



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

FIRST SECTION

CASE OF GRYAZNOV v. RUSSIA

(Application no. 19673/03)

JUDGMENT

STRASBOURG

12 June 2012

FINAL

12/09/2012

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

In the case of Gryaznov v. Russia,

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

Nina Vajić, *President*,

Anatoly Kovler,

Elisabeth Steiner,

Khanlar Hajiyeu,

Mirjana Lazarova Trajkovska,

Julia Laffranque,

Linos-Alexandre Sicilianos, *judges*,

and Søren Nielsen, *Section Registrar*,

Having deliberated in private on 22 May 2012,

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

PROCEDURE

1. The case originated in an application (no. 19673/03) 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 a Russian national, Mr Dmitriy Sergeyevich Gryaznov (“the applicant”), on 10 April 2003.

2. The applicant, who had been granted legal aid, was represented by Mr A. Koss, a lawyer practising in Kaliningrad. The Russian Government (“the Government”) were represented by Ms V. Milinchuk, former Representative of the Russian Federation at the European Court of Human Rights.

3. The applicant complained in particular of a violation of his right of access to court and of a violation of the principle of equality of arms.

4. On 16 March 2007 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 applicant was born in 1967 and lives in Kaliningrad.

6. In 2000 the applicant was convicted of extortion and aggravated murder and sentenced to seventeen years’ imprisonment. On 12 October

2000 he was transferred to a correctional colony in the Kaliningrad Region to serve his sentence.

A. Claim for compensation for the alleged ill-treatment

7. On 1 July 2002 the applicant sued the investigator for compensation, claiming that he had been ill-treated to make him confess. In his statement of claim he alleged that on 17 March 1999 the investigator had beaten him and injured his lips, forehead and ears. The investigator had also threatened to kill him. After he had confessed to the murder, he had been placed in a detention facility. He had applied for medical assistance, which had been refused. On 23 March 1999 he had been questioned and the questioning had been videotaped. In his statement of claim he asked the court to watch the videotape, in which it could be seen that his lips were cut. He also asked the court to hear his counsel, Ms V., who had seen marks of beatings on his face. He finally indicated that he wanted to give oral submissions and requested to be brought to the hearing.

8. On 25 September 2002 the Leningradskiy District Court of Kaliningrad rejected the applicant's requests to be brought to the hearing and to summon Ms V. It stated that domestic law did not give a detainee the right to be brought to a hearing in a civil case. Referring to legal professional privilege, it held that Ms V. could not be questioned about the information that had become known to her in the performance of her duties as counsel. It further requested the prosecutor's office of the Kaliningrad Region to make available the video record of the applicant's questioning.

9. On 29 October 2002 the prosecutor's office of the Kaliningrad Region informed the court that the record of the questioning had been erased as unnecessary.

10. On an unspecified date the prosecutor's office of the Kaliningrad Region and the local department of the Ministry of Finance made written submissions in support of the respondent.

11. On 14 November 2002 the applicant repeated his request to attend the hearing. On 20 November 2002 the Leningradskiy District Court rejected his request, giving the same reasons as before. It added that the applicant was entitled to appoint a representative.

12. On 10 December 2002 the Leningradskiy District Court heard the investigator, who denied beating the applicant. The applicant was not brought to the hearing.

13. On the same day the Leningradskiy District Court gave its judgment. It rejected the applicant's claim for compensation as unsubstantiated.

14. On 16 December 2002 the applicant received the decision of 20 November 2002 and a notification stating that the hearing before the Leningradskiy District Court was scheduled for 10 December 2002. On the same day the applicant complained to the District Court about the belated

notification. He also submitted that he did not have a representative and that his personal attendance was important because his claim was based on his personal experience. He asked that a new hearing be scheduled and that he be brought to that hearing.

15. On 26 December 2002 the applicant received a copy of the judgment of 10 December 2002. In his appeal submissions he complained, in particular, that he had not been brought to the hearing, and about the court's refusal to summon Ms V. He further complained that, despite his many requests, he had had no opportunity to study the materials submitted by the respondent, or to comment on them.

16. On 29 January 2003 the applicant received the transcript of the hearing of 10 December 2002 and copies of written submissions by the prosecutor's office of the Kaliningrad Region and the local department of the Ministry of Finance.

17. On 4 March 2003 the applicant received the remaining materials from the case file.

18. On 12 March 2003 the Kaliningrad Regional Court upheld the judgment on appeal. The applicant was not brought to the appeal hearing.

B. Claim for compensation for the allegedly unlawful transfer to prison

19. On an unspecified date the administration of the applicant's correctional colony applied to a court, asking it to order the applicant's transfer to prison for three years.

20. On 10 April 2002 the Bagrationovskiy District Court of the Kaliningrad Region granted the request. It held that the applicant had often disrupted the colony regime or infringed colony regulations, and had frequently been placed in a punishment or solitary cell. It concluded from this that the applicant was of an unruly character and was a bad influence on the other inmates.

21. On 11 April 2002 the applicant was transferred to prison.

22. On 10 September 2002 the Kaliningrad Regional Court quashed the decision on appeal as having no basis in domestic law.

23. On 8 October 2002 the applicant was transported back to the colony.

24. On 27 January 2003 the applicant sued the judge who had ordered his transfer to prison and the Kaliningrad Regional Department of the Ministry of Finance for compensation. He claimed that the judge had unlawfully ordered his transfer to prison and that her unlawful decision had caused him mental suffering for which he should be compensated by the Ministry of Finance.

25. On 9 April 2003 the Kaliningrad Regional Court declared the claim inadmissible in the final instance. It held that Article 1070 of the Civil Code, which provided for compensation for damage caused by unlawful

judicial decisions, contained an exhaustive list of cases in which such compensation could be paid. The applicant's situation did not fall within the cases specified.

II. RELEVANT DOMESTIC LAW AND PRACTICE

A. Civil hearings

26. Before 1 February 2003 the civil procedure was governed by the RSFSR Code of Civil Procedure of 11 June 1964 ("the old CCP"). On 1 February 2003 the Code of Civil Procedure of the Russian Federation ("the CCP") entered into force.

1. Attendance at hearings

27. Individuals may appear before the court in person or act through a representative (Article 43 § 1 of the old CCP and 48 § 1 of the CCP). A court may appoint an advocate to represent a defendant whose place of residence is not known (Article 50 of the CCP). The Advocates Act (Law no. 63-FZ of 31 May 2002) provides that free legal assistance may be provided to indigent plaintiffs in civil disputes concerning alimony or pension payments or claims for damage to health (section 26 § 1).

28. Parties to the case must be notified of the time and place of court hearings (Article 144 of the old CCP and Article 155 of the CCP). Summons are to be served on the parties and their representatives in such a way that they have enough time to appear at the hearing and prepare their case (Article 106 § 2 of the old CCP and Article 113 § 3 of the CCP). If a party to the case fails to appear and there is no evidence that the party has been duly summoned, the hearing must be adjourned (Article 157 § 1 of the old CCP and Article 167 § 2 of the CCP).

29. A court may hold a session outside the court-house if, for instance, it is necessary to examine evidence which cannot be brought to the court-house (Articles 66 and 179 of the old CCP and Articles 58 and 184 of the CCP).

30. The Penitentiary Code provides that convicted persons may be transferred from a correctional colony to an investigative unit if their participation is required as witnesses, victims or suspects in connection with certain investigative measures (Article 77.1). The Code does not mention any possibility for a convicted person to take part in civil proceedings, whether as a plaintiff or a defendant.

31. On several occasions the Constitutional Court has examined complaints by convicted persons whose requests for leave to appear in civil proceedings have been refused by courts. It has consistently declared those

complaints inadmissible, finding that the contested provisions of the Code of Civil Procedure and the Penitentiary Code do not, as such, restrict the convicted person's access to court. It has emphasised nonetheless that the convicted person should be able to make submissions to the civil court, either through a representative or in any other way provided by law. If necessary, the hearing may be held at the location where the convicted person is serving his sentence, or the court hearing the case may instruct the court with territorial jurisdiction over the correctional colony to obtain the applicant's submissions or to take any other procedural steps (decisions 478-O of 16 October 2003, 335-O of 14 October 2004, and 94-O of 21 February 2008).

2. Submission and examination of evidence

32. Parties to civil proceedings are entitled to study the case file and make copies of documents, submit evidence, and ask questions of the other party and the witnesses (Article 30 of the old CCP and Article 35 of the CCP).

33. Parties must submit evidence in support of their submissions. If they are unable to obtain a certain piece of evidence, the court may, at their request, order that the person, organisation or State body in possession of that piece of evidence make it available to the court (Articles 50, 64 and 69 of the old CCP and Article 57 of the CCP).

34. Each party must send the other party a copy of its submissions and supporting evidence (Article 149 of the CCP). All evidence must be examined by the court at the hearing in the presence of the parties. The parties must be provided with copies (Articles 175 and 178 of the old CCP, Articles 180-183 of the CCP).

35. Parties may ask the court to examine witnesses. They must explain to the court which relevant facts that witness may confirm. The court then decides whether that witness should be summoned to testify (Articles 61 § 3 and 142 § 1 (6) of the old CCP and Articles 69 § 2 and 150 § 1 (7) of the CCP). Counsel in criminal, civil or administrative proceedings may not be questioned about the circumstances that have become known to them as a result of the performance of their duties (Article 61 § 2 (1) of the old CCP and Article 69 § 3 (1) of the CCP).

B. State liability for damage caused in the process of the administration of justice

36. The Civil Code provides that damage inflicted on the person or property of an individual shall be reimbursed in full by the person who inflicted the damage (Article 1064 § 1).

37. Damage caused through unlawful conviction, unlawful prosecution, unlawful placement in custody or order not to leave the place of residence,

unlawful administrative arrest or correctional work, shall be compensated by the federal or regional treasury, irrespective of any fault by the judges or law-enforcement officials (Article 1070 § 1 of the Civil Code). The federal or regional treasury shall also be liable for damage sustained by an individual as part of the administration of justice, provided that the judge's guilt has been established in a final criminal conviction (Article 1070 § 2).

38. By a ruling of 25 January 2001, the Constitutional Court provided an interpretation of Article 1070 § 2 of the Civil Code. It held that a judge's criminal conviction was a necessary element of a claim for damages on account of an unlawful judicial decision issued by that judge in the context of civil proceedings. It reasoned as follows:

“3...This special precondition for State liability for damage caused as part of the administration of justice is justified by the criteria for the activities of the judiciary, established by the Constitution of the Russian Federation and detailed in the legal provisions on [civil] procedure (including adversarial proceedings, wide margin of appreciation of the judges, and so on), and by the existence of a special procedure for review of judicial decisions. Review of judicial decisions, that is assessment of their lawfulness and justification, must be carried out through special procedures established by law: appeal, cassation and supervisory review proceedings. Review of a judicial decision in separate tort proceedings would have amounted to an additional review of its lawfulness and justification...

This is unacceptable ... because it would have led to a situation where a party to judicial proceedings which considers that it has been a victim of unlawful actions by a judge would have recourse not only to appeal proceedings, but also to a tort action, and the judges would have had to prove each time absence of fault on their part. This would have undermined the existing system of review of judicial decisions by higher courts, which is intrinsic to the judiciary and is established by law.

4. Administration of justice is a special type of State power. When applying a general legal rule to the circumstances of a given case, a judge provides an interpretation of the rule, takes a decision within the scope of his (at times wide) margin of appreciation provided by the law and, often, assesses the circumstances without the benefit of sufficient information (sometimes concealed from him)...

Article 1070 § 2 not only excludes a presumption of fault on the [judge's] part, but also requires the establishment of the judge's guilt in a criminal judgment as an additional condition of State liability. Thus, Article 1070 § 2 links State liability to a criminal act by a judge, which is premeditated (pronouncement of a deliberately unlawful conviction, judgment or another decision, an offence under Article 305 of the Criminal Code of the Russian Federation) or negligent (improper exercise of his powers by a judge as a result of a negligent or careless attitude to his duties, which results in a substantial breach of citizens' rights or legitimate interests, an offence under Article 293 of the Criminal Code of the Russian Federation).

It follows from Article 1070 § 2 of the Civil Code, taken together with its Article 1069 and the above-mentioned and other provisions of the Criminal Code on the basis of which a judge may be held criminally liable, that the State is liable for damage in all cases where it has been caused by a criminal act committed by a judge as part of judicial proceedings.

The specific nature of the disputed provision which provided for an exception to the general rules governing compensation for damage warrants a conclusion that the term “administration of justice” does not cover judicial proceedings in their entirety, but only extends to judicial acts touching upon the merits of a case...”

39. The Constitutional Court further held that other judicial acts, mainly those of a procedural nature, fell outside the scope of the notion of “administration of justice”. State liability for damage caused by such procedural acts or failures to act, such as a breach of the reasonable length of court proceedings, could arise even in the absence of a final criminal conviction of a judge, if the fault of the judge has been established in civil proceedings. An individual should be able to obtain compensation for any damage incurred through a violation by a court of his or her right to a fair trial within the meaning of Article 6 of the Convention. The Constitutional Court held that Parliament should legislate on the grounds and procedure for compensation by the State for damage caused by unlawful acts or failures to act on the part of a court or a judge in such cases, and should determine territorial and subject-matter jurisdiction over such claims.

THE LAW

I. ALLEGED VIOLATION OF ARTICLE 6 § 1 OF THE CONVENTION ON ACCOUNT OF AN ALLEGED VIOLATION OF THE PRINCIPLE OF EQUALITY OF ARMS IN A CIVIL CASE

40. The applicant complained that the courts had refused to secure his attendance at the first-instance and appeal hearings in the proceedings concerning damages for the alleged ill-treatment. In addition, the applicant complained that he had not been served with copies of submissions and documents presented by the defendant to the Leningradskiy District Court until after the first-instance hearing and could not therefore comment on them. He finally complained that the District Court had refused to call Ms V. to the witness stand. He relied on Article 6 § 1, which provides, in so far as relevant, as follows:

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

A. Admissibility

41. 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.

B. Merits

1. Submissions by the parties

42. The Government submitted that the applicant had not advanced any convincing arguments showing that his personal attendance at the hearings had been necessary. He could have participated in the hearings by being represented there by counsel. His request to be brought to the hearings had apparently been motivated by his wish to escape for a time from the severe correctional regime he was under.

43. The applicant maintained his claims. He submitted that had not been present at the hearing of 10 December 2002 and had been therefore unable to make submissions or to comment on the submissions of the other party. The District Court had moreover refused to summon his counsel Ms V., who could have confirmed that he had had marks of beatings on his face. Given that he had been denied medical assistance and that the video recording of his questioning had been erased, Ms V.'s testimony would have been the only opportunity for him to prove that he had been ill-treated.

2. The Court's assessment

(a) Absence from the hearings

44. The applicant sought leave to appear before the civil court examining his claim of ill-treatment. The domestic courts refused him leave to appear, relying on the absence of any legal norm requiring his presence and on his right to appoint a representative. Thus, both the first-instance and appeal hearings were held in his absence.

45. Article 6 of the Convention does not guarantee a right to personal presence before a civil court, but rather a more general right to present one's case effectively before the court and to enjoy equality of arms with the opposing side. Article 6 § 1 leaves to the State a free choice of the means to be used in guaranteeing litigants these rights (see *Steel and Morris v. the United Kingdom*, no. 68416/01, §§ 59-60, ECHR 2005-II). Thus, representation may be an appropriate solution in cases where a party cannot appear in person before a civil court. Given the obvious difficulties involved in transporting convicted persons from one location to another, the Court can in principle accept that in cases where the claim is not based on the plaintiff's personal experiences, representation of the detainee by an advocate would not be in breach of the principle of equality of arms (see *Khuzhin and Others v. Russia*, no. 13470/02, § 105, 23 October 2008).

46. The Court observes that it has previously found a violation of the right to a “public and fair hearing” in a number of cases where Russian courts, after having refused leave to appear to imprisoned applicants wishing to make oral submissions on their civil claim on the ground that the domestic law did not make provision for convicted persons to be brought from correctional colonies to the place where their civil claim was being heard, failed to consider other legal means of securing their effective participation in the proceedings (see *Khuzhin and Others*, cited above, §§ 53 et seq., and *Mokhov v. Russia*, no. 28245/04, §§ 41 et seq., 4 March 2010).

47. It has also found a violation of Article 6 in cases where a Russian court has refused leave to appear to an imprisoned applicant who had wished to make oral submissions on his claim that he had been ill-treated by the police (see *Kovalev v. Russia*, no. 78145/01, § 37, 10 May 2007) or that he had been detained in appalling conditions (see *Sokur v. Russia*, no. 23243/03, § 30 et seq., 15 October 2009; *Shilbergs v. Russia*, no. 20075/03, § 111, 17 December 2009; and *Artyomov v. Russia*, no. 14146/02, § 205, 27 May 2010). The Court found that, irrespective of a representative’s presence, the applicant’s personal attendance was also necessary. Given that his claim had been largely based on his personal experience, his submissions would have been “an important part of the plaintiff’s presentation of the case and virtually the only way to ensure adversarial proceedings”.

48. In the present case, it is doubtful that the applicant had a practical opportunity to appoint a representative. It appears that he did not learn that he had been refused leave to attend the hearing until after the hearing had taken place (see paragraph

14. above). The applicant was obviously unable to decide on a further course of action for the defence of his rights until such time as the decision refusing him leave to appear was communicated to him (see, for similar reasoning, *Khuzhin and Others*, cited above, § 107).

49. In any event, the Court is not convinced that the representative’s appearance before the court could have secured the effective, proper and satisfactory presentation of the applicant’s case. The applicant’s claim for compensation for non-pecuniary damage resulting from his ill-treatment was, to a major extent, based on his personal experience. The Court considers that his testimony describing the circumstances of the alleged ill-treatment, of which only the applicant himself had first-hand knowledge, would have constituted an indispensable part of his presentation of the case (see *Kovalev*, cited above, § 37). Only the applicant could, by testifying in person, substantiate his claims and answer the judges’ questions, if any.

50. Nor is the Court persuaded by the domestic courts’ reference to the fact that the domestic law did not make provision for convicted persons to be brought from correctional colonies to the place where their civil claim was being heard. The Court is mindful of another possibility which was

open to the domestic courts as a way of securing the applicant's participation in the proceedings. They could have held a session by way of a video link or in the applicant's correctional colony, in so far as it was possible under the rules on court jurisdiction (see paragraphs 29 and 31 above and, for the relevant principles, *Riepan v. Austria*, no. 35115/97, §§ 27-42, ECHR 2000-XII, and *Marcello Viola v. Italy*, no. 45106/04, § 49 et seq., ECHR 2006-XI (extracts)). The Court finds it inexplicable that the domestic courts did not consider these options (see, for similar reasoning, *Sokur*, cited above, § 36, and *Shilbergs*, cited above, § 109).

51. In these circumstances, the Court finds that the principle of equality of arms was breached, owing to the domestic courts' refusal to secure the applicant's attendance at the hearing.

(b) Failure to serve documents on the applicant

52. The applicant's situation was further aggravated by the fact that he was not given access to the respondent's and third parties' observations requesting that the claims be dismissed and the evidence adduced by them until after the first-instance hearing. He was thereby deprived of an opportunity to comment on the observations and to question the authenticity, relevance and lawfulness of the evidence. The applicant was thus placed at a substantial disadvantage *vis-à-vis* the opposing party. The fact that after the first instance hearing he eventually received copies of the respondent's and third parties' observations and the supporting evidence did not remedy that disadvantage. Indeed, by that time he had already lodged his appeal submissions and therefore could no longer comment on the observations in writing. Nor could he do it orally during the appeal hearing which was held just a few days later because, as noted above, he had not been brought to that hearing.

53. The Court reiterates that the principle of adversarial proceedings and equality of arms, which is one of the elements of the broader concept of a fair hearing, requires that each party be given a reasonable opportunity to have knowledge of and comment on the observations made or evidence adduced by the other party and to present its case under conditions that do not place it at a substantial disadvantage *vis-à-vis* its opponent (see *Krčmář and Others v. the Czech Republic*, no. 35376/97, § 39, 3 March 2000, and *Dombo Beheer B.V. v. the Netherlands*, 27 October 1993, § 33, Series A no. 274).

54. The Court notes that it has frequently found violations of Article 6 § 1 of the Convention in cases raising issues similar to the one in the present case (see, for example, *Ziegler v. Switzerland*, no. 33499/96, §§ 33-40, 21 February 2002; *Steck-Risch and Others v. Liechtenstein*, no. 63151/00, §§ 51-59, 19 May 2005; *Bartenbach v. Austria*, no. 39120/03, §§ 32-34, 20 March 2008; *Schaller-Bossert v. Switzerland*, no. 41718/05, §§ 39-43, 28 October 2010; and *Hrdalo v. Croatia*, no. 23272/07, §§ 34-40,

27 September 2011). Having examined all the material submitted to it, the Court considers that the Government have not put forward any fact or argument capable of persuading it to reach a different conclusion in the present case.

(c) Refusal to call a witness

55. Finally, the Court observes that the applicant's request to have a witness questioned was rejected on the ground that Ms V., who had been the applicant's counsel at his trial, was bound by lawyer-client confidentiality.

56. The Court reiterates that while Article 6 of the Convention guarantees the right to a fair hearing, it does not lay down any rules on the admissibility of evidence or the way it should be assessed, which are therefore primarily matters for regulation by national law and the national courts (see *Schenk v. Switzerland*, judgment of 12 July 1988, Series A no. 140, p. 29, §§ 45-46, and *Garcia Ruiz v. Spain* [GC] no. 30544/96, ECHR 1999-I, § 28). Similarly, it is in the first place for the national authorities, in particular the courts, to interpret domestic law, and the Court will not substitute its own interpretation for theirs in the absence of arbitrariness. That being said, the Court's task remains to ascertain whether the proceedings in their entirety, including the way in which evidence and procedural decisions were taken, were fair (see *Tamminen v. Finland*, no. 40847/98, § 38, 15 June 2004).

57. Article 6 of the Convention does not explicitly guarantee the right to have witnesses called or other evidence admitted by a court in civil proceedings. Nevertheless, any restriction imposed on the right of a party to civil proceedings to call witnesses and to adduce other evidence in support of his case must be consistent with the requirements of a fair trial within the meaning of paragraph 1 of that Article, including the principle of equality of arms. Equality of arms implies that each party must be afforded a reasonable opportunity to present his case - including his evidence - under conditions that do not place him at a substantial disadvantage *vis-à-vis* his opponent (see *Wierzbicki v. Poland*, no. 24541/94, § 39, 18 June 2002).

58. In the instant case, it was incumbent upon the applicant to prove that he had been subjected to ill-treatment. He relied on two pieces of evidence: a video recording of his questioning showing that he had injuries on his face and body, and testimony by Ms V., who could confirm that she had seen injuries on him. Given that the video recording had been destroyed by the respondent, Ms V.'s testimony was the applicant's only evidence other than his own submissions.

59. The applicant was however denied the opportunity to have Ms V. called, because the domestic courts considered that she was bound by lawyer-client privilege. The Court notes in this connection that the rule of lawyer-client privilege serves the important purpose of assuring confidentiality between counsel and client and thereby encouraging clients

to make full and frank disclosures to their counsel, who are then better able to provide legal advice and effective representation. The privilege serves the interests of the client and therefore may be claimed or waived by the client only.

60. The applicant in the present case wanted Ms V. to testify about the injuries she had seen on his face and body rather than to disclose any information that she had received from him during their confidential counsel-client communications. It is therefore difficult to see why she should be prevented from testifying about circumstances that were manifestly not covered by lawyer-client privilege. In any event, by requesting that she be questioned in court about the injuries, the applicant explicitly waived the privilege, and it was not for the courts to impose it against his will.

61. The refusal to hear Ms V., the only witness capable of supporting the applicant's allegations of ill-treatment, deprived him of any opportunity to prove his case, and inevitably led to the finding that his claims were unsubstantiated. The Court finds that that refusal may be regarded in the above circumstances as disclosing unfairness not compatible with the requirements of the Convention (see, for comparison, *Tamminen*, cited above, §§ 38-42, and *Dombo Beheer B.V.*, cited above, §§ 31- 35).

(d) Conclusion

62. Given that the applicant was refused leave to appear at the first-instance and appeal hearings, that he was not given a reasonable opportunity to comment on the respondent's and third parties' submissions and evidence in support adduced by them, and that the domestic courts refused to hear a crucial witness in support of his case, the applicant was placed at a substantial disadvantage *vis-a-vis* the opposing party, and deprived of an opportunity to present his case effectively before the court.

63. There has therefore been a violation of Article 6 § 1 of the Convention.

II. ALLEGED VIOLATION OF ARTICLE 6 § 1 OF THE CONVENTION ON ACCOUNT OF DENIAL OF ACCESS TO COURT

64. The applicant complained under Article 6 § 1 of the Convention that he had been denied access to court, because the domestic courts had refused to examine his claim for compensation for the damage caused by an unlawful judicial decision. The relevant parts of Article 6 § 1 have been cited above.

A. Admissibility

65. The Government submitted that Article 6 was not applicable to the proceedings brought by the applicant against the judge. The applicant did not have any right to compensation recognised under domestic law. Therefore, the proceedings in question did not concern the determination of his civil rights or obligations.

66. The Court reiterates, in that connection, that Article 6 § 1 extends to “*contestations*” (disputes) over “civil rights” which can be said, at least on arguable grounds, to be recognised under domestic law, irrespective of whether they are also protected under the Convention (see, as a recent authority, *Enea v. Italy* [GC], no. 74912/01, § 103, ECHR 2009-...). However, whether a person has an actionable domestic claim so as to engage Article 6 § 1 may depend not only on the substantive content of the relevant civil right, as defined under national law, but also on the existence of procedural bars to or limits on the possibilities of bringing potential claims to court. In the latter kind of case, Article 6 § 1 may be applicable (see *A. v. the United Kingdom*, no. 35373/97, § 63, ECHR 2002-X).

67. The Court considers that in the present case the distinction between the elements that relate to the existence in domestic law of a right to compensation for damage caused by unlawful judicial decisions, and the elements which act as a procedural bar to the determination by a court of claims which derive from allegedly unlawful judicial decisions, is difficult to discern. These issues relate, at least in part, to the merits of the applicant’s complaint under Article 6 § 1 of the Convention. The Court therefore decides to join the question of applicability of Article 6 to the merits.

68. The Court further 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.

B. Merits

69. The Government submitted that Article 1070 of the Civil Code (see paragraph 37 above) exhaustively defined cases in which an action for compensation may be brought against a judge. The applicant’s action clearly did not belong among those cases and had therefore been declared inadmissible.

70. The applicant maintained his claims.

71. The Court reiterates that Article 6 § 1 secures to everyone the right to have a claim relating to his civil rights and obligations brought before a court or tribunal. In this way, that provision embodies the “right to court”, of which the right of access to court, that is, the right to institute

proceedings before a court, constitutes one aspect; however, it is an aspect that makes it in fact possible to benefit from the further guarantees laid down in paragraph 1 of Article 6 (see *Sergey Smirnov v. Russia*, no. 14085/04, § 25, 22 December 2009, and *Teltronic-CATV v. Poland*, no. 48140/99, § 45, 10 January 2006).

72. The right to court is not absolute and may be subject to limitations. The limitations applied should not bar or restrict the access afforded to the individual in such a way or to such an extent that the very essence of that right is impaired. Furthermore, the Court underlines that a limitation will not be compatible with Article 6 § 1 unless it pursues a legitimate aim and there is a reasonable relationship of proportionality between the means employed and the legitimate aim sought to be achieved (see *Sergey Smirnov*, cited above, §§ 26 and 27; *Jedamski and Jedamska v. Poland*, no. 73547/01, § 58, 26 July 2005; and *Kreuz v. Poland*, no. 28249/95, §§ 54 and 55, ECHR 2001-VI).

73. The Court further reiterates that it is not its task to take the place of domestic courts. It is primarily for the national authorities, notably the courts, to resolve problems of interpretation of domestic legislation. The Court's role is confined to ascertaining whether the effects of such an interpretation are compatible with the Convention (see *Société Anonyme Sotiris and Nikos Koutras Attee v. Greece*, no. 39442/98, § 17, ECHR 2000-XII).

74. Turning to the present case, the Court observes that after it had been submitted to a court the applicant's case was not examined on the merits, because his situation did not fall within the cases specified in Article 1070 of the Civil Code (see paragraph 25 above). Article 1070 creates an exception to the general rule that all damage inflicted on a person must be compensated by the tortfeasor, contained in Article 1064 of the same Code, by establishing that damage caused as part of the administration of justice could be compensated by the State in two categories of cases only (see paragraphs 36 and 37 above). Firstly, Article 1070 contains an exhaustive list of situations where damage caused by unlawful judicial decisions is compensated for, irrespective of any fault on the part of the judge. Secondly, it provides that damage may also be recoverable in cases where the judge's fault has been established in criminal proceedings. The Constitutional Court defined a third category of cases where damage incurred through a violation by a court of the right to a fair trial by acts of a procedural nature could be compensated for even in the absence of a final criminal conviction of a judge, if the fault of the judge has been established in civil proceedings (see paragraph 39 above, see also, in respect of the third category of cases, *Chernichkin v. Russia*, no. 39874/03, §§ 28-30, 16 September 2010). In all other cases, such as in the applicant's case, no liability could be imposed on the judges or the State.

75. The Court notes that it has already found that certain privileges and immunities from civil liability are compatible with Article 6 § 1. Just as the right of access to court is an inherent part of the fair trial guarantee in that Article, so some restrictions on access must likewise be regarded as inherent, an example being those limitations generally accepted by signatory States as part of the doctrine of parliamentary immunity (see *A. v. the United Kingdom*, cited above, § 83) or generally recognised rules of public international law on State immunity or on immunity of international organisations (see, on State immunity, *Al-Adsani v. the United Kingdom* [GC], no. 35763/97, § 56, ECHR 2001-XI, and *Fogarty v. the United Kingdom* [GC], no. 37112/97, § 36, ECHR 2001-XI (extracts), see also, on immunity of international organisation, *Waite and Kennedy v. Germany* [GC], no. 26083/94, §§ 50-74, ECHR 1999-I). At the same time, the Court has also found that it would not be consistent with the rule of law in a democratic society, or with the basic principle underlying Article 6 § 1 – namely that civil claims must be capable of being submitted to a judge for adjudication – if a State could, without restraint or control by the Convention enforcement bodies, remove from the jurisdiction of the courts a whole range of civil claims, or confer immunities from civil liability on large groups or categories of persons (see *Fayed v. the United Kingdom*, 21 September 1994, § 65, Series A no. 294-B, and *Al-Adsani v. the United Kingdom* [GC], no. 35763/97, § 47, ECHR 2001-XI).

76. The Court further observes that immunity given to a judge from civil claims in damages has been earlier found to be a permissible restriction on the right of access to court, in the case of *Ernst and Others v. Belgium*. The Court took into account that judicial immunity was a long established legal practice existing in some form in many member States. It pursued the legitimate aim of proper administration of justice. The Court however added that a material factor in determining whether such restriction was proportionate to the legitimate aim was whether the applicants had available to them reasonable alternative means to protect their rights effectively. Although they could not sue a judge for damages, they were able to lodge a civil action against the State on the basis of the same facts. The essence of their right of access to court was not therefore impaired (see *Ernst and Others v. Belgium*, no. 33400/96, §§ 47-57, 15 July 2003).

77. By contrast to *Ernst and Others v. Belgium*, the applicant in the present case could lodge a civil claim for damages neither against the judge nor against the State. It remains to be ascertained whether this restriction was compatible with Article 6 § 1.

78. The Court takes note of the Constitutional Court's arguments justifying circumscribed liability of the judges and the State for damage caused by allegedly unlawful judicial decisions, and consequent immunity from civil actions (see paragraph 38 above). It accepts that such a restriction aims at preventing losing parties, who normally have an opportunity to take

their complaints to an appeal court or to such other forum as may be prescribed by procedural rules, from attacking a final court decision in separate civil proceedings. It also permits judges to do their work in complete independence and free from fear that the exercise of their discretion and judgment may make them liable for damages. Finally, it permits judges to devote themselves entirely to their judicial duties without being constantly disrupted by civil actions lodged by losing parties. It therefore pursues a legitimate aim of proper administration of justice.

79. It remains to be determined whether there was a reasonable relationship of proportionality between the means employed and the legitimate objective pursued by the contested limitation.

80. The Court notes that the immunity from civil claims for damage caused as part of the administration of justice is not of a blanket or non-rebutted nature. In particular, a civil action can be lodged in most serious cases where damage has been caused through unlawful conviction, unlawful prosecution, unlawful placement in custody or order not to leave the place of residence, unlawful administrative arrest or correctional work, irrespective of any fault on the part of judges or law-enforcement officials. A civil action for damages can also be lodged in cases where judicial acts have been done with malicious intent or corruptly and the judge's guilt has been established in a final criminal conviction. The limitation in question cannot be therefore regarded as an arbitrary removal of the courts' jurisdiction to determine a whole range of civil claims.

81. The Court reiterates in this connection that it is a principle of Convention case-law that Article 6 does not in itself guarantee any particular content for civil rights and obligations in national law, and that Convention enforcement bodies may not create by way of interpretation of Article 6 § 1 a substantive civil right which has no legal basis in the State concerned (see *Z and Others v. the United Kingdom* [GC], no. 29392/95, § 98, ECHR 2001-V, and *A. v. the United Kingdom*, cited above, § 63). Domestic courts at two levels of jurisdiction found that Russian law did not impose any liability on the judge or on the State in the circumstances of the applicant's case, and declared his claims inadmissible. However, if as a matter of law there was no basis for the claim, the hearing of evidence would have been an expensive and time-consuming process which would not have provided the applicant with any remedy at its conclusion. Such a hearing would have indeed served no purpose in a situation where, as in the present case, no liability for the alleged damage existed under domestic law. It is not for this Court to find that such liability should have been imposed on the judge or on the State in the applicant's case, since this would effectively involve substituting its own views for those of the national courts as to the proper interpretation and content of domestic law. There is therefore no reason to consider the inadmissibility decision based on the

absence of a sustainable cause of action as offending the principle of access to court (see, *mutatis mutandis*, *Z and Others*, cited above, §§ 97 and 101).

82. Finally, the Court notes that the limited liability of the judges and the State for damage caused in the framework of judicial proceedings and the consequent immunity from civil actions may, in cases where there is an arguable claim under the substantive Convention provisions, give rise to an issue under the Convention, but in the Court's view it is an issue under Article 13, not Article 6 § 1 (see *Z and Others*, cited above, §§ 102 and 103). In the present case the applicant did not raise any arguable claim under the substantive Convention provisions in connection with his unlawful transfer from a correctional colony to a prison, nor did he lodge a complaint under Article 13.

83. In view of the above, the Court finds that there has been no violation of Article 6 § 1 of the Convention.

III. OTHER ALLEGED VIOLATIONS OF THE CONVENTION

84. Lastly, the Court has examined the other complaints submitted by the applicant, and, having regard to all the material in its possession and in so far as these complaints fall within the Court's competence, it finds that they 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 must be rejected as manifestly ill-founded, pursuant to Article 35 §§ 3 (a) and 4 of the Convention.

IV. APPLICATION OF ARTICLE 41 OF THE CONVENTION

85. 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

86. The applicant claimed compensation for non-pecuniary damage. The amount of the claim is however unclear. The printed text indicates the amount of 6,000 euros (EUR), written in figures. The handwritten clarification in brackets indicates the amount of EUR 16,000, written in words.

87. The Government pointed out the discrepancies between the printed and handwritten texts. They submitted that the applicant's claim was excessive.

88. The Court considers that the applicant must have suffered distress and frustration resulting from unfair civil proceedings in respect of his claim for compensation for the alleged ill-treatment. Making its assessment on an equitable basis, the Court awards the applicant EUR 4,000 for non-pecuniary damage, plus any tax that may be chargeable on the above amount.

B. Costs and expenses

89. The applicant did not claim costs and expenses. Accordingly, there is no call to make an award under this head.

C. Default interest

90. 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. *Declares* the complaints concerning the alleged violation of the principle of equality of arms in the proceedings for compensation for the alleged ill-treatment and the alleged violation of his right of access to court in the proceedings for compensation for damage caused by the allegedly unlawful judicial decisions admissible and the remainder of the application inadmissible;
2. *Holds* that there has been a violation of Article 6 § 1 of the Convention in respect of a breach of the principle of equality of arms in the proceedings for compensation for the alleged ill-treatment;
3. *Holds* that there has been no violation of Article 6 § 1 of the Convention as regards access to court in the proceedings for compensation for the damage caused by the allegedly unlawful judicial decisions;
4. *Holds*
 - (a) that the respondent State is to pay the applicant, within three months of the date on which the judgment becomes final in accordance with Article 44 § 2 of the Convention, EUR 4,000 (four thousand euros) in respect of non-pecuniary damage, to be converted into Russian roubles at the rate applicable on the date of settlement, plus any tax that may be chargeable;

(b) that from the expiry of the above-mentioned three months until settlement simple interest shall be payable on the above amount at a rate equal to the marginal lending rate of the European Central Bank during the default period, plus three percentage points;

5. *Dismisses* unanimously the remainder of the applicant's claim for just satisfaction.

Done in English, and notified in writing on 12 June 2012, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Søren Nielsen
Registrar

Nina Vajić
President