

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

FIRST SECTION

DECISION

AS TO THE ADMISSIBILITY OF

Application no. 35365/05
by Oleg Vyacheslavovich LADYGIN
against Russia

The European Court of Human Rights (First Section), sitting on 30 August 2011 as a Chamber composed of:

Nina Vajić, *President,*
Anatoly Kovler,
Peer Lorenzen,
Elisabeth Steiner,
Khanlar Hajiyev,
Julia Laffranque,
Linos-Alexandre Sicilianos, *judges,*

and Søren Nielsen, *Section Registrar,*

Having regard to the above application lodged on 1 September 2005,

Having deliberated, decides as follows:

THE FACTS

A. The circumstances of the case

The applicant, Mr Oleg Vyacheslavovich Ladygin, is a Russian national who was born in 1964 and lives in Moscow.

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

On 26 April 2004 the applicant arrived at the Savelovskiy District Court of Moscow to meet with the president of that court. It appears that the applicant attempted to enter the president's waiting room ahead of the queue of visitors causing their dissatisfaction. The president's assistant called an usher who invited the applicant to leave the waiting room and to wait in the corridor. As the applicant refused to comply, the usher forced him out and drew up a report stating that the applicant had committed an offence punishable under Article 17.3 § 2 of the Russian Code of Administrative Offences, that is, disobeyed the usher's order aimed at maintaining public order on the court's premises.

According to the applicant, he was unable to meet the president of the court on that date as a result of those events.

On 28 April 2004 the applicant lodged a claim against the bailiffs' service with the Savelovskiy District Court. It appears that he sought compensation for non-pecuniary damage.

In a decision of 31 May 2004 the Savelovskiy District Court declined to examine the applicant's claim, stating that it fell outside its territorial jurisdiction and that the applicant should apply to the Golovinskiy District Court of Moscow. The Golovinskiy District Court of Moscow also declined to examine the applicant's claim in a decision of 1 July 2004, stating that it fell within the jurisdiction of the Savelovskiy District Court.

In a letter of 1 June 2004 the prosecutor's office of the Northern Administrative District of Moscow informed the applicant that they had examined his complaint and established that the usher's actions had been lawful and that he had acted within his competence.

On 18 September 2004 the applicant again filed a claim with the Savelovskiy District Court. It appears that he complained that he had endured emotional and physical suffering as a result of the usher's actions on 26 April 2004 and requested that the court hold the usher liable under administrative and criminal law and to award the applicant compensation for non-pecuniary damage.

On 24 March 2005 the Savelovskiy District Court declined to examine the applicant's claim, stating that it could not be examined in civil proceedings, as the applicant had asked the court to hold the usher liable for abuse of power, that is, for a criminal offence. The court noted that the applicant should thus lodge his request with a prosecutor's office.

On 16 May 2005 the Moscow City Court upheld the above decision on appeal.

B. Relevant domestic law

1. Constitution

Article 46 of the Russian Constitution of 1993 provides that decisions and actions or lack of action of state bodies, bodies of local self-government, public associations and officials may be appealed against in court.

Article 53 of the Constitution provides for the right to be compensated by the state for damage caused as a result of the unlawful actions (or omission) of state bodies and their officials.

2. Civil Code

Article 151 of the Russian Civil Code provides that compensation in respect of non-pecuniary damage is payable only in the event that physical or psychological damage has been inflicted on a person in violation of his rights.

Article 1069 of the Civil Code provides for the right to compensation for damage caused to an individual or legal person as a result of an unlawful act or failure to act by state or municipal bodies, or their officials, including that caused by a written act issued by a state or municipal body contrary to the law. Damages are payable by the treasury of the Russian Federation, the treasury of the subjects of the Russian Federation or the municipal treasury.

COMPLAINT

The applicant complained under Articles 6, 13 and 14 of the Convention about the domestic courts' refusal to examine his claim against the usher on the merits.

THE LAW

The Court must first determine whether the application is admissible under Article 35 of the Convention, as amended by Protocol No. 14 which entered into force on 1 June 2010.

The Protocol added a new admissibility requirement to Article 35 which, in so far as relevant, provides as follows:

> "3. The Court shall declare inadmissible any individual application submitted under Article 34 if it considers that:
>
> (...)

> (b) the applicant has not suffered a significant disadvantage, unless respect for human rights as defined in the Convention and the Protocols thereto requires an examination of the application on the merits and provided that no case may be rejected on this ground which has not been duly considered by a domestic tribunal."

In accordance with Article 20 of the Protocol, this provision shall apply from the date of its entry into force to all applications pending before the Court, except those declared admissible. In view of the circumstances of the present case the Court finds it appropriate to examine at the outset whether the applicant's complaint complies with this new admissibility requirement. This means that the Court should examine whether the applicant suffered a significant disadvantage, whether respect for human rights would in any event require an examination of the case and whether the case was duly considered by a domestic tribunal (see also *Vasilchenko v. Russia*, no. 34784/02, § 49, 23 September 2010; *Adrian Mihai Ionescu v. Roumanie* (dec.), no. 36659/04, §§ 29-30, 1 June 2010; *Korolev v. Russia* (dec), no. 25551/05, 1 July 2010; and *Rinck v. France* (dec.), no. 18774/09, 19 October 2010).

The Court reiterates that the main element contained in the new admissibility criterion is the question of whether the applicant has suffered a "significant disadvantage". Inspired by the above-mentioned general principle *de minimis non curat praetor*, the new criterion hinges on the idea that a violation of a right, however real from a purely legal point of view, should attain a minimum level of severity to warrant consideration by an international court. The assessment of this minimum level is, in the nature of things, relative and depends on all the circumstances of the case. The severity of a violation should be assessed, taking account of both the applicant's subjective perceptions and what is objectively at stake in a particular case.

In the present case, the domestic courts declined to consider the applicant's claim against the usher, stating that this claim could not be examined in the context of civil proceedings. The Court has strong doubts whether the applicant was entitled under the domestic law to bring such a claim to a court, and therefore whether his right of access to court was restricted in any way. It will examine this issue in more detail below. However, even assuming that the domestic courts' refusal to examine the applicant's claim undermined his right of access to court, the Court is unable to discern anything in the materials in its possession to suggest that such a limitation had any serious adverse effect on his life.

The applicant's insistence on bringing the case before this Court may have been prompted by his subjective perception that he had not been treated fairly and disagreed with the outcome of the case at the domestic level. Although the applicant's subjective perception is relevant, this element does not suffice for the Court to conclude that the applicant suffered a significant disadvantage. The applicant's subjective perception

has to be justifiable on objective grounds. However, the Court does not see such justification in this case.

In view of the foregoing, the Court concludes that in the circumstances of the case the applicant has not suffered a significant disadvantage as a result of the alleged violation of the Convention.

The second element contained in Article 35 § 3 (b) compels the Court to examine the case in any event if respect for human rights so requires. This would apply where a case raises questions of a general character affecting the observance of the Convention, for instance whether there is a need to clarify the States' obligation under the Convention or to induce the respondent State to resolve a structural deficiency. Considering the present case in this way the Court does not see any compelling reason to warrant its examination on the merits. Thus, the Court concludes that respect for human rights does not require an examination of this case.

Finally, the last criterion under Article 35 § 3 (b) does not allow the rejection of an application if the case has not been duly considered by a domestic tribunal. Its purpose is to ensure that every case receives a judicial examination whether at the national level or at the European level, in other words, to avoid a denial of justice (see *Korolev* (dec.), cited above). In this respect, the Court observes in the present case that under the domestic law compensation for non-pecuniary damage is only payable in respect of proven damage caused by the actions or omissions on the part of authorities in breach of a plaintiff's rights. It further notes that the applicant does not appear to have ever substantiated his claim against the usher, and in particular, to have adduced any evidence to demonstrate that the latter applied any unlawful coercion or other illegal methods in his respect, which could arguably constitute a factual basis for his claim for damages. Indeed, as was also confirmed by the prosecutor's office, the usher acted strictly within his competence when carrying out the acts in question. It is therefore clear that at no moment did the applicant have any arguable claim for damages within the meaning of the domestic law (see, in a similar context, *Skorobogatykh v. Russia* (dec.), no. 37966/02, 8 June 2006).

The Court considers that the notion "duly examined" established in Article 35 § 3 (b) cannot be interpreted as obliging the State to examine the merits of any claim brought before the national courts, however frivolous it may be. It thus finds that in a situation such as the present one, where an applicant attempts to bring a claim which clearly has no basis in national law, the last criterion under Article 35 § 3 (b) is satisfied.

In the light of the foregoing, the Court finds that the present application should be declared inadmissible in accordance with Article 35 § 3 (b) of the Convention, as amended by Protocol No. 14. This conclusion obviates the need to consider if other admissibility requirements have been complied with.

For these reasons, the Court unanimously

Declares the application inadmissible.

Søren Nielsen	Nina Vajić
Registrar	President