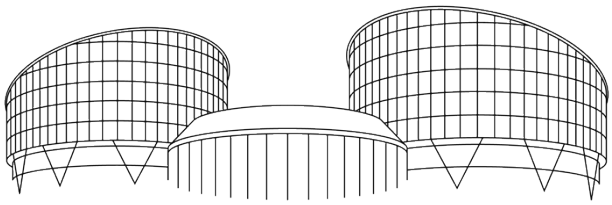

EUROPEAN COURT OF HUMAN RIGHTS
COUR EUROPÉENNE DES DROITS DE L'HOMME

FIRST SECTION

CASE OF ZELENKOV v. RUSSIA

(Application no. 29992/05)

JUDGMENT

STRASBOURG

18 April 2013

FINAL

18/07/2013

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

In the case of Zelenkov v. Russia,

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

Isabelle Berro-Lefèvre, *President,*
Mirjana Lazarova Trajkovska,
Julia Laffranque,
Linos-Alexandre Sicilianos,
Erik Møse,
Ksenija Turković,
Dmitry Dedov, *judges,*
and Søren Nielsen, *Section Registrar,*

Having deliberated in private on 26 March 2013,

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

PROCEDURE

1. The case originated in an application (no. 29992/05) 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 Aleksandr Semenovich Zelenkov ("the applicant"), on 12 August 2005.

2. The applicant was represented by Ms A. Starodumova, a lawyer practising in Chelyabinsk. The Russian Government ("the Government") were represented by Mr G. Matyushkin, Representative of the Russian Federation at the European Court of Human Rights.

3. The applicant alleged, in particular, that he had been unable to participate in the appeal hearing on 15 February 2005 owing to the domestic courts' failure to duly notify him of its date and time.

4. On 6 February 2009 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 1965 and lives in Minsk, Belarus.

6. On an unspecified date the applicant, a former investigator with the military prosecutor's office, challenged in court the lawfulness of his discharge from the army.

7. On 23 November 2001 the Chelyabinsk Garrison Military Court dismissed the applicant's claims in full. The applicant appealed.

8. On 17 January 2002 the Uralskiy Circuit Military Court upheld on appeal the substance of the judgment of 23 November 2001.

9. On 5 August 2004 the Supreme Court of Russia granted a request submitted by the applicant for supervisory review of the judgments of 23 November 2001 and 17 January 2002.

10. On 27 October 2004 the Presidium of the Uralskiy Circuit Military Court quashed the above-mentioned judgments by way of supervisory review and remitted the matter for fresh consideration.

11. On 16 December 2004 the Chelyabinsk Garrison Military Court again dismissed the applicant's claims in full, noting that the applicant had failed to lodge them within the statutory three-year period. The applicant's counsel attended the hearing, but the applicant himself was not present. On an unspecified date the applicant lodged an appeal against the judgment.

12. On 21 January 2005 the Chelyabinsk Garrison Military Court sent a letter to the applicant's address notifying him of the appeal hearing fixed for 15 February 2005. It appears that the applicant did not receive the letter.

13. On 15 February 2005 the Uralskiy Circuit Military Court upheld the judgment of 16 December 2004 on appeal. The applicant did not attend the hearing. The court heard two army officers representing the respondent.

14. On an unspecified date the applicant asked the Uralskiy Circuit Military Court for supervisory review of the judgments in his case. He argued that the courts had erroneously applied the statutory time-limit to his claims.

15. On 21 June 2005 the Uralskiy Circuit Military Court dismissed the applicant's request for supervisory review. An identical request subsequently submitted by the applicant to the Supreme Court of the Russian Federation was dismissed on 30 January 2006.

II. RELEVANT DOMESTIC LAW

16. The Code of Civil Procedure of the Russian Federation ("the CCP", in force at the material time) reads as follows:

Article 113. Court summonses and notifications

"1. Parties ... shall be summoned to court by a letter sent via registered mail with an acknowledgment of receipt, a court summons with an acknowledgment of receipt, a telegram, by telephone or fax or by any other means of communication which guarantees recording of the reception by the parties of the court summonses or notifications.

2. A court summons is one form of court notification. Parties are notified by a court summons of the date and place of a court hearing or of particular procedural measures ...

3. A summons or another form of notification shall be served on parties in such a way [as to ensure] that they have enough time to prepare their case and to appear at the hearing.

4. A court summons issued to a party shall be sent to the address indicated by that party or his/her representative. If a party does not reside at the address indicated, the court summons may be sent to his or her place of work ..."

Article 115. Service of court summonses and notifications

"1. A court summons or other notification shall be sent by mail or delivered by a person whom the court authorises to deliver them. The time of service shall be recorded as laid down by post office regulations or on a document which shall be returned to the court.

2. With the party's consent, a judge may serve him or her with a summons or notification to be delivered to another party. A person authorised by the judge to deliver a court summons or another notification shall return a counterfoil of the summons or a copy of the notification bearing the addressee's signature confirming receipt."

Article 116. Receipt of a court summons

"1. A court summons ... to a person shall be served on him or her against his or her signature on a counterfoil of the summons, which shall be returned to the court."

THE LAW

I. ALLEGED VIOLATION OF ARTICLE 6 OF THE CONVENTION

17. The applicant complained that his inability to attend the appeal hearing on 15 February 2005 as a result of the domestic courts' failure to notify him of its date and time had contravened Article 6 § 1 of the Convention, which reads as follows:

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

18. The Government contested that allegation. They pointed out that the relevant notice had been dispatched by the court on 21 January 2005 and that the applicant had had sufficient time to prepare for the appeal hearing and to make the necessary arrangements to participate in it. They submitted a copy of an excerpt from the court's outgoing correspondence log confirming that the letter had been dispatched. In their opinion, the fact that the applicant had not complained, when asking for a supervisory review of the appeal judgment of 15 February 2005, that he had not been duly notified

of the date and time of the appeal hearing confirmed, albeit indirectly, that his right to a fair hearing had not been infringed. As a former lawyer, the applicant had not resorted to that argument before the supervisory review court when asking for the judgment rendered in his case to be quashed, which showed that he had been aware of the date and time of the appeal hearing.

19. The applicant maintained his complaint. He insisted that he had not been notified of the date and time of the appeal hearing in his case. As a result, he had been unable to take part in the appeal hearing on 15 February 2005.

A. Admissibility

20. 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

21. The Court reiterates that Article 6 § 1 of the Convention provides that, in the determination of civil rights and obligations, "everyone is entitled to a fair and public hearing". The public character of proceedings protects litigants against the administration of justice in secret with no public scrutiny; it is also one of the means whereby confidence in the courts can be maintained. By rendering the administration of justice visible, publicity contributes to the achievement of the aim of Article 6 § 1, a fair hearing, the guarantee of which is one of the foundations of a democratic society (see, for example, *Osinger v. Austria*, no. 54645/00, § 44, 24 March 2005).

22. However, the requirement to hold a public hearing is subject to exceptions. In particular, in the cases where a public hearing has been held at first instance, the Court has previously found that the absence of such a hearing before a second or third instance may accordingly be justified by the special features of the proceedings at issue. Thus, leave-to-appeal proceedings and proceedings involving only questions of law, as opposed to questions of fact, may comply with the requirements of Article 6, although the appellant was not given an opportunity of being heard in person by the appeal or cassation court (see, *mutatis mutandis*, *Jan-Åke Andersson v. Sweden*, 29 October 1991, § 27, Series A no. 212-B).

23. Lastly, neither the letter nor the spirit of Article 6 § 1 prevents a person from waiving of his own free will, either expressly or tacitly, the entitlement to have his case heard in public (see *Yakovlev v. Russia*, no. 72701/01, § 19, 15 March 2005).

24. The Court observes that at the material time the Russian rules of civil procedure provided for an oral hearing before the appeal court. 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 Court considers that these provisions were not, in themselves, incompatible with the fair trial guarantees of Article 6 § 1.

25. The Court has no reason to doubt that the letter of 21 January 2005 notifying the applicant of the appeal hearing was, in fact, dispatched. It further reiterates 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). At the same time, an analysis of Articles 113, 115 and 116 of the CCP suggests that, whichever specific method is chosen to notify the parties, the domestic courts should be in possession of evidence confirming the receipt of such notification by the addressee (see paragraph 16 above). However, the Government adduced no evidence of receipt by the applicant of the notification about the appeal hearing (compare *Prokopenko v. Russia*, no. 8630/03, § 18, 3 May 2007). In these circumstances, the Court is not persuaded that the domestic authorities notified the applicant of the appeal hearing in accordance with domestic law and in such a way as to provide him with an opportunity to attend it and prepare his case.

26. The Court reiterates that it has frequently found a violation of Article 6 § 1 of the Convention in cases raising issues similar to the present one (see *Yakovlev*, cite 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*, cited above, § 17 et seq.; and *Subbotkin v. Russia*, no. 837/03, § 18 et seq., 12 June 2008).

27. Having examined the materials submitted to it, 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. The Court has established that owing to the non-notification, the applicant has been deprived of the opportunity to attend the appeal hearing and plead his case in adversarial proceedings. The Court also notes that there is nothing in the appeal judgment to suggest that the court of appeal examined the question whether the applicant had been duly notified and, if not, whether the examination of the appeal should have been adjourned.

28. 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

29. Lastly, the applicant complained of various other procedural irregularities and of the unfairness of the civil proceedings initiated by him. He referred to Articles 6 and 13 of the Convention.

30. 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.

III. APPLICATION OF ARTICLE 41 OF THE CONVENTION

31. 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

32. The applicant submitted that he had incurred non-pecuniary damage resulting from the violation of his rights. However, he did not specify the amount claimed, leaving it to the Court's discretion.

33. The Government considered that if the Court were to find a violation, this would in itself constitute sufficient just satisfaction.

34. The Court finds that the applicant must have suffered frustration and a feeling of injustice as a result of the domestic authorities' failure to apprise him of the appeal hearing in good time. Having regard to the nature of the violation found and making its assessment on an equitable basis, the Court awards the applicant 1,500 euros (EUR), plus any tax that may be chargeable on that amount.

B. Costs and expenses

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

C. Default interest

36. 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 court's failure to duly notify the applicant of the date and time of the appeal hearing 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 from the date on which the judgment becomes final in accordance with Article 44 § 2 of the Convention, EUR 1,500 (one thousand five hundred euros), plus any tax that may be chargeable, to be converted into the currency of the respondent State at the rate applicable at the date of settlement, in respect of non-pecuniary damage;
   (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.

Done in English, and notified in writing on 18 April 2013, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Søren Nielsen	Isabelle Berro-Lefèvre
Registrar	President