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

THIRD SECTION

DECISION

Application no. 438/09
Lyubov Nikolayevna MILITSA and Akulina Yakovlevna MILITSA
against Russia
and 24 other applications
(see list appended)

The European Court of Human Rights (Third Section), sitting on 14 September 2021 as a Committee composed of:

Peeter Roosma, *President,*
Dmitry Dedov,
Andreas Zünd, *judges,*
and Olga Chernishova, *Deputy Section Registrar,*

Having regard to the above applications lodged on the various dates indicated in the appended table,

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

Having deliberated, decides as follows:

THE FACTS

1. A list of the applicants is set out in the appendix.

2. The Russian Government ("the Government") were represented initially by Mr G. Matyushkin, then by Mr M. Galperin, the Representatives of the Russian Federation to the European Court of Human Rights, and lately by their successor in that office, Mr. M. Vinogradov.

A. The circumstances of the case

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

4. Each of the applicants was a claimant or defendant in civil proceedings. Besides the parties, prosecutors participated in those

proceedings with the aim of defending public interests or interests of vulnerable persons.

B. Relevant domestic law and practice

1. Code of Civil Procedure

5. The Code of Civil Procedure of the Russian Federation ("the CCvP") reads as follows:

Article 45. Participation of a prosecutor in the proceedings

"1. A prosecutor shall be entitled to lodge an application with the court for the protection of rights, freedoms and lawful interests of citizens, of an indefinite group of persons or of the interests of the Russian Federation, subjects of the Russian Federation and municipal entities ...

2. A prosecutor, who has lodged an application, shall enjoy all the procedural rights and bear all the procedural obligations of the plaintiff, except for the right to conclude a friendly settlement agreement and the obligation to pay the court fees ...

3. A prosecutor shall join the proceedings and give an opinion in cases concerning eviction, reinstatement at work, [or] compensation for harm caused to life or health, and in other cases provided for by the present Code and other federal laws, for the purpose of exercising his [or her] powers. Non-appearance of a prosecutor [who has been] notified of the time and place of the hearing shall not constitute an impediment to the hearing of [such a] case."

Article 131. Form and content of a statement of claim

"3. In the statement of claim lodged by a prosecutor for the protection of the interests of the Russian Federation, subjects of the Russian Federation and municipal entities or for the protection of the rights, freedoms and lawful interests of an indefinite group of persons, there should be indicated what exactly their interests are, which right has been violated, and there should also be a reference to the law or other legal instrument, providing for [such] means of protection of these interests. In case of a prosecutor's application for the protection of the lawful interests of a citizen, the statement of claim shall contain either the grounds of impossibility for the citizen to bring an action on his [or her] own or indication that the citizen has applied to the prosecutor."

6. Article 189 of the CCvP provides that once the prosecutor has given an opinion, the parties shall be afforded an opportunity to submit additional explanations.

2. The Prosecutor's Offices Act (Federal Law no. 2202-1 of 17 January 1992)

7. The relevant provisions of the Prosecutor's Offices Act were previously reproduced in the case *Batsanina v. Russia*, no. 3932/02, § 12, 26 May 2009.

3. Clarifications by the Constitutional Court

8. The Ruling of the Constitutional Court of the Russian Federation no. 831-O-O of 18 December 2007 (point 2.1) clarifies that the prosecutor's opinion cannot predetermine the position of the court on a particular case which shall be determined on the basis of all the circumstances of the case, as well as impartial, comprehensive and complete examination of the arguments and evidence submitted by the parties. In civil cases the prosecutor acts in the public interest for the protection of socially vulnerable people. The prosecutor's participation in such cases does not prevent the parties from fully exercising their rights; it does not upset the balance between the parties, nor does it infringe the principle of adversarial procedure.

4. Relevant Council of Europe documents

9. The provisions of the relevant Council of Europe documents were previously reproduced in the case *Batsanina*, cited above, §§ 15-17.

COMPLAINT

10. The applicants complained under Article 6 § 1 of the Convention that a fair balance between the parties had not been respected in view of the prosecutor's participation in civil proceedings. The relevant part of Article 6 reads as follows:

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

THE LAW

11. Having regard to the similar subject matter of the applications, the Court finds it appropriate to examine them jointly.

12. The Government submitted that prosecutors had participated in the proceedings in accordance with the law and their participation had been justified by the public interest. The prosecutors had not acted in favour of any party to the proceedings, their opinion had not been binding on the court and their involvement had not had any momentous impact on the outcome of the proceedings. Thus, the Government maintained that the participation of the prosecutors in the proceedings had not violated the principle of equality of arms, nor in any other way had it undermined the fairness of the proceedings.

13. The applicants maintained their complaints. They submitted that the mere presence of a prosecutor at the civil proceedings, was it active or passive, should be deemed a violation of Article 6 § 1 of the Convention. In their opinion prosecutors had each time supported the adverse party, thus

creating the feeling of inequality. They further alleged that the prosecutors' participation had not been justified and had aimed at influencing the court.

14. The Court reiterates that under the principle of equality of arms, as one of the features of the wider concept of a fair trial, each party must be afforded a reasonable opportunity to present its case under conditions that do not place it at a substantial disadvantage vis-à-vis its opponent (see *Korolev v. Russia (no. 2)*, no. 5447/03, § 29, 1 April 2010, and *Yvon v. France*, no. 44962/98, § 31, ECHR 2003-V).

15. In a number of cases the Court has already examined the role of the prosecutors or comparable officers in the proceedings outside the sphere of criminal law. In those cases the Court found a violation of Article 6 § 1 of the Convention on account of the participation of similar officers in the deliberations of the court or their presence at the court's deliberations (see *Martinie v. France* [GC], no. 58675/00, § 53, ECHR 2006-VI, and further references therein), and on account of non-communication of the prosecutor's submissions to the applicant and impossibility for the applicant to reply to them in absence of oral hearings (see *Göç v. Turkey* [GC], no. 36590/97, §§ 55-6, ECHR 2002-V).

16. When considering the applications lodged against Russia raising the same issue, the Court has not excluded that support by the prosecutor's office of one of the parties may be justified in certain circumstances, for instance for the protection of vulnerable persons who are unable to protect their interests themselves, or where numerous citizens are affected by the alleged wrongdoing, or where identifiable State assets or interests need to be protected (see *Batsanina*, cited above, § 27). Further, the Court has considered that the mere fact that a prosecutor participated in civil proceedings cannot as such give rise to an issue under Article 6 (see, *mutatis mutandis*, *Chernysheva v. Russia* (dec.), no. 77062/01, 10 June 2004) and that the fact that a similar point of view is defended before a court by several parties does not necessarily place the opposing party in a position of "substantial disadvantage" when presenting his or her case. It should be ascertained whether, in view of the prosecutor's participation in the proceedings, the "fair balance" between the parties was respected (see *Korolev (no. 2)*, § 30, and *Batsanina*, § 25, both cited above).

17. Turning to the circumstances of the present cases, the Court points out that none of the above-mentioned procedural defects (see paragraph 15 above) could be identified in the proceedings at issue.

18. The prosecutor's participation in all the cases was provided for by law. When taking part in civil proceedings, the prosecutor did not have any special powers, such as the right to participate in the court's deliberations or to attend them, the prosecutor was afforded the same procedural rights as other parties to the proceedings. When initiating or joining the proceedings, the prosecutor acted in the public interest, in particular, for the protection of State interests and assets or the rights of vulnerable persons. The prosecutor

was an independent participant, who did not support any party to the proceedings, but implemented the main function of the prosecutor's office to oversee and ensure the respect for the rule of law. The prosecutor's opinion was not binding on the court and the parties had the opportunity to make oral or written submissions in reply to the prosecutor's opinion. The applicants actively participated in the proceedings, in person or through their representatives.

19. In the absence of consistent explanations from the applicants how the prosecutor's participation in their cases had affected the fairness of the proceedings, there is no reason to believe that the prosecutor's involvement in civil cases was meant or had the effect of unduly influencing the court or preventing the applicants from bringing an effective defence (see *Batsanina*, cited above, § 27). Thus, in the Court's opinion, the principle of the equality of arms, requiring a fair balance between the parties, was respected in the present cases.

20. It follows that the complaints are manifestly ill-founded and must be rejected in accordance with Article 35 §§ 3 (a) and 4 of the Convention.

For these reasons, the Court, unanimously,

Decides to join the applications;

Declares the applications inadmissible.

Done in English and notified in writing on 7 October 2021.

{signature_p_2}

Olga Chernishova
Deputy Registrar

Peeter Roosma
President

Appendix

No.	Application no. Case name Lodged on	Applicant Place of Residence Nationality Represented by	Final judgment (court, date), subject-matter of the dispute
1.	438/09 Militsa v. Russia 10/11/2008	**Lyubov Nikolayevna MILITSA** Moscow Russian **Akulina Yakovlevna MILITSA** Tver Russian	Supreme Court of the Republic of Mari El 26/06/2008 (first set of proceedings) 14/10/2008 (second set of proceedings) eviction proceedings
2.	74779/10 Dolganov v. Russia 15/12/2010	**Viktor Gennadyevich DOLGANOV** Kamensk-Shakhtinskiy Russian Irina Sergeyevna IVANKOVA	Rostov Regional Court 28/10/2010 (first set of proceedings) Supreme Court 29/08/2013 compensation proceedings
3.	24448/11 Litvin v. Russia 08/04/2011	**Yuriy Mikhaylovich LITVIN** Yekaterinburg Russian	Court of Yamal-Nenets Autonomous Region 18/10/2010 labour dispute
4.	28121/11 Bondarenko v. Russia 18/04/2011	**Nikolay Ivanovich BONDARENKO** Bataysk Russian Aleksandr Sergeyevich GOLIKOV	Rostov Regional Court 17/03/2011 compensation proceedings
5.	35437/11 Chumachenko v. Russia 14/05/2011	**Valeriy Alekseyevich CHUMACHENKO** Magadan Russian **Lyudmila Ivanovna CHUMACHENKO** Magadan Russian Anna Vladimirovna BOYCHENYUK	Magadan Regional Court 07/09/2012 eviction proceedings
6.	36212/11 Naymanova v. Russia 10/08/2011	**Roza Ismailovna NAYMANOVA** Cherkessk Russian Asldar Mardan-Ogly MARDANOV	Supreme Court of the Karachay-Cherkess Republic 09/03/2011 compensation proceedings
7.	18212/12 Davydenko v. Russia 13/03/2012	**Aleksandr Yuryevich DAVYDENKO** Irkutsk Russian Aleksey Anatolyevich NAVALNYY	Supreme Court 05/04/2012 labour dispute
8.	39702/12 Lyashkov v. Russia 04/06/2012	**Sergey Vasilyevich LYASHKOV** Kashira Russian Dmitriy Vasilyevich LYASHKOV	Supreme Court 22/03/2012 labour dispute
9.	48883/12 Kireyev v. Russia 09/07/2012	**Aleksandr Nikolayevich KIREYEV** Yartsevo Russian	Supreme Court 06/03/2013 labour dispute

No.	Application no. Case name Lodged on	Applicant Place of Residence Nationality Represented by	Final judgment (court, date), subject-matter of the dispute
10.	67451/12 Berlim v. Russia 19/09/2012	**Aleksandr Vladimirovich BERLIM** Gvardeyskoye Russian	Supreme Court 02/11/2012 labour dispute
11.	72828/12 Rostatova v. Russia 13/10/2012	**Nina Sergeyevna ROSTATOVA** Volgodonsk Russian Aleksandra Aleksandrovna BOGUN	Supreme Court 26/09/2012 labour dispute
12.	76186/12 Shuparskiy v. Russia 20/11/2012	**Sergey Profilyevich SHUPARSKIY** Angarsk Russian Inna Anatolyevna MARCHENKO	Irkutsk Regional Court 06/11/2012 compensation proceedings
13.	78883/12 Umrikhin v. Russia 14/11/2012	**Denis Aleksandrovich UMRIKHIN** Stavropol Russian Nikolay Nikolayevich UKRAINTSEV	North Caucasus District Military Court 23/05/2012 labour dispute
14.	5522/13 Aleksandrova v. Russia 29/11/2012	**Viktoriya Afanasyevna ALEKSANDROVA** Magnitogorsk Russian Irina Dmitriyevna KOMISSAROVA (not lawyer)	Chelyabinsk Regional Court 31/05/2012 labour dispute
15.	15468/13 Kashcheyev v. Russia 17/01/2013	**Gennadiy Vladimirovich KASHCHEYEV** Bratsk Russian	Supreme Court 18/07/2012 labour dispute
16.	58958/13 Mirumyan v. Russia 12/08/2013	**Ararat Azatovich MIRUMYAN** Saratov Russian	Supreme Court 09/07/2013 labour dispute
17.	59927/13 Chichadeyev v. Russia 10/05/2012	**Vladimir Veniaminovich CHICHADEYEV** Perm Russian	Perm Regional Court 12/01/2015 (first set of proceedings) 17/07/2013 (second set of proceedings) Supreme Court 01/06/2012 (third set of proceedings) compensation proceedings
18.	69079/13 Deyneko v. Russia 25/10/2013	**Andrey Vladimirovich DEYNEKO** Slavyanka Russian Anton Nikolayevich TITOV	Tikhookeansky Navy Military Court 14/02/2014 labour dispute
19.	11776/14 Aliyev v. Russia 30/01/2014	**Fakhri Alish Ogly ALIYEV** St Petersburg Russian Fedor Samuilovich LEMESHEV	St Petersburg City Court 12/12/2013 eviction proceedings
20.	19326/14 Moiseyev v. Russia 27/02/2014	**Oleg Aleksandrovich MOISEYEV** Sedan Russian Yelena Sergeyevna MOISEYEVA	Supreme Court 27/03/2014 labour dispute

No.	Application no. Case name Lodged on	Applicant Place of Residence Nationality Represented by	Final judgment (court, date), subject-matter of the dispute
		(not a lawyer)	
21.	21695/14 Kulnev v. Russia 03/03/2014	**Yevgeniy Viktorovich KULNEV** Khokholskiy Russian Tumas Arsenovich MISAKYAN	Supreme Court 19/12/2013 labour dispute
22.	73740/14 Burmistrova v. Russia 14/11/2014	**Viktoriya Viktorovna BURMISTROVA** Tambov Russian	Supreme Court 23/05/2014 labour dispute
23.	77185/14 Fedyayev v. Russia 04/12/2014	**Sergey Konstantinovich FEDYAYEV** Irkutsk Russian Roman Vladimirovich KRAVTSOV	Irkutsk Regional Court 02/10/2014 civil dispute (proceedings to invalidate the agreement)
24.	35725/16 Yefanov v. Russia 14/06/2016	**Yuriy Mikhaylovich YEFANOV** Belovo Russian Oleg Aleksandrovich SEREDA	Supreme Court 15/12/2015 compensation proceedings
25.	49027/16 Klimenko v. Russia 11/08/2016	**Valeriy Petrovich KLIMENKO** Severskaya Russian Sergey Ivanovich BOGDANOV	Supreme Court 22/03/2016 compensation proceedings