THIRD SECTION

CASE OF STARKOV AND TISHCHENKO v. RUSSIA

(Applications nos. 54424/14 and 43797/16)

JUDGMENT

STRASBOURG

17 December 2019

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

In the case of Starkov and Tishchenko 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 26 November 2019,

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

1. PROCEDURE

1.  The case originated in two applications (nos. 54424/14 and 43797/16) 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 two Russian nationals, Mr Aleksey Vladimirovich Starkov and Mr Vladislav Anatolyevich Tishchenko (“the applicants”), on 14 July 2014 and 13 July 2016 respectively.

2.  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 fairness of the administrative proceedings was given to the Government, and the remainder of the applications was declared inadmissible pursuant to Rule 54 § 3 of the Rules of Court.

4.  The Government objected to the examination of the application by a Committee. Having considered the Government’s objection, the Court rejects it.

1. THE FACTS

THE CIRCUMSTANCES OF THE CASE

* + 1. Starkov v. Russia, application no. 54424/14

5.  The applicant was born in 1982 and lives in Shirokiy Buyerak, Saratov Region.

6.  On 12 August 2013 the police stopped the applicant and subjected him to a breathalyser test. They prepared an administrative record accusing him of drink-driving.

7.  On an unspecified date the justice of the peace of Circuit no. 1 of the Volsk District of the Saratov Region opened a trial against the applicant. He denied the charges. He claimed that he had undergone a breathalyser test which had shown that he was sober and that no attesting witnesses had been present during the test. He asked the court to summon two police officers, Bar. and Bazh., and the attesting witnesses, L. and Zh., for questioning. The justice of the peace agreed to summon the police officers but refused to summon the attesting witnesses. When questioned, both police officers stated that they had tried to stop the applicant for speeding. He had ignored them and they had pursued his car. The car had stopped after colliding with another vehicle. The police officers had taken the applicant to the police station, where he had undergone a breathalyser test which had shown that he was drunk.

8.  On 12 November 2013 the justice of the peace found the applicant guilty of drink-driving, ordered him to pay a fine of 30,000 Russian roubles and suspended his driving licence for a year and eleven months. The justice of the peace based her findings on the material in the administrative case file and the statements made by the police officers. The applicant appealed, noting, *inter alia*, that the justice of the peace had refused to obtain the attendance of the attesting witnesses and that, as a result, he had been deprived of the opportunity to contest the allegations against him.

9.  On 5 December 2013 the Volsk District Court of the Saratov Region held an appeal hearing. The court granted the applicant’s request to question witnesses L. and Zh. and summoned them to the next hearing. The court reasoned that it was impossible to examine the case without questioning them. It appears that the court adjourned several subsequent hearings because of the witnesses’ failure to appear.

10.  On 20 January 2014 the District Court upheld the judgment of 12 November 2013 on appeal. The attesting witnesses summoned by the court had failed to appear at the hearing and the appellate court proceeded with the examination of the case in their absence.

* + 1. Tishchenko v. Russia, application no. 43797/16

11.  The applicant was born in 1972 and lives in Volsk, Saratov Region.

12.  On 17 October 2015 a traffic police officer, M., drew up an administrative-offence record which indicated that the applicant had refused to undergo a breathalyser test in Kovdor, Murmansk Region. M. prepared the record in the presence of two attesting witnesses, B. and Mak.

13.  On an unspecified date the justice of the peace of Circuit no. 5 of the Volsk District of the Saratov Region opened a trial against the applicant. The applicant claimed that the police officer had not asked him to undergo a medical examination. In support of his position, he asked the court to question the police officer who had prepared the administrative-offence record and the attesting witnesses. The justice of the peace asked her counterpart in the Murmansk Region to question the witnesses, noting that their statements were necessary for the “comprehensive, complete and objective” consideration of the applicant’s case.

14.  On 28 December 2015 the justice of the peace in Kovdor questioned M., but B. and Mak. did not appear for questioning.

15.  On 26 January 2016 the justice of the peace found the applicant guilty as charged, ordered him to pay a fine of RUB 30,000 and withdrew his driving licence for a year and nine months. The justice of the peace referred to the statement made by M. and the material in the administrative case file. The applicant appealed.

16.  On 4 March 2016 the Volsk District Court of the Saratov Region upheld the judgment of 26 January 2016 on appeal.

1. THE LAW
	1. JOINDER OF THE APPLICATIONS

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

* 1. ALLEGED VIOLATION OF ARTICLE 6 OF THE CONVENTION

18.  The applicants complained that the administrative proceedings against them had been unfair. In particular, they alleged that they had been unable to examine the attesting witnesses in court. Mr Starkov (application no. 54424/14) also claimed that he had not been provided with free legal assistance. The applicants relied on Article 6 of the Convention, the relevant parts of which read as follows:

“1.  In the determination 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:

...

(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 ...”

19.  The Government contested that argument. They considered that the administrative proceedings against the applicants had been compatible with the provisions of the Convention. In their view, it had been impossible for the national judicial authorities to ensure the witnesses’ presence in court. In any event, the national judicial authorities had based their findings on the evidence examined during the trial. Both applicants had been duly informed of their rights. They had been represented by a lawyer of their own choosing in court. The fact that Mr Starkov had not been provided with free legal assistance when he had been stopped by the police could not be construed as detrimental to the fairness of the proceedings against him.

20.  The applicants maintained their complaints.

* + 1. Admissibility

21.  The Court accepts, and the Government have not argued otherwise, that Article 6 of the Convention applies in the present case under its criminal limb. In this connection, it takes into account that the penalties imposed on the applicants – a monetary fine and driving licence suspension – were punitive and deterrent in nature (compare *Mikhaylova v. Russia*, no. 46998/08, § 64, 19 November 2015).

22.  The Court notes that this complaint 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.

* + 1. Merits
			1. Non-attendance of the witnesses
				1. General principles

23.  The general principles concerning the right of an accused to obtain the attendance and examination of witnesses on his or her behalf are well established in the Court’s case-law and have been summarised in the judgment of *Murtazaliyeva v. Russia* ([GC], no. 36658/05, §§ 150-68).

* + - * 1. Application of the principles in the present case

24.  According to the material submitted by the parties, the domestic judicial authorities accepted that the witnesses’ statements were, as claimed by the applicants, relevant and necessary for the proper examination of their respective cases. The Court sees no reason to hold otherwise. It accepts that the applicants’ request to examine the witnesses was sufficiently reasoned and relevant to the subject matter of the charges against them.

25.  It further notes that the material submitted by the Government remains silent as to what measures the domestic judicial authorities employed, apart from sending the summonses by post, to ensure the witnesses’ presence. When the witnesses failed to appear, the domestic judicial authorities decided to proceed with hearing the case without providing any reason for their decision to do so. The domestic judicial authorities thus failed to make every reasonable effort to obtain the attendance of those witnesses.

26.  Lastly, the Court takes into account that in the case under consideration, the only evidence referred to by the courts, when finding the applicants guilty, was the administrative-offence record and the statements made by the police officers. It considers that the failure on the part of the national judicial authorities to obtain the testimony of independent observers of the contested events undermined the overall fairness of the proceedings.

27.  In view of the above findings, the Court concludes that the administrative proceedings against the applicant were unfair. There has therefore been a violation of Article 6 §§ 1 and 3 (d) of the Convention.

* + - 1. Mr Starkov’s complaints concerning free legal assistance

28.  Regard being had to the Court’s findings in paragraphs 24 to 27 above, the Court considers it unnecessary to examine the remainder of Mr Starkov’s complaints about the fairness of the criminal proceedings against him.

* 1. 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.”

* + 1. Damage

30.  Mr Starkov (application no. 54424/14) claimed 105,000 euros (EUR) in respect of non-pecuniary damage. Mr Tishchenko (application no. 43797/16) claimed EUR 379.75 and EUR 60,000 in respect of pecuniary and non-pecuniary damage respectively.

31.  The Government considered Mr Tishchenko’s claim in respect of pecuniary damage to be unfounded. They further submitted that the applicants’ claims in respect of non-pecuniary damage were excessive and unreasonable.

32.  The Court notes that in the present case an award of just satisfaction can only be based on the fact that the applicants 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 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 Mr Tishchenko’s claim in respect of pecuniary damage. As to the applicants’ claims in respect of non-pecuniary damage, the Court awards them EUR 1,000 each.

* + 1. Costs and expenses

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

* + 1. Default interest

34.  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.

1. FOR THESE REASONS, THE COURT, UNANIMOUSLY,
2. *Decides* to join the applications;
3. *Declares* the applications admissible;
4. *Holds* that there has been a violation of Article 6 §§ 1 and 3 (d) of the Convention;
5. *Holds* that it is not necessary to examine separately the remainder of Mr Starkov’s grievances under Article 6 §§ 1 and 3 (c) of the Convention;
6. *Holds*
	1. that the respondent State is to pay each of the applicants, within three months EUR 1,000 (one thousand euros) plus any tax that may be chargeable, in respect of non-pecuniary damage,to be converted into the currency of the respondent State at the rate applicable at the date of settlement:
	2. 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;
7. *Dismisses* the remainder of the applicants claim for just satisfaction.

Done in English, and notified in writing on 17 December 2019, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

 Stephen Phillips Alena Poláčková
 Registrar President