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

THIRD SECTION

DECISION

Application no. 3107/18
Aleksandr Aleksandrovich TORBIN
against Russia
(see appended table)

The European Court of Human Rights (Third Section), sitting on 30 June 2022 as a Committee composed of:

Darian Pavli, *President,*
Andreas Zünd,
Mikhail Lobov, *judges,*
and Viktoriya Maradudina, *Acting Deputy Section Registrar,*

Having regard to the above application lodged on 29 December 2017,

Having regard to the observations submitted by the respondent Government,

Having deliberated, decides as follows:

FACTS AND PROCEDURE

The applicant's details are set out in the appended table.

The applicant's complaint under Article 6 § 1 of the Convention concerning his absence from civil proceedings was communicated to the Russian Government ("the Government").

THE LAW

The Court observes that the applicant, who lives in Pskov Region, initiated civil proceedings against his former employer in Moscow. The first instance court ruled on the dispute in the applicant's absence and dismissed the claim by a judgment of 29 May 2015. When the latter found out about it, he lodged on 19 November 2015 a belated appeal asking at the same time for the restoration of the time-limit.

On 18 March 2016 the Moscow City Court accepted the applicant's appeal for consideration, and, noting that the latter had not participated in the first instance as he had not been properly notified about the hearings, decided to

examine the case according to the rules governing the first instance proceedings, and adjourned the hearings in view of the applicant's absence.

By a registered mail of 28 March 2016, the Moscow City Court sent to the applicant summonses for the appeal hearings scheduled on 6 April 2016. On 4 April 2016, an attempt of that mail delivery to the applicant's address failed. Finally, on 6 April, the applicant went to the postal office and picked up the mail.

On the same day, the Moscow City Court, ruling in the applicant's absence, quashed the first instance judgment and dismissed the claim. The City Court noted that the applicant had been duly summoned but had failed to appear at the appeal hearings.

Rejecting the applicant's cassation appeal, the single judge of the Moscow City Court considered that the applicant did not display due diligence to be able to appear at the appeal hearing.

The Court reiterates that the domestic courts are under an obligation to ascertain, on the basis of available evidence, whether the parties were duly served with the information about the forthcoming hearing, for litigants must be apprised of their respective hearing in such a way as to have an opportunity to attend it, should they decide to exercise the right to personal presence, as established under the Russian law. It is on the basis of the domestic courts' reasoning that the Court will decide whether litigants were afforded an adequate opportunity to present their case effectively (see *Gankin and Others v. Russia*, nos. 2430/06 and 3 others, §§ 39-40, 31 May 2016). At the same time, unlike in criminal matters, the domestic courts cannot be held accountable for not tracking down absent parties to the civil proceedings (see *Saura Bustamante v. Spain* (dec.), no. 43555/98, 29 August 2000, and *Sevillano González v. Spain* (dec.), no. 41776/98, 2 February 1999), provided that such parties had knowledge of the civil action brought against them (see *Dilipak and Karakaya v. Turkey*, nos. 7942/05 and 24838/05, § 77, 4 March 2014). It also reiterates that the parties have to exhibit due diligence in the defence of their interests. Litigants must also take appropriate measures to ensure effective receipt of correspondence the domestic courts may send them (see *Perihan and Mezopotamya Basın Yayın A.Ş. v. Turkey*, no. 21377/03, § 38, 21 January 2014).

Turning to the present case, in the Court's view, the applicant having lodged his appeal in November 2015, had ample opportunities to contact the Moscow City Court registry to enquire about the fate of his appeal since that moment, that is to say during more than three months, and should have been aware of pending appeal proceedings.

Furthermore, since the applicant did not provide the appeal court with his telephone number or his email address, the Moscow City Court registry had no other choice than to send the summonses by post (see *Ilyushchenko v. Russia* (dec.) [Committee], no. 11275/17, 8 December 2020). The applicant could have expected court summonses to arrive to his address. However, he

did not take any steps to ensure the receipt of that summons in due time and did not make use of any other venues through which the Russian courts make public the information about future hearings, all the more so as the relevant information about the appeal proceedings in the applicant's case was published on the Moscow City Court website, and the applicant does not argue otherwise.

In view of the above, even admitting that the appeal court registry did not send the summonses sufficiently in advance, the Court considers, as the single judge of the Moscow City Court did, that the applicant, for his part, did not exhibit due diligence (see, for a recent example, *Plekhanova and Others v. Russia* (dec.) [Committee], nos. 12530/19 and 2 other applications, 17 December 2020). Thus, the application is manifestly ill-founded and must be rejected in accordance with Article 35 §§ 3 and 4 of the Convention.

For these reasons, the Court, unanimously,

Declares the application inadmissible.

Done in English and notified in writing on 21 July 2022.

Viktoriya Maradudina	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	Final decision date Court
3107/18 29/12/2017	**Aleksandr Aleksandrovich TORBIN** 1978	Civil dispute for damages initiated by the applicant against his former employer	29/05/2015 Zamoskvoretskiy District Court of Moscow	06/04/2016 Moscow City Court	30/06/2017 Supreme Court of Russia