THIRD SECTION

**CASE OF SEVASTYANOV v. RUSSIA**

*(Application no. 66355/11)*

JUDGMENT

STRASBOURG

22 October 2019

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

In the case of Sevastyanov v. Russia,

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

 Alena Poláčková, *President,* Dmitry Dedov, Gilberto Felici, *judges,*
and Stephen Phillips, *Section Registrar,*

Having deliberated in private on 1 October 2019,

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

PROCEDURE

1.  The case originated in an application (no. 66355/11) 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 Ivan Aleksandrovich Sevastyanov (“the applicant”), on 7 October 2011.

2.  The applicant was represented by Mr V. Semkin, a lawyer practising in Tyumen. 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 2 February 2018 notice of the complaints concerning the applicant’s alleged lack of access to legal assistance, inability to confront witnesses and obtain the attendance of witnesses in court, and absence from the appeal hearing was given to the Government, and the remainder of the application was declared inadmissible, pursuant to Rule 54 § 3 of the Rules of Court.

THE FACTS

THE CIRCUMSTANCES OF THE CASE

4.  The applicant was born in 1989 and lives in Tyumen.

5.  On 6 April 2011 traffic police officers drew up an administrative‑offence record in which they indicated that the applicant had refused to undergo a breathalyser test.

6.  On 28 April 2011 the justice of the peace of judicial circuit no. 2 of the Tyumen District of the Tyumen Region found the applicant guilty as charged and withdrew his driving licence for one and a half years. The justice of the peace relied on (i) the administrative-arrest record and other police documentation, (ii) a report indicating that the applicant had refused to undergo a breathalyser test, and (iii) written statements by S. and Ya. (who had been attesting witnesses of the events in question and had signed both the record prepared by the police and the medical report compiled in their presence). The justice of the peace also took note of the applicant’s decision to agree to the case being heard in the absence of his lawyer, who had been unable to attend the hearing.

7.  The applicant maintained his innocence. He claimed he had not been under the influence of alcohol on 6 April 2011; that he had been a passenger in the car and not the driver; and that he had complied with the police’s demand and undergone a breathalyser test, which had confirmed that he had been sober.

8.  On 9 May 2011 the applicant appealed. He argued that the justice of the peace should have (1) questioned S., Ya. and the traffic police officers in person and (2) ensured on his behalf the attendance of two witnesses to the events in question, P. and Sem. Lastly, he submitted that, contrary to the findings of the justice of the peace, he had not agreed to the case being heard in his lawyer’s absence.

9.  On 27 May 2011 the Tyumen District Court of the Tyumen Region upheld the judgment of 28 April 2011. The applicant did not attend the hearing. Having noted that the applicant had been notified of the date and time of the hearing, the court opened the hearing of the case. It reviewed the material in the case file and questioned the police officer, St., who had instituted administrative proceedings against the applicant.

THE LAW

I.  ALLEGED VIOLATION OF ARTICLE 6 OF THE CONVENTION

10.  The applicant complained that the administrative proceedings against him had been unfair. In particular, he submitted that the justice of the peace had heard the case in his lawyer’s absence; that he had been unable to confront witnesses S. and Ya.; that he had been unable to obtain the attendance and examination of witnesses P. and Sem.; and that he and his lawyer had been unable to attend the appeal hearing. He relied on Article 6 of the Convention, which, in so far as relevant, reads as follows:

“1.  In the determination of ... of any criminal charge against him, everyone is entitled to a fair ... hearing ... by [a] ... tribunal ...

3.  Everyone charged with a criminal offence has the following minimum rights:

...

(b)  to have adequate time and facilities for the preparation of his defence;

(c)  to defend himself in person or through legal assistance of his own choosing or, if he has not sufficient means to pay for legal assistance, to be given it free when the interests of justice so require;

(d)  to examine or have examined witnesses against him and to obtain the attendance and examination of witnesses on his behalf under the same conditions as witnesses against him ...”

11.  The Government contested that argument. They argued that the applicant had not applied for a review of the judgments in his case and that his complaints should be dismissed for his failure to exhaust effective domestic remedies. They considered that the applicant had not substantiated his allegations that he had opposed the justice of the peace’s decision to proceed with the hearing of the case in the absence of his lawyer. Nor had he asked the justice of the peace to obtain the attendance of the witnesses P. and Sem. They submitted, without providing any relevant documents, that the applicant had been duly notified of the appeal hearing.

12.  The applicant maintained his complaints. He submitted that the exhaustion of the remedies referred to by the Government had not been required in order for his case to comply with the Convention admissibility criteria.

A.  Admissibility

1.  Applicability of Article 6

13.  The Court accepts, and the Government do not argue otherwise, that Article 6 of the Convention applies in the present case under its criminal limb. In this connection, it takes into account the fact that the penalty (in the form of the suspension of his driving licence) imposed on the applicant was punitive and deterrent in nature (compare *Mikhaylova v. Russia*, no. 46998/08, § 64, 19 November 2015).

2.  Exhaustion of domestic remedies

14.  As regards the Government’s contention that it was incumbent on the applicant to apply for a review of the judgments in his case in order to comply with the Convention admissibility criteria, the Court reiterates that the review procedure referred to by the Government is not subject to any ascertainable time-limit and thus cannot be considered to constitute a remedy for the purpose of Article 35 § 1 of the Convention (see *Smadikov v. Russia* (dec.), no. 10810/15, 18 February 2015). The Government’s objection is therefore dismissed.

15.  As to the Government’s argument that the applicant’s complaint should be dismissed in so far as it relates to the alleged omission on the part of the national judicial authorities to obtain the attendance of the above‑mentioned witnesses and their examination on the applicant’s behalf, the Court observes that, as pointed out by the Government, the applicant did not ask the justice of the peace who considered his case at the first level of jurisdiction to obtain on his behalf the attendance and examination of the witnesses. He did, however, raise that issue before the appellate court that had authority to admit new evidence and, which in fact did so in respect of the present case. The Court considers, therefore, that the applicant did raise, in substance, the complaint in the domestic proceedings, and accordingly dismisses the Government’s objection.

3.  Well-foundedness of the complaints

16.  Lastly, the Court discerns no evidence supporting the applicant’s submission that he opposed the decision of the justice of the peace to proceed with the examination of the case in the absence of the applicant’s lawyer. The Court finds that the applicant’s complaint regarding the absence of his lawyer from the hearing before the justice of the peace does not disclose any appearance of a violation of the rights and freedoms set out in the Convention or its Protocols. Accordingly, this part of the application is manifestly ill-founded and must be rejected, in accordance with Article 35 §§ 3 (a) and 4 of the Convention.

4.  Conclusion

17.  The Court notes that the complaints to the effect that the applicant was unable to confront witnesses S. and Ya.; that he was unable to obtain the attendance and examination of witnesses P. and Sem.; and that he and his lawyer were unable to attend the appeal hearing are not manifestly ill‑founded within the meaning of Article 35 § 3 (a) of the Convention. It furthermore notes that they are not inadmissible on any other grounds. They must therefore be declared admissible.

B.  Merits

1.  General principles

18.  The general principles concerning the right of an accused to confront adverse witnesses, to obtain the attendance and examination of witnesses on his or her behalf and to attend a hearing are well established in the Court’s case-law and have been summarised in the judgments of S*chatschaschwili*, *Murtazaliyeva*, and *Hermi* respectively (see *Schatschaschwili v. Germany* [GC], no. 9154/10, §§ 100-31, ECHR 2015; *Murtazaliyeva v. Russia* [GC], no. 36658/05, §§ 150-99, 18 December 2018; and *Hermi v. Italy* [GC], no. 18114/02, §§ 58-62, 64, and 76, ECHR 2006‑XII).

2.  Application of the principles in the present case

19.  In deciding whether the administrative proceedings against the applicant were fair, the Court will examine them as a whole (see *Edwards v. the United Kingdom*, 16 December 1992, § 34, Series A no. 247‑B).

(a)  Admission of the witnesses’ statements by the justice of the peace

20.  The Court observes that, in finding the applicant liable for an administrative offence, the justice of the peace relied on the documents prepared and collected by the police. To verify the police’s version of the events, she did no more than refer to the written statements of the attesting witnesses S. and Ya., without providing any reason for her decision not to summon those witnesses to testify in court. In such circumstances, the Court considers that there was no good reason for their non-attendance.

21.  The Court also accepts, and the Government do not argue to the contrary, that the statements made by those witnesses were decisive in the consideration of the applicant’s case. The witnesses had first-hand knowledge of the key facts underlying the charges against the applicant in a case where the police had played an active role in the contested events.

22.  Lastly, the Court discerns no effort on the part of the justice of the peace to make use of any counterbalancing measures to compensate for the difficulties experienced by the applicant on account of the admission of the witnesses’ written statements as evidence.

23.  Regard being had to the above, the Court concludes that the applicant’s rights, as set out in Article 6 § 3 (d) of the Convention, were undermined by the omissions on the part of the justice of the peace in the course of the trial. It remains for the Court to determine whether the appellate court made reparation for the violation of the applicant’s right (see *De Cubber v. Belgium*, 26 October 1984, § 33, Series A no. 86).

(b)  Appeal proceedings

24.  As regards the appeal hearing, the Court takes into account that in his statement of appeal, the applicant contested his conviction on factual and legal grounds. He denied having committed the administrative offence that he had been found guilty of. Accordingly, it was the appellate court’s duty to make an assessment of the question of the applicant’s guilt or innocence. It also admitted and examined new evidence. The court questioned police officer St., who had instituted administrative proceedings against the applicant, and relied on his statement when upholding the judgment of 28 April 2011 on appeal. The Court considers that, in such circumstances, for a proper examination of the case, the issue of the applicant’s guilt or innocence could not, as a matter of a fair trial, have been determined by the appellate court without it directly assessing the evidence given in person by the applicant; the latter’s presence was therefore necessary.

25.  The Court furthermore observes that the Government argued that the applicant had been duly notified of the appeal hearing and had inferred that, in failing to attend the appeal hearing, the applicant had waived his right to appear in court. In this connection, it notes that the judgment of the appellate court remains silent as to what actions the court had taken in order to verify whether the applicant or his lawyer had been duly notified of the hearing. Nor did the Government submit any evidence to substantiate their argument. Given the circumstances, the Court is unable to accept that the applicant or his lawyers were duly notified of the date and time of the appeal hearing. It furthermore considers that the applicant did not waive his right to take part in the hearing.

26.  The foregoing considerations are sufficient to enable the Court to conclude that the appellate court failed to ensure the applicant’s effective participation in the appeal hearing and that the appeal proceedings did not comply with the requirements of fairness.

(c)  Conclusions

27.  In view of the above findings, the Court concludes that the administrative proceedings against the applicant were unfair. The applicant’s right to confront adverse witnesses was infringed. This defect was not remedied on appeal owing to the judicial authorities’ failure to ensure the applicant’s effective participation in the appeal proceedings. There has therefore been a violation of Article 6 §§ 1 and 3 (c) and (d) of the Convention.

28.  Regard being had to the above findings in the present case, the Court considers it unnecessary to examine separately whether the fairness of the proceedings was also breached because the applicant was unable to have the defence witnesses questioned (compare *Vladimir Romanov v. Russia*, no. 41461/02, § 107, 24 July 2008, and *Yevgeniy Ivanov v. Russia*, no. 27100/03, § 51, 25 April 2013).

II.  APPLICATION OF ARTICLE 41 OF THE CONVENTION

29.  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

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

31.  The Government considered the applicant’s claims excessive and unreasonable and not supported by the Court’s case-law. They discerned no violation of the applicant’s rights in the present case and considered that no award should be made to him.

32.  Having regard to the nature and scope of the violation found, the Court awards the applicant EUR 1,000 in respect of non-pecuniary damage, plus any tax that may be chargeable.

B.  Costs and expenses

33.  The applicant also claimed EUR 800 for the costs and expenses incurred before the Court.

34.  The Government submitted that the applicant had failed to substantiate his claims.

35.  Regard being had to the documents in its possession and to its case‑law, the Court rejects the claim for costs and expenses.

C.  Default interest

36.  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 complaints that the applicant was unable to confront witnesses and to obtain the attendance and examination of witnesses on his behalf and that he and his lawyer were unable to attend the appeal hearing admissible and the remainder of the application inadmissible;

2.  *Holds* that there has been a violation of Article 6 §§ 1 and 3 (c) and (d) of the Convention;

3.  *Holds* that it is not necessary to examine separately the applicant’s complaint under Article 6 §§ 1 and 3 (d) pertaining to the alleged failure on the part of the national judicial authorities to obtain the attendance and examination of the witnesses P. and Sem.;

4.  *Holds*

(a)  that the respondent State is to pay to the applicant, within three months, EUR 1,000 (one thousand euros),to be converted into the currency of the respondent State at the rate applicable at the date of settlement, plus any tax that may be chargeable, in respect of non‑pecuniary damage;

(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;

5.  *Dismisses* the remainder of the applicant’s claim for just satisfaction.

Done in English, and notified in writing on 22 October 2019, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

 Stephen Phillips Alena Poláčková
 Registrar President