



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

THIRD SECTION

CASE OF MARYASOVA AND OTHERS v. RUSSIA

(Applications nos. 1956/05, 12055/07, 25655/07, 32983/07, 35385/07, 44395/07, 10688/08, 7461/09, 29775/09, 5290/10, 19055/10, 33694/10, 37955/10, 57867/10, 65011/10, 6914/11, 6951/11, 27075/11, 33042/11, 40292/11, 42297/11, 46006/11, 52428/11 and 3537/12)

JUDGMENT

STRASBOURG

22 November 2016

This judgment is final. It may be subject to editorial revision.

In the case of Maryasova and Others v. Russia,

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

Helena Jäderblom, *President*,

Dmitry Dedov,

Branko Lubarda, *judges*,

and Fatoş Aracı, *Deputy Section Registrar*,

Having deliberated in private on 3 November 2016,

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

PROCEDURE

1. The case originated in twenty-four applications against the Russian Federation (see application numbers in Appendix I) lodged with the Court under Article 34 of the Convention for the Protection of Human Rights and Fundamental Freedoms (“the Convention”) by twenty-four Russian nationals whose names and the dates on which they introduced their applications are set out in Appendix I.

2. The names of the applicants’ representatives are listed in Appendix II. The Russian Government (“the Government”) were represented by Mr G. Matyushkin, Representative of the Russian Federation to the European Court of Human Rights.

3. The applicants complained, in particular, that they had been denied an opportunity to appear in person before the appeal courts in the civil proceedings to which they had been parties.

THE FACTS

I. THE CIRCUMSTANCES OF THE CASE

4. The applicants were all parties to unrelated sets of civil proceedings.

5. Some applicants attended the hearings before the first-instance courts; all of them were absent from the appeal hearings. Whenever the appeal courts addressed the issue of their absence, they did not check whether the applicants or their representatives received the summons, whether it was necessary to adjourn hearings or whether their presence was required due to the nature of the claims.

6. The dates of the final judgments are set out in Appendix I.

II. RELEVANT DOMESTIC LAW AND PRACTICE

7. The domestic provisions governing notification of litigants in civil proceedings are described in *Gankin and Others v. Russia*, (nos. 2430/06, 1454/08, 11670/10 and 12938/12, §§ 16-17, 31 May 2016).

THE LAW

I. JOINDER OF THE APPLICATIONS

8. Having regard to the similar subject matter of the applications, the Court finds it appropriate to examine them jointly in a single judgment.

II. ALLEGED VIOLATION OF ARTICLE 6 OF THE CONVENTION

9. The applicants complained that their right to a fair hearing under Article 6 § 1 of the Convention had been breached on account of the domestic courts' failure to ensure their participation in the appeal hearings. Article 6 § of the Convention 1 reads in the relevant part as follows:

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

A. Admissibility

10. The Government submitted that Mr Izabakarov's complaint was time-barred because it had been introduced on 17 June 2011, that is to say more than six months after the final domestic decision in his case had been made on 1 December 2010.

11. A copy of the appeal judgment submitted by Mr Izabakarov shows that he had received the judgment on 17 December 2010. It follows that the date of introduction of Mr Izabakarov's application lies within six months of the date on which he became aware of the final decision in his case. The Government's objection should therefore be dismissed.

12. The Court further notes that this part of the application 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

13. The Government submitted that the applicants had been duly notified of the forthcoming hearings. Unlike in criminal proceedings, civil

disputes did not require the presence of both parties for appeal proceedings, and the nature of the dispute in the present cases had not called for the applicants' personal attendance. In the case of Ms Maryasova, the applicant's lawyer had been informed of the upcoming hearing; the applicants Ms Mariya Tukova and Ms Svetlana Tukova had been notified of the appeal hearings by telephone; and the summonses sent to Mr Akhpashev and Mr Kalinchuk had been returned undelivered. Lastly, in the case of Mr Izabakarov, the Government argued that both litigants had lived in a small village and therefore the applicant should have learned about the forthcoming appeal hearing from the opposing party.

14. The applicants maintained their complaints.

15. The Court reiterates that the domestic courts are under an obligation to ascertain, on the basis of the available evidence, whether the parties were duly served with the information about the forthcoming hearing, for litigants must be apprised of the hearing in such a way as to have an opportunity to attend it should they decide to exercise the right to personal presence established in Russian law. It is on the basis of the domestic courts' reasoning that the Court will decide whether the litigants were afforded an adequate opportunity to present their case effectively (see *Gankin and Others*, cited above, §§ 39-40).

16. The applicants alleged that they had not received the summonses and had been unaware of the date and place of the appeal hearings in their cases. The Court notes, as it did in *Gankin and Others*, cited above, that the appeal judgments did not mention any proof of receipt of summonses by the applicants or their representatives and did not contain any analysis as to whether or not it was necessary to adjourn hearings pending proper notification. Nor did the appeal courts say anything about the nature of the applicants' legal claims which might have rendered their presence unnecessary. It follows that the arguments raised by the Government were not tested in the domestic proceedings and appeared for the first time in the proceedings before the Court. The Court reiterates in this regard that a lack of or deficiency in the reasoning in the domestic decisions cannot be made up *ex post facto* in the Court proceedings, for it cannot take the place of the national courts which had the evidence before them. For that reason, the Court is unable to entertain the claims which the respondent Government raised for the first time in the proceedings before it (see *Gankin and Others*, cited above, § 41, with further references, and *Yevdokimov and Others v. Russia*, nos. 27236/05 and 10 others, § 37, 16 February 2016). In sum, the Court does not see any argument in the Government's submissions that might warrant a conclusion different from that reached in *Gankin and Others*.

17. Having regard to its established case-law and the circumstances of the present case, the Court finds that by embarking on the merits of the appeals without attempting to ascertain whether the applicants had been

aware – or should have been aware – of the date and time of the hearings, the domestic courts deprived them of the opportunity to attend and to present their cases effectively, in breach of Article 6 of the Convention.

18. There has accordingly been a violation of Article 6 § 1 of the Convention in respect of all the applicants.

III. OTHER ALLEGED VIOLATIONS OF THE CONVENTION

19. The Court has also examined the other complaints submitted by the applicants. However, having regard to all the material in its possession and in so far as those 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 these parts of the applications must be rejected as manifestly ill-founded, pursuant to Article 35 §§ 3 and 4 of the Convention.

IV. APPLICATION OF ARTICLE 41 OF THE CONVENTION

20. 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.”

21. Regard being had to the documents in its possession and to its case-law in similar cases, the Court considers it reasonable to award the applicants the sums listed in Appendix II, plus any tax that may chargeable on that amounts.

22. 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.

23. The Court holds that when an applicant has suffered an infringement of his right to a fair hearing guaranteed by Article 6 of the Convention, he or she should, as far as possible, be put in the position in which he or she would have been had the requirements of that provision not been disregarded. The most appropriate form of redress would, in principle, be the possibility for the applicant to request the reopening of the proceedings. In its recent case the Court laid down the principles applicable to the reopening of terminated civil proceedings on the basis of the Court's judgment (see *Bochan v. Ukraine (no. 2)*, no. 22251/08, §§ 57-58, ECHR 2015).

24. In this connection, the Court reiterates that in Russia a finding by the Court of a violation of the Convention or its Protocols is grounds for reopening civil proceedings under Article 392 §§ 2(2) and 4(4) of the Code

of Civil Procedure and for reviewing the domestic judgments in the light of the Convention principles established by the Court (see *Davydov v. Russia*, no. 18967/07, §§ 10-15, 30 October 2014).

FOR THESE REASONS, THE COURT, UNANIMOUSLY,

1. *Decides* to join the applications;
2. *Declares* the complaint concerning the unfairness of the civil proceedings admissible and the remainder of the applications inadmissible;
3. *Holds* that there has been a violation of Article 6 § 1 of the Convention;
4. *Holds*
 - (a) that the respondent State is to pay the applicants, within three months, the amounts listed in Appendix II, 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;
 - (b) that from the expiry of the above-mentioned three months until settlement, simple interest shall be payable on such amounts at a rate equal to the marginal lending rate of the European Central Bank during the default period, plus three percentage points;
5. *Dismisses* the remainder of the applicants' claim for just satisfaction.

Done in English, and notified in writing on 22 November 2016, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Fatoş Aracı
Deputy Registrar

Helena Jäderblom
President

Appendix I. Facts

Application number and applicant's name	Date of introduction	Name of the appeal court and date of the final decision in the civil proceedings concerned
1956/05 Anastasiya Pavlovna Maryasova	09/12/2004	Kaliningrad Regional Court, 16 June 2004
12055/07 Yelena Sergeevna Dmitriyeva	02/02/2007	Supreme Court of the Tatarstan Republic, 2 October 2006
25655/07 Mariya Grigoryevna Tukova	12/05/2007	Military Court of the Northern Caucasus Circuit, 4 April 2007
32983/07 Olga Vladimirovna Tikhonova	04/07/2007	Krasnodar Regional Court, 20 March 2007
35385/07 Vyacheslav Valeryevich Krikunov	16/07/2007	Kaluga Regional Court, 5 October 2006 (received on 5 February 2007)
44395/07 Svetlana Valeryevna Tukova	12/05/2007	Military Court of the Northern Caucasus Circuit, 4 April 2007
10688/08 Zoya Kozminichna Ryabchikova	09/01/2008	Belgorod Regional Court, 30 October 2007
7461/09 Nina Ivanovna Stetsenko	31/12/2008	Voronezh Regional Court, 6 May 2008 (received on 2 July 2008)
29775/09 Andrey Vladimirovich Sizonenko	04/04/2009	Volgograd Regional Court, 5 February 2009
5290/10 Mikhail Mikhaylovich Belous	28/12/2009	Prikubanskiy District Court of the Krasnodar Region 21 July 2009
19055/10 Petr Valeryevich Akhpashev	05/03/2010	Perm Regional Court, 16 February 2010
33694/10 Andrey Nikolayevich Naumov	02/06/2010	Moscow City Court, 3 December 2009
37955/10 Valeriy Alekseyevich Rachkov	31/05/2010	Moscow Regional Court, 1 December 2009
57867/10 Georgiy Albertovich Kropachev	08/09/2010	Krasnoyarsk Regional Court, 10 March 2010
65011/10 Svetlana Yuryevna Chernykh	02/11/2010	Murmansk Regional Court 5 May 2010 (two sets of proceedings)
6914/11 Anatoliy Olegovich Churgel	11/01/2011	Moscow City Court, 19 August 2010
6951/11 Aleksandr Ivanovich Malashenko	12/01/2011	Supreme Court of the Kareliya Republic, 3 August 2010
27075/11 Varvara Olegovna Polenova	04/04/2011	Krasnodar Regional Court, 7 October 2010
33042/11 Valeriy Vladimirovich Kalinchuk	10/05/2011	Novosibirsk Regional Court, 23 November 2010
40292/11 Ibragim Aliyevich Izabakarov	14/06/2011	Supreme Court of the Dagestan Republic, 1 December 2010 (received on 17 December 2010)

42297/11 Sergey Anatolyevich Guryanov	01/07/2011	Moscow Regional Court, 9 December 2010 (received on 4 January 2011)
46006/11 Yelena Ilyinichna Tsyganova	05/07/2011	Yaroslavl Regional Court, 12 May 2011
52428/11 Zulfiya Rafisovna Gilmanshina	18/07/2011	Supreme Court of the Udmurtiya Republic, 19 January 2011
3537/12 Vladimir Savelyevich Vasilenko	10/12/2011	Krasnodar Regional Court, 19 July 2011

Appendix II.
Awards made by the Court under Article 41 of the
Convention

Application number and applicant's name	Represented by	Award in respect of non-pecuniary damage	Award in respect of costs and expenses
1956/05 Anastasiya Pavlovna Maryasova		EUR 1,500	
12055/07 Yelena Sergeevna Dmitriyeva		EUR 1,500	
25655/07 Mariya Grigoryevna Tukova	Mr U. Sommer	EUR 1,500	
32983/07 Olga Vladimirovna Tikhonova	Mr V. Ponomarev	EUR 1,500	
35385/07 Vyacheslav Valeryevich Krikunov		EUR 665	
44395/07 Svetlana Valeryevna Tukova		EUR 1,500	
10688/08 Zoya Kozminichna Ryabchikova	Mr E. Rozhkov	EUR 1,500	
7461/09 Nina Ivanovna Stetsenko	Mr A. Stetsenko	EUR 1,500	EUR 385
29775/09 Andrey Vladimirovich Sizonenko		EUR 1,500	
5290/10 Mikhail Mikhaylovich Belous		EUR 1,500	
19055/10 Petr Valeryevich Akhpashev		EUR 1,500	
33694/10 Andrey Nikolayevich Naumov		EUR 1,500	
37955/10 Valeriy Alekseyevich Rachkov		EUR 1,500	
57867/10 Georgiy Albertovich Kropachev	Mr D. Boyev	EUR 1,500	EUR 600
65011/10 Svetlana Yuryevna Chernykh		EUR 1,500	
6914/11 Anatoliy Olegovich Churgel		EUR 1,500	
6951/11 Aleksandr Ivanovich Malashenko		EUR 1,500	EUR 23
27075/11 Varvara Olegovna Polenova		EUR 1,500	
33042/11 Valeriy Vladimirovich Kalinchuk		EUR 1,500	
40292/11		EUR 1,500	EUR 21

Ibragim Aliyevich Izabakarov			
42297/11 Sergey Anatolyevich Guryanov		EUR 1,500	EUR 14
46006/11 Yelena Ilyinichna Tsyganova		EUR 1,500	
52428/11 Zulfiya Rafisovna Gilmanshina		EUR 1,500	
3537/12 Vladimir Savelyevich Vasilenko		EUR 1,500	