

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

THIRD SECTION

CASE OF PLESHCHINSKIY v. RUSSIA

(Application no. 37/06)

JUDGMENT

STRASBOURG

19 December 2017

This judgment is final but it may be subject to editorial revision.

COUNCIL OF EUROPE
CONSEIL DE L'EUROPE

In the case of Pleshchinskiy v. Russia,

The European Court of Human Rights (Third Section), sitting as a Committee composed of:

Luis López Guerra, *President,*
Dmitry Dedov,
Jolien Schukking, *judges,*
and Fatoş Aracı, *Deputy Section Registrar,*

Having deliberated in private on 28 November 2017,

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

PROCEDURE

1. The case originated in an application (no. 37/06) 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 Grigoriy Nikolayevich Pleshchinskiy ("the applicant"), on 17 November 2005.

2. The applicant was represented by Mr T.A. Misakyan, a lawyer practising in Moscow. The Russian Government ("the Government") were initially represented by Mr G. Matyushkin, Representative of the Russian Federation to the European Court of Human Rights, and then by his successor in that office, Mr M. Galperin.

3. On 15 June 2009 the application was communicated to the Government.

THE FACTS

I. THE CIRCUMSTANCES OF THE CASE

4. The applicant, Mr Grigoriy Nikolayevich Pleshchinskiy, is a Russian national who was born in 1954 and lives in Solnechnogorsk, Moscow Region.

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

A. Conditions of detention and transport

1. Description of conditions of detention and transport

6. The applicant was kept in Solnechnogorsk Police's temporary detention centre in overcrowded cells from 2 to 10 October 2003; 20 to

24 October 2003; 17 to 21 November 2003; 21 to 28 November 2003; 22 to 29 December 2003; 26 to 30 January 2004; 2 and 3 February 2004; 31 March to 2 April 2004 and then on several occasions between April and 22 July 2004. He had to relieve himself in a bucket in the presence of other detainees and it was very difficult to breathe in the cells. There was no tap or other access to water, no proper light, no table on which to eat food and no area for outdoor activities. In the winter the walls and ceiling were covered with ice or damp. He had no access to a shower.

7. The applicant made numerous journeys in 2003-2004 between Volokolamsk remand centre and the temporary detention centre in Solnechnogorsk, which took three to four hours in an overcrowded van, which was cold in the winter and stuffy in the summer.

2. Proceedings for compensation

8. On 11 July 2005 the applicant sued the State for compensation in respect of non-pecuniary damage caused by the allegedly appalling conditions of his detention in the temporary detention centre.

9. On 14 November 2005 the Solnechnogorsk Town Court rejected the applicant's claims. It established that the material conditions of his detention could be explained by insufficient funding.

10. On 22 November and 6 December 2005 the applicant lodged appeals against the decision of 14 November 2005.

11. On 19 December 2005 the applicant was informed that the text of the judgment had been available since 5 December 2005.

12. On an unspecified date the court sent a summons to an appeal hearing which had been scheduled for 30 January 2006. However, the applicant did not receive the summons as it contained an error in the address, which was written as "2, Vishnevskaya Street" instead of "2, Vishnevaya Street".

13. On 30 January 2006 the Moscow Regional Court upheld the decision of 14 November 2005 in the applicant's absence.

14. In reply to an enquiry from the applicant about the date of the appeal hearing, he was informed on 1 February 2006 that it had been held on 30 January 2006.

B. Proceedings regarding title to a flat

15. In December 1992 the municipality allowed the applicant and his son, a minor at the time, to obtain ownership of the flat in Solnechnogorsk in which they were living by way of privatisation. The applicant obtained a title certificate, which, however, named him as the sole owner.

16. After reaching the age of majority, the son sued the father, asserting his right to the flat and seeking an annulment of the above-mentioned certificate.

17. In support of his claim the plaintiff submitted a copy of the housing register, and certificates from his school and kindergarten. All the documents showed that the plaintiff had been permanently residing in Solnechnogorsk.

18. The applicant sought to prove that at the material time the plaintiff had lived in a flat in another town, Taganrog, and tried to obtain certificates of his moving in and out of the privatised flat. However, the competent authority would not issue them unless they were requested by a judge. However, the judge considered that the evidence adduced by the plaintiff sufficed.

19. On 4 May 2005 the Solnechnogorsk Town Court of the Moscow Region granted the plaintiff's claim. It held that the housing law provided that minors living with a tenant in a flat leased under a social lease agreement enjoyed the same rights as the tenant as of the privatisation date. Accordingly, where flats were privatised without payment, they could become owners of the flat together with the adults. Furthermore, under the privatisation law then in force, a privatisation agreement had to contain a reference to the minors who enjoyed the right to use the premises in question.

20. On 14 June 2005 the Moscow Regional Court upheld the decision of 4 May 2005 on appeal.

II. RELEVANT DOMESTIC LAW

A. Notification in civil proceedings

21. Domestic provisions governing the notification of litigants in civil proceedings are described in *Gankin and Others v. Russia*, (nos. 2430/06, and 3 others, §§ 16-17, 31 May 2016).

B. Evidence in civil proceedings

22. Article 57 of the Code of Civil Procedure ("CCP") provides that if the parties to a case experience difficulties in submitting the necessary evidence, the court may, at their request, assist them in collecting and requesting such evidence.

23. Under Article 59 of the CCP a court admits only the evidence which is important for the case.

THE LAW

I. ALLEGED VIOLATION OF ARTICLES 3 OF THE CONVENTION

24. The applicant complained of poor conditions of detention and transport under Article 3 of the Convention, which reads as follows:

> "No one shall be subjected to torture or to inhuman or degrading treatment or punishment."

25. The Government contested the applicant's allegations.

26. The applicant maintained his complaint.

27. The Court reiterates that the six-month period runs from the final decision in the process of exhaustion of domestic remedies. Where it is clear from the outset that no effective remedy is available to the applicant, the period runs from the date of the acts or measures complained of. Article 35 § 1 cannot be interpreted, however, in a manner which would require an applicant to seize the Court of his complaint before his position in connection with the matter has been finally settled at the domestic level. Where, therefore, an applicant avails himself of an apparently existing remedy and only subsequently becomes aware of circumstances which render the remedy ineffective, the Court considers that it may be appropriate for the purposes of Article 35 § 1 to take the start of the six-month period from the date when the applicant first became or ought to have become aware of those circumstances (see *Artyomov v. Russia*, no. 14146/02, § 108, 27 May 2010, with further references).

28. The Court further reiterates its constant position that in the Russian legal system a civil action for compensation for inadequate conditions of detention has not been considered an effective remedy (see *Kalashnikov v. Russia* (dec.), no. 47095/99, 18 September 2001; *Moiseyev v. Russia* (dec.), no. 62936/00, 9 December 2004; *Mamedova v. Russia*, no. 7064/05, § 55, 1 June 2006; *Andrey Frolov v. Russia*, no. 205/02, § 39, 29 March 2007; and *Norkin v. Russia* (dec.), no. 21056/11, § 17, 5 February 2013).

29. Turning to the circumstances of the present case, the Court notes that the applicant had access to legal advice and should have been aware of the ineffectiveness of the judicial avenue he had made use of. Thus the last day of the applicant's detention and transport shall be the date from which the six-month period started to run (see *Artyomov*, cited above, §§ 113-18, and *Moskalyuk v. Russia*, no. 3267/03, §§ 45-48, 14 January 2010). However, the applicant did not lodge his complaint about the conditions of his detention and transport in 2003-2004 until 25 March 2006, which is out of time.

30. It follows that this complaint is inadmissible for non-compliance with the six-month rule set out in Article 35 § 1 of the Convention and must be rejected pursuant to Article 35 § 4.

II. ALLEGED VIOLATION OF ARTICLES 3 AND 13 OF THE CONVENTION

31. The applicant complained that he had not had an effective remedy for his complaint about the conditions of his detention and transport under Articles 3 and 13 of the Convention. Article 13 reads as follows:

> "Everyone whose rights and freedoms as set forth in [the] Convention are violated shall have an effective remedy before a national authority notwithstanding that the violation has been committed by persons acting in an official capacity."

32. The Government contested the applicant's allegations.

33. The applicant maintained his complaint.

34. In view of its above finding that the applicant's complaint under Article 3 was lodged out of time (see paragraph 30 above), the Court holds that the applicant's complaint under Article 13 in conjunction with Article 3 is also time-barred (see *Bitiyeva and Others v. Russia*, no. 36156/04, § 123, 23 April 2009).

35. It follows that this complaint must be rejected, in accordance with Article 35 §§ 1 and 4 of the Convention.

III. ALLEGED VIOLATION OF ARTICLE 6 OF THE CONVENTION

36. The applicant complained that there had been a breach of his right to a fair hearing under Article 6 of the Convention on account of the domestic authorities' failure to duly notify him of the date and place of the appeal hearing in the civil proceedings relating to the conditions of his detention. He also complained under Article 6 that the proceedings concerning his ownership of the flat had been unfair on account of his alleged inability to collect evidence in support of his claim and the judge's refusal to assist him in collecting that evidence. Article 6 § 1 reads in the relevant part as follows:

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

A. Proceedings concerning conditions of detention

1. Admissibility

37. The Court notes that this complaint is not manifestly ill-founded within the meaning of Article 35 § 3 (a) of the Convention. It further notes

that it is not inadmissible on any other grounds. It must therefore be declared admissible.

2. Merits

38. The Government acknowledged that the court summons had been sent to the wrong address.

39. The applicant maintained his complaint.

40. The Court reiterates that in the interests of the administration of justice a litigant should be summoned to a court hearing in such a way as not only to have knowledge of the date and the place of the hearing, but also to have enough time to prepare his case and to attend the court hearing. A formal dispatch of a notification letter without any confidence that it will reach the applicant in good time cannot be considered by the Court as proper notification (see *Kolegovy v. Russia*, no. 15226/05, § 40, 1 March 2012, and *Gusak v. Russia*, no. 28956/05, § 27, 7 June 2011). In Russian cases the Court has frequently found a violation of Article 6 of the Convention on the grounds that the applicants' absence from appeal proceedings was due to courts' failure to duly inform them of the date and place of hearings (see, for instance, *Kolegovy*, cited above, §§ 38-45; *Gusak*, cited above, §§ 25-30, 7 June 2011; and *Shandrov v. Russia*, no. 15093/05, §§ 27-32, 15 March 2011).

41. The Court considers that its findings in the above-mentioned judgments pertain to the present case. It is not disputed by the parties that the court summons did not reach the applicant, while the domestic courts did not examine whether the applicant had duly received the notification. Such an enquiry would have allowed the courts to decide on an adjournment of the case pending due notification of the parties. Instead, the appeal court embarked on an examination of the merits of the applicant's appeal claim and rejected it in his absence.

42. It follows that the domestic authorities failed to demonstrate that they had made a reasonable effort to duly summon the applicant to the hearing (see, by contrast, *Babunidze v. Russia* (dec.), no. 3040/03, 15 May 2007). In the light of the foregoing, the Court concludes that the applicant's absence from the hearing before the appeal court was due to the court's failure to duly notify him of the date and place of that hearing.

43. There has therefore been a violation of Article 6 § 1 of the Convention on account of the authorities' failure to afford the applicant an adequate opportunity to present his case effectively before the appeal court.

B. Proceedings concerning the flat

44. The Court reiterates that it is central to the concept of a fair trial, in civil as in criminal proceedings, that a litigant is not denied the opportunity to present his or her case effectively before the court and that he or she is

able to enjoy equality of arms with the opposing side (see *Steel and Morris v. the United Kingdom*, no. 68416/01, § 59, ECHR 2005-II). The principle of adversarial proceedings and equality of arms requires that each party be given a reasonable opportunity to have knowledge of and comment on the observations made or evidence adduced by the other party and to present its case under conditions that do not place it at a substantial disadvantage vis-à-vis its opponent (see *Krčmář and Others v. the Czech Republic*, no. 35376/97, § 39, 3 March 2000, and *Dombo Beheer B.V. v. the Netherlands*, 27 October 1993, § 33, Series A no. 274).

45. Furthermore, the Convention does not lay down rules on evidence as such. It is for the national courts to assess the evidence they have obtained and the relevance of any evidence that a party wishes to have produced. The Court has nevertheless to ascertain whether the proceedings considered as a whole, including the way in which the evidence was taken, were fair as required by Article 6 § 1 (see *Mantovanelli v. France*, 18 March 1997, § 34, *Reports of Judgments and Decisions* 1997-II).

46. Turning to the present case, the Court notes that under Russian law, as interpreted by the domestic courts, minors living in a flat leased under a social tenancy agreement had the right to use the flat (reside in it). In case of privatisation, minor and adult residents were entitled to acquire ownership of the flat. Therefore the key evidence that was decisive for the outcome of the proceedings were documents confirming that the applicant's son resided in the flat. By the time of the applicant's request to provide him with certificates of moving in and out of the flat, the case file already contained such documents: an extract from a housing register and school and kindergarten certificates. Therefore, the certificates of moving in and moving out of the flat, which the applicant wished to receive, were not decisive evidence.

47. In the light of the above, the courts' decision to reject the applicant's request was not arbitrary, but aimed at avoiding unnecessary delays. The applicant was provided with a reasonable opportunity to present his case under conditions that did not place him at a substantial disadvantage *vis-à-vis* his opponent. The Court therefore considers that the proceedings were fair as a whole.

48. In view of the above, the Court finds that the applicant's complaint is manifestly ill-founded and must be rejected in accordance with Article 35 §§ 3 and 4 of the Convention.

IV. OTHER ALLEGED VIOLATIONS OF THE CONVENTION

49. The Court has also examined the other complaints submitted by the applicant. However, having regard to all the material in its possession, and in so far as those complaints fall within the Court's competence, it 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.

V. APPLICATION OF ARTICLE 41 OF THE CONVENTION

50. 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

51. The applicant claimed 968,459 Russian roubles and 77,000 euros (EUR) in respect of pecuniary and non-pecuniary damage.

52. The Government found this claim excessive.

53. 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, it awards the applicant EUR 1,500 in respect of non-pecuniary damage, plus any tax that may be chargeable.

B. Costs and expenses

54. The applicant did not claim any costs or expenses. Accordingly, there is no call to make an award under this head.

C. Default interest

55. The Court considers it appropriate that the default interest rate 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 applicant's absence from the appeal hearing on 30 January 2006 under Article 6 of the Convention 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, EUR 1,500 (one thousand five hundred euros), to be converted into the currency of the respondent State, at the rate applicable at the date of settlement, plus any tax that may be chargeable, in respect of non-pecuniary damage;

(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;

4. *Dismisses* the remainder of the applicant's claim for just satisfaction.

Done in English, and notified in writing on 19 December 2017, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Fatoş Aracı	Luis López Guerra
Deputy Registrar	President