

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

THIRD SECTION

CASE OF SHIGALEV v. RUSSIA

(Application no. 56911/14)

JUDGMENT

STRASBOURG

21 January 2021

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



In the case of Shigalev v. Russia,

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

Darian Pavli, *President,*
Dmitry Dedov,
Peeter Roosma, *judges,*

and Liv Tigerstedt, *Acting Deputy Section Registrar,*

Having deliberated in private on 17 December 2020,

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

PROCEDURE

1. The case originated in an application against Russia lodged with the Court under Article 34 of the Convention for the Protection of Human Rights and Fundamental Freedoms ("the Convention") on 16 July 2014.

2. The Russian Government ("the Government") were given notice of the application.

THE FACTS

3. The applicant's details and information relevant to the application are set out in the appended table.

4. The applicant complained under Article 6 § 1 of the Convention that he had been denied an opportunity to appear in person before the court in the civil proceedings to which he was party. He also raised other complaints under the provisions of the Convention.

THE LAW

I. THE GOVERNMENT'S REQUEST TO STRIKE OUT THE APPLICATION UNDER ARTICLE 37 § 1 OF THE CONVENTION

5. The Government submitted a unilateral declaration which did not offer a sufficient basis for finding that respect for human rights as defined in the Convention does not require the Court to continue its examination of the cases (Article 37 § 1 *in fine*). The Court rejects the Government's request to strike the application out and will accordingly pursue its examination of the merits of the case (see *Tahsin Acar v. Turkey* (preliminary objections) [GC], no. 26307/95, § 75, ECHR 2003-VI, and in particular for cases concerning fairness of court proceedings under Article 6 of the Convention, see *Igranov and Others v. Russia*, nos. 42399/13 and 8 others, §§ 24-27, 20 March 2018).

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

6. The applicant complained principally that his right to a fair hearing had been breached on account of the domestic courts' refusal of his requests to appear in court. He relied on Article 6 § 1 of the Convention, which reads as follows:

Article 6 § 1

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

7. The Court reiterates that the applicant, detainee at the time of the events, was not afforded an opportunity to attend hearings in civil proceedings to which he was party. The details of those domestic proceedings are indicated in the appended table. The Court observes that the general principles regarding the right to present one's case effectively before the court and to enjoy equality of arms with the opposing side, as guaranteed by Article 6 of the Convention, have been stated in a number of its previous judgments (see, among many other authorities, *Steel and Morris v. the United Kingdom*, no. 68416/01, §§ 59-60, ECHR 2005-II). The Court's analysis of an alleged violation of the right to a fair trial where an incarcerated applicant complain about his absence from hearings in civil proceedings includes the following elements: examination of the manner in which domestic courts assessed the question whether the nature of the dispute required the applicant's personal presence and determination whether domestic courts put in place any procedural arrangements aiming at guaranteeing his effective participation in the proceedings (see *Yevdokimov and Others v. Russia*, nos. 27236/05 and 10 others, § 48, 16 February 2016).

8. In the leading case of *Yevdokimov and Others*, cited above, the Court already found a violation in respect of issues similar to those in the present case.

9. Having examined all the material submitted to it, the Court has not found any fact or argument capable of persuading it to reach a different conclusion on the admissibility and merits of these complaints. Having regard to its case-law on the subject, the Court considers that in the instant case the domestic courts deprived the applicant of the opportunity to present his case effectively and failed to meet their obligation to ensure respect for the principle of a fair trial.

10. These complaints are therefore admissible and disclose a breach of Article 6 § 1 of the Convention.

III. REMAINING COMPLAINTS

11. The applicant also complained under Articles 3 and 13 of the Convention about poor conditions of his detention in a pre-trial detention

facility in Nizhniy Novgorod in 2014 and the lack of an effective remedy in this respect.

12. With regard to these complaints, the applicant should avail himself of the new compensatory remedy introduced in the Russian Federation, which the Court declared effective in its recent decision of *Shmelev and Others v. Russia* ((dec.), nos.41743/17 and 16 others, 17 March 2020).

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

IV. APPLICATION OF ARTICLE 41 OF THE CONVENTION

13. 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."

14. Regard being had to the documents in its possession and to its case-law (see, in particular, *Igranov and Others v. Russia,* nos. 42933/13 and 8 others, § 40, 20 March 2018), the Court considers it reasonable to award the sum indicated in the appended table.

15. 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. *Rejects* the Government's request to strike the application out of its list of cases under Article 37 § 1 of the Convention on the basis of the unilateral declaration which they submitted;

2. *Declares* the complaints concerning the applicant's absence from civil proceedings admissible and the remainder of the application inadmissible;

3. *Holds* that there has been a breach of Article 6 § 1 of the Convention concerning the applicant's absence from civil proceedings;

4. *Holds*

   (a) that the respondent State is to pay the applicant, within three months, the amount indicated in the appended table, to be converted into the currency of the respondent State at the rate applicable at the date of settlement;

(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 during the default period plus three percentage points.

Done in English, and notified in writing on 21 January 2021, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Liv Tigerstedt	Darian Pavli
Acting Deputy Registrar	President

APPENDIX

Application raising complaints under Article 6 § 1 of the Convention (applicant's absence from civil proceedings)

Application no. Date of introduction	Applicant's name Year of birth	Nature of the dispute	First-instance hearing date Court	Appeal hearing date Court	Amount awarded for non-pecuniary damage and costs and expenses per applicant (in euros)[1]
56911/14 16/07/2014	**Ilya Aleksandrovich SHIGALEV** 1973	Tort action related to conditions of detention.	27/12/2013 Vadskiy District Court of the Nizhny Novgorod Region	24/03/2014 Nizhniy Novgorod Regional Court	1,500

[1] Plus any tax that may be chargeable to the applicant.