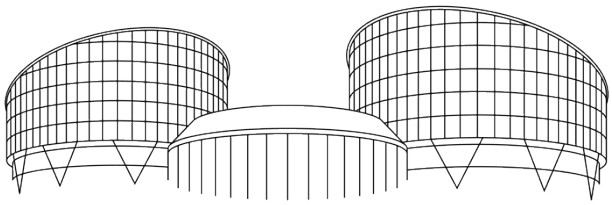

EUROPEAN COURT OF HUMAN RIGHTS
COUR EUROPÉENNE DES DROITS DE L'HOMME

FIRST SECTION

CASE OF ZEMLYACHENKO v. RUSSIA

(Application no. 23866/06)

JUDGMENT

STRASBOURG

22 January 2013

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

In the case of Zemlyachenko v. Russia,

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

Elisabeth Steiner, *President,*
Anatoly Kovler,
Linos-Alexandre Sicilianos, *judges,*
and André Wampach, *Deputy Section Registrar,*

Having deliberated in private on 18 December 2012,

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

PROCEDURE

1. The case originated in an application (no. 23866/06) 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 Alekseyevich Zemlyachenko ("the applicant"), on 20 March 2006.

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 26 January 2010 the application was communicated to the Government.

THE FACTS

I. THE CIRCUMSTANCES OF THE CASE

4. The applicant was born in 1988 and lives in the Leningard region.

5. In 2005 the applicant brought a court action against a bank for its refusal to refund the capital placed on a savings account together with interest and appointed B. to represent him in those proceedings.

6. The Podporozhskiy Town Court of the Leningrad Region ("the Town Court") set the case down for trial on 13 December 2005. The applicant alleges that in the beginning of the hearing his representative received the observations and documents filed by the defendant. He complains that the Town Court allowed his representative to read those observations during several minutes which were not enough to prepare his comments on them.

7. On 13 December 2005 the Town Court dismissed the applicant's claims.

8. On 20 December 2005 the applicant and his representative lodged an appeal against the judgment of 13 December 2005.

9. On 2 February 2006 the Regional Court examined and dismissed the applicant's and his representative's appeal against the judgment of 13 December 2005. Neither the applicant nor his representative were present at the hearing whereas the defendant's representative was present and made submissions. It does not appear from the decision of 2 February 2006 that the appeal court verified whether the applicant and his representative had been duly apprised of the hearing and, if they had not, whether the examination of the appeal should have been adjourned. The applicant alleges that he and his representative B. were not apprised of the appeal hearing.

10. By a letter of 6 March 2006 the Town Court informed the applicant that on 2 February 2006 the Regional Court had examined and dismissed his appeal against the judgment of 13 December 2005.

11. On 10 March 2006 the applicant's representative complained to the Town Court that he had not been apprised of the appeal hearing of 2 February 2006. In particular, he claimed that in the materials of the case he had found a notification letter of 11 January 2006 addressed to him. However, there had been no documents confirming that that letter had been dispatched to him.

12. On 15 March 2006 the Town Court replied that on 12 January 2006 it had sent to the applicant and his representative notifications about the appeal hearing of 2 February 2006. The Town Court further explained that such letters were normally sent by ordinary mail without acknowledgment of receipt and that the post office was responsible for their delivery. The Town Court advised the applicant's representative to complain about the failure to deliver the letters of 12 January 2006 to the post office.

13. The applicant submitted that he had applied for a supervisory review of the decision of 2 February 2006, but the supervisory review court refused to examine his complaint on procedural grounds.

II. RELEVANT DOMESTIC LAW

14. 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

15. The applicant complained under Article 6 § 1 of the Convention that the domestic courts had not duly apprised him and his representative of the appeal hearing of 2 February 2006 and therefore deprived him of an effective opportunity to attend it and present his case. 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. Admissibility

16. The Government submitted that the applicant had not exhausted domestic remedies in respect of the above complaint. In particular, he had not lodged an application for supervisory review of the appeal decision of 2 February 2006.

17. The applicant submitted that on 10 March 2006 he had applied to the supervisory review court for re-examination of his case. However, that court refused to examine his complaint on procedural grounds.

18. 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.

B. Merits

19. The Government claimed that the applicant had been duly notified of the appeal hearing of 2 February 2006. The summons had been sent to the parties to the dispute on 12 January 2006 by an ordinary letter. Any delays in delivery of that mail had to be attributed to postal services. Neither the applicant nor his representative appeared at the hearing of 2 February 2006 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 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.

20. The applicant maintained his complaint.

21. 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).

22. 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.

23. 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 and his representative on 12 January 2006. However, the Government did not present any evidence, such as acknowledgment of receipt or similar, showing that the summons had reached the applicant and/or his representative in good time.

24. 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.

25. The Court further observes that there is nothing in the text of the appeal decision of 2 February 2006 to suggest that the appeal court examined whether the applicant and/or his representative 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 them. It follows that the domestic authorities failed to demonstrate that they had taken a reasonable effort to duly summon the applicant and/or his representative to the hearing (see by contrast *Babunidze v. Russia* (dec.), no. 3040/03, 15 May 2007). In these circumstances the Court accepts the

applicant's allegation that the domestic courts had failed in their duty to inform him 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 applicant's appeal submissions. Those observations were not communicated to the applicant and he could not comment on them.

26. 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).

27. 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 and his representative were deprived of an effective opportunity to attend the appeal hearing and plead the case in adversarial proceedings.

28. It follows that there has been a violation of Article 6 § 1 of the Convention.

II. OTHER ALLEGED VIOLATIONS OF THE CONVENTION

29. 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

30. 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

31. The applicant claimed 12,137,891 Russian roubles (RUB) in respect of pecuniary damage which represented the income which he expected to receive from his bank deposit.

32. The Government contested those claims.

33. The Court does not discern any causal link between the violation found and the pecuniary damage alleged; it therefore rejects the applicant's claim.

B. Costs and expenses

34. The applicant did not submit any claims for costs and expenses. Accordingly, the Court makes no award under this head.

FOR THESE REASONS, THE COURT UNANIMOUSLY

1. *Declares* admissible the complaint concerning the domestic courts' failure to duly apprise the applicant and his representative of the appeal hearing of 2 February 2006 and to provide them with an effective opportunity to attend it and present the case and the remainder of the application inadmissible;

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

3. *Dismisses* the applicant's claim for just satisfaction.

Done in English, and notified in writing on 22 January 2013, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

André Wampach
Deputy Registrar

Elisabeth Steiner
President