



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

FIRST SECTION

CASE OF SERGEY ZUBAREV v. RUSSIA

(Application no. 5682/06)

JUDGMENT

STRASBOURG

5 February 2015

FINAL

05/05/2015

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

In the case of Sergey Zubarev v. Russia,

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

Isabelle Berro, *President*,
Julia Laffranque,
Paulo Pinto de Albuquerque,
Linos-Alexandre Sicilianos,
Erik Møse,
Ksenija Turković,
Dmitry Dedov, *judges*,

and Søren Nielsen, *Section Registrar*,

Having deliberated in private on 13 January 2015,

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

PROCEDURE

1. The case originated in an application (no. 5682/06) 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 Sergey Pavlovich Zubarev (“the applicant”), on 26 November 2005.

2. The Russian Government (“the Government”) were represented by Ms V. Milinchuk, former Representative of the Russian Federation at the European Court of Human Rights.

3. The applicant alleged that the domestic courts’ refusal to examine his claims on the merits amounted to a violation of his right of access to a court.

4. On 15 March 2007 the application was communicated to the Government.

THE FACTS

I. THE CIRCUMSTANCES OF THE CASE

5. The applicant was born in 1953 and lives in Tula.

6. The applicant is a lawyer. In 2003-05 the applicant, together with the lawyer Ms V., represented Ms D. in civil proceedings before the Proletarskiy District Court of Tula.

7. On 13 April 2005 Judge S. of the District Court sent a complaint to the President of the Tula Bar Association. She alleged that the absence of the applicant and Ms V. without good cause had led to delays in the

proceedings. She asked the President to institute disciplinary proceedings against the lawyers and to inform them of the next hearing in Ms D.'s case. In particular, she stated as follows:

"I draw your attention to the conduct of the lawyers Mr Zubarev and Ms V., which is not compatible with the Lawyers' Code of Ethics. It has encroached on the rights of the person they were representing before the court ... and has led to unjustifiable delays in the examination of the merits of the case. At the same time [they] have systematically written complaints in Ms D.'s name to various authorities and newspapers, attempting in that way to shift the responsibility for their own incompetence and lack of professionalism onto the judicial system, and thereby expressing contempt for the court."

8. The parties did not inform the Court whether there was any follow-up to Judge S.'s complaint on the part of the Bar Association.

9. Being of the opinion that the above-cited paragraph of Judge S.'s complaint tarnished their professional reputation, the applicant and Ms V. brought a defamation action against her in accordance with Article 152 of the Civil Code. They also sought a compensation award in respect of non-pecuniary damage.

10. On 3 May 2005 the District Court refused to accept the applicant's claims for consideration. The court noted that current laws did not define the grounds or procedure for adjudicating that type of claim. In particular, the court noted as follows:

"According to Article 16 of the Law of the Russian Federation on the Status of the Judiciary of the Russian Federation, a judge cannot be held liable for an expression of opinion in the course of the administration of justice or for the judgment handed down [by him or her] unless he or she has been found guilty in criminal proceedings concerning the abuse of power or the adoption of an unlawful verdict, judgment or other judicial act.

Pursuant to Article 1070 § 2 of the [Civil Code] of the Russian Federation, ... [d]amage caused within the framework of the administration of justice shall be compensated, provided that the guilt of the judge has been established in a final criminal conviction.

The claims lodged by [the applicant] and Ms V. cannot be considered in civil proceedings given that the issue of a judge's liability for actions taken in the course of the administration of justice must be adjudicated purely in accordance with the procedure prescribed by law. [However], current legislation does not lay down the grounds or the procedure for compensation by the State for damage caused by a judge's unlawful actions (inaction) (including the rules governing the jurisdiction of this type of case)."

11. Further to an appeal by the applicant, on 16 June 2005 the Tula Regional Court upheld that decision. The court noted, in particular:

"Pursuant to Article 134 § 1 (1) of the [Code of Civil Procedure] of the Russian Federation, the judge must dismiss a claim [without consideration on the merits] if it cannot be adjudicated in civil proceedings but should instead be considered and adjudicated by way of another judicial process.

Referring to Article 16 of the Law of the Russian Federation on the Status of the Judiciary of the Russian Federation, the [first-instance] court established that the claims lodged by Ms V. and [the applicant] concerned the judge's liability and the compensation for damage caused by the judge's actions (failure to act). [It] correctly indicated in its decision that the judge should be immune from liability for the actions taken in the course of the administration of justice unless she or he had been found guilty of criminal abuse of power in a final criminal conviction.

Being mindful of the fact that the issue of the judge's liability for actions taken in the course of the administration of justice can be examined only in accordance with the procedure prescribed by law, the court has rightly dismissed the claims lodged by [the applicant] and Ms V. [without consideration on the merits], noting correctly that current legislation had not yet laid down the grounds or the procedure for compensation by the State for damage caused by a judge's unlawful actions (inaction) (including the rules governing the jurisdiction of this type of case)."

II. RELEVANT DOMESTIC LAW AND PRACTICE

A. Judicial immunity

12. According to Article 16 of the Law of the Russian Federation on the Status of the Judiciary of the Russian Federation, a judge cannot be held liable for an expression of opinion in the course of the administration of justice or for the judgment handed down [by him or her] unless he or she has been found guilty in criminal proceedings concerning the abuse of power or the adoption of an unlawful verdict, judgment or other judicial act.

B. Action to protect goodwill and reputation

13. Article 152 § 1 of the Civil code of the Russian Federation (hereinafter, the "Civil Code") provides that any person may have recourse to a court to challenge statements that are damaging to his or her goodwill, dignity or professional reputation. The aggrieved person may also claim compensation for losses and non-pecuniary damage sustained as a result of the dissemination of such statements.

C. Action for damages

14. Article 1064 of the Civil Code contains general provisions on liability for the infliction of damage. It establishes that damage inflicted on the person or property of an individual shall be reimbursed in full by the person who inflicted the damage (Article 1064 § 1).

15. Article 1070 § 2 of the Civil Code defines liability for damage caused by unlawful actions of the law-enforcement authorities or the courts. In particular, it is established that the federal or regional treasury shall be liable for damage sustained by an individual within the framework of the

administration of justice, provided that the judge's guilt has been established in a final criminal conviction.

16. By Ruling no. 1-P of 25 January 2001, the Constitutional Court found that Article 1070 § 2 of the Civil Code was compatible with the Constitution in so far as it provided for special conditions governing State liability for damage caused within the framework of the administration of justice. It clarified, however, that the term "administration of justice" did not cover judicial proceedings in their entirety but extended only to judicial acts touching upon the merits of a case. Other judicial acts – mainly of a procedural nature – fell outside the scope of the concept of "administration of justice". State liability for damage caused by such procedural acts or failures to act could arise even in the absence of the final criminal conviction of a judge if the fault of the judge had been established in civil proceedings. The Constitutional Court emphasised, moreover, that the constitutional right to compensation by the State for such damage should not be associated with the personal fault of a judge. The Constitutional Court held that Parliament should legislate on the grounds and procedure for compensation by the State for damage caused by the unlawful acts or failures to act of a court or a judge and should determine territorial and subject-matter jurisdiction over such claims.

17. The Russian Code of Civil Procedure provides that a civil claim should be dismissed, in particular, if it is not amenable to examination in civil proceedings (Article 220).

D. Contempt of court and attorney's disciplinary liability

18. According to the rules of civil procedure, a failure to comply with a court order or any other demonstration of contempt of court will give rise to liability as set forth in federal law (Article 13 § 2 of the Code of Civil Procedure of the Russian Federation). Should the presiding judge consider counsel to be in contempt of court, he or she may issue a special ruling (Article 226 § 1 of the Code of Civil Procedure) with which it will be compulsory for the Bar Association to comply, or lodge a separate complaint with the Bar Association (Article 20 § 4 the Lawyers' Code of Ethics). The complaint should be submitted in writing and should clearly state, in particular, the actions of the lawyer that allegedly amount to a violation of his or her professional duties and the relevant evidence (Article 20 §§ 6 and 7 of the Code).

19. The President of the Bar Association will decide on the admissibility of the complaint (Article 21) and schedule a hearing of the case. The disciplinary proceedings comprise two stages: a hearing (1) by a qualifications board (Article 23) and (2) by the council of the bar association (Article 24). The qualifications board prepares recommendations to the council. The parties to the proceedings may participate in the hearing

and make submissions to the board. The member of the bar whose conduct constitutes the subject matter the proceedings may settle the case with the complainant and has the right to appeal against the decision of the council.

III. RELEVANT DOCUMENTS OF THE COUNCIL OF EUROPE

20. The European Charter on the statute for judges adopted at the multilateral meeting on the statute for judges in Europe, organized by the Council of Europe, between 8-10 July 1998, provides as follows as regards the judges' liability:

“5.1. The dereliction by a judge of one of the duties expressly defined by the statute, may only give rise to a sanction upon the decision, following the proposal, the recommendation, or with the agreement of a tribunal or authority composed at least as to one half of elected judges, within the framework of proceedings of a character involving the full hearing of the parties, in which the judge proceeded against must be entitled to representation. The scale of sanctions which may be imposed is set out in the statute, and their imposition is subject to the principle of proportionality. The decision of an executive authority, of a tribunal, or of an authority pronouncing a sanction, as envisaged herein, is open to an appeal to a higher judicial authority.

5.2. Compensation for harm wrongfully suffered as a result of the decision or the behaviour of a judge in the exercise of his or her duties is guaranteed by the State. The statute may provide that the State has the possibility of applying, within a fixed limit, for reimbursement from the judge by way of legal proceedings in the case of a gross and inexcusable breach of the rules governing the performance of judicial duties. The submission of the claim to the competent court must form the subject of prior agreement with the authority referred to at paragraph 1.3 hereof.

5.3. Each individual must have the possibility of submitting without specific formality a complaint relating to the miscarriage of justice in a given case to an independent body. This body has the power, if a careful and close examination makes a dereliction on the part of a judge indisputably appear, such as envisaged at paragraph 5.1 hereof, to refer the matter to the disciplinary authority, or at the very least to recommend such referral to an authority normally competent in accordance with the statute, to make such a reference.”

21. The Consultative Council of European Judges, an advisory body of the Council of Europe on issues related to the independence, impartiality and competence of judges, adopted, during its 11th plenary meeting (Strasbourg, 17-19 November 2010), a Magna Carta of Judges (Fundamental Principles) summarising and codifying the main conclusions of the Opinions that it already adopted. The relevant parts of the document read as follows:

“Ethics and responsibility

18. Deontological principles, distinguished from disciplinary rules, shall guide the actions of judges. They shall be drafted by the judges themselves and be included in their training.

19. In each State, the statute or the fundamental charter applicable to judges shall define the misconduct which may lead to disciplinary sanctions as well as the disciplinary procedure.

20. Judges shall be criminally liable in ordinary law for offences committed outside their judicial office. Criminal liability shall not be imposed on judges for unintentional failings in the exercise of their functions.

21. The remedy for judicial errors should lie in an appropriate system of appeals. Any remedy for other failings in the administration of justice lies only against the state.

22. It is not appropriate for a judge to be exposed, in respect of the purported exercise of judicial functions, to any personal liability, even by way of reimbursement of the state, except in a case of wilful default.”

22. On 17 November 2010 the Committee of Ministers adopted Recommendation to member states on judges: independence, efficiency and responsibilities (CM/Rec(2010)12), which provides, as regards the liability of a judge or disciplinary proceedings, as follows:

“66. The interpretation of the law, assessment of facts or weighing of evidence carried out by judges to determine cases should not give rise to civil or disciplinary liability, except in cases of malice and gross negligence.

67. Only the state may seek to establish the civil liability of a judge through court action in the event that it has had to award compensation.

68. The interpretation of the law, assessment of facts or weighing of evidence carried out by judges to determine cases should not give rise to criminal liability, except in cases of malice.

69. Disciplinary proceedings may follow where judges fail to carry out their duties in an efficient and proper manner. Such proceedings should be conducted by an independent authority or a court with all the guarantees of a fair trial and provide the judge with the right to challenge the decision and sanction. Disciplinary sanctions should be proportionate.

70. Judges should not be personally accountable where their decision is overruled or modified on appeal.

71. When not exercising judicial functions, judges are liable under civil, criminal and administrative law in the same way as any other citizen.”

THE LAW

ALLEGED VIOLATION OF ARTICLE 6 OF THE CONVENTION

23. The applicant complained under Articles 6 and 13 of the Convention that the domestic courts’ refusal to examine his claims had denied him access to a court. The Court will examine the complaint under Article 6 of the Convention, which, in so far as relevant, reads:

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

A. Admissibility

24. The Government argued that the application should be dismissed for the applicant's failure to exhaust effective domestic remedies in respect of his grievances. In their opinion, it had been open to him to complain to the Judicial Qualifications Board or a prosecutor's office about the violations allegedly committed by the judge. Those bodies had authority to institute criminal or disciplinary proceedings against a judge.

25. The applicant submitted that the purpose of his action was to defend his goodwill and professional reputation. It had not been his intention to institute disciplinary or criminal proceedings against Judge S. He had complied with the Convention requirements by having introduced a civil claim for the purpose of reinstating his infringed rights.

26. The Court considers that the issue of exhaustion of domestic remedies is closely linked to the merits of the applicant's complaint. The Court, therefore, finds it necessary to join the Government's objection to the merits of the complaint. It further notes that the complaint is not manifestly ill-founded within the meaning of Article 35 § 3 (a) of the Convention or inadmissible on any other grounds. It must therefore be declared admissible.

B. Merits

27. The Government submitted that the applicant's action had been dismissed by the domestic courts for his failure to comply with the relevant domestic laws which exhaustively defined cases in which an action may be brought against a judge (see paragraph 15 above).

28. The applicant maintained his complaint.

29. The Court reiterates that Article 6 § 1 secures to everyone the right to have any claim relating to his civil rights and obligations brought before a court or tribunal. In this way the Article embodies the “right to a court”, of which the right of access, that is, the right to institute proceedings before courts in civil matters, constitutes one aspect; however, it is an aspect that makes it in fact possible to benefit from the further guarantees laid down in paragraph 1 of Article 6 (see, among recent authorities, *Gryaznov v. Russia*, no. 19673/03, § 71, 12 June 2012).

30. The right of access to the courts secured by Article 6 § 1 of the Convention is not absolute, but may be subject to limitations; these are permitted by implication since the right of access by its very nature calls for regulation by the State. In this respect, the Contracting States enjoy a certain margin of appreciation, although the final decision as to the observance of the Convention's requirements rests with the Court. It must be satisfied that

the limitations applied do not restrict or reduce the access left to the individual in such a way or to such an extent that the very essence of the right is impaired. Furthermore, a limitation will not be compatible with Article 6 § 1 if it does not pursue a legitimate aim and if there is not a reasonable relationship of proportionality between the means employed and the aim sought to be achieved. If the restriction is compatible with these principles, no violation of Article 6 will arise (see *Prince Hans-Adam II of Liechtenstein v. Germany* [GC], no. 42527/98, § 44, ECHR 2001-VIII).

31. Turning to the circumstances of the present case, the Court notes the Government's argument that the domestic courts refused to entertain the applicant's claims because of the judicial immunity from liability for actions taken in a professional capacity in the course of the administration of justice.

32. On that point, the Court observes that judicial immunity is a legal practice that exists in some form in many member States (see *Ernst and Others v. Belgium*, no. 33400/96, § 50, 15 July 2003). It has been established for the benefit of the public, in whose interest it is that the judges should be at liberty to exercise their functions with independence and without fear of consequences, while litigants can protect themselves from judicial errors by taking their complaints to an appeal court without resorting to suits for personal liability. Accordingly, the Court accepts that in the present case immunity from liability accorded to the judge in connection with her actions in a professional capacity as a presiding judge in a civil case may be regarded as having a legitimate aim namely pursuing the interests of the administration of justice (compare, *Gryaznov*, cited above, § 78).

33. It remains to be determined whether in the circumstances of the case there was a reasonable relationship of proportionality between the means employed and the legitimate aim pursued by the contested limitation.

34. On that point, the Court observes that the statements perceived by the applicant as defamatory were made by the judge in the complaint addressed to the regional bar association in strict compliance with the procedure prescribed by domestic law (see paragraphs 18-19 above). They were not disseminated via any public medium. Nor is it asserted by the applicant that anyone other than the bodies of the bar association was made aware of their content. The Court is therefore satisfied that the statements had a very restricted circulation.

35. It further notes that the applicant was at liberty to challenge the truthfulness of the judge's allegations within the framework of the disciplinary proceedings. In this respect the Court notes that the applicant did not claim that those proceedings had failed to offer him proper safeguards commensurate with the requirements set forth in Article 6 of the Convention. He also chose not to provide any information as to their outcome or consequences.

36. The Court also takes note of its earlier finding in the *Gryaznov* case where it established that the judicial immunity from liability for actions taken in the course of the administration of justice was not of a blanket or non-rebutted nature. It notes that, in particular, a civil action for damages can also be lodged in cases where judicial acts have been done with malicious intent or corruptly and the judge's guilt has been established in a final criminal conviction (compare, *Gryaznov*, cited above, § 80). The limitation in question cannot therefore be regarded as an arbitrary removal of the courts' jurisdiction to determine a whole range of civil claims.

37. Lastly, the Court reiterates that it is not its task to substitute its own view for that of the national legislature as to what would be the most appropriate policy as regards the judicial immunity from liability in circumstances such as those of the present case. It is for the national authorities to determine the extent to which the individual's interests in full protection of his or her reputation should yield to the requirements of the public's interest in the normal functioning of the judicial system (compare, *Fayed v. the United Kingdom*, 21 September 1994, § 81, Series A no. 294-B). Domestic courts at two levels of jurisdiction found that Russian law did not impose any liability on the judge in the circumstances of the applicant's case, and declared the latter's claims inadmissible.

38. In the light of the foregoing considerations, the Court cannot but find that, in the exercise of their responsibility to regulate the conduct of the civil proceedings, the national authorities have not exceeded their margin of appreciation in limiting the applicant's access to a court under Article 6 § 1 of the Convention. The Court concludes, accordingly, that a reasonable relationship of proportionality can be said to have existed between the judicial immunity in the course of the administration of justice and the legitimate aim pursued in the public interest. Whereas, therefore, the issue of exhaustion of domestic remedies does not arise in such circumstances the Court rejects the Government's objection in this respect and finds that there has been no violation of Article 6 § 1 of the Convention.

FOR THESE REASONS, THE COURT, UNANIMOUSLY,

1. *Joins* to the merits the Government's objection as to the exhaustion of domestic remedies and *rejects* it;
2. *Declares* the application admissible;
3. *Holds* that there has been no violation of Article 6 § 1 of the Convention.

Done in English, and notified in writing on 5 February 2015, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Søren Nielsen
Registrar

Isabelle Berro
President