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

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The lack of uniform rules at domestic level on the starting point for lodging an appeal in civil proceedings creates a risk of repetitive applications

In today's **Chamber** judgment[1] in the case of **Cherednichenko and Others v. Russia** (applications nos. 35082/13, 63216/13, 31766/15, 35428/15 and 50645/16) the European Court of Human Rights held, unanimously, that there had been:

a violation of Article 6 § 1 (right of access to a court) of the European Convention on Human Rights in respect of applications nos. 35082/13, 63216/13, 31766/15 and 50645/16.

The case concerned the starting point of the period allowed for lodging an appeal in civil proceedings, which was interpreted in different ways at national level: it was either the date on which a short form of the decision was read out at the hearing, or the date on which the full text of the decision was finalised by the judge, or the date on which the finalised decision was filed with the court's registry, or the date on which a copy of the decision was received through the post.

The Court held, in particular, that the problem resulted from a systemic shortcoming arising from the absence, at domestic level, of a uniform system that would make it possible to establish in an objective manner the date from which the full text of the decision was available to the parties to the dispute, in so far as that date triggered the time-limit within which an appeal could be lodged. In the Court's opinion, measures by the national authorities to correct this failing in the procedural law would help to remedy the systemic defect identified. Furthermore, the Court reiterated that it was not its role to establish the facts on a systematic basis. Nonetheless, in the absence of such a system, the Court would be required, with a view to the proper administration of justice, to accept as the starting point of the time-limit for lodging an appeal the dates indicated by the applicants, unless the Government proved the contrary.

Notably, the Court considered that three of the applicants had exercised their right of appeal within the time-limit allowed and that, by rejecting their appeals as out of time, the domestic courts had given an excessively formalistic interpretation of the domestic law. Given the seriousness of the penalty imposed on them, the Court held that the contested measure had not been proportionate to the aim of ensuring judicial certainty and the proper administration of justice.

Principal facts

The five applicants are Irina Cherednichenko (born in 1959), Natalya Polupanova (born in 1975), Viktor Storozhenko (born in 1953), Radik Khabibullin (born in 1966) and Aleksandr Smirnov (born in 1966). They live in Russia, in Krasnodar, Volgograd, Vladivostok, Popovka and Volgorechensk respectively.

Ms Cherednichenko (application no. 35082/13) brought an action in tort which was dismissed on 6 August 2012. On 23 August 2012 she lodged a short notice of appeal, explaining that she would be able to set out the grounds for her appeal only when she had received the full text of the decision. On 30 August 2012 she received a full copy of the decision, and on 24 September 2012 she sent her

1. Under Articles 43 and 44 of the Convention, this Chamber judgment is not final. During the three-month period following its delivery, any party may request that the case be referred to the Grand Chamber of the Court. If such a request is made, a panel of five judges considers whether the case deserves further examination. In that event, the Grand Chamber will hear the case and deliver a final judgment. If the referral request is refused, the Chamber judgment will become final on that day.
Once a judgment becomes final, it is transmitted to the Committee of Ministers of the Council of Europe for supervision of its execution. Further information about the execution process can be found here: www.coe.int/t/dghl/monitoring/execution.

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grounds of appeal by registered letter, together with an application for extension of the time-limit for lodging an appeal. The registry of the court received the letter on 16 October 2012. In the meantime, on 8 October 2012, the judge ruled that the notice of appeal was inadmissible because Ms Cherednichenko had not remedied the irregularities identified within the time allowed. The applicant applied to the District Court for an extension of the time-limit for appealing, without success. She lodged a cassation appeal against that decision, which was also dismissed.

Ms Polupanova (application no. 63216/13) appealed against her dismissal, but her appeal was rejected. She posted her grounds of appeal on 30 May 2012, but her application was declared inadmissible as being out of time. The court found in particular that the period for lodging an appeal had started on the day following the date on which the full text of the judgment had been finalised, that is, on 24 April 2012.

Mr Smirnov (application no. 50645/16) brought proceedings against a private company concerning the performance of a contract of sale, but his action was dismissed on 22 June 2015. On 30 June 2015 he received a copy of the full judgment, and on 30 July 2015 he lodged an appeal. The court declared his appeal inadmissible as being out of time, stating that the period for lodging an appeal had started on 27 June 2015, the date on which the judgment had been delivered in full.

Mr Storozhenko (application no. 31766/15) lodged a claim for compensation against the Federal Government and two ministries, on the grounds that a criminal investigation had been ineffective. He subsequently learned that his action had been dismissed and that the decision had become final, since he had not lodged an appeal. According to the register of postal deliveries, the registry sent the decision to an address in Moscow instead of Vladivostok.

Mr Khabibullin (application no. 35428/15) lodged a claim for damages against the Russian Central Bank which was dismissed on 18 March 2015. On 18 April 2015 he filed a notice of appeal, without having received a copy of the judgment. He was sent a notice to appear at a hearing on 6 October 2015, on which his name was misspelled. Believing that the notice was not intended for him, he decided not to appear. He later learnt that his appeal had been dismissed.

Complaints, procedure and composition of the Court

Relying on Article 6 § 1, the applicants alleged that their right of access to a court had been breached, on the grounds that their appeals had been declared inadmissible as being out of time, as a result of incorrect application of the procedural rules.

The application was lodged with the European Court of Human Rights on 29 May 2013 (Ms Cherednichenko), 11 September 2013 (Ms Polupanova), 14 June 2015 (Mr Storozhenko), 23 June 2015 (Mr Khabibullin) and 15 August 2016 (Mr Smirnov).

Judgment was given by a Chamber of seven judges, composed as follows:

Helena **Jäderblom** (Sweden), *President*,
Luis **López Guerra** (Spain),
Dmitry **Dedov** (Russia),
Pere **Pastor Vilanova** (Andorra),
Alena **Poláčková** (Slovakia),
Georgios A. **Serghides** (Cyprus),
Jolien **Schukking** (the Netherlands),

and also Stephen **Phillips**, *Section Registrar.*

Decision of the Court

Article 6 § 1 (right of access to a court)

The Court noted that all of the applicants, with the exception of Mr Storozhenko, had lodged their notices and/or grounds of appeal, which were declared out of time. The question that was in dispute between the parties was the starting point of the time allowed for lodging an appeal, which was assessed in different ways at national level: it was either the date on which a short form of the decision was read out at the hearing, the date on which the full text of the decision was finalised by the judge, the date on which the finalised decision was filed with the court's registry, or the date on which a copy of the decision was received through the post.

The Court considered that the problem resulted from a systemic shortcoming arising from the absence, at domestic level, of a uniform system that would make it possible to establish in an objective manner the date from which the full text of the decision was available to the parties to the dispute, in so far as that date marked the starting point of the period in which an appeal could be lodged. This problem had previously been identified in the *Ivanova and Ivashova* judgment[2]. In the Court's opinion, measures by the national authorities to correct this failing in the procedural law would help to remedy the systemic defect identified. Furthermore, the Court reiterated that it was not its role to establish the facts on a systematic basis. Nonetheless, in the absence of such a system, the Court would be required, with a view to the proper administration of justice, to accept as the starting point of the time-limit for lodging an appeal the dates indicated by the applicants, at least unless the Government proved the contrary.

In the cases of Ms Cherednichenko, Ms Polupanova and Mr Smirnov, the Court considered that the applicants had exercised their right of appeal within the time-limit allowed, from the date on which they had effectively received a full copy of the judicial decisions. It further considered that, by rejecting their appeals as out of time, the domestic courts had given an excessively formalistic interpretation of the domestic law, with the result that the applicants had had imposed on them an obligation that they were unable to meet, even with particular diligence. Given the seriousness of the penalty imposed on the applicants for failure to comply with the time-limits calculated in this way, the Court considered that the contested measure had not been proportionate to the aim of ensuring judicial certainty and the proper administration of justice. **It held that there had been a violation of Article 6 § 1 of the Convention.**

In the case of Mr Storozhenko, who never lodged his appeal because the decision had been sent to the wrong address, the Court found that the failure to notify the text of the decision had deprived him of his right of access to the appeal court. **It held that there had been a violation of Article 6 § 1.**

In the case of Mr Khabibullin, the Court considered that his complaint was manifestly ill-founded in that the Moscow court had examined his appeal.

Article 41 (just satisfaction)

The Court held that Russia was to pay the applicants Ms Cherednichenko, Ms Polupanova and Mr Storozhenko 2,500 euros (EUR) each in respect of non-pecuniary damage, and EUR 100 and EUR 200 in respect of costs and expenses to Ms Cherednichenko and Ms Polupanova respectively. Mr Storozhenko and Mr Smirnov made no claim in this respect.

The judgment is available only in French.

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[2] *Ivanova and Ivashova v. Russia*, nos. 797/14 and 67755/14, 26 January 2017.

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