



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

1959 · 50 · 2009

FIRST SECTION

CASE OF ZAYTSEVA v. RUSSIA

(Application no. 11583/05)

JUDGMENT

STRASBOURG

26 November 2009

FINAL

26/02/2010

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 Zaytseva 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 Hajiyev,

Dean Spielmann,

Sverre Erik Jebens, *judges*,

and Søren Nielsen, *Section Registrar*,

Having deliberated in private on 5 November 2009,

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

PROCEDURE

1. The case originated in an application (no. 11583/05) 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 Zoya Mikhaylovna Zaytseva (“the applicant”), on 8 February 2005.

2. The applicant was represented by Mr I. Telyatyev, a lawyer practising in Arkhangelsk. The Russian Government (“the Government”) were initially represented by Ms V. Milinchuk, former Representative of the Russian Federation at the European Court of Human Rights, and subsequently by Mr A. Savenkov, First Deputy Minister of Justice of the Russian Federation.

3. The applicant alleged, in particular, that she had not been apprised of the appeal hearing before the Arkhangelsk Regional Court and the appeal was considered in her absence.

4. On 30 November 2007 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

5. The applicant was born in 1939 and lives in Arkhangelsk.

6. In 1975 the applicant was injured in a work-related accident. In 2004 she sued the Arkhangelsk Regional Health Department for disability benefits alleging that her current disability had resulted from that incident.

7. On 15 December 2004 the Oktyabrskiy District Court of Arkhangelsk rejected the applicant's claims. The District Court examined, among other evidence, a decision by the Medical and Labour Expert Examination Service of the Arkhangelsk Region, which indicated that the applicant's disability had been caused by the injury she sustained in 1975.

8. The applicant lodged an appeal with the Arkhangelsk Regional Court. The appeal hearing was scheduled for 17 January 2005. According to the Government, the District Court dispatched summonses to the parties, including the applicant and her representative, informing them of the date and time of the appeal hearing. According to the applicant, she did not receive the summons.

9. On 17 January 2005 the Arkhangelsk Regional Court examined the appeal and rejected it. The applicant and the representative of the Health Department were absent but the prosecutor intervened in the proceedings on behalf of the Health Department and addressed the court. The Regional Court did not examine the question whether the applicant or her representative had been duly summonsed and, if they had not, whether the examination of the appeal should have been adjourned.

II. RELEVANT DOMESTIC LAW

10. The Code of Civil Procedure (in force as of 1 February 2003) provides that parties to the proceedings are to be summonsed to a court by registered mail with a confirmation of receipt, by a phone call or a telegram, by fax or by any other means which will secure delivery of the summons to the addressee. Summonses must be served on the parties in such a way that they have enough time to prepare their case and appear at the hearing (Article 113).

11. Summonses are to be sent by mail or by a court courier. The time when a summons is served on the addressee is to be recorded on a document which must be returned to the court by courier or by any other method used by the postal service. A judge may request a party to the proceedings to transmit a summons to another party. In that case, that person should bring to the court an acknowledgment of receipt (Article 115).

12. A summons is to be served on a person against his or her signature, on its copy, which is to be returned to the court (Article 116).

13. A civil case is to be heard in a court session with mandatory notification of all parties of the place and time of the court session (Article 155).

14. If a party to the case fails to appear at the hearing and there is no evidence that the party has been duly summonsed, the hearing is to be adjourned (Article 167).

THE LAW

I. ALLEGED VIOLATION OF ARTICLE 6 OF THE CONVENTION

15. The applicant complained that she had not been afforded an opportunity to attend the appeal hearing in breach of Article 6 § 1 of the Convention, which reads, in so far as relevant, as follows:

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

A. Admissibility

16. The Government argued that the applicant had failed to exhaust the domestic remedies available to her. She did not apply for a supervisory review of the judgment of 17 January 2005 rendered in her absence.

17. In this connection, the Court reiterates that an application for supervisory review is not a remedy to be used for the purposes of Article 35 § 1 of the Convention (see *Denisov v. Russia* (dec.), no. 33408/03, 6 May 2004). Therefore, the Government's objection as to the non-exhaustion of domestic remedies must be dismissed.

18. 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

19. The Government claimed that the applicant, like all the parties to the proceedings, had been duly notified of the date and time of the appeal hearing. In support of their submissions, they provided the Court with a copy of the summons dated 29 December 2004 and addressed, *inter alia*, to the applicant and her representative. The Government further reasoned that the failure of the applicant and her representative to appear in court had not precluded consideration of the matter by the appeal court. The applicant's case had not been complex and the appeal court had duly considered the case on the basis of the materials in the case file and the applicant's written

submissions. The Government concluded, accordingly, that the fact that the appeal hearing in the instant case had been held in the absence of the applicant and her representative, who had been duly notified of its date and time, did not disclose a violation of Article 6 § 1 of the Convention.

20. The applicant maintained her claims.

21. The Court accepts the Government's assertion that the summons had been dispatched by the domestic judicial authorities. However, the Government did not present any evidence, such as an acknowledgement of receipt or an envelope with a postmark, showing that it had reached the applicant or her representative, and that it had done so in good time. Having regard to the provisions of Russian law on the service of court summons (see "Relevant domestic law" above), the Court considers that the Government should have been in possession of such evidence. The failure on the Government's part to submit it without a satisfactory explanation gives rise to the drawing of inferences as to the ill-foundedness of their allegations. In such circumstances, the Court accepts the applicant's argument that the domestic authorities had failed to notify the applicant of the appeal hearing in such a way as to provide her with an opportunity to attend it and present her case effectively.

22. The Court reiterates that it has frequently found a violation of Article 6 § 1 of the Convention in cases raising issues similar to the one in the present case (see, among other authorities, *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; and *Prokopenko v. Russia*, no. 8630/03, §§ 17 et seq., 3 May 2007)

23. Having examined the materials in its possession, 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 missing notification the applicant was deprived of the opportunity to attend the appeal hearing. The Court also notes that there is nothing in the text of the appeal judgment to suggest that the Regional Court examined the question whether the applicant or her representative had been duly summonsed and, if they had not, whether the examination of the appeal should have been adjourned.

24. It follows that there has been 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

25. Lastly, the applicant complained under Article 1 of Protocol No. 1 of a violation of her right to disability benefits. She further complained under Articles 6 and 14 of the Convention that she had been placed at a disadvantage, because she had been obliged to obtain a decision by the

Medical and Labour Expert Examination Service of the Arkhangelsk Region in order to prove her entitlement to disability benefits, while the Health Department had not been obliged to reverse this decision in order to dispute her entitlement.

26. Having regard to all the material in its possession, and in so far as these complaints fall within its competence *ratione materiae*, 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

III. APPLICATION OF ARTICLE 41 OF THE CONVENTION

27. 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

28. The applicant claimed 7,700 euros (EUR) in respect of pecuniary damage, which represented a monetary compensation for her disability allegedly resulting from a job-related injury, and EUR 10,000 in respect of non-pecuniary damage.

29. The Government considered the applicant's claims excessive and unreasonable. They further submitted that the applicant had failed to substantiate her claims and that there was no causal link between the damage claimed and the subject matter of the case. Lastly, they opined that the finding of a violation would constitute sufficient just satisfaction.

30. The Court does not discern any causal link between the violation found and the pecuniary damage alleged; it therefore rejects this claim. On the other hand, the Court considers that the applicant suffered non-pecuniary damage which would not be adequately compensated by the finding of a violation alone. However, the amount claimed by the applicant appears to be excessive. Making its assessment on an equitable basis, the Court awards the applicant EUR 1,000 in respect of non-pecuniary damage, plus any tax that may be chargeable on that amount.

B. Costs and expenses

31. The applicant also claimed EUR 800 for costs and expenses incurred before the Court. She provided the Court with a statement from her

representative confirming that a payment of 30,000 Russian roubles had been made by the applicant to him.

32. The Government considered her claims unsubstantiated.

33. 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 are reasonable as to quantum. In the present case, regard being had to the information in its possession and the above criteria, the Court considers it reasonable to award the sum of EUR 800 for the costs and expenses incurred by the applicant in the proceedings before the Court.

C. Default interest

34. 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 admissible and the remainder of the application inadmissible;
2. *Holds* that there has been a violation of Article 6 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;
 - (ii) EUR 800 (eight hundred 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 26 November 2009, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Søren Nielsen
Registrar

Christos Rozakis
President