THIRD SECTION

**CASE OF VANEYEV v. RUSSIA**

*(Application no. 78168/13)*

JUDGMENT

STRASBOURG

27 August 2019

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

In the case of Vaneyev v. Russia,

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

 Georgios A. Serghides, *President,* Branko Lubarda, Erik Wennerström, *judges,*
and Fatoş Aracı, *Deputy Section Registrar,*

Having deliberated in private on 9 July 2019,

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

PROCEDURE

1.  The case originated in an application (no. 78168/13) 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 Valeriy Mikhaylovich Vaneyev (“the applicant”), on 8 November 2013.

2.  The applicant was represented by Mr S. Vaneyev, a lawyer practising in Syktyvkar. The Russian Government (“the Government”) were represented by Mr M. Galperin, Representative of the Russian Federation to the European Court of Human Rights.

3.  On 23 February 2018 notice of the application was given to the Government.

THE FACTS

THE CIRCUMSTANCES OF THE CASE

4.  The applicant was born in 1949 and lives in Syktyvkar.

5.  On 22 August 2012 the applicant was involved in a motor vehicle accident. His car collided with Sh.’s car, injuring Sh. On the same date a traffic police inspector opened an administrative investigation into the accident. Subsequently the administrative case was closed.

6.  On 19 October 2012 the police opened a criminal case against the applicant on charges of causing bodily injury by dangerous driving.

7.  On an unspecified date the investigation was completed. The case was transferred to the Omutninsk District Court of the Kirov Region and assigned to Judge K.

8.  On 8 February 2013 the applicant asked that Judge K. withdraw from the case because Sh.’s wife was a judge at the same court. In response, Judge K. made the following statement:

“While it is true that Sh.’s wife works for [the District Court], [Sh.] is not an acquaintance of mine. Nor is he my close relative or related to me. I am not personally interested in the outcome of the case, either directly or indirectly.”

9.  The applicant, who was represented by counsel, withdrew his challenge and agreed to his case being considered by Judge K. He pleaded guilty and asked the court to dispense with a full trial.

10.  On the same date the District Court, sitting in a single judge formation composed of Judge K., found the applicant guilty as charged and sentenced him to one year and four months’ restriction of liberty. The court also ordered him to pay Sh. 150,000 Russian roubles in respect of non‑pecuniary damage. The applicant appealed.

On 14 May 2013 the Kirov Regional Court upheld the judgment of 8 February 2013 on appeal, holding that there were no circumstances requiring that Judge K. withdraw from the applicant’s case. It reiterated the trial judge’s statement that the latter was not an acquaintance or a relative of the victim.

THE LAW

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

11.  The applicant complained that the District Court which had determined a criminal charge against him had not been impartial. He relied on Article 6 § 1 of the Convention, the relevant part of which reads as follows:

“In the determination of ... any criminal charge against him, everyone is entitled to a fair ... hearing ... by an independent and impartial tribunal established by law.”

12.  The Government contested that argument. In their opinion, there was no evidence that Judge K. being a colleague of the victim’s wife had affected his impartiality. They further pointed out that the applicant had withdrawn his challenge in respect of Judge K.’s appointment as a trial judge in his case and had expressly agreed to his case being considered by the latter. Furthermore, the applicant had pleaded guilty and had asked the trial court to dispense with a full trial in order to ensure a more lenient sentence for himself. Judge K. had sentenced the applicant to a restriction of liberty for a period of one year and four months, while the Criminal Code of the Russian Federation provided for a maximum sentence of two years for the criminal offence he had committed.

13.  The applicant maintained his complaint.

A.  Admissibility

14.  The Court notes that 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

1.  General principles

15.  The general principles concerning court impartiality are well established in the Court’s case-law and have been summarised in a number of cases (see, for example, *Morice v. France* [GC], no. 29369/10, §§ 73-78, ECHR 2015).

2.  Application of the principles in the present case

16.  In the present case, the applicant believed that the trial judge had lacked impartiality owing to the fact that the wife of Sh., who had sustained injuries as a result of his reckless driving, had been a judge at the same District Court.

17.  The Court notes at the outset, and the applicant has not argued to the contrary, that the trial judge did not display any personal bias against the applicant. Accordingly, the Court will examine the case from the perspective of the objective impartiality test and more specifically address the question whether the applicant’s doubts, stemming from the specific situation, may be regarded as objectively justified in the circumstances of the case (compare *Morice*, cited above, § 80).

18.  The Court attaches particular weight to the nature of the criminal case against the applicant. As stated above, he stood trial for causing serious bodily harm to Judge Sh.’s husband in a road traffic accident. In such circumstances, the Court considers that the fact that the victim’s wife was a colleague of the trial judge might have raised an issue as to impartiality.

19.  It further notes that the applicant’s doubts as to the trial judge’s impartiality were not dissipated by the latter. He did not respond to the applicant’s concerns about a lack of impartiality on his part. His statement contained a simple comment that he was not an acquaintance or a relative of the victim (contrast *Puolitaival and Pirttiaho v. Finland*, no. 54857/00, § 53, 23 November 2004). It did not shed any light on the nature of the professional or personal relations, if any, between the trial judge and the victim’s wife.

20.  As regards the Government’s argument that the applicant withdrew his challenge in respect of Judge K. and agreed to the latter considering his case, the Court notes that it was Judge K. who was to decide on the challenge in respect of himself. It reiterates, in this connection, that the procedure by which judges do not actually decide, but merely appear to decide, on challenges for bias in respect of themselves is incompatible with the requirement of impartiality (see, *mutatis mutandis*, *Revtyuk v. Russia*, no. 31796/10, § 26, 9 January 2018) and considers that the applicant’s decision to withdraw the challenge has no bearing on the issue. Nor is it relevant that the applicant entered in some sort of a plea bargain.

21.  In such circumstances, the Court considers that the applicant’s doubts as to Judge K.’s impartiality were objectively justified.

22.  Lastly, the Court notes that the appeal proceedings did not remedy the shortcomings of the trial. The appellate court did not carry out an independent analysis of the applicant’s concerns about a lack of impartiality of the trial judge. Instead of putting the applicant’s mind at rest as to any doubts in this regard, the appellate court merely reiterated the trial judge’s statement that the latter was not an acquaintance or a relative of the victim.

23.  There has accordingly been a violation of Article 6 § 1 of the Convention.

II.  APPLICATION OF ARTICLE 41 OF THE CONVENTION

24.  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

25.  The applicant claimed 650,000 Russian roubles (RUB) and 50,000 euros (EUR) in respect of pecuniary and non-pecuniary damage respectively. As to pecuniary damage, he claimed RUB 500,000 for the damage to his car as a result of the road traffic accident. He further claimed RUB 150,000, representing the amount the District Court had ordered him to pay Sh. in respect of non-pecuniary damage.

26.  The Government considered that no award should be made to the applicant. They submitted that he had failed to substantiate his claims in respect of pecuniary damage. As regards his claims in respect of non‑pecuniary damage, they submitted that the most appropriate form of redress, in the circumstances of the case, would be a reopening of the criminal proceedings against him.

27.  The Court notes that in the present case an award of just satisfaction can only be based on the fact that the applicant did not have the benefit of the guarantees of Article 6 § 1 of the Convention. It cannot speculate as to what the outcome of the proceedings compatible with Article 6 § 1 of the Convention might have been, had the requirements of this provision not been violated (compare *Menchinskaya v. Russia*, no. 42454/02, § 46, 15 January 2009, and *Popov v. Russia*, no. 26853/04, § 260, 13 July 2006). It therefore rejects the applicant’s claim in respect of pecuniary damage. As to his claims in respect of non-pecuniary damage, the Court awards him EUR 3,200.

B.  Costs and expenses

28.  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

29.  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.  *Declares* the application admissible;

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 the following amounts,to be converted into the currency of the respondent State EUR 3,200 (three thousand two hundred euros), plus any tax that may be chargeable, in respect of non-pecuniary damage, 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 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 27 August 2019, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

 Fatoş Aracı Georgios A. Serghides
 Deputy Registrar President