(la porta Santa della Basilica di Collemaggio a L'Aquila. Ha resistito al terremoto) 

La Corte europea dei diritti dell'uomo, Con la sentenza del 1° giugno 2010 (nel **ricorso n. 36659/04, Ionescu contro Romania**
), ha emesso la prima decisione fondata sul nuovo testo dell'articolo 35 della C.E.D.U., introdotto dal Protocollo 14.
La Corte ha interpretato la nuova condizione che gli permette di dichiarare **irricevibile il ricorso se chi agisce in giudizio «non ha subito alcun pregiudizio**

importante». Ha ritenuto, in particolare, che per valutare il pregiudizio importante, è necessario tenere conto dell'impatto monetario della questione alla base del ricorso perché, se si tratta di una causa che verte su un importo che possa ritenersi piccolo (in se riguardato ma anche in riferimento alla situazione economica del ricorrente), si deve dichiarare il ricorso irricevibile. Nella fattispecie la Corte ha dichiarato irricevibile il ricorso proprio perché non ha riscontrato "ripercussioni importanti sulla vita personale" del ricorrente.
Per la Corte, inoltre, nel caso non era necessario un esame nel merito per assicurare il rispetto dei diritti dell'uomo. Ha ritenuto importante, infatti, che la questione fosse stata «debitamente esaminata da un tribunale interno» e che il ricorrente avesse potuto sollevare le questioni relative all'eventuale violazione dell'equo processo anche sul piano nazionale.
La Corte di Strasburgo ha ulteriormente delineato i contorni del nuovo filtro di ricevibilità nel decidere, sempre nel senso della irricevibilità, un ulteriore ricorso (il **ricorso n. 25551/05, Korolev (III) contro Russia**
) con decisione depositata il 1° luglio 2010. In tale decisione la Corte ha affermato che spetta a essa stessa fissare i criteri obiettivi per l'applicazione della nuova norma che introduce un filtro ai procedimenti. Ha confermato, quindi, che i ricorsi sono ammissibili solo in presenza di un "pregiudizio importante" che, nel caso di specie (nel quale un cittadino russo non aveva avuto accesso a un fascicolo amministrativo riguardante istanza di rilascio di passaporto, che gli era stato consegnato con notevole ritardo) la Corte ha ritenuto non sussistentepoichè ha accertato che la pretesa economica alla base dell'azione del ricorrente era pari a 1 euro. La Corte ha comunque precisato che in alcuni casi, malgrado il basso valore economico del ricorso, potrebbero sorgere importanti questioni di principio.

LEGGI DI SEGUITO LE MOTIVAZIONI DELLE SENTENZE *(e aderisci ai social network [www .concorrenzaeavvocatura.ning.com](http://www.concorrenzaeavvocatura.ning.com)*
... e per un commento scrivimi all'indirizzo perelli.maurizio su libero.it)
...

...THE FACTS

1. The applicant, Mr Adrian Mihai Ionescu, is a Romanian national, who was born in 1974 and lives in Bucharest. The Romanian Government ("the Government") were represented by their Agent, Mr Răzvan-Horaţiu Radu, of the Ministry of Foreign Affairs.

A. The circumstances of the case

2. The facts of the case, as submitted by the parties, may be summarised as follows.

3. In an action before the Bucharest District Court, the applicant claimed 90 euros (EUR) in damages from an international road transport company ("the company"), alleging that it had failed to perform its contractual obligations.

4. He claimed that in respect of a return journey between Bucharest and Madrid, which had cost him EUR 190, the company had failed to observe the safety and comfort requirements set out in its advertising material, namely the provision of fully reclining seats, a change of coach in Luxembourg and the availability of six drivers.

5. On 6 January 2004 he requested the production of the relevant transport documents held by the defendant company.

6. In a judgment of 7 January 2004 the court dismissed his action. After examining the clauses of the contract of carriage, it found that none of the conditions referred to by the applicant were mentioned. The court did not rule on the request for the production of certain items of evidence.

7. In an appeal on points of law received in the court's registry on 22 January 2004, the applicant challenged that judgment. In his grounds of appeal, filed in the registry on the same

day, he alleged that the impugned judgment was based on contradictory grounds, that it was the result of an erroneous application of the law and that it infringed the law. The applicant added that the court had failed to rule on certain defences that were crucial for the outcome of the dispute and that it had misinterpreted the subject-matter of the proceedings.

8. He developed his arguments relying on provisions of the Civil Code and on the interpretation of the contractual clauses.

9. The case was referred to the High Court of Cassation and Justice ("the High Court"). Under the Code of Civil Procedure as then in force, the appeal was subject to a two-stage examination: first, the High Court would adjudicate in private on its admissibility and, if it was declared admissible, the merits of the impugned judgment would then be examined in a public hearing.

10. On 26 February 2004 the applicant submitted "pleadings concerning the admissibility of the appeal" in which he argued that it should be declared admissible because the substantive and procedural conditions were satisfied.

11. In a final judgment delivered in private on 2 April 2004 in the absence of the parties, who had not been summoned to appear, the High Court declared the appeal null and void, under Article 302-1 § 3 of the Code of Civil Procedure as then in force, on the ground that it had not stated the reasons why the District Court's decision was alleged to be unlawful.

12. On 3 August 2004 the applicant applied to have that judgment set aside, alleging that it was the result of a manifest error on the part of the High Court, because he had set out his grounds of appeal in the document filed on 22 January 2004. In addition, he complained about the lack of publicity of the proceedings before the High Court.

13. In a judgment of 26 January 2005 the High Court rejected his application on the ground that no appeal lay against the judgment of 2 April 2004.

B. Relevant domestic law

14. The Code of Civil Procedure (as amended by the Government's Emergency Order no. 58 of 25 June 2003), as worded at the material time, contained the following provisions:

Article 299

"Appeals on points of law shall be heard by the High Court of Cassation and Justice, unless otherwise provided by law."

Article 302-1 § 3

"Statements of appeal on points of law shall, if they are not to be declared null and void, ... indicate the grounds of illegality raised and contain the corresponding reasoning ..."

Article 304

"The setting-aside or quashing of a judgment may be sought only in the following cases and for the following reasons:

1. if the bench was composed in breach of the statutory provisions;

2. if the judgment was delivered by judges other than those who heard the case on the merits;

3. if the judgment was rendered in disregard of the jurisdiction of another court;

4. if the court exceeded its jurisdiction;

5. if the judgment was rendered contrary to rules of procedure of which a breach carries the sanction of nullity ...;

6. if the judgment was rendered ultra petita;

7. if the judgment did not give reasons or if it was based on reasoning that was contradictory or unrelated to the subject-matter of the proceedings;

8. if, on account of misinterpretation, the court modified the subject-matter of the proceedings whereas that subject-matter had been clear and undisputed;

9. if the judgment was not based on the law, if it infringed the law, or if it was the result of an erroneous application of the law;

10. if the court failed to rule on certain defences or certain documents in the file that were crucial for the outcome of the dispute."

Article 304-1

"An appeal on points of law against a judgment which is not subject to an ordinary appeal shall not be limited to the situations provided for in Article 304, as the appellate court shall be entitled to examine all the aspects of the case."

Article 308 §§ 1 and 4

“The president of the court which receives the appeal on points of law shall appoint a bench of three judges to rule on its admissibility ...

If the judges are unanimous in finding that the admissibility conditions are not satisfied, or if they find that the grounds of appeal and the accompanying arguments do not correspond to those set out in Article 304, they shall declare the appeal null and void or, if appropriate, reject it in a reasoned decision without summoning the parties, that decision not being subject to appeal.”

15. Law no. 195 of 25 May 2004, further amending the Code of Civil Procedure, repealed the provisions of Emergency Order no. 58/2003 concerning the exclusive jurisdiction of the High Court of Cassation and Justice to hear appeals on points of law, together with the provisions concerning the preliminary examination of their admissibility. Appeals on points of law are now examined by the courts that are immediately above those that gave the judgments at first instance or on appeal, without any preliminary examination of admissibility, and in accordance with the ordinary procedure provided for by the Code of Civil Procedure.

COMPLAINTS

16. Relying on Article 6 § 1 of the Convention, the applicant complained that the District Court had failed to rule on his request for the production of evidence, that the proceedings in the High Court had not been public, and lastly that he had not had access to the High Court for the purpose of appealing against the judgment of 7 January 2004.

17. Referring to Article 13 of the Convention, he complained that the appeal against the above-mentioned judgment had not constituted an effective remedy and that there had been no remedy by which to challenge the judgment of 2 April 2004.

THE LAW

18. The applicant submitted a number of complaints under Article 6 § 1 and Article 13 of the Convention, which read as follows:

Article 6 § 1

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

Article 13

“Everyone whose rights and freedoms as set forth in [the] Convention are violated shall have an effective remedy before a national authority ...”

19. First, as regards the proceedings before the District Court, the applicant alleged that the court had omitted to rule on his request for the production of evidence.

20. The Court reiterates at the outset that the admissibility of evidence is primarily a matter for regulation by national law and that it is for the national courts to assess whether it is appropriate to take evidence. Nor is it for the Court to examine an application concerning errors of fact or law allegedly committed by domestic courts.

21. In view of all the material in its possession, and to the extent that it is competent to examine the allegations made, the Court finds that the District Court carried out a wholly independent assessment of all the circumstances of the case and the various evidence adduced by the parties and gave adequate reasons for its judgment. The judgment was given after adversarial proceedings during which the applicant had been able to present the observations and legal grounds that he deemed necessary, together with arguments in support of his position. It cannot therefore be considered that the proceedings failed to meet the requirements of fairness under Article 6 § 1 of the Convention.

22. It follows that this complaint must be rejected as manifestly ill-founded in accordance with Article 35 §§ 3 (a) and 4 of the Convention.

23. Secondly, as regards the examination by the High Court of Cassation and Justice of his appeal on points of law, the applicant complained that the procedure had not been public and that the appeal had been declared null and void. He also complained that there was no remedy by which to challenge the High Court's judgment.

24. The Government admitted that the applicant's right of access to a court had been subjected to limitations, but argued that the conditions of admissibility of the appeal on points of law had been compatible with Convention requirements. They alleged that the applicant had not satisfied the procedural conditions laid down in the Code of Civil Procedure, as he had failed to refer expressly to the cases he sought to submit in which such an appeal was available.

25. They further pointed out that the High Court had examined the applicant's pleadings and had concluded that his arguments did not enable it to relate his complaints to the cases in which such an appeal was available. The Government concluded that the annulment of the appeal had been the result of negligence on his part.

26. The applicant maintained that the decision declaring null and void his appeal on points of law had breached his right of access to a court. He stated that in his pleadings of 22 January 2004 he had cited and developed the provisions of Article 304 of the Code of Civil Procedure. He thus took the view that the High Court had confined itself to a purely formal examination of his appeal and had dismissed it arbitrarily.

27. The Court finds at the outset that the applicant's complaints about the proceedings before the High Court underlie those concerning the annulment of his appeal and may be seen in the context of his right of access to a court.

28. The Court further notes that Article 35 of the Convention, as amended by Protocol No. 14, which entered into force on 1 June 2010, provides as follows:

“3. The Court shall declare inadmissible any individual application submitted under Article 34 if it considers that :

a. the application is incompatible with the provisions of the Convention or the Protocols thereto, manifestly ill-founded, or an abuse of the right of individual application; or

b. the applicant has not suffered a significant disadvantage, unless respect for human rights as defined in the Convention and the Protocols thereto requires an examination of the application on the merits and provided that no case may be rejected on this ground which has not been duly considered by a domestic tribunal.”

29. In the present case, the Court finds that the complaint under Article 6 of the Convention is not incompatible with the provisions of the Convention or its Protocols, nor is it manifestly ill-founded or an abuse of the right of application within the meaning of Article 35 § 3 (a) of the Convention as amended by Protocol No. 14.

30. However, having regard to the entry into force of Protocol No. 14, the Court finds it necessary to examine of its own motion whether in the present case it should apply the new admissibility criterion provided for by Article 35 § 3 (b) of the Convention as amended (see, mutatis mutandis, among the many cases where the Court has examined compliance with admissibility conditions of its own motion, Walker v. the United Kingdom (dec.), no. 34979/97, ECHR 2000-I; Blečić v. Croatia [GC], no. 59532/00, § 63, ECHR 2006-III; and Şandru and Others v. Romania, no. 22465/03, §§ 50 et seq., 8 December 2009).

31. As indicated in paragraph 79 of the Explanatory Report to Protocol No. 14: “The new criterion may lead to certain cases being declared inadmissible which might have resulted in a judgment without it. Its main effect, however, is likely to be that it will in the longer term enable more rapid disposal of unmeritorious cases”.

32. The Court notes that the main aspect of this new criterion is whether the applicant has suffered any significant disadvantage.

33. Even though the concept of “significant disadvantage” has not been interpreted to date, it has been referred to in dissenting opinions appended to the judgments in Debono v. Malta (no. 34539/02, 7 February 2006), Miholapa v. Latvia (no. 61655/00, 31 May 2007), O’Halloran and Francis v. the United Kingdom ([GC], nos. 15809/02 and 25624/02, ECHR 2007-VIII) and Micallef v. Malta ([GC], no. 17056/06, ECHR 2009-…).

34. Those opinions show that the absence of any such disadvantage can be based on criteria such as the financial impact of the matter in dispute or the importance of the case for the applicant. In this connection it is noteworthy that the insignificance of a claim was the decisive factor in a recent decision by the Court declaring an application inadmissible (see Bock v. Germany (dec.), no. 22051/07, 19 January 2010).

35. In the present case the Court notes that the applicant’s alleged financial loss on account of a failure to perform a contract of carriage was limited. The amount in issue, according to the applicant’s own estimation, was 90 euros for all heads of damage, and there is no evidence that his financial circumstances were such that the outcome of the case would have had a significant effect on his personal life.

36. In those circumstances the Court finds that the applicant has not suffered any “significant disadvantage” in the exercise of his right of access to a court.

37. As to the question whether respect for human rights as defined in the Convention and the Protocols thereto requires an examination of the application on the merits, the Court points out that it has already held that respect for human rights does not require it to continue the examination of an application when, for example, the relevant law has changed and similar issues have been resolved in other cases before it (see Léger v. France (striking out) [GC], no. 19324/02, § 51, ECHR 2009-...).

38. In the present case the Court observes that the provisions concerning the preliminary examination of the admissibility of appeals on points of law have been repealed and that such appeals are now examined according to the ordinary procedure provided for by the Code of Civil Procedure.

39. In those circumstances, since the issue before the Court is of historical interest only and as the Court has already had a number of opportunities to rule on the application of procedural rules by domestic courts (see, for example, Běleš and Others v. the Czech Republic, no. 47273/99, § 69, ECHR 2002-IX; Zvolský and Zvolská v. the Czech Republic, no. 46129/99, § 55, ECHR 2002-IX; L'Erablière A.S.B.L. v. Belgium, no. 49230/07, § 38, ECHR 2009-…; and Sâmbata Bihor Greco-Catholic Parish v. Romania, no. 48107/99, § 63, 12 January 2010), the Court finds that respect for human rights does not require it to continue the examination of this complaint.

40. Lastly, as regards the third condition of the new admissibility criterion, namely that the case must have been "duly considered" by a domestic tribunal for it to be inadmissible, the Court notes that the applicant's action was examined on the merits by the Bucharest District Court. The applicant was therefore able to submit his arguments in adversarial proceedings before at least one domestic court.

41. The three conditions of the new admissibility criterion having therefore been satisfied, the Court finds that this complaint must be declared inadmissible under Article 35 §§ 3 (b) and 4 of the Convention.

For these reasons, the Court by a majority,

Declares the application inadmissible.

Stanley Naismith Josep Casadevall
Deputy Registrar President

ADRIAN MIHAI IONESCU v. ROMANIA DECISION

ADRIAN MIHAI IONESCU v. ROMANIA DECISION

522

28.06.2010

Press release issued by the Registrar

Decision on admissibility

Adrian Mihai Ionescu v. Romania (application no. 36659/04)

Application inadmissible

FIRST APPLICATION BY THE Court OF THE NEW ADMISSIBILITY CRITERION INTRODUCED BY PROTOCOL No.14

Principal facts

The applicant, Mr Adrian Mihai Ionescu, was born in 1974 and lives in Bucharest. In an action brought before the Bucharest Court of First Instance, he sought damages in the amount of 90 euros from a road transport company. He had travelled between Bucharest and Madrid with the company and alleged that it had failed to observe the safety and comfort requirements set out in its advertising material (use of fully reclining seats, change of coach in Luxembourg and availability of six drivers).

On 7 January 2004 the court dismissed his action, observing that none of the clauses referred to by Mr Ionescu appeared in the contract of carriage. The court did not rule on a request by the applicant for the production of certain items of evidence by the company. Mr Ionescu subsequently appealed on points of law to the same court, but the case was referred to the High Court of Cassation and Justice. In a final judgment delivered on 2 April 2004 in the absence of the parties, who had not been summoned to appear, the High Court declared the appeal null and void on the ground that it had not stated the reasons why the first-instance court’s decision was alleged to be unlawful. Mr Ionescu applied to have that judgment set aside; his application was dismissed on 26 January 2005 as no appeal lay against the judgment.

Complaints, procedure and composition of the Court

Mr Ionescu complained, firstly, that the Court of First Instance had failed to rule on his request for the production of evidence. He further complained that the proceedings in the High Court of Cassation and Justice had not been conducted in public, that his appeal on points of law had been declared null and void and that the High Court’s judgment had not been subject to appeal. He relied on Article 6 § 1 (right to a fair hearing) of the European Convention on Human Rights.

The application was lodged on 1 October 2004.

The decision on admissibility was given on 1 June 2010 by a Chamber composed of seven judges:

Josep Casadevall (Andorra), President,
Elisabet Fura (Sweden),
Corneliu Bîrsan (Romania),
Alvina Gyulumyan (Armenia),
Egbert Myjer (the Netherlands),
Ineta Ziemele (Latvia),
Ann Power (Ireland), judges,

and also Santiago Quesada, Section Registrar.

Decision of the Court

Complaint concerning the proceedings in the Court of First Instance

The Court reiterated that the admissibility of evidence was primarily a matter for national law. In this case, the Court of First Instance had carried out a wholly independent assessment of the evidence adduced by the parties and given adequate reasons for its judgment, following adversarial proceedings. The applicant’s first complaint was therefore manifestly ill-founded.

Complaint concerning the proceedings in the High Court of Cassation and Justice

The Court noted at the outset that these complaints were not incompatible with the provisions of the Convention, manifestly ill-founded or an abuse of the right of application. However, since the entry into force of Protocol No. 14 to the Convention on 1 June 2010, a new admissibility criterion was applicable: an application is inadmissible where “the applicant has not suffered a significant disadvantage, unless respect for human rights as defined in the Convention and the Protocols thereto requires an examination of the application on the merits and provided that no case may be rejected on this ground which has not been duly considered by a domestic tribunal”. The Court considered it necessary to examine of its own motion whether the present case fell into this category.

It examined, firstly, whether the applicant had suffered any significant disadvantage (the main aspect of the new criterion). This was not the case, since the alleged financial loss was limited (90 euros, according to Mr Ionescu) and there was no evidence that the applicant’s financial

circumstances were such that the outcome of the case would have had a significant effect on his personal life.

Secondly, it examined whether respect for human rights required an examination of the application on the merits. The answer was again negative, since the relevant legal provisions had been repealed, and the issue before the Court was therefore of historical interest only.

Lastly, the Court noted that the case had been “duly considered” on the merits by a tribunal, namely the Bucharest Court of First Instance.

The three conditions of the new admissibility criterion had therefore been satisfied.

Accordingly, the Court, by a majority, declared the application inadmissible.

****

The decision is available in French and English. This press release is a document produced by the Registry; the summary it contains does not bind the Court. The decision is accessible on its Internet site (http://www.echr.coe.int).

Press contacts

echrpress@echr.coe.int / +33 3 90 21 42 08

Frédéric Dolt (tel: + 33 (0)3 90 21 53 39) or
Emma Hellyer (tel: + 33 3 90 21 42 15)
Tracey Turner-Tretz (tel: + 33 (0)3 88 41 35 30)

Kristina Pencheva-Malinowski (tel: + 33 (0)3 88 41 35 70)
Céline Menu-Lange (tel: + 33 (0)3 90 21 58 77)
Nina Salomon (tel: + 33 (0)3 90 21 49 79)

The European Court of Human Rights was set up in Strasbourg by the Council of Europe Member States in 1959 to deal with alleged violations of the 1950 European Convention on Human Rights.

FIRST SECTION

DECISION

AS TO THE ADMISSIBILITY OF

Application no. 25551/05
by Vladimir Petrovich KOROLEV
against Russia

The European Court of Human Rights (First Section), sitting on 1 July 2010 as a Chamber composed of:

Christos Rozakis, President,
Anatoly Kovler,
Elisabeth Steiner,
Dean Spielmann,
Sverre Erik Jebens,
Giorgio Malinverni,
George Nicolaou, judges,
and Søren Nielsen, Section Registrar,

Having regard to the above application lodged on 27 July 2004,

Having deliberated, decides as follows:

THE FACTS

The applicant, Mr Vladimir Petrovich Korolev, is a Russian national who was born in 1954 and lives in Orenburg, the Russian Federation.

The circumstances of the case

The facts of the case, as submitted by the applicant, may be summarised as follows.

The applicant sued the Head of the Passport and Visa Department at the Regional Directorate of the Interior for having denied him access to documents pertaining to a delay in issuing his new travel passport.

On 25 September 2001 the Verkh-Isetskiy District Court of Ekaterinburg dismissed the applicant's claim. On 13 November 2001 the Sverdlovskiy Regional Court quashed the judgment on appeal and referred the case back to the district court.

On 16 April 2002 the district court allowed the applicant's claim, ordering the Head of the Passport and Visa Department to allow the applicant access to all the documents and materials relating to the issuing of his passport. The court also held that the Passport and Visa Department should pay the applicant 22.50 Russian roubles (RUB) in compensation for the court fees.

On 4 July 2002 this judgment was upheld on appeal and became final.

It is not evident from the case file if and when the respondent authority complied with the judgment in the part concerning the applicant's access to his file. All reported actions taken by the applicant in the wake of the judgment were solely aimed at recovering the RUB 22.50 awarded by the district court.

On 22 July 2002 the district court issued a writ of execution which was explicitly limited to the payment of the court's award of RUB 22.50. On 28 April 2003 the bailiff started the enforcement proceedings.

On 15 December 2003 the applicant challenged the bailiff's inactivity before the district court. On 22 December 2003 the judge found the complaint to fall short of the procedural requirements and requested the applicant to comply therewith by 5 January 2003. The applicant was in particular requested to substantiate the bailiff's alleged failure.

The applicant supplemented his complaint on 31 December 2003.

On 6 January 2004 the court found that the applicant had not complied with the said requirements and dismissed the complaint without considering its merits. On 10 February 2004 the Sverdlovskiy Regional Court upheld that decision.

COMPLAINTS

The applicant complained that the authorities' failure to pay him the amount awarded by the domestic courts had violated his rights under
Article 6 of the Convention and Article 1 of Protocol No. 1. He also complained under Article 6 about the domestic courts' failure to consider his application challenging the bailiffs' inactivity.

Referring also to Article 6, the applicant furthermore complained of various breaches of

domestic procedural requirements by the domestic courts, notably of the time-limits provided for by domestic law.

THE LAW

The Court must first determine whether the complaints are admissible under Article 35 of the Convention, as amended by Protocol No. 14 which entered into force on 1 June 2010.

The Protocol added a new admissibility requirement to Article 35 which, in so far as relevant, provides as follows:

“3. The Court shall declare inadmissible any individual application submitted under Article 34 if it considers that:

(...)

(b) the applicant has not suffered a significant disadvantage, unless respect for human rights as defined in the Convention and the Protocols thereto requires an examination of the application on the merits and provided that no case may be rejected on this ground which has not been duly considered by a domestic tribunal.”

In accordance with Article 20 of the Protocol, the new provision shall apply from the date of its entry into force to all applications pending before the Court, except those declared admissible. In view of the circumstances of the present case the Court finds it appropriate to examine at the outset whether the applicant's complaints comply with this new admissibility requirement.

In doing so, the Court will bear in mind that the purpose of the new admissibility criterion is, in the long run, to enable more rapid disposal of unmeritorious cases and thus to allow it to concentrate on the Court's central mission of providing legal protection of human rights at the European level (see Explanatory Report to Protocol No. 14, CETS No. 194 (hereinafter referred

to as “Explanatory Report”), §§ 39 and 77-79). The High Contracting Parties clearly wished that the Court devote more time to cases which warrant consideration on the merits, whether seen from the perspective of the legal interest of the individual applicant or considered from the broader perspective of the law of the Convention and the European public order to which it contributes (see Explanatory Report, § 77). More recently, the High Contracting Parties invited the Court to give full effect to the new admissibility criterion and to consider other possibilities of applying the principle de minimis non curat praetor (see Action Plan adopted by the High Level Conference on the Future of the European Court of Human Rights, Interlaken, 19 February 2010, § 9(c)).

A. Whether the applicant has suffered a significant disadvantage

The main element contained in the new admissibility criterion is the question of whether the applicant has suffered a “significant disadvantage”. It is common ground that these terms are open to interpretation and that they give the Court some degree of flexibility, in addition to that already provided by the existing admissibility criteria (see Explanatory Report, §§ 78 and 80).

In the Court's view, these terms are not susceptible to exhaustive definition, like many other terms used in the Convention. The High Contracting Parties thus expected the Court to establish objective criteria for the application of the new rule through the gradual development of the case-law (see Explanatory Report, § 80).

Inspired by the abovementioned general principle de minimis non curat praetor, the new criterion hinges on the idea that a violation of a right, however real from a purely legal point of view, should attain a minimum level of severity to warrant consideration by an international court. The assessment of this minimum level is, in the nature of things, relative and depends on all the circumstances of the case (see, mutatis mutandis, Soering v. the United Kingdom, 7 July 1989, § 100, Series A no. 161). The severity of a violation should be assessed, taking account of both the applicant's subjective perceptions and what is objectively at stake in a particular case.

In the circumstances of the present case, the Court is struck at the outset by the tiny and indeed almost negligible size of the pecuniary loss which prompted the applicant to bring his case to the Court. The applicant's grievances were explicitly limited to the defendant authority's failure to pay a sum equivalent to less than one euro awarded to him by the domestic court.

The Court is conscious that the impact of a pecuniary loss must not be measured in abstract terms; even modest pecuniary damage may be significant in the light of the person's specific condition and the economic situation of the country or region in which he or she lives. However, with all due respect for varying economic circumstances, the Court considers it to be beyond any doubt that the petty amount at stake in the present case was of minimal significance to the applicant.

The Court is mindful at the same time that the pecuniary interest involved is not the only element to determine whether the applicant has suffered a significant disadvantage. Indeed, a violation of the Convention may concern important questions of principle and thus cause a significant disadvantage without affecting pecuniary interest. It could even have been so in the present case had the applicant complained, for example, of the authorities' failure to enforce his legitimate right to consult his file at the Passport and Visa Department. Yet, the applicant did not challenge the execution of the domestic judgment in that part, limiting his claims solely to pecuniary damage. Thus, the Court can see no hindrance to the enforcement of the applicant's right of access to his file, which was the main purpose of the domestic litigation at issue.

Admittedly, the applicant's insistence on the payment of RUB 22.50 by the respondent authority may have been prompted by his subjective perception that it was an important question of principle. Although relevant, this element does not suffice for the Court to conclude that he suffered a significant disadvantage. The applicant's subjective feeling about the impact of the alleged violations has to be justifiable on objective grounds. However, the Court does not perceive any such justification in the present case, as the main issue of principle was in all likelihood resolved to the applicant's advantage.

In view of the foregoing, the Court concludes that the applicant has not suffered a significant disadvantage as a result of the alleged violations of the Convention.

B. Whether respect for human rights as defined in the Convention and the Protocols thereto requires an examination of the application on the merits

The second element contained in the new criterion is intended as a safeguard clause (see Explanatory Report, § 81) compelling the Court to continue the examination of the application, even in the absence of any significant damage caused to the applicant, if respect for human

rights as defined in the Convention and the Protocols thereto so requires. The Court notes that the wording is drawn from the second sentence of Article 37 § 1 of the Convention where it fulfils a similar function in the context of decisions to strike applications out of the Court's list of cases. The same wording is used in Article 38 § 1 as a basis for securing a friendly settlement between the parties.

The Court notes that the Convention organs have consistently interpreted those provisions as compelling them to continue the examination of a case, notwithstanding its settlement by the parties or the existence of any other ground for striking the case out of its list. A further examination of a case was thus found to be necessary when it raised questions of a general character affecting the observance of the Convention (see Tyrer v. the United Kingdom, no. 5856/72, Commission's report of 14 December 1976, Series B 24, p. 2, § 2).

Such questions of a general character would arise, for example, where there is a need to clarify the States' obligations under the Convention or to induce the respondent State to resolve a structural deficiency affecting other persons in the same position as the applicant. The Court has thus been frequently led, under Articles 37 and 38, to verify that the general problem raised by the case had been or was being remedied and that similar legal issues had been resolved by the Court in other cases (see, among many others, Can v. Austria, 30 September 1985, §§ 15-18, Series A no. 96, and Léger v. France (striking out) [GC], no. 19324/02, § 51, ECHR 2009-...).

Considering the present case in this way, as required by new Article 35 § 3 (b), and having regard to its responsibilities under Article 19 of the Convention, the Court does not see any compelling reason of public order (ordre public) to warrant its examination on the merits. First, the Court has on numerous occasions determined issues analogous to that arising in the instant case and ascertained in great detail the States' obligations under the Convention in that respect (see, among many others, Hornsby v. Greece, 19 March 1997, Reports of Judgments and Decisions 1997-II; Burdov v. Russia, no. 59498/00, ECHR 2002-III; and Burdov v. Russia (no. 2), no. 33509/04, ECHR 2009-...). Second, both the Court and the Committee of Ministers have addressed the systemic problem of non-enforcement of domestic judgments in the Russian Federation and the need for adoption of general measures to prevent new violations on that account (see Burdov (no. 2), cited above, and the Committee of Ministers' Interim Resolutions CM/ResDH(2009)43 of 19 March 2009 and CM/ResDH(2009)158 of 3 December 2009). An examination on the merits of the present case would not bring any new element in this regard.

The Court concludes that respect for human rights, as defined in the Convention and the Protocols thereto, does not require an examination of the present application on the merits.

C. Whether the case was duly considered by a domestic tribunal

Article 35 § 3 (b) does not allow the rejection of an application on the grounds of the new admissibility requirement if the case has not been duly considered by a domestic tribunal. Qualified by the drafters as a second safeguard clause (see Explanatory report, § 82), its purpose is to ensure that every case receives a judicial examination whether at the national level or at the European level, in other words, to avoid a denial of justice. The clause is also consonant with the principle of subsidiarity, as reflected notably in Article 13 of the Convention, which requires that an effective remedy against violations be available at the national level.

In the Court's view, the facts of the present case taken as a whole disclose no denial of justice at the domestic level. The applicant's initial grievances against the State authorities were considered at two levels of jurisdiction and his claims were granted. His subsequent complaint against the bailiff's failure to recover the judicial award in his favour was rejected by the district court for non-compliance with domestic procedural requirements. The applicant failed to comply with those requirements, not having resubmitted his claim in accordance with the judge's request. This situation does not constitute a denial of justice imputable to the authorities.

As regards the alleged breaches of domestic procedural requirements by those two courts, the Convention does not grant the applicant a right to challenge them in further domestic proceedings once his case has been decided in final instance (see Tregubenko v. Ukraine, no. 61333/00, 21 October 2003, and Sitkov v. Russia (dec.), no. 55531/00, 9 November 2004). That these complaints were not subject to further judicial review under domestic law does not, in the Court's view, constitute an obstacle for the application of the new admissibility criterion. To construe the contrary would prevent the Court from rejecting any claim, however insignificant, relating to alleged violations imputable to a final national instance. The Court finds that such an approach would be neither appropriate nor consistent with the object and purpose of the new provision.

The Court concludes that the applicant's case was duly considered by a domestic tribunal within the meaning of Article 35 § 3 (b).

D. Conclusion

In view of the foregoing, the Court finds that the present application must be declared inadmissible in accordance with Article 35 § 3 (b) of the Convention, as amended by Protocol No. 14. This conclusion obviates the need to consider if the application complies with other admissibility requirements.

For these reasons, the Court unanimously

Declares the application inadmissible.

Søren Nielsen Christos Rozakis
Registrar President

KOROLEV v. RUSSIA DECISION

KOROLEV v. RUSSIA DECISION