CONSEIL DE L'EUROPE

COUNCIL OF EUROPE

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

FIRST SECTION

DECISION

AS TO THE ADMISSIBILITY OF

Application no. 14810/02
by Ryakib Ismailovich BIRYUKOV
against Russia

The European Court of Human Rights (First Section), sitting on 24 November 2005 as a Chamber composed of:

Mr C.L. ROZAKIS, *President*,
Mrs S. BOTOUCHAROVA,
Mr A. KOVLER,
Mrs E. STEINER,
Mr K. HAJIYEV,
Mr D. SPIELMANN,
Mr S.E. JEBENS, *judges*,
and Mr S. NIELSEN, *Section Registrar*,

Having regard to the above application lodged on 3 January 2002,

Having regard to the observations submitted by the respondent Government and the observations in reply submitted by the applicant,

Having deliberated, decides as follows:

THE FACTS

The applicant, Mr Ryakib Ismailovich Biryukov, is a Russian national who was born in 1977 and lives in Togliatti. He is represented before the Court by Mr A. V. Chebotarenko, a lawyer practising in Togliatti. The respondent Government are represented by Mr P.A. Laptev, Representative of the Russian Federation at the European Court of Human Rights.

A. The circumstances of the case

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

In May 1999 the applicant was injured in a road accident. Immediately after the accident he was brought to the Nikolaevsky District Hospital where he was given first medical aid. Later, his arm was amputated. In October 1999 the applicant brought proceedings for damages against the hospital before the Nikolaevskiy District Court of the Ulyanovsk Region. He claimed that the medical staff of the hospital had failed to provide him with appropriate medical care and that it had been their malpractice which had led to the loss of his arm. In June 2000 the district court obtained an expert opinion which found no indication of medical malpractice.

On 2 April 2001 the court examined the case in a public hearing where the applicant, his representative and the defendant were present. It established no malpractice on the part of the hospital staff and no causal link between the treatment and the amputation of the arm. At the close of the hearing the court read out the operative part of the judgment by which the case was dismissed.

A copy of the reasoned judgment was served on the applicant on 6 April 2001. The applicant appealed, *inter alia*, on the ground that the district court had not read out at the hearing the full text of the judgment in breach of the Code of Civil Procedure. On 3 July 2001 the Ulyanovsk Regional Court, having heard the parties, dismissed the appeal and upheld the judgment. It noted that by announcing the operative provisions of the judgment at the hearing and providing the applicant with a copy of the reasoned judgment within the established time-limit the district court had fully complied with the Code of Civil Procedure, notably Article 203. The regional court read out operative provisions of its decision at the hearing. A copy of the reasoned decision was later served on the applicant.

B. Relevant domestic law and practice

1. Public pronouncement of judgments

Article 9 of the Code of Civil Procedure of 1964 in force at the material time provided:

> "...Judgments shall always be pronounced publicly."

Article 203 of the Code of Civil Procedure of 1964 read:

> "Judgment shall be delivered immediately after the examination of a case. In exceptional circumstances in most complex cases the preparation of a reasoned judgment may be postponed for not more than three days, providing that the operative part of the judgment is pronounced at the same hearing in which the examination of the case has ended. At the same time the court shall announce when participants to the

proceedings and representatives may become acquainted with the reasoned judgment. The announced operative part of the judgment shall be signed by all judges and included in the case file."

Under Article 10 § 8 of the new Code of Civil Procedure of 2002, judgments are announced publicly, save in cases involving rights and interests of minors. Articles 193 § 2 and 199 of the Code of 2002 contain provisions similar to those of Article 203 of the old Code of Civil Procedure except that the time limit for the preparation of a reasoned judgment is five days.

2. Access to a case file

By virtue of Articles 30 and 31 of the federal law on the Judicial System of the Russian Federation of 1996 and Articles 1 and 6 of the federal law on the Courts Administration Office at the Supreme Court of the Russian Federation of 1998, the Courts Administration Office at the Supreme Court provides administrative support for district and regional courts. In particular, it organizes their clerical work including archives. Thus, at the material time, the clerical work in a district court was governed by the Courts Administration Office's Instruction no. 8 of 29 January 1999.

Paragraph 181 of the Instruction provided for an exhaustive list of persons who could consult a case file in a court's building. It was limited to parties to proceedings, their representatives, other participants to proceedings, judges and officers of higher courts, public prosecutors and officers of the Courts Administration Office.

Paragraph 184 of the Instruction provided for an exhaustive list of persons who could be given, at the discretion of a president of a court or a judge, a copy of documents from a case file. It included parties to a civil case, an accused person, a convicted person, an acquitted person and a victim in criminal proceedings, and their representatives.

By a final decision of 3 April 2003 the Supreme Court of the Russian Federation refused to examine an appeal lodged by two individuals for declaring the Instruction void. It found that the Instruction, as an instrument which concerned human rights, freedoms and obligations, had not passed compulsory registration at the federal Ministry of Justice and official publication and, therefore, could not be considered an instrument issued by a federal authority which lawfulness would fall within the jurisdiction of the Supreme Court.

The Instruction of the Courts Administration Office no. 169 of 28 December 1999 (paragraphs 16.1 and 16.4) concerning regional courts and the new Instruction of the Courts Administration Office no. 36 of 29 April 2003 (paragraphs 12.1 and 12.4) concerning district courts, which is currently in force, contain provisions identical to those of paragraphs 181 and 184 of the above Instruction no. 8.

The new Instruction concerning district courts no. 36 and the Instruction concerning regional courts no. 169 were challenged in the Supreme Court by an individual N, a journalist, who argued that they violated the principles of open and public administration of justice in so far as they restricted public access to court decisions and other court documents in case files. In its decision of 2 November 2004 the Supreme Court found that the Instructions complied fully with the Code of Civil Procedure of 2002 and the Code of Criminal Procedure, which vested a right to consult a case file and receive a copy of court decisions and other documents in participants to proceedings only. It noted that journalists could have an access to court documents to the extent and in the order prescribed by relevant legislation. The applicant argued that the existing order did not ensure free access to court documents and that some court officers prevented journalists from exercising their right of access to information. The Court replied that in such instances the applicant was free to complain by way of an appeal to court. It dismissed the application. On 13 January 2005 N's appeal was dismissed and the decision was upheld by the Cassation Section of the Supreme Court.

COMPLAINTS

1. The applicant complains under Article 6 § 1 of the Convention about the outcome of the proceedings, alleging the domestic courts' failure properly to assess the evidence.

2. The applicant complains, furthermore, under the same provision, about the lack of public pronouncement of the reasoned judgment in his case.

THE LAW

The applicant complains under Article 6 § 1 that the domestic courts wrongly assessed the evidence of the case. Furthermore, as regards the court proceedings, he complains that there was no public pronouncement of the judgment in his case.

Article 6 § 1 of the Convention provides, as relevant:

> "In the determination of his civil rights and obligations ... everyone is entitled to a fair and public hearing ... . Judgment shall be pronounced publicly but the press and public may be excluded from all or part of the trial in the interests of morals, public order or national security in a democratic society, where the interests of juveniles or the protection of the private life of the parties so require, or to the extent strictly

necessary in the opinion of the court in special circumstances where publicity would prejudice the interests of justice."

With regard to the judicial decision of which the applicant complains, the Court recalls that, in accordance with Article 19 of the Convention, its only task is to ensure the observance of the obligations undertaken by the Parties in the Convention. In particular, it is not competent to deal with an application alleging that errors of law or fact have been committed by domestic courts, except where it considers that such errors might have involved a possible violation of any of the rights and freedoms set out in the Convention. The Court refers, on this point, to its established case-law (see e.g. *Schenk v. Switzerland*, judgment of 12 July 1988, Series A no. 140, p. 29, § 45 and *García Ruiz v. Spain* [GC], no. 30544/96, § 28-29, ECHR 1999-I).

It is true that the applicant also complains about the lack of public pronouncement of the judgment in his case. In this respect the Government submit that the operative part of the judgment of the Nikolaevskiy District Court of 2 April 2001 was pronounced publicly in a court hearing in the presence of the applicant. The compiling of a reasoned judgment could be postponed for three days by virtue of Article 203 of the Code of Civil Procedure, then in force. Article 199 of the new Code of Civil Procedure provides for five days during which a reasoned judgment should be prepared. A copy of the reasoned judgment was served on the applicant. The operative part of the decision of the Ulyanovsk Regional Court was pronounced in the applicant's presence and a copy of the reasoned decision was served on him later. Therefore the applicant's complaint is manifestly ill-founded and should be declared inadmissible.

The applicant maintains his complaint.

The Court considers, in the light of the parties' submissions, that this complaint raises serious issues of fact and law under the Convention, the determination of which requires an examination of the merits. The Court concludes therefore that this complaint is not manifestly ill-founded within the meaning of Article 35 § 3 of the Convention. No other ground for declaring it inadmissible has been established.

For these reasons, the Court unanimously

Declares admissible, without prejudging the merits, the applicant's complaint concerning public pronouncement of the judgment in his case;

Declares the remainder of the application inadmissible.

Søren NIELSEN
Registrar

Christos ROZAKIS
President