



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

THIRD SECTION

**CASE OF PAUL AND BORODIN v. RUSSIA**

*(Application no. 28508/14)*

JUDGMENT

STRASBOURG

13 November 2018

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



**In the case of Paul and Borodin v. Russia,**

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

Alena Poláčková, *President*,

Dmitry Dedov,

Jolien Schukking, *judges*,

and Fatoş Aracı, *Deputy Section Registrar*,

Having deliberated in private on 16 October 2018,

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

## PROCEDURE

1. The case originated in an application (no. 28508/14) 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 Georgiyevich Paul and Mr Sergey Vladimirovich Borodin (“the applicants”), on 7 April 2014.

2. The Russian Government (“the Government”) were represented by Mr M. Galperin, the Representative of the Russian Federation to the European Court of Human Rights.

3. On 6 July 2017 the complaints concerning extension of the time-limits for appeal and subsequent quashing of the final judgments in the applicants’ favour were communicated to the Government and the remainder of the application was declared inadmissible pursuant to Rule 54 § 3 of the Rules of Court.

## THE FACTS

### I. THE CIRCUMSTANCES OF THE CASE

4. The applicants were born in 1977 and 1964, respectively, and live in Voronezh.

5. The applicants are lawyers practicing in Russia.

6. Between 2008 and 2010 the applicants, within the group of lawyers, consulted several municipal organisations about various legal issues and provided other legal service. However municipal organisations did not pay for the service and the applicants instituted proceedings seeking to recover the debt.

7. On 22 June 2010 the Sovetskiy District Court of Voronezh granted the applicants claim against the municipal transport company and awarded them 40,020,000 Russian roubles. The judgment was not appealed against and became final. It appears that the judgment was executed at the expense of the municipal budget.

8. On 9 January 2013 the prosecutor of the Voronezh Region applied to the district court for the extension of the time-limits for an ordinary appeal against the judgment of 22 June 2010.

9. On 13 June 2013 the district court refused to extend the time-limits. The prosecutor appealed.

10. On 8 August 2013 the Voronezh Regional Court quashed the decision of the district court and extended the time limit for an ordinary appeal. The court found that the public interest had been concerned as far as the judgment had been executed by means of the municipal budget. Thus the prosecutor had the right to lodge an appeal.

11. On 12 November 2013 the Voronezh Regional Court granted the appeal lodged by the prosecutor and quashed the judgment of 22 June 2010 and ordered the reversal of execution. The judgment became final and was partially executed.

## II. RELEVANT DOMESTIC LAW

12. The relevant domestic law governing the extension of the time limits for appeal is summed up in the Court's decision in the case of *Samoylenko v. Russia* (dec.) (no. 58068/13, §§ 27-30, 30 March 2017).

## THE LAW

### I. ALLEGED VIOLATION OF ARTICLE 6 OF THE CONVENTION

13. The applicants complain under Article 6 of the Convention about unlawful extension of the time-limits for appeal and subsequent quashing of the final judgment in his favour by the regional court.

The relevant part of the aforementioned provisions reads:

#### **Article 6 § 1**

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

### A. Admissibility

14. The Court notes that these 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.

### B. Merits

15. The Government considered that the intervention of the public prosecutor and extension of the time-limits were justified since the judgment delivered in favour of the applicants had concerned public interest.

16. The applicants maintained their claims.

17. The Court reiterates that the existence of reasons capable of justifying a departure from the principle of legal certainty, even where they are established, is not in itself sufficient to conclude to the absence of a violation of Article 6 of the Convention. Another important factor should be taken into account, that is the time elapsed from the moment when the person requesting the extension of the time-limits became aware that a judgment was delivered against him. Since the extension of the time-limits for appeal constitutes an interference with the principle of *res judicata*, a person requesting such an extension should act with sufficient diligence, that is without delay from the moment when he became aware, or ought to have become aware, of the judgment subject to appeal (*Magomedov and Others v. Russia*, nos. 33636/09 and 9 others, § 89, 28 March 2017, with further references).

18. Turning to the circumstances of the present case, the Court recalls that it has already had an opportunity to examine the domestic proceedings complained of in the present case in its *Magomedov and Others* judgment (cited above). In the aforementioned case the Court found a violation of Article 6 of the Convention on account of the domestic courts' failure to examine when the intervening party became aware or "ought to have become aware" of the adoption of the judgments against it, in particular in view of a significant lapse of time between the delivery of those judgments and the introduction of out-of-time appeals (*Magomedov and Others*, cited above, §§ 98-101). The Court does not see any reason to reach a different conclusion in the present case.

19. Having examined all the material before it the Court concludes that there has been a violation of Article 6 of the Convention.

## II. APPLICATION OF ARTICLE 41 OF THE CONVENTION

20. 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

21. Mr Paul and Mr Borodin claimed 197,773 Russian rubles (RUB) and RUB 8,565,280 respectively as pecuniary damage.

22. The Government argued that the sum claimed in respect of pecuniary damage is excessive and unreasonable.

23. The Court reiterates its finding that there had been a violation of Article 6 § 1 of the Convention on account of the interference with the principle of legal certainty. As regards the applicants’ claim for pecuniary damage, the Court does not see a causal link between the violation found and the alleged pecuniary damage and rejects those claims. Moreover, it considers that the finding of a violation constitutes in itself sufficient just satisfaction for any non-pecuniary damage which may have been suffered by the applicants.

### B. Costs and expenses

24. The applicants did not submit any claim for the costs and expenses. Accordingly, the Court does not award her any sum under that head.

### C. Default interest

25. 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 of the Convention;
3. *Holds* that the finding of a violation constitutes in itself sufficient just satisfaction for any non-pecuniary damage sustained by the applicants;

4. *Dismisses* the remainder of the applicants' claim for just satisfaction.

Done in English, and notified in writing on 13 November 2018, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Fatoş Aracı  
Deputy Registrar

Alena Poláčková  
President