so far as it has been shown that these have been actually and necessarily incurred and were reasonable as to quantum. In the present case, regard being had to the above criteria and in so far as the applicant's claims were supported by the relevant documents, the Court awards the applicant EUR 2, plus any tax that may be chargeable to her, and dismisses the remainder of her claims under this head.

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. *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. *Holds*
 - (a) that the respondent State is to pay the applicant, within three months from the date on which the judgment becomes final in accordance with Article 44 § 2 of the Convention, the following amounts, to be converted into Russian roubles at the rate applicable at the date of settlement:
 - (i) EUR 1,000 (one thousand euros) in respect of non-pecuniary damage, plus any tax that may be chargeable to the applicant;
 - (ii) EUR 2,00 (two euros) in respect of costs and expenses, plus any tax that may be chargeable to the applicant;
 - (b) that from the expiry of the above-mentioned three months until settlement simple interest shall be payable on the above amounts at a rate equal to the marginal lending rate of the European Central Bank during the default period plus three percentage points;
4. *Dismisses* the remainder of the applicant's claim for just satisfaction.

Done in English, and notified in writing on 14 November 2008, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Søren Nielsen
Registrar

Christos Rozakis
President