

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

FIRST SECTION

CASE OF CHERNICHKIN v. RUSSIA

(Application no. 39874/03)

JUDGMENT

STRASBOURG

16 September 2010

FINAL

21/02/2011

This judgment has become final under Article 44 § 2 (c) of the Convention. It may be subject to editorial revision.

In the case of Chernichkin v. Russia**,**

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

Christos Rozakis, *President,*
Anatoly Kovler,
Elisabeth Steiner,
Dean Spielmann,
Sverre Erik Jebens,
Giorgio Malinverni,
George Nicolaou, *judges,*
and Søren Nielsen, *Section Registrar,*

Having deliberated in private on 26 August 2010,

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

PROCEDURE

1. The case originated in an application (no. 39874/03) 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 Aleksandr Sergeyevich Chernichkin ("the applicant"), on 4 April 2002.

2. The Russian Government ("the Government") were represented by Mrs V. Milinchuk, former Representative of the Russian Federation at the European Court of Human Rights.

3. The applicant alleged that he had been denied access to a court.

4. On 3 September 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 § 1 of the Convention).

THE FACTS

I. THE CIRCUMSTANCES OF THE CASE

5. The applicant was born in 1941 and lives in Moscow.

A. Litigation with the Savings Bank

6. In 1995 the applicant deposited his money with the Savings Bank of Russia (*Sberbank*). Subsequently, the Savings Bank unilaterally reduced the interest rate on his deposit. The applicant sued the Savings Bank for the damages incurred through the unilateral modification of the interest rate.

7. On 10 March 1998 the Tverskoy District Court of Moscow dismissed the applicant's claim as unsubstantiated. On 26 May 1998 the Moscow City Court upheld that judgment.

8. On 10 June 1999 the Presidium of the Moscow City Court quashed the judgments of 10 March and 26 May 1998 by way of supervisory review and remitted the claim for fresh consideration. The Presidium's decision was set aside by the Supreme Court of the Russian Federation on 16 November 1999. However, on 9 December 1999 the City Court's Presidium re-examined the supervisory-review application, quashed the earlier judgments and ordered a new examination of the applicant's claim.

9. On 17 October 2000 the Tverskoy District Court granted a small portion of the applicant's claims to the amount of 386,63 Russian roubles and rejected the remainder. On 27 October 2000 the District Court adopted a supplementary judgment, by which it declared the deposit agreement, in relation to the right of the Savings Bank to change unilaterally the interest rate, invalid. On 16 February 2001 the Moscow City Court rejected an appeal by the applicant.

B. Action for compensation for the excessive length of proceedings

10. The applicant lodged a claim against the Ministry of Finance, seeking compensation for pecuniary and non-pecuniary damages incurred through the inappropriate administration of justice, and notably the excessive length of proceedings in respect of his claim against the Savings Bank.

11. On 23 July 2001 the Basmanniy District Court of Moscow dismissed the applicant's claim. Referring to the Constitutional Court's Ruling of 25 January 2001 (see paragraph 16 below), the District Court noted that Parliament had not yet adopted a law determining jurisdiction over claims concerning State liability for the damage caused by a court's or judge's failure to adjudicate a case within a reasonable time, and dismissed the claim in the following terms:

> "According to Article 1 of the RSFSR Code of Civil Procedure, the rules of civil procedure in federal courts of general jurisdiction are determined by the Russian Constitution, the Judicial System Act, the Code of Civil Procedure and other federal laws.
>
> The law has not determined the territorial and subject-matter jurisdiction over civil claims for compensation of damages incurred in civil proceedings in cases where a

dispute has not been heard on the merits as a consequence of unlawful acts (or failures to act) of a court (a judge), including the breach of a reasonable-time guarantee.

The court must dismiss the statement of claim if there are grounds listed in Article 129 (1) and (7) of the RSFSR Code of Civil Procedure, that is if the claim may not be examined in civil proceedings and if the court is not competent to examine the claim."

12. On 20 December 2001 the Moscow City Court upheld the decision to dismiss the applicant's claim, finding as follows:

"In dismissing the claim, the judge correctly stated that the law had not determined the territorial and subject-matter jurisdiction over civil claims for compensation of damages incurred in civil proceedings in cases where a dispute had not been heard on the merits as a consequence of unlawful acts (or failures to act) of a court (a judge), including the breach of a reasonable-time guarantee.

Under these circumstances, the [City Court] finds no grounds for quashing that decision. Since the judge reached the conclusion that the claim may not be examined in civil proceedings, the reference to Article 129 (7) of the RSFSR Code of Civil Procedure must be deleted [as being superfluous]".

13. On 5 May 2003 and 4 February 2004 the Moscow City Court and the Supreme Court of the Russian Federation, respectively, refused the applicant's requests for the institution of supervisory-review proceedings.

II. RELEVANT DOMESTIC LAW AND PRACTICE

14. Article 1064 of the Civil Code contains general provisions on liability for the infliction of damage. It establishes that damage inflicted on the person or property of an individual shall be reimbursed in full by the person who inflicted the damage (Article 1064 § 1).

15. Article 1070 of the Civil Code determines liability for the damage caused by unlawful actions of law-enforcement authorities or courts. In particular, it is established that the federal or regional treasury shall be liable for the damage sustained by an individual in the framework of the administration of justice provided that the judge's guilt has been established in a final criminal conviction (Article 1070 § 2).

16. By Ruling no. 1-P of 25 January 2001, the Constitutional Court found that Article 1070 § 2 of the Civil Code was compatible with the Constitution in so far as it provided for special conditions on State liability for the damage caused in the framework of administration of justice. It clarified, nevertheless, that the term "administration of justice" did not cover the judicial proceedings in their entirety, but only extended to judicial acts touching upon the merits of a case. Other judicial acts – mainly of a procedural nature – fell outside the scope of the notion "administration of justice". State liability for the damage caused by such procedural acts or failures to act, such as a breach of the reasonable length of court

proceedings, could arise even in the absence of a final criminal conviction of a judge if the fault of the judge has been established in civil proceedings. The Constitutional Court emphasised, moreover, that the constitutional right to compensation by the State for the damage should not be tied in with the personal fault of a judge. An individual should be able to obtain compensation for any damage incurred through a violation by a court of his or her right to a fair trial within the meaning of Article 6 of the Convention. The Constitutional Court held that Parliament should legislate on the grounds and procedure for compensation by the State for the damage caused by unlawful acts or failures to act of a court or a judge and determine territorial and subject-matter jurisdiction over such claims.

17. The RSFSR Code of Civil Procedure (in force at the material time) established that a civil claim should be dismissed, by a single judge, in particular, if it was not amenable to examination in civil proceedings (Article 129 (1)) or if the court was not competent to examine it (Article 129 (7)).

THE LAW

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

18. The applicant complained under Article 6 § 1 of the Convention that he had been denied access to a court because the Moscow courts had refused to examine his claim against the Ministry of Finance. Article 6 in the relevant part provides as follows:

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

A. Submissions by the parties

1. The Government

19. The Government submitted that the applicant had not exhausted the domestic remedies because he had not applied for supervisory review before lodging his application with the Court. Furthermore, he had not lodged a criminal complaint with the Prosecutor General's Office about an alleged breach of law committed by any of the judges who had examined his claim against the Savings Bank. Finally, the applicant had not asked any judicial authorities to establish a violation of his right to a hearing within a reasonable time.

20. In the Government's view, there was no violation of the applicant's right to a court. The domestic courts examined and dismissed the applicant's statement of claim because it contained defects and fell short of the requirements of substantive and procedural law. The Government maintained that the applicant had not attempted to correct those defects.

2. The applicant

21. The applicant pointed out that supervisory-review proceedings were not considered by the Court to be an effective remedy in the Russian legal system because of its discretionary nature. Similarly, a criminal complaint would not lead to the automatic institution of criminal proceedings, as the decision to institute them remained within the prosecutor's sole discretion. In any event, he did complain to the Prosecutor General's Office about the unlawful actions of the judges and prosecutors, but all of his complaints were rejected.

22. The applicant emphasised that the claim he had attempted to lodge against the Ministry of Finance had contained references to many procedural and substantive violations committed by the Tverskoy District and Moscow City Courts during the examination of his claim against the Savings Bank. The domestic courts may not have rejected his claim *de plano* for a lack of justification or insufficient evidence, as those were the issues to be determined in the judicial proceedings. The Basmanniy District Court's refusal to examine his claim had been in breach of the constitutional requirements and Article 6 of the Convention.

B. Admissibility

23. The Government pleaded non-exhaustion of domestic remedies. The Court reiterates firstly that supervisory review in civil proceedings under Russian law is not an effective remedy to be exhausted (see *Tumilovich v. Russia* (dec.), no. 47033/99, 22 June 1999, and *Denisov v. Russia* (dec.), no. 33408/03, 6 May 2004). Secondly, it observes that there was no allegation of criminally reprehensible conduct on the part of the judges who had examined the applicant's claim against the Savings Bank and that the institution of criminal proceedings was not a condition precedent for the examination of the applicant's claim for damages caused by the allegedly excessive length of civil proceedings. Finally, the Court notes that the existence and extent of any such damages were precisely the issues to be determined in the proceedings which the applicant had unsuccessfully sought to institute. It follows that the Government's objection is without merit on all three counts and that it must be dismissed.

24. 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.

C. Merits

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 *Sergey Smirnov v. Russia*, no. 14085/04, § 25, 22 December 2009, and *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 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 *Sergey Smirnov*, cited above, §§ 26-27; *Jedamski and Jedamska v. Poland*, no. 73547/01, § 58, 26 July 2005*;* and *Kreuz v. Poland*, 19 June 2001, no. 28249/95, §§ 54 and 55, ECHR 2001-VI).

27. Finally, 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).

28. In the instant case the applicant attempted to sue the Russian treasury for the damage caused by the allegedly excessive length of civil proceedings in his dispute with the Savings Bank. The possibility of lodging such claims was envisaged in Articles 1064 and 1070 of the Civil Code of the Russian Federation (see paragraphs 14 and 15 above). The Constitutional Court clarified that State liability for the damage caused by any violations of the litigant's right to a fair trial, including a breach of the reasonable-time guarantee, would arise even if the fault of the judge was established in civil – rather than criminal – proceedings and that the right to compensation by the State for the damage should not be tied in with the personal fault of a judge (see paragraph 16 above). It also held that an individual should be able to obtain compensation for any damage incurred through a violation of his or her right to a fair trial within the meaning of

Article 6 of the Convention. It follows that the applicant's claim concerned his civil rights of a pecuniary nature and should have been amenable to examination in civil proceedings.

29. The Moscow courts dismissed the applicant's claim on the grounds that the legislature had not yet determined jurisdiction over such claims. This limitation on the right to a court excluded any possibility of having such a claim examined and, accordingly, undermined the essence of the applicant's right of access to a court. The Government did not offer any justification for the continued failure to adopt legislation governing the procedure for examination of such claims.

30. Accordingly, the Court finds that the applicant was denied the right of access to a court and that there has been a violation of Article 6 § 1 of the Convention in that regard.

II. APPLICATION OF ARTICLE 41 OF THE CONVENTION

31. 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

32. The applicant claimed 17,143 euros (EUR) as compensation in respect of non-pecuniary damage.

33. The Government considered that the applicant's claim in respect of non-pecuniary damage was excessive and unreasonable and also not supported by any evidence of harm or suffering.

34. The Court considers that the applicant must have suffered distress and frustration as a result of the refusal of the 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 7,200 for non-pecuniary damage, plus any tax that may be chargeable on the above amount.

B. Costs and expenses

35. The applicant claimed 10,767 euros (EUR) for 1,786 hours of his own work in the domestic proceedings at the rate of EUR 6.03 an hour and a

further EUR 1,055 for 175 hours' work on self-representation in the Strasbourg proceedings.

36. The Government stated that the applicant's method of calculation of his own work had not been "based on any legislation" and had been therefore "erroneous". The amount claimed was unreasonable in respect of the complexity of the case. In the Government's opinion, the award should not exceed EUR 100.

37. 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 were reasonable as to quantum. In the present case, regard being had to the documents in its possession and the above criteria, the Court considers it reasonable to award the sum of EUR 1,000 covering costs under all heads.

C. Default interest

38. 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 application admissible;

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, the following amounts, to be converted into Russian roubles at the rate applicable at the date of settlement:
      (i) EUR 7,200 (seven thousand two hundred euros), plus any tax that may be chargeable, in respect of non-pecuniary damage;
      (ii) EUR 1,000 (one thousand euros), plus any tax that may be chargeable, in respect of costs and expenses;
   (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 16 September 2010, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Søren Nielsen Registrar	Christos Rozakis President