



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

THIRD SECTION

CASE OF ORLOV AND OTHERS v. RUSSIA

(Applications nos. 36907/12 and 6 others - see appended list)

JUDGMENT

STRASBOURG

6 April 2017

This judgment is final but it may be subject to editorial revision.

In the case of Orlov and Others v. Russia,

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

Luis López Guerra, *President*,

Dmitry Dedov,

Branko Lubarda, *judges*,

and Karen Reid, *Section Registrar*,

Having deliberated in private on 16 March 2017,

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

PROCEDURE

1. The case originated in applications against Russia lodged with the Court under Article 34 of the Convention for the Protection of Human Rights and Fundamental Freedoms (“the Convention”) on the various dates indicated in the appended table.

2. The applications were communicated to the Russian Government (“the Government”).

THE FACTS

3. The list of applicants and the relevant details of the applications are set out in the appended table.

4. The applicants complained that they had been denied an opportunity to appear in person before the court in the civil proceedings to which they were parties.

THE LAW**I. JOINDER OF THE APPLICATIONS**

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

II. THE GOVERNMENT’S REQUEST TO STRIKE OUT UNDER ARTICLE 37 § 1 OF THE CONVENTION

6. The Government submitted unilateral declarations in all applications, which did not offer a sufficient basis for finding that respect for human

rights as defined in the Convention does not require the Court to continue its examination of the case (Article 37 § 1 in fine). The Court rejects the Government's request to strike these applications out and will accordingly pursue its examination of their merits (see *Tahsin Acar v. Turkey* (preliminary objections) [GC], no. 26307/95, § 75, ECHR 2003-VI and *Rozhin v. Russia*, no. 50098/07, §§ 23-25, 6 December 2011).

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

7. The applicants complained that their right to a fair hearing had been breached on account of the domestic courts' refusal of their requests to appear in court. They relied on Article 6 § 1 of the Convention, which reads as follows:

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

8. The Court reiterates that the applicants, detainees at the time of the events, were not afforded an opportunity to attend hearings in civil proceedings to which they were parties. The details of those domestic proceedings are indicated in the appended table. The Court observes that the general principles regarding the right to present one's case effectively before the court and to enjoy equality of arms with the opposing side, as guaranteed by Article 6 of the Convention, have been stated in a number of its previous judgments (see, among many other authorities, *Steel and Morris v. the United Kingdom*, no. 68416/01, §§ 59-60, ECHR 2005-II). The Court's analysis of an alleged violation of the right to a fair trial in respect of cases where incarcerated applicants complain about their absence from hearings in civil proceedings includes the following elements: examination of the manner in which domestic courts assessed the question whether the nature of the dispute required the applicants' personal presence and determination whether domestic courts put in place any procedural arrangements aiming at guaranteeing their effective participation in the proceedings (see *Yevdokimov and Others v. Russia*, nos. 27236/05 and 10 others, § 48, 16 February 2016).

9. In the leading case of *Yevdokimov and Others v. Russia*, cited above, the Court already found a violation in respect of issues similar to those in the present case.

10. Having examined all the material submitted to it, the Court has not found any fact or argument capable of persuading it to reach a different conclusion on the admissibility and merits of these complaints. Having regard to its case-law on the subject, the Court considers that in the instant case the domestic courts deprived the applicants of the opportunity to

present their cases effectively and failed to meet their obligation to ensure respect for the principle of a fair trial.

11. These complaints are therefore admissible and disclose a breach of Article 6 § 1 of the Convention.

IV. APPLICATION OF ARTICLE 41 OF THE CONVENTION

12. 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.”

13. Regard being had to the documents in its possession and to its case-law, the Court considers it reasonable to award the sums indicated in the appended table.

14. 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.

FOR THESE REASONS, THE COURT, UNANIMOUSLY,

1. *Decides* to join the applications;
2. *Rejects* the Government’s request to strike the applications out of the list;
3. *Declares* the applications admissible;
4. *Holds* that these applications disclose a breach of Article 6 § 1 of the Convention concerning the applicant’s absence from civil proceedings;
5. *Holds*
 - (a) that the respondent State is to pay the applicants, within three months, the amounts indicated in the appended table, 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 the above amounts at a rate equal to the marginal lending rate of the European Central Bank during the default period plus three percentage points.

Done in English, and notified in writing on 6 April 2017, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Karen Reid
Registrar

Luis López Guerra
President

APPENDIX

List of applications raising complaints under Article 6 § 1 of the Convention
(applicant's absence from civil proceedings)

No.	Application no. Date of introduction	Applicant name Date of birth	Nature of the dispute Final decision	First-instance hearing date Court	Appeal hearing date Court	Amount awarded for non-pecuniary damage and costs and expenses per applicant (in euros) ¹
1.	36907/12 10/12/2012	Sergey Aleksandrovich Orlov 17/06/1963	defamation dispute	23/01/2012 Oktyabrskiy District Court of Vladimir	30/08/2012 Vladimir Regional Court	1,500
2.	40782/12 22/03/2012	German Nikolayevich Vyushkin 31/01/1976	non-pecuniary damages for bad conditions of detention	14/11/2011 Omutninskiy District Court of the Kirov Region	26/01/2012 Kirov Regional Court	1,500
3.	42855/12 17/06/2012	Mikhail Aleksseyevich Lunev 04/06/1984	non-pecuniary damages for unlawful criminal prosecution	15/09/2011 Belebey Town Court of the Republic of Bashkortostan	26/01/2012 Supreme Court of the Republic of Bashkortostan	1,500
4.	42940/12 24/06/2012	Aleksey Ivanovich Bolsunovskiy 08/10/1982	employment dispute	29/02/2012 Kuybyshevskiy District Court of Irkutsk	11/05/2012 Irkutsk Regional Court	1,500
5.	43317/12 04/06/2012	Aleksandr Nikolayevich Tereshchenko 16/05/1976	non-pecuniary damages for bad conditions of detention	29/12/2011 Shahunskiy District Court of the Nizhny Novgorod Region	17/04/2012 Nizhniy Novgorod Regional Court	1,500
6.	68297/12 27/08/2012	Andrey Sergeyevich Matveyev 06/03/1978	non-pecuniary damages for bad conditions of detention	02/11/2011 Kalininskiy District Court of St Petersburg	14/06/2012 St Petersburg City Court	1,500
7.	72157/12 01/10/2012	Dmitriy Vasilyevich Bazhan 08/01/1979	non-pecuniary damages for bad conditions of detention	12/04/2012 Syktyvkar Town Court of the Komi Republic	19/07/2012 Supreme Court of the Komi Republic	1,500

¹. Plus any tax that may be chargeable to the applicants.