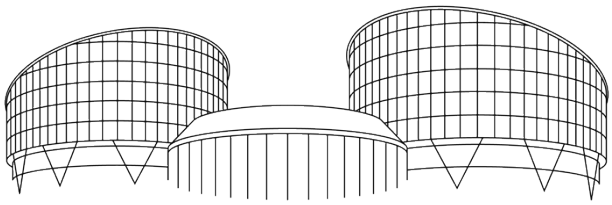

EUROPEAN COURT OF HUMAN RIGHTS
COUR EUROPÉENNE DES DROITS DE L'HOMME

FIRST SECTION

CASE OF PUZYREVSKIY v. RUSSIA

(Application no. 41603/05)

JUDGMENT

STRASBOURG

9 October 2012

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

In the case of Puzyrevskiy v. Russia,

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

Peer Lorenzen, *President,*
Elisabeth Steiner,
Julia Laffranque, *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. 41603/05) 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 Valeriy Nikolayevich Puzyrevskiy ("the applicant"), on 25 November 2004.

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

3. On 24 March 2009 the application was communicated to the Government.

THE FACTS

I. THE CIRCUMSTANCES OF THE CASE

4. The applicant was born in 1949 and lives in Sredniy Urgal, a village in the Khabarovsk region.

5. In 2004 the applicant lodged a court action against a private company seeking compensation for pecuniary and non-pecuniary damage sustained as a result of actions of company's employees.

6. On 7 July 2004 Verkhnebureinskiy District Court (Khabarovsk Region) dismissed the applicant's action as unfounded.

7. The applicant appealed against the judgment of 7 July 2004. His statement of appeal was received by the District Court on 21 July 2004.

8. On 4 August 2004 the District Court sent the case file, with the applicant's appeal statement enclosed, to the Khabarovsk Regional Court ("the Regional Court"). On the same day the District Court sent a letter to the applicant confirming that his case had been transferred to the Regional

Court and informing him that an appeal hearing had been scheduled for 10.00 a.m. on 12 August 2004. It follows from the stamp marks on the envelope that the letter was dispatched on 5 August 2004 and arrived at the applicant's local post office on 9 August 2004.

9. On 12 August 2004 the Regional Court held a hearing, which the applicant did not attend. The Regional Court upheld the judgment of 7 July 2004, endorsing the District Court's reasoning. The company's representative attended the appeal hearing and made submissions.

10. On 19 August 2004 the head of the post office replied to the applicant's complaint about the delays in delivery of mail that the District Court's letter of 4 August 2004 had been delivered to the applicant only on 16 August 2004 by the fault of one of the employees of the post office.

11. On 27 September 2004 the Regional Court sent to the applicant a copy of the judgment of 12 August 2004.

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 he had not been provided with an effective opportunity to attend the appeal hearing of 12 August 2004. Article 6 § 1, in so far as relevant, 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. The parties' submissions

14. The Government claimed that the applicant had been duly notified of the appeal hearing of 12 August 2004. The summons had been sent to the parties to the dispute on 4 August 2004. The fact that the other party appeared at the hearing proved that the summonses had reached the addressees. However, neither the applicant nor his representative appeared at the hearing of 12 August 2004 and did not inform the appeal court of the reasons of their absence. Therefore, the appeal court had decided to examine

the applicant's appeal in his absence. The Government also pointed out that the applicant failed to produce in support of his allegations a certificate from the postal service confirming that the summons had not been delivered to his address or that it had been delivered in such a way that he had not had enough time to prepare for the appeal hearing. Finally, they submitted that the applicant had not claimed that he wished to submit to the appeal court new arguments in addition to those stated in his grounds of appeal or new evidence.

15. The applicant maintained his complaint. He submitted that he had provided the Court with copies of replies from the post office confirming that the summons had been served on him only on 16 August 2004.

B. The Court's assessment

1. Admissibility

16. 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

17. 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).

18. The Court observes that the Russian Code of Civil Procedure provides for oral hearings before courts of appeal and that the jurisdiction of appellate courts is not limited to matters of law but also extended to factual issues. However, the parties' attendance is not mandatory and, if a party does not appear at the hearing without a valid reason after it had been duly notified thereof, the court can 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.

19. Turning to the circumstances of the present case the Court observes that it follows from the reply by the head of the post office sent to the

applicant on 19 August 2004 that the applicant had received the summons only on 16 August 2004, i.e. four days after the appeal hearing had taken place. The Government did not contest the authenticity of that document. Nor did they provide the Court with any evidence, such as acknowledgment of receipt or similar, showing that the summons had reached the applicant in good time. It therefore follows that the applicant had not received the summons in good time. In so far as the Government claimed that the applicant's representative had not appeared at the appeal hearing, the Court observes the applicant had not been represented before the first-instance court and it follows from the case file that he had not appointed any representative for the appeal hearing. However, even assuming that the applicant had appointed one, the Government had not provided any evidence showing that the summons had been sent to him and that it had reached him in good time.

20. The Court observes that there is nothing in the text of the appeal decision of 12 August 2004 to suggest that the appeal court examined whether the applicant and/or his representative, if any, had been duly summoned to the hearing, and if they 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.

21. 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).

22. 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 owing to the belated notification the applicant was deprived of an effective opportunity to attend the appeal hearing.

23. 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

24. 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

25. 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

26. The applicant claimed 890, 829 euros (EUR) in respect of pecuniary and non-pecuniary damage.

27. The Government submitted that his claims were excessive and unsubstantiated.

28. The Court reiterates that in accordance with Rule 60 of the Rules of Court an applicant who wishes to obtain an award of just satisfaction must make a specific claim to that effect and submit details of all claims, together with any relevant supporting documents, within the fixed time-limits. The Court observes that in the present case the applicant did not provide any information or supporting documents in respect of his claim under the pecuniary damage head. Therefore, the Court rejects the applicant's claim in that part. On the other hand, the Court awards the applicant EUR 1,500 in respect of non-pecuniary damage.

B. Costs and expenses

29. The applicant did not claim reimbursement of his costs and expenses incurred before the domestic authorities and the Court. Accordingly, the Court considers that there is no call to award him any sum on this account.

C. Default interest

30. 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 complaint concerning the domestic courts' failure to provide the applicant with an effective opportunity to attend the appeal hearing of 12 August 2004 admissible 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, EUR 1,500 (one thousand five hundred euros), plus any tax that may be chargeable, in respect of non-pecuniary damage, to be converted into the currency of the respondent State at the rate applicable at the date of settlement;
   (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;

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

Peer Lorenzen
President