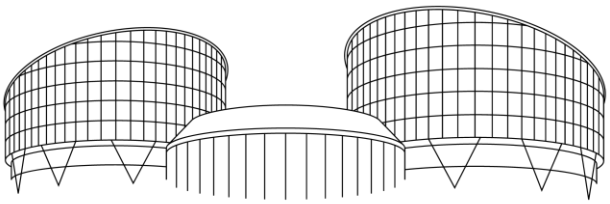

EUROPEAN COURT OF HUMAN RIGHTS
COUR EUROPÉENNE DES DROITS DE L'HOMME

1959 · 50 · 2009

FIRST SECTION

CASE OF SOKUR v. RUSSIA

(Application no. 23243/03)

JUDGMENT

STRASBOURG

15 October 2009

FINAL

15/01/2010

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 Sokur v. Russia**,**

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

Christos Rozakis, *President,*
Nina Vajić,
Anatoly Kovler,
Elisabeth Steiner,
Khanlar Hajiyev,
Dean Spielmann,
Sverre Erik Jebens, *judges,*

and André Wampach, *Deputy Section Registrar*,

Having deliberated in private on 24 September 2009,

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

PROCEDURE

1. The case originated in an application (no. 23243/03) 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 Valentin Vladimirovich Sokur ("the applicant"), on 20 June 2003.

2. The applicant, who had been granted legal aid, was represented by Ms Y. Yefremova and Mr M. Rachkovskiy, lawyers practising in Moscow. The Russian Government ("the Government") were represented by Ms V. Milinchuk, former Representative of the Russian Federation at the European Court of Human Rights, and subsequently by Mr G. Matyushkin, Representative of the Russian Federation at the European Court of Human Rights.

3. The applicant alleged, in particular, that the courts at two levels of jurisdiction had refused to secure his participation in the civil proceedings concerning his claims for compensation for damage resulting from unlawful detention and conviction.

4. On 5 April 2007 the President of the First Section decided to give notice of the application to the Government. It was also decided to examine the merits of the application at the same time as its admissibility (Article 29 § 3).

5. The Government objected to the joint examination of the admissibility and merits of the application. Having examined the Government's objection, the Court dismissed it.

THE FACTS

I. THE CIRCUMSTANCES OF THE CASE

6. The applicant is a Russian national who was born in 1977 and is serving a prison sentence in Kaliningrad.

A. Criminal proceedings against the applicant

7. On 1 June 1998 the applicant was arrested on suspicion of assault and robbery. He remained in custody pending investigation and trial.

8. On 20 May 1999 the Moskovskiy District Court of Kaliningrad found the applicant guilty as charged and sentenced him to seven years' imprisonment.

9. On 31 August 1999 the Kaliningrad Regional Court quashed the applicant's conviction on appeal and discontinued the criminal proceedings against him. He was released on the same day.

10. It appears that approximately a month after his release the applicant was arrested on suspicion of two counts of murder.

B. Proceedings for compensation

11. In December 2001 the applicant, who was at that time serving a prison sentence, sued the Ministry of Finance and M., the trial judge who had convicted him on 20 May 1999, for compensation for damage resulting from his unlawful detention and conviction. The applicant claimed an award for non-pecuniary damage in the amount of 500,000 Russian roubles (RUB), reimbursement of his lawyer's fee and lost earnings in the amount of RUB 55,000. He also sought leave to appear before the court.

12. On 25 January 2002 the Moskovskiy District Court of Kaliningrad granted the applicant leave to appear and scheduled the hearing for 22 February 2002.

13. The District Court heard the case on 22 February 2002 as scheduled. The applicant was not transported to participate in the hearing. Mr D., his representative, was present. He asked the court to consider the matter in the applicant's absence. The District Court granted the applicant's claims in part and awarded him RUB 25,000 in compensation for non-pecuniary damage. The remainder of the applicant's claims were dismissed.

14. On a complaint by the applicant, the Presidium of the Kaliningrad Regional Court quashed the judgment of 22 February 2002 by way of supervisory review on 30 July 2002. The court noted, *inter alia*, that the District Court had failed: (1) to inform the applicant of his duty to submit

documents substantiating his claim for compensation for lost earnings; and (2) to establish the circumstances with regard to the applicant's claim concerning non-pecuniary damage.

15. On 15 August 2002 the applicant was notified of a new court hearing, scheduled for 28 August 2002. He was also advised of his right to be represented in the proceedings before the court.

16. In response to the District Court's decision of 6 August 2002 to grant the applicant leave to appear, the head of the administration of the penitentiary establishment responded that it was not possible to comply with the court's decision. On 28 August 2002 the District Court adjourned the hearing.

17. On 29 August 2002 the District Court asked the applicant to make written submissions in connection with his claims. The applicant asked the court to appoint the regional ombudsman to represent him in the proceedings. He further asked the court to obtain certain documents to substantiate his claims for compensation for lost earnings and reimbursement of the lawyer's fee.

18. On 1 November 2002 the District Court adjourned the hearing of the matter pending the receipt of the documents requested by the applicant. The court scheduled the next hearing for 11 December 2002 and advised the applicant of his right to appoint a representative.

19. Following the ombudsman's refusal to represent the applicant, the latter asked the District Court to secure his presence at the next hearing.

20. On 11 December 2002 the District Court granted the applicant's claims in part and awarded him RUB 15,000 in compensation for non-pecuniary damage and RUB 1,900 by way of reimbursement of the lawyer's fee. The court dismissed the applicant's claims for lost earnings, noting that he had failed to submit documents proving that he had been actually employed at the relevant time. Neither the applicant nor the respondents were present. The record of the court hearing and other items from the case file were forwarded to the applicant.

21. The applicant appealed against the judgment of 11 December 2002. In response to the applicant's request to be present at the appeal hearing, the Regional Court informed him that the applicable laws did not provide for the personal presence of persons serving a prison sentence at a hearing concerning the determination of their civil rights and obligations. The court further advised the applicant of his right to submit observations in writing and/or to appoint a representative.

22. On 26 March 2003 the Regional Court upheld in substance the judgment of 11 December 2002 on appeal, increasing to RUB 35,000 the amount awarded to the applicant in compensation for non-pecuniary damage. Neither the applicant nor the respondents were present.

II. RELEVANT DOMESTIC LAW AND PRACTICE

23. Parties to civil proceedings may appear before a court in person or act through a representative (Article 43 of the Code of Civil Procedure in force until 31 January 2003 ("the old CCP") and Article 48 of the Code of Civil Procedure in force as of 1 February 2003 ("the new CCP"). A court may appoint an advocate to represent a defendant whose place of residence is not known (Article 50 of the new CCP). The Advocates Act (Law no. 63-FZ of 31 May 2002) provides that free legal assistance may be provided to indigent plaintiffs in civil disputes concerning alimony or pension payments or claims for health damage (section 26 § 1).

24. The Penitentiary Code provides that convicted persons may be transferred from a correctional colony to an investigative unit if their participation is required as witnesses, victims or suspects in connection with certain investigative measures (Article 77.1). The Code does not mention the possibility for a convicted person to take part in civil proceedings, whether as a plaintiff or defendant.

25. On several occasions the Constitutional Court has examined complaints by convicted persons whose requests for leave to appear in civil proceedings had been refused by courts. It has consistently declared the complaints inadmissible, finding that the contested provisions of the Code of Civil Procedure and the Penitentiary Code did not, as such, restrict the convicted person's access to court. It has emphasised, nonetheless, that the convicted person should be able to make submissions to the civil court, either through a representative or in any other way provided by law. If necessary, the hearing may be held at the location where the convicted person is serving the sentence or the court hearing the case may instruct the court having territorial jurisdiction over the correctional colony to obtain the applicant's submissions or carry out any other procedural steps (decisions no. 478-O of 16 October 2003, no. 335-O of 14 October 2004, and no. 94-O of 21 February 2008).

THE LAW

I. ALLEGED VIOLATION OF ARTICLE 6 OF THE CONVENTION ON ACCOUNT OF THE DOMESTIC COURTS' FAILURE TO ENSURE THE APPLICANT'S EFFECTIVE PARTICIPATION IN THE CIVIL PROCEEDINGS

26. The applicant complained that he had been refused the opportunity to participate in the civil proceedings. He relied on Article 6 § 1 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 ..."

27. The Government contested that argument. They argued that the applicant had failed to demonstrate that his personal presence in court was indispensable for the proper administration of justice. In any event, given the nature of his claims, his presence in court was not required. It was also open to him to assign a representative as provided for by the applicable legislation. Given that the applicant had been convicted of a serious crime and was serving a sentence in a penitentiary establishment with strict conditions of detention, his request for participation in the civil proceedings was merely an attempt to be detained, even if briefly, in less strict conditions than those imposed on him. The domestic judicial authorities had observed all the fair-trial guarantees set out in Article 6 of the Convention. The applicant had been duly informed of the dates and time of the hearings. He had been provided with copies of the records of hearings and other documents from the case file. The court had advised him of his rights and had facilitated the collection of the evidence needed to substantiate his claims. As a result, the applicant's claims had been granted in part.

28. The applicant maintained his complaint. In his view, it was essential for compliance with the principle of the equality of arms that his presence in court should have been secured. The fact that the domestic judicial authorities had failed to ensure his presence in court had deprived him of the opportunity to make effective use of his procedural rights. He had been unable to produce and examine evidence, to file motions and to argue his case. The applicant did not have the financial means to retain a lawyer to represent him. His relatives did not have the requisite legal knowledge to provide effective representation. He could have been transferred to a local detention facility so that transporting him to the courthouse was feasible. The applicant further opined that the courts' refusals to grant him leave to appear had been unlawful. In this connection he relied on Article 77.1 of the Penitentiary Code. Lastly, the applicant argued that his right to be present at

a hearing in the course of civil proceedings was absolute as provided for in domestic law.

A. Admissibility

29. The Court notes that this complaint is not manifestly ill-founded within the meaning of Article 35 § 3 of the Convention. It further notes that it is not inadmissible on any other grounds. It must therefore be declared admissible.

B. Merits

30. The Court reiterates that the principle of adversarial proceedings and equality of arms, which is one of the elements of the broader concept of a fair hearing, requires that each party be given a reasonable opportunity to have knowledge of and comment on the observations made or evidence adduced by the other party and to present his or her case under conditions that do not place him or her at a substantial disadvantage *vis-à-vis* his or her opponent (see *Krčmář and Others v. the Czech Republic*, no. 35376/97, § 39, 3 March 2000, and *Dombo Beheer B.V. v. the Netherlands*, 27 October 1993, § 33, Series A no. 274). The Court has previously found a violation of the right to a "public and fair hearing" in a case where a Russian court, after having refused leave to appear to the imprisoned applicants, who had wished to make oral submissions on their defamation claim, failed to consider other legal possibilities for securing their effective participation in the proceedings (see *Khuzhin and Others v. Russia*, no. 13470/02, §§ 53 et seq., 23 October 2008). It also found a violation of Article 6 in a case where an imprisoned applicant was similarly unable to be present and testify in court with regard to his claim that he had been ill-treated by the police. Despite the fact that the applicant in that case was represented by his wife, the Court considered it relevant that his claim had been largely based on his personal experience and that his submissions would therefore have been "an important part of the plaintiff's presentation of the case and virtually the only way to ensure adversarial proceedings" (see *Kovalev v. Russia*, no. 78145/01, § 37, 10 May 2007).

31. The Court observes that the Russian Code of Civil Procedure provides for the plaintiff's right to appear in person before a civil court hearing his claim (see paragraph 23 above). However, neither the Code of Civil Procedure nor the Penitentiary Code make special provision for the exercise of that right by individuals who are in custody, whether they are in pre-trial detention or are serving a sentence. In the present case the applicant's requests for leave to appear were denied precisely on the ground that the domestic law did not make provision for convicted persons to be brought from correctional colonies to the place where their civil claim was

being heard. The Court reiterates that Article 6 of the Convention does not guarantee the right to personal presence before a civil court but rather a more general right to present one's case effectively before the court and to enjoy equality of arms with the opposing side. Article 6 § 1 leaves to the State a free choice of the means to be used in guaranteeing litigants these rights (see *Steel and Morris v. the United Kingdom*, no. 68416/01, §§ 59-60, ECHR 2005-II).

32. The issue of the exercise of procedural rights by detainees in civil proceedings has been examined on several occasions by the Russian Constitutional Court, which has identified several ways in which their rights can be secured (see paragraph 25 above). It has consistently emphasised representation as an appropriate solution in cases where a party cannot appear in person before a civil court. Given the obvious difficulties involved in transporting convicted persons from one location to another, the Court can in principle accept that in cases where the claim is not based on the plaintiff's personal experiences, representation of the detainee by an advocate would not be in breach of the principle of equality of arms.

33. Turning to the circumstances of the instant case, the Court observes that the applicant sought an award for the pecuniary and non-pecuniary damage resulting from his unlawful detention and conviction. The courts at two levels of jurisdiction refused to grant him leave to appear and examined the case in his absence, finding that there were no legal grounds to ensure his personal attendance. The courts also advised the applicant in good time of his rights, including the right to be represented (see, by contrast, *Khuzhin*, cited above, §§ 106-09).

34. However, the Court is not convinced that the representative's appearance before the court could have secured the effective, proper and satisfactory presentation of the applicant's case.

35. The Court observes that the applicant's claims for the non-pecuniary damage resulting from his unlawful detention and conviction were, to a major extent, based on his personal experience. The Court considers that his testimony describing the conditions of his detention, of which only the applicant himself had first-hand knowledge, would have constituted an indispensable part of the plaintiff's presentation of the case (see *Kovalev*, cited above, § 37). Only the applicant could, by testifying in person, substantiate his claims for compensation for non-pecuniary damage and answer the judges' questions, if any.

36. The Court also notes that the domestic courts refused the applicant leave to appear, relying on the absence of a legal norm requiring his presence. In this connection, the Court is also mindful of another possibility which was open to the domestic courts as a way of securing the applicant's participation in the proceedings. The District Court could have held a session in the penitentiary establishment where the applicant was serving a sentence. However, the domestic courts did not consider such an option.

37. In these circumstances, the Court finds that the domestic courts, by refusing to grant the applicant leave to appear and make oral submissions at a hearing, deprived him of the opportunity to present his case effectively.

38. There has therefore been a violation of Article 6 § 1 of the Convention on account of the applicant's absence before the domestic courts in the civil proceedings in his case.

II. OTHER ALLEGED VIOLATIONS OF THE CONVENTION

39. Lastly, relying on Articles 3, 5, 6 and 14 of the Convention, the applicant complained about the conditions and contested the lawfulness of his pre-trial detention and the outcome of the civil proceedings. He further argued that he had been discriminated against by the domestic authorities.

40. However, having regard to all the material in its possession, the Court finds that it does 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 being manifestly ill-founded, pursuant to Article 35 §§ 3 and 4 of the Convention.

III. APPLICATION OF ARTICLE 41 OF THE CONVENTION

41. 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

42. The applicant claimed 4,000 euros (EUR) in respect of non-pecuniary damage.

43. The Government submitted that there had been no violation of the applicant's rights as set out in the Convention. In any event, they considered the applicant's claims excessive and suggested that the acknowledgment of a violation would constitute adequate just satisfaction.

44. 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 claims. 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

45. The applicant did not submit a claim for costs and expenses. Accordingly, the Court considers that there is no call to award him any sum on that account.

C. Default interest

46. 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. *Declares* the complaint concerning the domestic authorities' failure to ensure the applicant's participation in the civil proceedings 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 2,000 (two thousand euros) in respect of non-pecuniary damage, to be converted into Russian roubles 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 15 October 2009, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

André Wampach
Deputy Registrar

Christos Rozakis
President