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

FIRST SECTION

CASE OF KOVALEV v. RUSSIA

(Application no. 78145/01)

JUDGMENT

STRASBOURG

10 May 2007

FINAL

12/11/2007

This judgment will become final in the circumstances set out in Article 44 § 2 of the Convention. It may be subject to editorial revision.

In the case of Kovalev v. Russia,

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

Mr C.L. ROZAKIS, *President*,
Mr L. LOUCAIDES,
Mrs N. VAJIĆ,
Mr A. KOVLER,
Mrs E. STEINER,
Mr K. HAJIYEV,
Mr D. SPIELMANN, *judges*,
and Mr S. NIELSEN, *Section Registrar*,

Having deliberated in private on 5 April 2007,

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

PROCEDURE

1. The case originated in an application (no. 78145/01) 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 Yevgeniy Vyacheslavovich Kovalev ("the applicant"), on 4 September 2001.

2. The applicant was represented by Ms K. Kostromina, a lawyer practising in Moscow. The Russian Government ("the Government") were represented by Mr P. Laptev, Representative of the Russian Federation at the European Court of Human Rights.

3. The applicant alleged, in particular, a violation of Article 6 § 1 of the Convention on account of the court's refusal to summon him from prison to take part in the proceedings concerning his allegations of ill-treatment by the police.

4. By a decision of 23 March 2006 the Court declared the application partly admissible.

5. The applicant and the Government each filed further written observations (Rule 59 § 1).

THE FACTS

THE CIRCUMSTANCES OF THE CASE

6. The applicant was born in 1973 and lives in Aksay, Rostov Region.

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

8. On 13 November 2000 the applicant was arrested by three police officers and taken to Aksay police station, where he was allegedly beaten up. He was detained on remand.

9. On 16 November 2000 the applicant was charged with a robbery committed as part of an organised gang. On the same day the Azov District Prosecutor authorised the applicant's pre-trial detention, and the applicant spent nine months in pre-trial detention facility IZ-61/1 in Rostov.

10. In July 2001 the applicant wrote a letter, apparently a complaint, to the Rostov Regional Prosecutor's Office and submitted it to the administration of the detention facility for posting.

11. On 22 August 2001 the Rostov Regional Court began its examination of the criminal charge against the applicant and his four co-accused. The applicant and his three co-accused contested their pre-trial testimonies as having been given under duress, but the court dismissed the allegations.

12. On 30 August 2001 the applicant was found guilty of participation in an organised armed gang and of two armed robberies, and was sentenced to eight and a half years' imprisonment. His accomplices were convicted as well.

13. On 17 September 2001 the Rostov Chief Prison Directorate, attached to the Ministry of Justice of the Russian Federation, informed the applicant that the administration of detention facility IZ-61/1 had unlawfully delayed his July 2001 letter to the prosecutor's office by about a month, and that disciplinary proceedings had been taken against those responsible.

14. On 19 February 2002 the applicant's conviction was upheld by the Supreme Court of the Russian Federation.

15. On an unspecified date the applicant's wife brought a civil claim. On behalf of the applicant she challenged the acts of the police, claiming that her husband had been unlawfully arrested and ill-treated. She claimed damages of 2,900,000 Russian roubles in the applicant's favour. She also requested that the applicant be summoned from the prison to participate in the proceedings in person. On 19 December 2001 the Rostov Regional Court confirmed her standing as a plaintiff in the civil proceedings and decided that the claim should be accepted for examination in the form in which it was lodged.

16. On 13 March 2002 the Aksay Town Court held a hearing in the proceedings, the applicant's wife stating the case with the assistance of a human rights NGO. At the hearing they reiterated the request for the applicant to be summoned to the courtroom, but the court ruled that the applicant's presence was not necessary and refused to order his attendance. The court held that it had no jurisdiction to examine the complaint relating to the arrest and detention, as these matters were covered by the rules of

criminal procedure, and held that in any event the complaints were unsubstantiated. The court dismissed all the claims as a whole.

17. The applicant's wife lodged an appeal, arguing that the court had not specified on what grounds it had dismissed the complaint alleging ill-treatment. She requested an expert examination and a full judicial examination of the circumstances surrounding the applicant's arrest. As a separate ground of appeal she complained about the court's refusal to summon the applicant and to have him heard in person.

18. On 17 April 2002 the Rostov Regional Court dismissed the appeal. As regards the applicant's absence from the hearing, the court held that he had made this complaint in person at the hearing in the criminal case, and that there was therefore no need for his oral submissions to be heard again. As to the substance of the complaint alleging ill-treatment, it upheld the first-instance judgment, stating that the allegations of ill-treatment were not substantiated by any evidence.

THE LAW

I. ALLEGED VIOLATION OF ARTICLE 6 § 1 OF THE CONVENTION

19. The applicant complained that he had not been summoned to appear in court for the hearing of the case concerning his alleged ill-treatment by the police. He relied on Article 6 § 1 of the Convention, which reads, in so far as relevant:

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

A. The parties' submissions

20. The Government responded to this complaint by making the following statements:

> "As to [the applicant's] absence at the hearing devoted to examination of the complaint against the actions of the [police officers] lodged by his wife, so far as [the applicant] was held in custody at the time of this complain[t] being filed and its examination, his wife participated in the court hearings being authorised by [the applicant] and acting on his behalf. According to the Supreme Court of the Russian Federation, there was no violation of [the applicant's] right to direct participation in the examination of the complaint in the court.
>
> It seems necessary to emphasise that the [Aksay Town Court] dismissed the complaint of Mrs Kovaleva based not on the merits but rather on procedural grounds...

> The applicant's wife Mrs. Kovaleva O.V. seized the [Aksay Town Court] with a complaint on behalf of her husband, [the applicant], alleging that her husband suffered an ill-treatment on the part of police officers of the Aksayskiy Department of Interior of the Rostov Region. While considering the above complaint the [Aksay Town Court] examined the question of the applicant's summons and his examination at the court's session. Thus, the [Aksay Town Court] decided to examine the matter in the applicant's absence... In deciding so the [Aksay Town Court] parted from the following. The circumstances referred to by Mrs Kovaleva O.V. could have been verified by checking explanations given by other persons participating in the proceedings as well as by examining [the applicant's] case file..."

21. The Government further referred to the ruling of the court of appeal which had upheld the first-instance court's refusal to summon the applicant, finding that it had been justified in the circumstances.

22. The applicant maintained his complaint, arguing that the civil courts had failed to conduct a fair hearing by depriving him of the possibility to make oral submissions in support of his allegations of ill-treatment.

B. The Court's assessment

1. Victim status

23. The Court notes, firstly, that it is not in dispute between the parties whether the applicant may claim to be the victim of a violation of Article 6 in the proceedings which ended on 17 April 2002. Nevertheless, noting that he was not a plaintiff in these proceedings, the Court considers it necessary to examine this issue before entering into the merits of his complaint.

24. The Court observes that the claim at issue was brought by the applicant's wife and that her standing as a party to the proceedings was expressly confirmed by the Rostov Regional Court on 19 December 2001. Having accepted the wife's standing, the courts, however, did not limit the scope of the case to the aspects relating to her personally. In this connection it is important to note that her claims were accepted for examination in the form in which they were submitted, namely whether the police's acts against *the applicant* should be found unlawful and damages should be awarded in *his* favour. Furthermore, as follows from the Government's observations, this claim was regarded under domestic law as having been lodged under the implicit authority of the applicant and on his behalf. The Court sees no need to disregard the interpretation offered by the domestic authorities and considers it established that it was the applicant's rights and interests that were primarily at stake in the instant dispute, rather than his wife's.

25. It follows that the applicant can claim to be the victim of a violation of Article 6 § 1.

2. Applicability of Article 6

26. The Court will next consider whether the proceedings at stake constituted a determination of the applicant's civil rights and obligations. According to its case-law, the concept of "civil rights and obligations" cannot be interpreted solely by reference to the domestic law of the respondent State, but must be considered "autonomous" within the meaning of Article 6 § 1 of the Convention (see, among other authorities, *König v. Germany*, judgment of 28 June 1978, Series A no. 27, pp. 29-30, §§ 88-89; *Baraona v. Portugal*, judgment of 8 July 1987, Series A no. 122, pp. 17-18, § 42; and *Ferrazzini v. Italy* [GC], no. 44759/98, § 24, ECHR 2001-VII).

27. To conclude that the proceedings in the present case concerned a "civil" right within the meaning of Article 6, the Court finds it sufficient that the subject matter of the applicant's action was pecuniary and that the outcome of the domestic proceedings was decisive for his right to compensation (see *Göç v. Turkey* [GC], no. 36590/97, § 41, ECHR 2002-V; see also, *mutatis mutandis*, *Georgiadis v. Greece*, judgment of 29 May 1997, *Reports of Judgments and Decisions* 1997-III, pp. 958-59, §§ 30-35, and *Werner v. Austria*, judgment of 24 November 1997, *Reports* 1997-VII, p. 2508, § 38).

28. Finally, there is no indication that the dispute in question was not genuine and serious (see, by contrast, *Skorobogatykh v. Russia* (dec.), no. 37966/02, 8 June 2006).

29. Article 6 § 1 of the Convention is accordingly applicable to the proceedings in the instant case.

3. Compliance with Article 6 § 1

30. While the parties in their submissions did not refer to any specific aspect of Article 6 § 1, the applicant's complaint about his inability to participate in the proceedings may be interpreted in the light of the Court's existing case-law as allegations of a lack of public hearing and of a failure to ensure adversarial proceedings.

31. As regards the public nature of the hearing, the Court reiterates that this guarantee was intended to protect litigants from the risk of justice being administered in secret without public scrutiny; it was also a means of fostering public confidence in the courts, since it made the administration of justice more transparent and contributed to a fair trial, a feature of any democratic society (see, among other authorities, *Tierce and Others v. San Marino*, nos. 24954/94, 24971/94 and 24972/94, § 92, ECHR 2000-IX, and *Axen v. Germany*, judgment of 8 December 1983, Series A no. 72, p. 12, § 25).

32. The Court has previously found that depriving the parties to civil proceedings of an opportunity to attend the hearing, as in cases where there has been a failure to summon the litigants, may infringe the right to a "public and fair hearing" (see *Yakovlev v. Russia*, no. 72701/01, §§ 19 et seq., 15 March 2005; *Groshev v. Russia*, no. 69889/01, §§ 27 et seq., 20 October 2005; and *Mokrushina v. Russia*, no. 23377/02, 5 October 2006). In these cases the courts conducted proceedings *de facto* in writing, having incorrectly assumed that the parties had waived their statutory right to be present at the hearing.

33. In the present case, however, the Court observes that the proceedings before the Aksay Town Court, and subsequently the Rostov Regional Court, were both oral and public. The applicant's wife was present in both instances and was able to plead the case in the oral proceedings. Taking into account her standing as a plaintiff in those proceedings, it cannot be argued that the hearings were conducted in the absence of a party to the dispute. Furthermore, the NGO representative assisting the applicant's wife also made oral submissions before the courts. Had the applicant not been in prison there would have been nothing to stop him from attending the hearing and making submissions in person. It follows that notwithstanding the applicant's absence from the courtroom, the hearings in the instant case were public within the meaning of Article 6 § 1.

34. The Court reiterates, next, that the right to a fair hearing, in particular the principle of adversarial proceedings and equality of arms, requires that each party be given a reasonable opportunity to have knowledge of and comment on the observations filed or evidence adduced by the other party and to present his case under conditions that do not place him at a substantial disadvantage *vis-à-vis* his opponent (see *X v. Austria*, no. 5362/72, Commission decision of 14 December 1972, Collection 42, p. 145, and *McMichael v. the United Kingdom*, judgment of 24 February 1995, Series A no. 307-B, §§ 17 and 27). Therefore, the refusal to hear a witness may, under certain circumstances, run counter to that principle (see *Karting v. Netherlands*, no. 12087/86, Commission decision of 13 May 1988; *X v. Austria*, cited above; and *McMichael*, cited above).

35. The Court observes that the applicant intended to defend in person the claim that he had been ill-treated while in police custody. His participation, however, was considered unnecessary, firstly on the ground that he had already made an oral statement on the subject of ill-treatment before the tribunal trying him on criminal charges and, secondly, because the claim of ill-treatment was not substantiated by any evidence.

36. The Court cannot accept either line of the domestic courts' reasoning. On the first point, it notes that during the criminal trial the applicant made allegations of ill-treatment in an attempt to have his initial confession to a robbery excluded from the case file as evidence obtained under duress. The Court has already distinguished on several occasions

between complaints about police brutality made for the purpose of contesting evidence in the criminal proceedings, on one hand, and a civil action aimed at establishing the existence of ill-treatment which may eventually result in a compensation award, on the other hand (see *Ksenzov v. Russia* (dec.), no. 75386/01, 27 January 2005, and *Slyusarev v. Russia* (dec.), no. 60333/00, 9 November 2006). Therefore, the mere reference to the episode of the applicant's complaint before the criminal court was insufficient to refuse him a further opportunity to make submissions on the subject.

37. Concerning the second point, the Court notes a certain contradiction between the courts' finding the complaint unsubstantiated and their reluctance to hear the applicant's statement. In any event, the exercise of the guarantees inherent in the right to a fair trial cannot depend on the court's giving a preliminary assessment of the claim as potentially successful. A distinction must be made, in this respect, between claims that are not genuine and serious (see *Skorobogatykh v. Russia*, cited above, and the Court's finding in paragraphs 28 and 29 above) and claims that are unlikely to succeed for lack of evidence. Given that the applicant's claim was, by its nature, largely based on his personal experience, his statement would have been an important part of the plaintiff's presentation of the case, and virtually the only way to ensure adversarial proceedings. In refusing to order his attendance, the domestic courts therefore failed to ensure a fair hearing of the applicant's claim.

38. It follows that there has been a violation of the applicant's right to a fair hearing as guaranteed by Article 6 §1 of the Convention.

II. APPLICATION OF ARTICLE 41 OF THE CONVENTION

39. 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

40. The applicant claimed 10,000 euros (EUR) in respect of non-pecuniary damage.

41. The Government contested the applicant's claims, arguing that they related to the applicant's complaints under Article 3 of the Convention which had been declared inadmissible in the Court's decision of 23 March 2006. They considered that no award should be made to the applicant.

42. The Court considers that the applicant must have suffered frustration and a feeling of injustice as a consequence of the court's refusal to order his attendance at the hearing concerning his alleged ill-treatment. It considers that the non-pecuniary damage suffered by the applicant cannot be adequately compensated by the finding of a violation alone. Accordingly, making its assessment on an equitable basis, it awards the applicant EUR 2,000, plus any tax that may be chargeable on that amount.

B. Costs and expenses

43. The applicant did not make any claim in respect of the costs and expenses incurred before the domestic courts and before the Court within the time-limits set by the Court. Accordingly, the Court makes no award under this head.

C. Default interest

44. The Court considers it appropriate that the default interest 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. *Holds* that the applicant may claim to be a "victim" for the purposes of Article 34 of the Convention;

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 2,000 (two thousand euros) in respect of non-pecuniary damage, to be converted into the national currency of the respondent State at the rate applicable at the date of settlement, plus any tax that may be chargeable;
   (b) that from the expiry of the above-mentioned three months until settlement simple interest shall be payable on the above amount at a rate equal to the marginal lending rate of the European Central Bank during the default period plus three percentage points;

4. *Dismisses* the remainder of the applicant's claim for just satisfaction.

Done in English, and notified in writing on 10 May 2007, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Søren NIELSEN	Christos ROZAKIS
Registrar	President

In accordance with Article 45 § 2 of the Convention and Rule 74 § 2 of the Rules of Court, the concurring opinion of Mr Spielmann joined by Mrs Vajić is annexed to this judgment.

C.L.R.
S.N.

CONCURRING OPINION OF JUDGE SPIELMANN JOINED BY JUDGE VAJIĆ

1. It is not without hesitation that I accept that the applicant has victim status.

2. Indeed, it is not entirely clear if the applicant's wife brought a civil claim in her own name or on behalf of the applicant. After all, on 19 December 2001 the Rostov Regional Court confirmed her standing *as a plaintiff* in the civil proceedings (paragraph 15 of the judgment). In most legal systems the applicant's wife's standing would have been inconsistent with the maxim "*Nul ne plaide par procureur*".

3. However, since the parties do not dispute whether the applicant may claim to be the victim of a violation of Article 6 in the proceedings which ended on 17 April 2002 and, as follows from the Government's observations, this claim was regarded under domestic law as having been lodged under the implicit authority of the applicant and on his behalf, I am satisfied, for the reasons given in paragraphs 23 and 24 of the judgment, that the applicant can claim to be the victim of a violation of Article 6 § 1.

4. The ambiguous procedural status of the applicant's wife give rises to a further ambiguity concerning the merits of the case. In paragraph 33 of the judgment, it is stated that "[t]aking into account [the applicant's wife's] standing as a plaintiff in those proceedings, it cannot be argued that the hearings were conducted in the absence of a party to the dispute".

5. Put simply, it is entirely unclear who was to be considered as "a party to the dispute": the applicant, his wife or both?

6. The effect of this ambiguity is, however, limited as, in any event, the applicant was deprived of a fair trial. In particular, his absence from the hearing was in violation of the principle of adversarial proceedings and equality of arms, for the reasons set out in paragraphs 34 to 38 of the judgment.