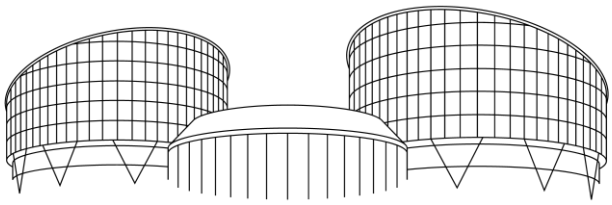

EUROPEAN COURT OF HUMAN RIGHTS
COUR EUROPÉENNE DES DROITS DE L'HOMME

FIRST SECTION

Application no. 9964/06
Viktor Aleksandrovich LISHNYAK
against Russia
lodged on 21 February 2006

STATEMENT OF FACTS

The applicant, Mr Viktor Aleksandrovich Lishnyak, is a Russian national, who was born in 1955 and lives in the town of Temryuk, Krasnodar Region.

The facts of the case, as submitted by the applicant, may be summarised as follows.

A. Case 1

The applicant was a judge in the Temryukskiy District Court of the Krasnodar Region. In 1997 the regional Judicial Disciplinary Board (JDB) disbarred the applicant from the judicial office. In 1998 the Federal JDB quashed the disbarment decision and reinstated the applicant.

In 2000 the JDB opposed appointment of the applicant to the "permanent" judicial post. In May 2005 the applicant decided to challenge this decision of the Board on account of "newly discovered circumstances". By a decision of 3 June 2005 the Board refused to reopen the proceedings. The applicant challenged this decision before the Krasnodar Regional Court. Apparently, his appeal was not examined.

B. Case 2

In June and September 2004 the applicant (and, apparently, some other people) wrote a letter to the President of the Regional Court accusing Mr G., President of the District Court of "being a stranger to justice".

Mr G. brought civil proceedings accusing the applicant of defamation.

On 18 April 2005 the Slavyanskiy Town Court of the Krasnodar Region issued a default judgment granting G.'s claims. The court considered that the applicant had disseminated information by way of a letter to a public

official; that this information was "accessible to a wide range of people"; that this information was defamatory since it did not "correspond to reality". In particular, the court noted that Mr G. had been appointed as President of a district court; his professional qualities had been checked and he had not been subject to any disciplinary proceedings.

The court ordered the applicant to refute an unspecified content of the letter by way of an apology. The applicant was also ordered to pay 8,000 Russian roubles (RUB) to the claimant.

The applicant appealed.

On 30 August 2005 the Krasnodar Regional Court upheld the judgment in substance, while excluding an obligation of apology as not prescribed by law and reducing the non-pecuniary award to RUB 1,000 (28 euros) because the dissemination of the false information on the part of the applicant had not been "particularly wide".

C. Case 3

On 11 November 2005, referring to an application by judge G., the Regional Judicial Council issued a recommendation to the JDB, in which they suggested that the applicant should be divested of his status of a retired judge.

On 16 November 2005 Mr G. lodged an application with the Board seeking revocation of the applicant's status of a retired judge.

On 22 November 2005 a copy of G.'s application was sent to the applicant. It follows from the text of the cover letter that the applicant would be informed by a subsequent telephone message as to the date of a hearing.

On 16 December 2005 the Board examined "an application by the Judicial Council". The Board held that the applicant should not longer be treated as a "retired judge" because of his commercial activities, which under Russian law were incompatible with the status of a retired judge. The Board also referred to the applicant's numerous and unfounded complaints against the local and regional judiciary. The Board also mentioned G.'s defamation case against the applicant (see above).

It follows from the text of the Board's decision that the applicant had not attended the Board's hearing on 18 November 2005; that he had been informed of the hearing to be held on 16 December 2005 but failed to attend.

According to the applicant, he had not been informed of the hearings.

It also follows from the text of the Board's decision that it was amenable to challenge before the Regional Court. The applicant was given a copy of the decision on 31 December 2005.

Apparently, he wrote to the Regional Court in March 2006. Later on, the applicant challenged the Board's decision before the Supreme Court of Russia. On 5 September 2006 the Appeal Section of the Supreme Court took the final decision, concluding that the applicant had missed the ten-day time-limit for lodging a judicial complaint against the Board's decision.

D. Case 4

The applicant sued his former employer (a private company) for their refusal to return his employment card and/or to issue a duplicate.

By a judgment of 17 April 2007 a peace justice dismissed his claims. The applicant did not appeal but sought supervisory review of the above judgment. On an unspecified date, the Regional Court quashed it by way of supervisory review and ordered a re-examination of the case.

In the resumed proceedings, the peace justice scheduled a hearing for 6 November 2007. It appears that the applicant informed the court that he accepted that the court would examine the case on that date (6 November 2007) in his absence. However, the court adjourned and rescheduled a hearing for 19 November 2007. No notification of the new date was made to the applicant.

On 19 November 2007 the peace justice heard the defendant and dismissed the applicant's claims. According to the applicant, the peace justice failed to examine his claim concerning a duplicate of the employment card.

According to the applicant, he received a copy of the decision by mail in December 2007.

The applicant did not appeal. Nor did he seek restoration of the time-limit for an ordinary appeal on account of a valid reason.

Instead, the applicant sought supervisory review of the judgment of 19 November 2007. A judge of the Regional Court instituted supervisory review proceedings, considering the issues concerning the alleged non-examination of the claim relating to the duplicate of the employment card and the non-notification of the applicant about the first-instance hearing were meritorious.

On 2 July 2008 the Presidium of the Regional Court held a hearing. The applicant was absent for unspecified reasons. Having heard the respondent, the Presidium court upheld the judgment of 19 November 2007. The Presidium decision contained no findings in relation to the notification issue.

E. Cases nos. 5 and 6

The applicant sued the Judicial Department claiming a monetary compensation in respect of non-pecuniary damage caused by the 1997 decision of the JDB (see above). On 29 October 2009 the Oktyabriskiy District Court of Krasnodar considered that the Department had not caused any damage to the applicant and that he had missed the three-year time-limit to be counted from the year 1997.

On 11 February the Regional Court upheld the judgment.

The applicant also sued the Federal Treasury and the JDB claiming a monetary compensation in respect of non-pecuniary damage caused by the 1997 decision of the JDB.

On 11 March 2011 the Oktyabrskiy District Court of Krasnodar dismissed his claims. The court considered that the JDB was not a public authority and had no budget; that Treasury could not incur any liability for

decisions taken by the Board. The court made no findings concerning direct liability of the JDB.

By a final judgment of 10 May 2011 the Regional Court upheld the judgment. The appeal court mentioned that the JDB was financed by the Judicial Department and that the court had dismissed, in separate proceedings, the applicant's similar claims against the Department.

F. Other proceedings

The applicant unsuccessfully sought institution of criminal proceedings against judges, including the President of the Regional Court.

The applicant also unsuccessfully sued the Regional Judicial Council in relation to their application of 9 November 2005 (see "Case no. 3" above). By a final judgment of 14 January 2010, the Regional Court refused to deal with his case.

Lastly, the applicant sued Mr G. By a final judgment of 14 December 2010, the Regional Court dismissed his claims.

COMPLAINTS

The applicant complains under Article 6 of the Convention about the Regional Court's failure to examine his challenges against the Board's decisions of 3 June and 16 December 2005; that he was not afforded an opportunity to be heard by the Board in the proceedings in June and December 2005; that he was not able to comment on the "application by the Judicial Council"; that he was wrongly deprived of his status of a retired judge; that he was deprived of access to a court against the Board's decision of 16 December 2005.

The applicant also complains in substance under Article 10 of the Convention that his written complaint to a public official gave rise to liability in the civil proceedings.

In relation to case no. 4, the applicant complains about the outcome of the proceedings; that the peace justice and the Presidium court were biased; that he was not informed of the hearing on 19 November 2007 and did not participate in it; that the peace justice failed to examine his claim about the duplicate of the employment card; that he was deprived of a possibility to lodge an ordinary appeal against the judgment of 19 November 2007.

Lastly, the applicant complains about the unlawful bar to his access to a court by the decisions of 11 February 2010 and 10 May 2011. In substance, the applicant argues that he was refused access to a court with a claim relating to the alleged moral suffering caused by the 1997 Board's decision, which was later on quashed.

QUESTIONS TO THE PARTIES

1. (a) Do the factual and legal issues relating to case no. 2 (see "Facts") fall within the scope of Article 35 § 3 (b) of the Convention? In particular, did the applicant suffer any "significant disadvantage"?

(b) Was Article 10 of the Convention applicable in the circumstances of the case, in which the applicant may be understood as asserting a right to petition a public authority with a complaint against a public official (see *Zakharov v. Russia*, no. 14881/03, § 26, 5 October 2006)? Was there a violation of Article 10 in the present case (see by way of comparison *Kazakov v. Russia*, no. 1758/02, §§ 26-31, 18 December 2008; *Bezymyannyy v. Russia*, no. 10941/03, §§ 37-39, 8 April 2010, and *Lešník v. Slovakia*, no. 35640/97, § 53, ECHR 2003-IV)? In particular, did the applicant use any formal complaints procedure? Was any such procedure available at the time? Did the national courts draw, if necessary, any meaningful distinction between "statements of fact" and "value judgments"?

2. (a) Noting that the 1997 decision disbarring the applicant from the judicial office had been quashed, was any right to compensation in this context recognised, at least on arguable grounds, under Russian law (see, for comparison, *Vasilyev and Kovtun v. Russia*, no. 13703/04, §§ 48-56, 13 December 2011, and *Gryaznov v. Russia*, no. 19673/03, §§ 74-83, 12 June 2012)? Did the applicant's claim relate to his civil rights and obligations?

(b) If yes, was the applicant's right of access to a court impinged upon (cases nos. 5 and 6), in breach of Article 6 § 1 of the Convention?

3. (a) In case no. 4, was the applicant notified of the hearings before the peace justice, including the hearing on 19 November 2007? Did the applicant validly waive a possibility to be present at the hearing on 6 November 2007 or any subsequent hearings before the peace justice? Did the proceedings before the Presidium of the Regional Court cure the alleged non-notification at first instance, thus depriving the applicant of victim status?

(b) Noting the presence of the other party at the first-instance hearing, did the absence of the applicant result in the violation of the principle of the equality of arms, thus breaching Article 6 § 1 of the Convention? Alternatively, did it violate the oral-hearing guarantee under the same provision, should such oral hearing be considered necessary in the circumstances of the case?