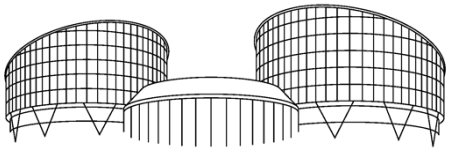

EUROPEAN COURT OF HUMAN RIGHTS
COUR EUROPÉENNE DES DROITS DE L'HOMME

FIRST SECTION

DECISION

Application no. 14803/05
Mars Rashidovich ZIGANSHIN
against Russia

The European Court of Human Rights (First Section), sitting on 1 April 2014 as a Committee composed of:

Khanlar Hajiyev, *President,*
Julia Laffranque,
Dmitry Dedov, *judges,*

and André Wampach, *Deputy Section Registrar,*

Having regard to the above application lodged on 21 March 2005,

Having regard to the comments submitted by the respondent Government and the observations in reply submitted by the applicant's representatives,

Having deliberated, decides as follows:

## THE FACTS

The applicant, Mr Mars Rashidovich Ziganshin, was a Russian national who was born in 1962 and lived in Arkhangelsk. He died on 3 July 2005. He was represented before the Court by Mr A. V. Sidorov and Mr I.Yu. Telyatyev, lawyers practising in Arkhangelsk.

On 17 April 2007 the applicant's daughter, Ms Ekaterina Marsovna Ziganshina, expressed a wish to pursue the proceedings before the Court in his stead. For practical reasons, Mr Ziganshin will continue to be called "the applicant" hereinafter.

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

## A. The circumstances of the case

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

On 26 December 2002 the applicant and six other fishermen sued their employer, private company OOO Dimas ("the company"), seeking wage arrears.

The case was assigned to the Justice of the Peace of the Varavino-Faktoriya District of Arkhangelsk ("the justice of the peace").

On 5 January 2003 the justice of the peace rejected the claimants' request for provisional measures.

On 11 February 2003 the defendant company asked for the hearing to be postponed because the Director General of the company and its representative were on mission.

On 17 February 2003 a hearing took place, the defendant was not represented. The justice of the peace granted the claimants' request to increase their claims as well as the defendant's request to postpone the hearing to 19 March 2003.

On 19 March 2003 the justice of the peace dismissed the claims on the ground that the claimants' representative was not duly authorized to represent them. This decision was appealed against.

On 8 May 2003 Lomonosovskiy District Court of Arkhangelsk quashed on appeal the justice of the peace's decision to dismiss the case and referred it back to the justice of the peace.

On 18 August 2003 the justice of the peace decided to examine separately Mr R.'s claim and to stay the proceedings concerning other co-claimants, including the applicant, pending the outcome of the Mr R.'s case.

On 15 September 2003 Mr R's case was decided on the merits. The judgment became final on 18 December 2003 after its examination on appeal.

On 25 December 2003 the justice of the peace resumed the examination of the applicant's case.

On 16 March 2004 the justice of the peace partly granted the applicant's claim, awarding him around 89,599.61 Russian roubles (RUB). The parties lodged their points of appeal with the Lomonosovskiy District Court of Arkhangelsk ("the district court").

It appears that the district court adjourned the appeal hearing at least once. The respondent's representative attended the adjournment hearing and countersigned the trial record specifying that the appeal hearing was listed for 13 July 2004.

On 13 July 2004 the district court upheld the judgment of 16 March 2004 on appeal. The hearing was held in the absence of the parties and their representatives.

Meanwhile, the company submitted an application for supervisory review of the judgment taken on 13 July 2004. The company claimed that it had not been duly notified of the date and place of the appeal hearing.

On 7 September 2004 judge Ch. of the Arkhangelsk Regional Court ("the regional court") ordered that the case be forwarded to the regional court.

On 21 September 2004 judge Ch. transferred the case for examination to the Presidium of the Arkhangelsk Regional Court.

On 28 September 2004 the claimants' representative submitted his observations on the supervisory-review application.

On 29 September 2004 the Presidium of the Arkhangelsk Regional Court quashed the judgment of 16 March 2004 on the ground that the head of the respondent company had not been duly apprised of the hearing, and remitted the case to the district court for consideration on appeal. The court in particular relied on the fact that the notification of the hearing had been sent to the defendant at a wrong address. It discarded the applicant's argument that the respondent's representative had attended the adjournment hearing and, therefore, had been aware when and where the appeal hearing would be held.

On 1 December 2004 the district court adjourned the appeal hearing on the ground that one of the claimants was on the high seas and there was no evidence showing that he had been duly notified of the time and place of the hearing.

On 24 December 2004 the district court refused to examine the respondent's request to discontinue the enforcement proceedings, owing to the claimants' failure to attend.

On 26 January 2005 the district court heard the case. The applicant did not attend the hearing and requested to examine the case in his absence. He was legally represented. The court reversed the judgment of 16 March 2004 and, anew, partly granted the applicant's claim. As a result, the amount awarded to the applicant by the first-instance court was reduced by around RUB 27,000.

## COMPLAINTS

The applicant complains under Article 6 of the Convention and Article 1 of Protocol No. 1 about the quashing by way of supervisory-review of the judgment of 13 July 2004 and of the excessive length of proceedings and of the lack of an effective remedy. Ha also complains of the alleged failure to notify him of the supervisory-review hearing.

The applicant also alleges a breach of his right to adversarial proceedings, since not all the claimants were apprised of the supervisory-review hearing, and about their unfavourable outcome.

# THE LAW

The Court notes the Government's objection as to the lack of *locus standi* of the late applicant's daughter. However, it does not consider it necessary to deal with that objection as, in any event, it finds the present complaint inadmissible for the following reasons.

*1. Complaints relating to the quashing of a final judgment in the applicant's favour*

As regards the applicant's complaint relating to the quashing of a final domestic judgment in his favour and an ensuing violation of his property rights, the Court notes that it had already examined the proceedings complained of in another case lodged by the applicant's co-claimant (*Tolstobrov v. Russia*, no. 11612/05, 4 March 2010). In this case, the Court concluded to the absence of a violation of Article 6 § 1 and of Article 1 of Protocol No. 1. The Court sees no reasons to depart from this conclusion in the present case. Therefore this part of the application must be declared manifestly ill-founded.

*2. Complaint relating to the applicant's absence from the supervisory-review hearing*

As regards the applicant's complaint concerning the alleged failure to properly notify him about the supervisory review hearing, the Court notes that the Government only submitted a copy of the letter of 22 September 2004 addressed to the defendant company and to the three claimants informing them that the hearing would take place on 29 September 2004 at 10.00 a.m. The letter was accompanied by different appendices, including a copy of the defendant company's supervisory-review request.

The Court however considers that in the present case it is not necessary to determine on what date the summons was served on the applicant, if at all, because on 28 September 2004 the applicant's representative submitted to the supervisory-review court his observations in response to the supervisory-review request lodged by the defendant company. It results from these observations that the applicant's representative had precise knowledge of the content of the supervisory-review request, which was sent to the claimants together with the letter indicating the date and time of the hearing. The Court is mindful of the fact that in these observations the applicant's representative did not mention that the applicant had not been properly notified of the hearing or asked for its adjournment for this particular reason.

Finally, the Court notes that the defendant company lodged a supervisory-review request on the points of law alleging a procedural defect at the appeal instance. In this respect, the Court considers that the

supervisory-review court could adequately resolve this issue on the basis of the case-file and the applicant's representative's written submission (see, *mutatis mutandis*, *Belan v. Russia* (dec.) no. 56786/00, 2 September 2004). In addition, the Court observes that the letter informing the parties about the hearing indicated that the parties' attendance was not necessary and the decision adopted by the Presidium of the Arkhangelsk Regional Court stated that the observations lodged by the applicant's representative were examined by this court when deciding the case.

It follows that this part of the application is manifestly ill-founded and must be rejected in accordance with Article 35 §§ 3 and 4 of the Convention.

*3. Complaint relating to the length of domestic proceedings*

As regards the applicant's complaint regarding the excessive length of the proceedings, the Court notes that in the present case the proceedings started on 26 December 2002 and ended on 26 January 2005 when the district court delivered its final judgment. The Court further notes that the period from 13 July 2004 to 29 September 2004 should not be taken into account because the case was examined by way of supervisory review and not pending. Therefore, the case was examined during one year and eleven months by three levels of jurisdiction.

The Court recalls that it is not its task to assess whether the domestic courts had complied with the procedural time-limits provided by their own procedural legislation. Its task is to examine whether the overall duration of the domestic proceedings is compatible with the reasonable time requirement within the meaning of Article 6 of the Convention.

The Court also reiterates that as regards labour disputes, the authorities are expected to act with particular diligence. However, even taking account of that requirement, the Court finds that the length of the proceedings in the present case does not give rise to any appearance of a violation of Article 6 § 1 (see, among many others, *Bortaychuk and Bikkin v. Russia* (dec.), no. 72767/01, 19 October 2004, in which the Court found no violation of the reasonable-time requirement in an employment dispute which examination lasted more than two years and two months). It follows that this complaint is manifestly ill-founded and must be rejected in accordance with Article 35 §§ 3 and 4 of the Convention

*4. Other complaints*

The applicant further complained about the alleged failure to notify the remaining claimants of the supervisory-review hearing, the alleged absence of remedies against the quashing of the final judgment and about the outcome of the proceedings.

However, in the light of all 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 is manifestly ill-founded and must be rejected in accordance with Article 35 §§ 3 (a) and 4 of the Convention.

For these reasons, the Court, unanimously,

Declares the application inadmissible.

André Wampach
Deputy Registrar

Khanlar Hajiyev
President