



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

FIRST SECTION

CASE OF SERGEY SMIRNOV v. RUSSIA

(Application no. 14085/04)

JUDGMENT

STRASBOURG

22 December 2009

FINAL

22/03/2010

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 Sergey Smirnov v. Russia,

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

Nina Vajić, *President*,
Anatoly Kovler,
Elisabeth Steiner,
Khanlar Hajiyeu,
Dean Spielmann,
Sverre Erik Jebens,
Giorgio Malinverni, *judges*,

and Søren Nielsen, *Section Registrar*,

Having deliberated in private on 3 December 2009,

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

PROCEDURE

1. The case originated in an application (no. 14085/04) 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 Yuryevich Smirnov (“the applicant”), on 26 February 2003.

2. The applicant was represented by Mr D. Gorelishvili, a lawyer practising in Moscow. The Russian Government (“the Government”) were represented by Mr P. Laptev, Representative of the Russian Federation at the European Court of Human Rights.

3. The applicant complained of a violation of his right of access to a court.

4. By a decision of 6 July 2006 the Court declared the application partly admissible.

THE FACTS

I. THE CIRCUMSTANCES OF THE CASE

5. The applicant was born in 1959 and lives in Moscow. He has no fixed place of residence or residence registration.

A. Proceedings against a hire agency

6. On 24 May 2002 the applicant asked to hire cutlery and a folding bed from the “Morion” hire agency. Having studied his passport, the manager replied that the company could not hire out anything to him because he had no residence registration¹.

7. On 12 August 2002 the applicant lodged a civil action against the “Morion” company, alleging unlawful denial of services. The statement of claim indicated that the applicant had no fixed place of residence and provided an address in Moscow for correspondence.

8. On 9 October 2002 the Khoroshevskiy District Court stayed the applicant's claim because his place of residence had not been specified. He was invited to specify it by 11 November 2002, failing which his action would be declared inadmissible.

9. The applicant appealed against the decision of 9 October 2002, alleging an unlawful restriction on his right of access to a court guaranteed by Article 46 of the Russian Constitution on account of his inability to show that he had permanent residence at a specific place.

10. On 20 December 2002 the Moscow City Court upheld the decision.

B. Proceedings against a telecommunications provider

11. On 5 April 2003 the applicant unsuccessfully attempted to subscribe to the services of the MTS telecommunications company. He was refused because he had no residence registration.

12. On 22 August 2003 he sued the MTS company and the cell phone vendor for subscription to a contract and compensation for non-pecuniary damage. He indicated the city of Moscow as his place of residence and provided a *poste restante* address for correspondence.

13. On 8 September 2002 the Taganskiy District Court of Moscow stayed the applicant's claim due to his omission to indicate his address. He was instructed to rectify the omission within ten days, failing which his claim would be declared inadmissible.

14. The applicant received a copy of the decision by mail at the address indicated in his statement of claim.

15. The applicant appealed, submitting that he had indicated his address in the statement of claim.

16. On 18 November 2003 the Moscow City Court upheld the decision of 8 September 2003.

1. In Russia a stamp indicating a person's residence registration is placed in his or her passport

II. RELEVANT DOMESTIC LAW

17. The RSFSR Code of Civil Procedure (“the old CCP”, in force until 1 February 2003) provided that a civil claim was to be filed with the court with territorial jurisdiction over the defendant's place of residence (Article 117).

18. The statement of claim was to specify, in particular, the plaintiff's name and place of residence. If such information was missing, the judge had to stay the proceedings and set a time-limit by which the plaintiff would remedy the defects. If the missing information was not supplied, the claim should be declared inadmissible (Articles 126 and 130).

19. The Code of Civil Procedure of the Russian Federation of 14 November 2002 (“the new CCP”, in force from 1 February 2003) contains identical provisions in Articles 28, 131 § 2 and 136.

20. The Civil Code defines a place of residence as a place where a person permanently or predominantly lives (Article 20 § 1).

21. On 17 July 1995 the Russian Government approved the Regulations for registration of temporary and permanent residence of Russian citizens (no. 713). Section 3 of the Regulations defines a place of residence as a place where a person permanently or predominantly lives as an owner or under the terms of a tenancy contract or on other statutory grounds. Section 16 imposes a duty to seek residence registration within seven days of a change of place of residence. Moreover, section 9 imposes a duty to obtain registration at any address where a person intends to stay temporarily for longer than ten days. The person is required to file an application for registration and to submit an identity document, an application form and a document showing the legal basis for residence at the indicated address.

THE LAW

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

22. The applicant complained under Article 6 § 1 of the Convention that he had had no access to a court for the determination of his civil claims. The relevant parts of Article 6 § 1 read as follows:

Article 6 § 1

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

23. The applicant submitted that the very essence of his right of access to a court had been impaired by the domestic courts' refusals to examine the

merits of his claims on the ground that he had omitted to indicate his place of residence. His statements of claim had mentioned an address for correspondence which, in the applicant's view, sufficed to enable the courts to keep contact with him. He had in fact received correspondence from courts at that address. The requirement to indicate his registered place of residence had no basis in domestic law and, taking into account his particular situation as a person with no fixed residence, it had had a prohibitive effect, depriving him of the right of access to a court.

24. The Government did not make submissions on the merits of the application.

25. The Court reiterates that Article 6 § 1 secures to everyone the right to have any claim relating to his civil rights and obligations brought before a court or tribunal. In this way, that provision embodies the “right to a court”, of which the right of access, that is, the right to institute proceedings before a court in civil matters, constitutes one aspect only; however, it is an aspect that makes it in fact possible to benefit from the further guarantees laid down in paragraph 1 of Article 6 (see *Teltronic-CATV v. Poland*, no. 48140/99, § 45, 10 January 2006).

26. The “right to a court” is not absolute, but may be subject to limitations. The Court has ruled that, guaranteeing to litigants an effective right of access to courts for the determination of their “civil rights and obligations”, Article 6 § 1 leaves to the State a free choice of the means to be used towards this end but, while the Contracting States enjoy a certain margin of appreciation in that respect, the final decision as to the observance of the Convention's requirements rests with the Court (see *Jedamski and Jedamska v. Poland*, no. 73547/01, § 58, 26 July 2005).

27. The Court must be satisfied that the limitations applied do not restrict or reduce the access afforded to the individual in such a way or to such an extent that the very essence of that right is impaired. Furthermore, the Court underlines that a limitation will not be compatible with Article 6 § 1 unless it pursues a legitimate aim and there is a reasonable relationship of proportionality between the means employed and the legitimate aim sought to be achieved (see *Tinnelly & Sons Ltd and Others and McElduff and Others v. the United Kingdom*, judgment of 10 July 1998, *Reports of Judgments and Decisions* 1998-IV, p. 1660, § 72; and *Kreuz v. Poland*, judgment of 19 June 2001, no. 28249/95, §§ 54 and 55, ECHR 2001-VI).

28. The Court further reiterates that it is not its 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 *Société Anonyme Sotiris and Nikos Koutras Attee v. Greece*, no. 39442/98, § 17, ECHR 2000-XII).

29. The requirement to indicate the plaintiff's place of residence is not in itself incompatible with Article 6 § 1. It pursues a legitimate aim of proper administration of justice, as it enables the courts to contact the plaintiff and serve summonses and decisions on him. The Court will however review the circumstances and manner in which that requirement was actually applied to the applicant to determine whether its effects in the particular circumstances of the case have been consonant with the Convention.

30. The Court observes that the applicant did not have a fixed or registered place of residence and was therefore unable to comply with the court's requirement. He brought his inability to indicate his place of residence to the attention of the domestic courts and indicated an address for correspondence instead. However, the domestic courts refused to entertain his claims.

31. No justification was provided by the domestic courts or the Government for such an inflexible application of this procedural rule. Indeed, the domestic courts did not need to know the applicant's place of residence to determine whether they had territorial jurisdiction to entertain his claims as the claims were filed with the court with jurisdiction over the defendant's place of residence, as required by domestic law (see paragraph 17 above). Nor was the place of residence the only valid contact address; an address for correspondence indicated by the applicant was obviously sufficient to enable the courts to keep contact with him. The Court therefore considers that the Russian courts demonstrated excessive and unjustified formalism by insisting that the applicant indicate his place of residence, a requirement that was known to be impossible in the applicant's situation.

32. In holding that the applicant could not take legal proceedings unless he indicated his place of residence the domestic courts did not only penalise his failure to comply with a formal requirement. They also imposed a real restriction on the applicant, preventing him from having his civil claims determined by the courts. What is at stake in the present case is therefore not merely a problem of interpretation of a legal provision in the usual way but of an unreasonable construction of a procedural requirement which prevented the applicant's claims being examined on the merits and thereby interfered with the very essence of his right of access to a court (cf. *Miragall Escolano and Others v. Spain*, nos. 38366/97, 38688/97, 40777/98, 40843/98, 41015/98, 41400/98, 41446/98, 41484/98, 41487/98 and 41509/98, §§ 36 and 37, ECHR 2000-I; and *Canea Catholic Church v. Greece*, 16 December 1997, § 41, *Reports* 1997-VIII). Such rigid application of a procedural rule, without considering particular circumstances, cannot be said to be compatible with Article 6 § 1.

33. Accordingly, there was a violation of Article 6 § 1 of the Convention.

II. APPLICATION OF ARTICLE 41 OF THE CONVENTION

34. 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

35. The applicant claimed 118,965 euros (EUR) in respect of pecuniary damage. The amount represents the cost of a flat, plus the monetary value of a privatisation voucher, plus the approximate value of social benefits he would have received if he had had residence registration. He also claimed EUR 20,000,000 in respect of non-pecuniary damage.

36. The Government submitted that the claim for pecuniary damage is not related to the complaint declared admissible, while the claim for non-pecuniary damage is excessive.

37. The Court does not discern a causal link between the violation found and the claim for pecuniary damage.

38. The Court further considers that the applicant must have suffered distress and frustration resulting from the refusal of domestic courts to entertain his claims. In these circumstances, the Court considers that the applicant's suffering and frustration cannot be compensated for by a mere finding of a violation. The particular amount claimed is however excessive. Making its assessment on an equitable basis, the Court awards the applicant EUR 2,000 for non-pecuniary damage, plus any tax that may be chargeable on the above amount.

B. Costs and expenses

39. The applicant claimed EUR 20,700 for his representation. His representative had spent 470 hours on the preparation of the observations and just satisfaction claims, and on the preparation of another related application on the applicant's behalf. The applicant and his representative had agreed that the representative's work would be remunerated at the rate of EUR 44 per hour.

40. The Government submitted that the applicant's claim was not supported by any documents. The applicant had not produced the legal fee agreement or documents showing that he had indeed paid the legal fee.

41. According to the Court's case-law, an applicant is entitled to reimbursement of his 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. Moreover, under Rule 60 of the Rules of the Court, any claim

for just satisfaction must be itemised and submitted in writing together with the relevant supporting documents or vouchers, “failing which the Chamber may reject the claim in whole or in part”. The applicant failed to produce the legal fee agreement to which he referred. Nor did he submit any other documents supporting his claims for legal costs and expenses. The Court therefore rejects the applicant's claim in full.

C. Default interest

42. 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. *Holds* that there has been a violation of Article 6 § 1 of the Convention;
2. *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 2,000 (two 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 amount at a rate equal to the marginal lending rate of the European Central Bank during the default period plus three percentage points;
3. *Dismisses* the remainder of the applicant's claim for just satisfaction.

Done in English, and notified in writing on 22 December 2009, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Søren Nielsen
Registrar

Nina Vajić
President