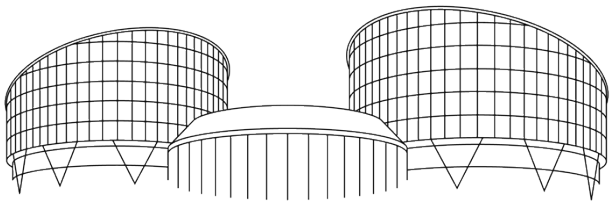

EUROPEAN COURT OF HUMAN RIGHTS
COUR EUROPÉENNE DES DROITS DE L'HOMME

FIRST SECTION

CASE OF VOROBYEV v. RUSSIA

(Application no. 15722/05)

JUDGMENT

STRASBOURG

9 October 2012

This judgment is final but it may be subject to editorial revision.

In the case of Vorobyev v. Russia,

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

Linos-Alexandre Sicilianos, *President,*
Anatoly Kovler,
Erik Møse, *judges,*

and André Wampach, *Deputy Section Registrar,*

Having deliberated in private on 18 September 2012,

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

PROCEDURE

1. The case originated in an application (no. 15722/05) 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 a Russian national, Mr Viktor Nikolayevich Vorobyev ("the applicant"), on 11 April 2005.

2. The Russian Government ("the Government") were represented by Mr G. Matyushkin, the Representative of the Russian Federation at the Court.

3. On 30 January 2009 the application was communicated to the Government.

THE FACTS

I. THE CIRCUMSTANCES OF THE CASE

4. The applicant was born in 1955 and lives in Yugorsk, a town in the Tyumen region.

5. On 29 May 2002 the applicant brought a court action against his former employer seeking compensation for damage to health related to professional hardship.

6. On 29 November 2004 Yugorskiy District Court (Khanty-Mansiyskiy Region) dismissed his claim as manifestly ill-founded.

7. On 14 December 2004 the applicant lodged an appeal against the judgment of 29 November 2004.

8. According to the Government, on 30 December 2004 the District Court sent a letter to the applicant informing him that the appeal hearing had been scheduled for 8 February 2005.

9. On 8 February 2005 the Khanty-Mansiyskiy Regional Court held a hearing which the applicant did not attend. The adverse party's representative attended the hearing and made submissions. The Regional Court upheld the judgment of 29 November 2004.

10. On an unspecified date the applicant applied for a supervisory review of the appeal decision of 8 February 2005.

11. By a decision of 14 March 2005 a judge of the Regional Court refused to examine his application on the grounds that the enclosed copy of the appeal decision of 8 February 2005 had not been certified by the relevant court.

II. RELEVANT DOMESTIC LAW

12. For a summary of relevant domestic law, as worded at the material time, see *Gusak v. Russia* (no. 28956/05, § 20, 7 June 2011).

THE LAW

I. ALLEGED VIOLATION OF ARTICLE 6 OF THE CONVENTION

13. The applicant complained under Article 6 § 1 of the Convention that the appeal proceedings of 8 February 2005 had not been adversarial because he had not been provided with an effective opportunity to attend the appeal hearing of 8 February 2005 and to comment on the submissions of the adverse party. Relevant part of Article 6 reads 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

14. The Government submitted that the applicant had not exhausted domestic remedies in respect of the above complaint. In particular, he did not lodge the second application for supervisory review of the appeal decision of 8 February 2005.

15. The applicant did not make any comments in that respect.

16. The Court has previously found that a supervisory review exercised under the Code of Civil Procedure in force since 1 February 2003 could not be considered an effective remedy within the meaning of Article 35 § 1 of the Convention (see *Denisov v. Russia*, (dec.), no. 33408/03, 6 May 2004).

It follows that the Government's objection as to non-exhaustion of domestic remedies must be dismissed.

17. 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

18. The Government claimed that the applicant's right to a public hearing was not violated. The applicant had taken part in the examination of his case by the first-instance court. He had been duly notified of the appeal hearing of 8 February 2005. The summons had been sent to him on 30 December 2004. However, the applicant did not appear at that hearing and did not inform the appeal court of the reasons of his absence. Therefore, the appeal court decided to examine the applicant's appeal in his absence. The Government submitted that the issues to be examined by the appeal court were not such as to require the applicant's personal presence at the hearing.

19. The applicant maintained his complaint.

20. The Court reiterates that the entitlement to a "public hearing" in Article 6 § 1 necessarily implies a right to an "oral hearing" *(*see *Fredin v. Sweden (no. 2)*, 23 February 1994, §§ 21-22, Series A no. 283-A). The right to a public hearing would be devoid of substance if a party to the case were not apprised of the hearing in such a way so as to have an opportunity to attend it, should he or she decide to exercise the right to appear established in the domestic law (see *Yakovlev v. Russia*, no. 72701/01, § 21, 15 March 2005).

21. The Court observes that the Russian Code of Civil Procedure, as worded at the material time, provided for oral hearings before courts of appeal and that the jurisdiction of appellate courts was not limited to matters of law but also extended to factual issues. However, the parties' attendance was not mandatory and, if a party did not appear at the hearing without a valid reason after it had been duly notified thereof, the court could proceed with the examination of the appeal. The analysis of the provisions of Russian law on the service of court summons suggests that, whichever specific form of the parties' notification is chosen, the domestic courts should be in possession of evidence confirming the receipt of such notification by the addressee; otherwise the hearing is to be adjourned.

22. Turning to the circumstances of the present case the Court observes that the Government provided a copy of the notification letter sent to the applicant on 30 December 2004. However, the Government did not present any evidence, such as acknowledgment of receipt or similar, showing that the summons had reached the applicant in good time. In these circumstances

the Court is not persuaded that the domestic authorities had notified the applicant of the appeal hearing of 8 February 2005 in such a way as to provide him with an opportunity to attend it and prepare his case.

23. The Court further observes that there is nothing in the text of the appeal decision of 8 February 2005 to suggest that the appeal court examined whether the applicant had been duly summoned to the hearing, and if he had not, whether the examination of the appeal should have been adjourned and new summons sent to the applicant. It follows that the domestic authorities failed to demonstrate that they had taken a reasonable effort to duly summon the applicant to the hearing (see by contrast *Babunidze v. Russia* (dec.), no. 3040/03, 15 May 2007). In these circumstances the Court considers that the applicant was not provided with an opportunity to appear at the appeal hearing of his case. 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 applicant's appeal submissions. Those observations were not communicated to the applicant and he could not comment on them.

24. The Court points out 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, among other authorities, *Yakovlev*, cited above, §§ 19 et seq.; *Groshev v. Russia*, no. 69889/01, §§ 27 et seq., 20 October 2005; *Mokrushina v. Russia*, no. 23377/02, §§ 20 et seq., 5 October 2006; *Prokopenko v. Russia*, no. 8630/03, §§ 17 et seq., 3 May 2007; *Subbotkin v. Russia*, no. 837/03, §§ 18 et seq. , 12 June 2008; *Litvinova v. Russia*, no. 34489/05, §§ 15 et seq., 14 November 2008 and *Shandrov v. Russia*, no. 15093/05, §§ 28 et seq., 15 March 2011).

25. 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. It has been established that the applicant was deprived of an effective opportunity to attend the appeal hearing and plead his case in adversarial proceedings.

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

II. OTHER ALLEGED VIOLATIONS OF THE CONVENTION

27. The Court has examined the remainder of the complaints raised by the applicant. However, in the light of the material in its possession, and in so far as the matters complained of are within its competence, the Court 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 being manifestly ill-founded, pursuant to Article 35 §§ 3 (a) and 4 of the Convention.

III. APPLICATION OF ARTICLE 41 OF THE CONVENTION

28. 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

29. The applicant claimed 158,900 euros (EUR) in respect of pecuniary damage which represented his loss income over a period between 2003 and 2010. He also claimed EUR 500, 000 in respect of non-pecuniary damage.

30. The Government contested those claims.

31. The Court does not discern any causal link between the violation found and the pecuniary damage alleged; it therefore rejects this claim. On the other hand, it awards the applicant EUR 1,500 in respect of non-pecuniary damage.

B. Costs and expenses

32. The applicant also claimed EUR 900 for the costs and expenses incurred before the domestic courts and before the Court.

33. The Government contested those claims.

34. Regard being had to the documents in its possession and to its case-law, the Court considers it reasonable to award the sum of EUR 100 covering costs under all heads.

C. Default interest

35. 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* admissible the complaint concerning the domestic courts' failure to provide the applicant with an effective opportunity to attend the appeal hearing of 8 February 2005 and the remainder of the application inadmissible;

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

3. *Holds*
   (a) that the respondent State is to pay the applicant, within three months, the following amounts, to be converted into the currency of the respondent State at the rate applicable at the date of settlement:
      (i) EUR 1,500 (one thousand five hundred euros), plus any tax that may be chargeable, in respect of non-pecuniary damage;
      (ii) EUR 100 (one hundred euros), plus any tax that may be chargeable to the applicant, 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;

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

Done in English, and notified in writing on 9 October 2012, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

André Wampach
Deputy Registrar

Linos-Alexandre Sicilianos
President