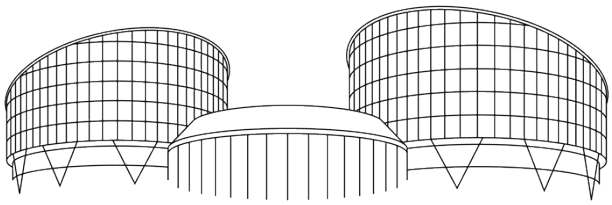

EUROPEAN COURT OF HUMAN RIGHTS
COUR EUROPÉENNE DES DROITS DE L'HOMME

FIFTH SECTION

CASE OF KOLEGOVY v. RUSSIA

(Application no. 15226/05)

JUDGMENT

STRASBOURG

1 March 2012

FINAL

01/06/2012

This judgment has become final under Article 44 § 2 of the Convention. It may be subject to editorial revision.

In the case of Kolegovy v. Russia,

The European Court of Human Rights (Fifth Section), sitting as a Chamber composed of:

Dean Spielmann, *President,*
Karel Jungwiert,
Boštjan M. Zupančič,
Anatoly Kovler,
Ann Power-Forde,
Angelika Nußberger,
André Potocki, *judges,*
and Claudia Westerdiek, *Section Registrar,*

Having deliberated in private on 7 February 2012,

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

PROCEDURE

1. The case originated in an application (no. 15226/05) against the Russian Federation lodged with the Court under Article 34 of the Convention for the Protection of Human Rights and Fundamental Freedoms ("the Convention") by two Russian nationals, Ms Mariya Ilyinichna Kolegova ("the first applicant") and Mr Pavel Ivanovich Kolegov ("the second applicant") on 8 March 2005.

2. On 23 June 2006 the second applicant died. The first applicant expressed an interest to pursue the application in his stead.

3. The first applicant, who had been granted legal aid, was represented by Mr I.L. Fedotov and L.V. Stakhiyeva, lawyers practising in Moscow. The Russian Government ("the Government") were represented by Mr G. Matyushkin, the Representative of the Russian Federation at the European Court of Human Rights.

4. On 8 December 2008 the application was communicated to the Government. It was also decided to rule on the admissibility and merits of the application at the same time (Article 29 § 1).

THE FACTS

I. THE CIRCUMSTANCES OF THE CASE

5. The applicants, who are a couple, were born in 1934 and 1932 respectively. The second applicant died in 2006. The first applicant lives in Skhodnya, the Moscow Region.

A. Domestic court proceedings

6. The applicants, both wheelchair-bound and having first-degree disability status, repeatedly requested social-security services to provide them with a car adapted to their disability. Their numerous complaints in this respect to the General Prosecutor's Office, Members of the State Duma, and Administration of the President of the Russian Federation proved unsuccessful. As it was mentioned in the authorities' letters to the applicants, according to the medical expert report ordered by the social-security services, the first applicant was not entitled to a free car and driving was contra-indicated in respect of the second applicant.

7. On 18 November 2003 the applicants, apparently assisted by counsel, lodged a claim against the Ministry of Labour challenging the refusal to provide them with a car and claiming compensation for non-pecuniary damage.

8. On 15 March 2004 the Basmannyy District Court of Moscow ("the district court") fixed the hearing for 14 May 2004 and at some point, apparently on the same date, summoned the applicants to appear at the hearing.

9. According to the Government, on 30 March 2004 one of the applicants received the respective notification. They submitted a copy of an acknowledgment-of-receipt card containing information on the date and time of the hearing, the name of the court, the date of notification, and signatures of a recipient and a postman.

10. According to the applicants, they did not receive the summons.

11. On 14 May 2004 the district court, having heard the defendant's representatives, rejected their claim because the applicants had lodged it against a wrong defendant. The court established that the social welfare services did not belong to the Ministry of Labour and that the latter did not have power to review their decisions. The applicants were absent from the hearing. The court found, with reference to the acknowledgment-of-receipt card, that they had been duly summoned and examined the case in their absence. The representative of the respondent authority was present.

12. On 30 June 2004 the applicants' representative received a copy of the judgment of 14 May 2004.

13. On 5 July 2004 the applicants appealed against the judgment. They complained, inter alia, that their right to a fair trial had been violated as neither they nor their lawyer had had a chance to attend the hearing due to their having been summoned belatedly.

14. On 14 July 2004 the district court on the applicants' request extended the time-limit for lodging the grounds of appeal.

15. On 6 October 2004 the Moscow City Court adjourned the examination of the applicants' appeal until 20 October 2004, having found

that the parties had not been notified of the date of the hearing in a timely manner.

16. According to the Government, at some point the district court dispatched summonses to the parties, including the applicants, informing them of the date and time of the appeal hearing. According to the applicants, neither they nor their representative received the summons.

17. On 20 October 2004 the Moscow City Court upheld the judgment of 14 May 2004 on appeal. The court examined the case in the applicants' absence, having mentioned that they had been notified of the appeal hearing. As regards the applicants' complaint about their absence from the hearing at the first instance court, the appeal court found that they had been properly summoned. The court further upheld the lower court's finding that the civil action was lodged against the wrong defendant.

B. Access to the case file at the registry of the Basmannyy District Court

18. On 12 December 2008 the application was communicated to the Government.

19. On 21 January 2009 the Moscow City Court requested the case file from the district court in order to prepare a report on the factual circumstances of the case, to be included in the Government's observations on the admissibility and merits of the application.

20. On 27 January 2009 the Moscow City Court received the case file.

21. On 4 February 2009 Ms Stakhiyeva, the first applicant's representative before the Court, requested the district court to grant her access to the case file concerning the applicants' civil proceedings.

22. On the same date the registry of the district court rejected her request having advised her that she could be granted access to the file not earlier than ten days following the request.

23. On 5 February 2009 the President of the district court refused to examine the representative's oral complaint in this respect, apparently having provided no reasons for the decision. It appears that on the same date the lawyer lodged a written complaint about the refusal to allow her to study the file, but the petition remained unanswered.

24. On 27 February 2009 the registry of the district court again rejected the applicant's new request for access to the file, and on the same date the President of the district court disallowed her complaint in this respect.

25. On 10 March 2009 the registry of the Moscow City Court returned the case file to the district court.

26. On 25 March 2009 the Government advised the Court that the file had been transferred to the district court and was available for study. On 27 March 2009 this letter was forwarded by the Court to the applicant's representatives.

27. On 9 April 2009 the Court received the Government's observations and on 29 April 2009 forwarded them to the applicant's representatives with a request to provide observations in reply.

28. On 12 May 2009 the applicant's lawyer requested to grant her access to the case file. She submits that on the same date the registry disallowed her request, and the President of the court refused to discuss the matter with her.

29. On 14 May 2009 she was advised by the registry of the district court that the file was available at the registry.

30. On 18 May 2009 the lawyer studied the case file.

31. On 9 June 2009 the applicant's lawyers submitted the observations in reply to the Government's observations on the applicants' case.

II. RELEVANT DOMESTIC LAW

For a summary of relevant domestic law provisions see *Gusak v. Russia*, no. 28956/05, § 20, 7 June 2011.

THE LAW

I. *LOCUS STANDI*

32. The Court observes that on 23 June 2006 the second applicant died after having lodged his application under Article 34 of the Convention.

33. The Court observes that in various cases in which an applicant has died in the course of the Convention proceedings it has taken into account the statements of the applicant's heirs or of close family members expressing their wish to pursue the application (see, among other authorities, *Kalló v. Hungary*, no. 30081/02, § 24, 11 April 2006). The Court considers that the first applicant, the second applicant's widow, who stated her intention of continuing the proceedings, has a legitimate interest in pursuing the application in the second applicant's stead (see *Bitiyeva and X v. Russia*, nos. 57953/00 and 37392/03, § 92, 21 June 2007). The Government did not contend that the first applicant had no standing to pursue the case in her late husband's stead. Accordingly, the Court finds that the first applicant, as the second applicant's heir, has standing to continue these proceedings in his stead.

II. ALLEGED VIOLATION OF ARTICLE 6 OF THE CONVENTION

34. The applicants complained that they were not notified of the hearings of 14 May and 20 October 2004. They relied on Article 6 § 1 of the Convention, the relevant part of which reads as follows:

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

A. The parties' submissions

35. The Government argued that the applicants were notified of both hearings in good time and in due form. As regards the hearing at the first instance court, they refer to a copy of the acknowledgment-of-receipt card form signed by one of the applicants confirming that on 30 March 2004 the summons had been dispatched to the applicants' address. They argued that the applicants did not appear at the hearing without a valid reason after having been duly notified thereof. In these circumstances, the first instance court's decision to proceed with the examination of the case was not incompatible with the fair trial guarantees of Article 6 § 1, as confirmed by the Court's judgments in several cases against Russia (such as, mutatis mutandis, *Groshev v. Russia*, no. 69889/01, § 30, 20 October 2005; *Mokrushina v. Russia*, no. 23377/02, § 23, 5 October 2006; and *Larin and Larina v. Russia*, no. 74286/01, § 43, 7 June 2007). As regards the appeal hearing at the Moscow City Court of 20 October 2004, they submitted that, first, the decision of the Moscow City Court of 6 October 2004 contained a date of the examination of the case and, second, the respective summons had been sent to the parties by mail. They reached the addressees, because the defendant received the notification and was present at the hearing. They further pointed out that the applicants could have submitted a certificate from a local post office confirming that they had not received any correspondence from the domestic court before the hearing, but had not done so.

36. The first applicant maintained the applicants' initial complaint adding that there was no evidence that she or the second applicant or their representative had received the summons in respect of the two hearings. As regards the acknowledgment of receipt in respect of the summons for the hearing at the first instance court, she challenged its authenticity, arguing that the signature on it did not belong to any of the applicants. It did not contain a name and address of a recipient. As regards the appeal proceedings before the Moscow City Court, they submitted that the domestic case file did not contain any documents to confirm that the notifications had been sent to the applicants or that the applicants had received the summons.

B. The Court's assessment

1. Admissibility

37. The Court notes that this complaint is not manifestly ill-founded within the meaning of Article 35 § 3 (a) of the Convention. It further notes that it is not inadmissible on any other grounds. It must therefore be declared admissible.

2. Merits

38. The Court notes the first applicant's argument as regards the lack of authenticity of the signatures on the acknowledgment-of-receipt card. The Court observes that the case file does not contain sufficient information for it to decide on the issue of authenticity of the signature on the card. However, it considers that there is no need to decide on the issue of notification of the first instance hearing separately for the following reasons.

39. The Court observes that the applicants complained about the alleged failure to notify them of the hearings at the courts of two levels of jurisdiction, including the appeal instance. As regards that hearing, the Government submitted that the parties had been properly summoned by mail.

40. The Court recalls that Article 6 cannot be construed as conferring on litigants an automatic right to obtain a specific form of service of court documents, such as by registered mail (see *Bogonos v. Russia* (dec.), no. 68798/01, 5 February 2004). Nevertheless, the Court considers that in the interests of the administration of justice a litigant should be summoned to a court hearing in such a way as not only to have knowledge of the date and the place of the hearing, but also to have enough time to prepare his case and to attend the court hearing. A formal dispatch of a notification letter without any confidence that it will reach the applicant in good time cannot be considered by the Court as proper notification (see *Gusak*, § 27, cited above).

41. Turning to the circumstances of the present case, the Court observes that the Government did not submit any evidence showing that the summons for the appeal hearing had reached the applicants or their representative in good time. Moreover, they did not submit any documents to demonstrate that the summons had, in fact, been sent to the applicants or their lawyer, such as copies of the summons, acknowledgments of receipt, envelopes bearing postmarks, a checklist of the case-file or any other record confirming the fact of actual dispatching of the notifications to the applicants or their representative (see, by contrast, *Belan v. Russia* (dec.), no. 56786/00, 2 September 2004, and *Bogonos v. Russia*, cited above). In these circumstances, the Court is unable to accept the Government's submission that the respondent party had been notified of the hearing as

sufficient evidence of the applicants' notification of the examination of the case. Similarly, the fact that the decision of 6 October 2004 contained a new date of the hearing, taken alone, cannot be regarded as an appropriate notification. It is important to note in this respect that the applicants had not been present at the court on 6 October 2004 and that the case-file does not contain any information as to the date on which they had received a copy of the decision to adjourn the case taken on that date. Moreover, the Court observes that there is nothing in the text of the appeal judgment to suggest that the appeal court examined the question whether the applicants had been duly summoned, and, if they had not been, whether the examination of the appeal should have been adjourned. In fact, the court's reasoning in this respect was confined to a finding that the applicants had been apprised of the date of the examination of their case, without further details.

42. It follows that the domestic authorities failed to demonstrate that they had taken a reasonable effort to duly summon the applicants to the hearing (see by contrast *Babunidze v. Russia* (dec.), no. 3040/03, 15 May 2007). In these circumstances the Court accepts the applicants' allegation that the domestic courts had failed in their duty to inform them of the appeal hearing. The Court also does not lose sight of the fact that the other party took part in the appeal hearing and made oral submissions. The participation in the hearing enabled the other party to submit observations on the applicants' appeal submissions, which were not communicated to the applicants and to which they could not reply orally.

43. The Court reiterates that it has frequently found a violation of Article 6 § 1 of the Convention in cases raising issues similar to the one in the present case (see, among other authorities, *Yakovlev v. Russia*, no. 72701/01, §§ 19 et seq., 15 March 2005; *Groshev v. Russia*, cited above, §§ 27 et seq.; *Mokrushina v. Russia*, cited above, §§ 20 et seq.; and *Prokopenko v. Russia*, no. 8630/03, §§ 17 et seq., 3 May 2007)

44. Having examined the materials in its possession, the Court notes that the Government have not put forward any fact or argument capable of persuading it to reach a different conclusion in the present case. The Court has established that due to the authorities' failure to duly summon the applicants they were deprived of the opportunity to attend the appeal hearing.

45. It follows that there has been a violation of the applicants' right to a fair hearing under Article 6 § 1 of the Convention

III. COMPLIANCE WITH ARTICLE 34

46. The first applicant may be understood to complain about a hindrance with her right to individual petition with reference to the refusals by the registry of the Basmannyy District Court to grant Ms Stakhiyeva access to

the case file. The Court will examine these allegations under Article 34 which reads as follows:

> "The Court may receive applications from any person, non-governmental organisation or group of individuals claiming to be the victim of a violation by one of the High Contracting Parties of the rights set forth in the Convention or the Protocols thereto. The High Contracting Parties undertake not to hinder in any way the effective exercise of this right."

47. The Government argued that there had been no hindrance with the right of individual petition. On 21 January 2009 the case file had been requested from the Basamannyy District Court via the Moscow City Court in order to prepare the Government's observations on the admissibility and merits of the case. On 10 March 2009 the case file had been sent back to the district court and had been available for the first applicant's representative at the registry of the court. The representative's new request to give her access to the file dated 12 May 2009 had been granted on 14 May 2009, and she successfully studied the file four days later.

48. The first applicant maintained her complaint.

49. The Court observes that from 21 January to 10 March 2009 the case file was unavailable for consultation at the first instance court because it was forwarded to the Moscow City Court, so that the Government could obtain information on the factual circumstances of the case and prepare their observations. Accordingly, the applicant's requests of 4 and 27 February 2009 to give her access to the file could not be granted. The Court accepts that the case file was necessary for the Government to prepare its observations on the admissibility and merits of the present application within the time-limit set out for this purpose. The Court notes, however, that the registry of the first instance court could have considered alternative means of transferring the information on the case which would have permitted to avoid any impediment to the applicant's representative's access to the documents, such as, for instance, sending photocopies of the case file by fax or mail. Nevertheless, the Court is satisfied that once the file was returned to the registry of the district court, the lawyer's new request for access to the file was granted without an undue delay. In fact, her new request to afford her an opportunity to study the case file lodged on 12 May 2009 was allowed two days later. She was able to study the case file, and the first applicant's representatives successfully submitted their observations on the admissibility and merits of the present application.

50. The Court finds it regrettable that the applicant' representative was not provided with specific reasons for the repeated refusals of the registry of the district court to give her access to the case file in February 2009. However, having regard to the fact that the applicant's representative studied the case file on 18 May 2009 and was able to prepare and submit her observations within the time-limit set out for this purpose, the Court considers that there is an insufficient factual basis to consider that there has

been any unjustified interference by State authorities with the first applicant's exercise of the right of petition in the proceedings before the Court in relation to the present application.

51. The Court therefore concludes that the respondent State has complied with its obligations under Article 34 of the Convention.

IV. OTHER ALLEGED VIOLATIONS OF THE CONVENTION

52. Lastly, the applicants complained under Article 3 of the Convention that without a car they could not gain access to necessary facilities and thus felt humiliation and distress, which impinged on the quality of their private life.

53. The Court observes that their claim was rejected by the domestic courts as it had been lodged against a wrong defendant. The domestic court advised them that such claim could be lodged against social welfare services. However, there is nothing to suggest that the applicants had brought proceedings against that authority. Therefore, they failed to lodge their claim against a due respondent. It follows that this complaint must be rejected under Article 35 §§ 1 and 4 of the Convention for non-exhaustion of domestic remedies.

54. The applicants further complained under Articles 6 and 13 and about the outcome of the civil proceedings.

55. In the light of all the material in its possession, and in so far as the matters complained of are within its competence, the Court finds that the above complaints do not disclose any appearance of a violation of the rights and freedoms set out in the Convention or its Protocols. It follows that this part of the application is manifestly ill-founded and must be rejected in accordance with Article 35 §§ 3 (a) and 4 of the Convention.

V. APPLICATION OF ARTICLE 41 OF THE CONVENTION

56. 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."

A. Damage

57. The first applicant claimed 20,000 euros (EUR) in respect of non-pecuniary damage. She did not make a claim in respect of pecuniary damage.

58. The Government contested the claim as excessive and unreasonable.

59. The Court finds that the applicants suffered non-pecuniary damage which would not be adequately compensated by the finding of a violation alone. Having regard to the nature of the violation found and making its assessment on an equitable basis, the Court awards the first applicant EUR 1,800, plus any tax that may be chargeable on that amount, and dismisses the remainder of the claim under this head.

B. Costs and expenses

60. The first applicant claimed 3,384.80 Russian roubles (RUB) in respect of "pecuniary expenses incurred for prevention and remedying the alleged violation of the applicant's rights in the context of the proceedings before the Court", of which RUB 3,090 represented the costs of the legal representation by Ms Stakhiyeva and RUB 294.80 postal expenses. She submitted copies of the postal receipts and a document confirming that a payment of RUB 3,090 had been made by the first applicant to her.

61. Referring to the wording of the applicant's claims under this head, the Government argued that these should be rather regarded as a claim for pecuniary damage. They concluded that the first applicant had not, in fact, lodged a claim for costs and expenses and therefore nothing should be awarded by the Court under this head. At the same time, they accepted that the claim was substantiated by the respective documents.

62. The Court observes that the first applicant made a request for compensation of her expenses in the context of the proceedings before the Court, claiming reimbursement of the postal expenses and the lawyer's fee. In these circumstances, the Court accepts that the claim was made, in fact, in respect of costs and expenses.

63. According to the Court's case-law, an applicant is entitled to the reimbursement of costs and expenses only in so far as it has been shown that these have been actually and necessarily incurred and are reasonable as to quantum.

64. In the present case, regard being had to the documents in its possession and the above criteria and to the fact that the Government had accepted that the claim had been sufficiently substantiated, as well as to the fact that the applicant was granted legal aid, the Court considers it reasonable to allow the claim in full and to award the first applicant the sum of EUR 78 for the proceedings before the Court, plus any tax that may be chargeable on that amount.

C. Default interest

65. 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. *Holds* that the first applicant has standing to continue the present proceedings in the second applicant's stead;

2. *Declares* the complaint under Article 6 § 1 concerning the domestic authorities' failure to duly apprise the applicants of the appeal hearing admissible and the remainder of the application inadmissible;

3. *Holds* that there has been a violation of Article 6 § 1 of the Convention;

4. *Holds* that the Government have not failed to comply with its obligations under Article 34 of the Convention;

5. *Holds*
   (a) that the respondent State is to pay the first applicant, within three months from the date on which the judgment becomes final in accordance with Article 44 § 2 of the Convention, the following amounts, to be converted into Russian roubles at the rate applicable at the date of settlement:
      (i) EUR 1,800 (one thousand eight hundred euros), plus any tax that may be chargeable, in respect of non-pecuniary damage;
      (ii) EUR 78 (seventy-eight euros), plus any tax that may be chargeable, in respect of costs and expenses;
   (b) that from the expiry of the above-mentioned three months until settlement simple interest shall be payable on the above amounts at a rate equal to the marginal lending rate of the European Central Bank during the default period plus three percentage points;

6. *Dismisses* the remainder of the first applicant's claim for just satisfaction.

Done in English, and notified in writing on 1 March 2012, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Claudia Westerdiek
Registrar

Dean Spielmann
President