



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

FIFTH SECTION

CASE OF SIVUKHIN v. RUSSIA

(Application no. 31049/05)

JUDGMENT

STRASBOURG

7 May 2009

FINAL

07/08/2009

This judgment may be subject to editorial revision.

In the case of Sivukhin v. Russia,

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

Rait Maruste, *President*,
Karel Jungwiert,
Anatoly Kovler,
Renate Jaeger,
Mark Villiger,
Isabelle Berro-Lefèvre,
Zdravka Kalaydjieva, *judges*,

and Claudia Westerdiek, *Section Registrar*,

Having deliberated in private on 14 April 2009,

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

PROCEDURE

1. The case originated in an application (no. 31049/05) 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, Mr Sergey Semenovitch Sivukhin (“the applicant”), on 27 July 2005.

2. The applicant was represented before the Court by Ms T. Chernyak, a lawyer practising in Krasnodar. The Russian Government (“the Government”) were represented by Ms V. Milinchuk and subsequently by Mr G. Matyushkin, Representatives of the Russian Federation at the European Court of Human Rights.

3. The applicant alleged, in particular, that his right to a fair trial had been violated since the appeal court had heard his case in his absence.

4. On 5 March 2008 the President of the Fifth 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

5. The applicant was born in 1946 and lives in Krasnodar.

6. In 1986 the applicant took part in the cleaning-up operation at the Chernobyl nuclear disaster site. He was subsequently granted Category 2

disability status and became entitled to various social benefits, including a 50% discount on housing charges.

7. In March 2004 the municipal housing maintenance authority lodged a claim against the applicant, seeking to recover unpaid housing charges.

8. On 31 March 2004 the applicant counterclaimed, seeking compensation in respect of non-pecuniary damage. He insisted that he had paid the housing charges on time and in full. The amount of the charges paid had been calculated to include the 50% discount to which he and his family were entitled.

9. On 26 July 2004 the Justice of the Peace of the 47th Court Circuit of the Prikubanskiy District of Krasnodar partly found against the applicant and ordered him to pay outstanding housing charges. It rejected the applicant's counterclaim, finding that by law only he, but not his family members, was entitled to the discount.

10. The applicant appealed against the judgment. He challenged the first-instance court's assessment of the facts and application of the legal provisions.

11. On 1 October 2004 the applicant's representative requested the Prikubanskiy District Court of Krasnodar to bring the Social Protection Department into the proceedings as a third party. The court granted this request and suspended the proceedings.

12. The appeal hearings were subsequently scheduled for 24 December 2004 and 21 January 2005 but did not take place due to the presiding judge's illness.

13. On 2 February 2005 the Prikubanskiy District Court of Krasnodar upheld the judgment. The applicant received the summons on 3 February 2005 and therefore neither he nor his representative could attend the hearing. The judgment (*определение*) contained a notice to the effect that no appeal lay against it.

14. On 9 February 2005 the applicant requested the court to resume the appeal proceedings since he had been summoned to the appeal hearing on 2 February 2005 belatedly.

15. On 6 April 2005 the Prikubanskiy District Court of Krasnodar heard the parties and rejected the applicant's request. The court established that the summons had been sent to the applicant on 1 February 2005, and there had been no evidence showing that the summons had reached him before the hearing on 2 February. Nevertheless, according to civil procedural law, improper summoning is not a ground for a review of the case.

16. On 5 July 2005 the Krasnodarsk Regional Court rejected the applicant's request for supervisory review proceedings.

II. RELEVANT DOMESTIC LAW AND PRACTICE

17. Under Article 113 of the Code of Civil Procedure of 2002, in force at the material time, parties to the proceedings are to be summoned to a hearing by a letter sent by registered mail with an acknowledgment of receipt, by court summons with an acknowledgment of receipt, by telegram, by phone or fax or by any other means which can guarantee a record of the fact that the summons was sent and was received by the party. Summons shall be served on the parties and their representatives in such a way that they have enough time to appear at the hearing and prepare their case.

18. According to Article 327 §§ 2 and 3 of the Code of Civil Procedure, an appeal court examines a case following rules of procedure in a first-instance court; it can establish new facts and examine new evidence.

19. Article 2.13 of the Instruction on the judicial workflow in district courts, approved by Order no. 36 of the Judicial Department of the Supreme Court on 29 April 2003, provides that, summons and copies of procedural documents shall be sent by registered mail with an acknowledgement of receipt form

THE LAW

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

20. The applicant complained that he had not been afforded the opportunity to attend the appeal hearing in his 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

21. 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

22. The Government claimed that the applicant had been notified of the appeal hearing of 2 February 2005 in good time. The summons was sent to him on 1 February 2005 and one day was sufficient to be prepared for the hearing. In any event, the applicant's presence was not necessary as the appeal court could decide on the basis of the case file and his written submissions. Furthermore, the applicant was in fact heard by the appeal court on 6 April 2005.

23. The applicant averred that the Prikubanskiy District Court of Krasnodar had failed in its duty to inform him of the appeal hearing, that he had received the letter of 1 February 2005 only on 3 February 2005, a day after the hearing, and that the Government had not provided any evidence to the contrary.

24. The parties did not dispute, and the Court has no reason to doubt, that the letter of 1 February 2005 was, in fact, dispatched. However, the Government did not present any evidence, such as an acknowledgment of receipt card or an envelope bearing postmarks, showing that it had reached the applicant in good time and disproving the applicant's allegation that he had received the summons only on 3 February 2005. No such evidence had been found in the course of domestic review of this issue either (see paragraph 15 above). The Court also does not lose sight of the fact that the summons to the hearing of 2 February 2005 were sent to the applicant only one day in advance. In its view this is insufficient time for the letter to pass through the mail service and reach the applicant in such a way as to provide him with an opportunity to attend the hearing and prepare his case.

25. 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; and *Subbotkin v. Russia*, no. 837/03, § 18 et seq., 12 June 2008).

26. 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. With respect to the Government's submission that the applicant was heard by the appeal court on 6 April 2005, the Court notes that in these proceedings the appeal court merely examined the question whether the belated summons of the applicant could be a sufficient ground to reopen the appeal hearing, and did not decide on the merits of his appeal. The Court has thus established that owing to improper notification the applicant was deprived of an opportunity to attend the appeal hearing in his case.

27. 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

28. The applicant complained under Articles 6 § 1 and 13 of the Convention that the proceedings in his case had been excessively long and unfair. He also relied on Article 1 of Protocol No.1 to the Convention in this respect.

29. 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

30. 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

31. The applicant claimed 100,000 euros (EUR) in respect of pecuniary and non-pecuniary damage.

32. The Government contested his claim as excessive and unreasonable. They considered that a finding of a violation would be adequate just satisfaction in the applicant's case.

33. The Court does not discern any causal link between the violation found and the pecuniary damage alleged. On the other hand, 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 him 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.

34. The Court further points out that the most appropriate form of redress in cases where it finds that a trial was held in breach of Article 6 § 1 of the Convention would, as a rule, be to reopen the proceedings in due course; however, as the applicant has not implicitly requested that, the Court will not make any ruling in this respect.

B. Costs and expenses

35. The applicant did not claim costs and expenses. Accordingly, there is no call to make an award under this head.

C. Default interest

36. 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, 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 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 7 May 2009, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Claudia Westerdiek
Registrar

Rait Maruste
President