



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

FIRST SECTION

Application no. 38092/05
Oleg Vladimirovich FEDCHENKO
against Russia
lodged on 1 August 2005

STATEMENT OF FACTS

THE FACTS

The applicant, Mr Oleg Vladimirovich Fedchenko, is a Russian national who was born in 1970 and lives in the settlement of Druzhniy, Kstovskiy District of Nizhniy Novgorod Region.

The facts of the case, as submitted by the applicant, may be summarised as follows.

In 2001 the applicant was convicted of drug dealing and sentenced to ten years' imprisonment.

In 2004 the applicant's wife Mrs F. lodged an application for divorce with the Justice of the Peace of the Fifth Court Circuit of the Kstovskiy District of the Nizhniy Novgorod Region.

On 13 September 2004 the Justice of the Peace established that the applicant was serving his sentence outside of the Nizhniy Novgorod Region in penitentiary establishment ЖХ-385/5 in the settlement of Lepley, Republic of Mordoviya, and issued a mandate to the head of the penitentiary establishment to question the applicant with a view to obtaining his observations on the merits of the claim. The question whether the applicant would agree that the case be examined in his absence was also to be put to him.

On 15 September 2004 the Justice of the Peace ordered that the case be examined on 1 October 2004 and that the claimant and the respondent be summoned to the hearing.

On 1 October 2004 the Justice of the Peace held a hearing in the claimant's presence. The applicant was not present. The judge noted that the mandate to the head of the penitentiary establishment had not been executed and that there was no information whether the applicant had been informed

of the hearing. He adjourned the hearing to 18 October 2004 and ordered that the parties be summoned.

On 18 October 2004 the Justice of the Peace held a hearing in the claimant's presence. According to the court records, the applicant, who was not present "for unknown reasons", had been apprised of the hearing in due time. He had not submitted any observations. The Justice of the Peace decided that the case be examined in the applicant's absence and after hearing the claimant delivered a default judgment. It noted that the marriage between the claimant and the applicant had been registered in 1999 and that the couple had a daughter born in 1997. It held, with a reference to Article 22 § 1 of the Family Code, that the marriage had actually been broken and that it was impossible to save the family. It ordered the dissolution of the marriage.

On 20 October 2004 the administration of penitentiary establishment *ЖХ-385/5* questioned the applicant, who received a copy of the suit on the previous day, by way of execution of the mandate of the Justice of the Peace. The applicant disagreed with the claim and asked for leave to appear before the court in person. On 29 October 2004 the administration of the penitentiary establishment sent his observations and request to the Justice of the Peace.

After receiving a copy of the judgment of 18 October 2004 the applicant appealed against it requesting that the judgment be set aside and a fresh examination of the case be ordered, that his representative Mr O. be summoned to the hearing and asked for leave to appear in person before the appeal court. The appeal was rejected as time-barred and the applicant asked for restoration of the relevant time-limit on the ground that he had received the judgment with a delay.

On 27 June 2005 the Kstov Town Court of the Nizhniy Novgorod Region examined the case on appeal. The claimant and the applicant or his representative were not present. The Town Court noted that Article 19 § 2 of the Family Code provided for administrative dissolution of marriage by the local register office if one's spouse was sentenced to more than three years' imprisonment for committing a crime regardless of the latter's consent and without his or her participation. It dismissed the applicant's appeal and, in particular, his complaint about the examination of the case by the first-instance court in his absence. It upheld the judgment of the Justice of the Peace.

COMPLAINTS

The applicant complains under Article 6 § 1 of the Convention that the Justice of the Peace examined the case in his absence. He also complains that he was deprived of a right to appeal against the judgment.

QUESTIONS TO THE PARTIES

1. Did the applicant have a fair hearing in the determination of his civil rights and obligations, in accordance with Article 6 § 1 of the Convention? In particular, were the principles of equality of arms and adversarial proceedings, as well as the right to be present at the hearing, respected as regards the examination of the case by the Justice of the Peace without the applicant's participation?

2. According to the court records of the hearing before the Justice of the Peace on 18 October 2004 and the judgment of that date, the applicant was apprised of the hearing in due time. On the basis of what documents such a conclusion was made? When was the judgment of 18 October 2004 served on the applicant? Did the Kstov Town Court of the Nizhniy Novgorod Region rule on the applicant's requests for leave to appear in person before the appeal court and for summoning his representative Mr O. to the appeal hearing? The Government are requested to submit the relevant documents in answering the above questions.