



In cases of appeals lodged out of time, the domestic courts should not be excessively formalistic

In today's **Chamber judgment**¹ in the case of **Kuznetsov and Others v. Russia** (application no. 24970/08) the European Court of Human Rights held, unanimously, that there had been:

a violation of Article 6 § 1 (right of access to a tribunal / court?) of the European Convention on Human Rights in the case of Mr Kuznetsov.

The Court declared the application lodged by Mr Bezzubko and Mr Trubitsin inadmissible.

The case concerned the dismissals of the appeals lodged by the applicants in the civil proceedings to which they had been parties. Their appeals had been dismissed on the grounds of the expiry of the specified time-limit. Their subsequent requests for the reopening of the time allowed for appeal were also dismissed.

The Court considered that the effectiveness of the remedy geared to reopening the time allowed was not in dispute. The applicants were therefore required to exercise that remedy.

In the case of Mr Bezzubko and Mr Trubitsin, the Court considered that those applicants had not shown the requisite diligence in submitting their request for the reopening of the time allowed for appeal, given that they had submitted the request four months after their appeal had been declared inadmissible. To accept their request under those conditions would have meant flouting the principle of legal certainty.

In Mr Kuznetsov's case, the Court considered that the decision to reject his request had been excessively formalistic. The Court rejected the Government's objection as to non-exhaustion of domestic remedies.

Principal facts

The applicants, Mr Anton Bezzubko, Mr Vladislav Trubitsin and Mr Aleksey Kuznetsov, are Russian nationals who were born in 1981, 1961 and 1976 respectively. Mr Bezzubko and Mr Trubitsin live in Rostov-on-Don and Mr Kuznetsov lives in Kirov (Russia).

Mr Bezzubko and Mr Trubitsin were defendants in civil proceedings. A judicial decision given on 21 November 2007 found against them. Having received a full copy of the decision on 29 November 2007, the applicants sent their grounds of appeal by post on 10 December 2007. Their appeal was declared inadmissible as being out of time. The applicants appealed against the inadmissibility decision. On 29 December 2007, that decision was upheld. Finally, in April 2008, Mr Bezzubko and Mr Trubitsin requested the reopening of the time allowed for appeal on the grounds that they had not received a full copy of the 21 November 2007 decision until 22 April 2008. Their request was rejected.

Mr Kuznetsov brought civil proceedings, requesting that the court hear his case in his absence. His civil action was partly granted on 8 September 2008, and the applicant received the full text of the

1. Under Articles 43 and 44 of the Convention, this Chamber judgment is not final. During the three-month period following its delivery, any party may request that the case be referred to the Grand Chamber of the Court. If such a request is made, a panel of five judges considers whether the case deserves further examination. In that event, the Grand Chamber will hear the case and deliver a final judgment. If the referral request is refused, the Chamber judgment will become final on that day.

Once a judgment becomes final, it is transmitted to the Committee of Ministers of the Council of Europe for supervision of its execution. Further information about the execution process can be found here: www.coe.int/t/dghl/monitoring/execution.

decision on 4 October 2008. He sent his appeal on 14 October 2008, but the court dismissed it as being out of time on the grounds that the full text of the judgment had been available at the registry since 13 September 2008 and the appeal had not been received until 5 November 2008. Mr Kuznetsov appealed against that decision, arguing that he had sent his appeal before the expiry of the 10-day time-limit after receipt of the decision. That appeal was dismissed on 8 April 2009 on the grounds that the applicant had lodged his appeal on 14 October 2008, that is to say after the expiry of the time allowed for appeal, and that he had not submitted a request for the reopening of the time allowed for appeal.

Complaints, procedure and composition of the Court

Relying on Article 6 § 1 (right of access to court ?), the applicants complained about the dismissal of their appeals as being out of time. They also relied on Article 13 (right to an effective remedy), and on Article 1 of Protocol No. 1 (protection of property) to the Convention

The application was lodged with the European Court of Human Rights on 30 April 2008.

Judgment was given by a Chamber of seven judges, composed as follows:

Helena **Jäderblom** (Sweden), *President*,
Branko **Lubarda** (Serbia),
Helen **Keller** (Switzerland),
Dmitry **Dedov** (Russia),
Pere **Pastor Vilanova** (Andorra),
Georgios A. **Serghides** (Cyprus),
Jolien **Schukking** (the Netherlands),

and also Fatoş **Aracı**, *Deputy Section Registrar*.

Decision of the Court

[Article 6 § 1](#)

[In the case of Mr Bezzubko and Mr Trubitsin](#)

The Court observed that in the present case the applicants' appeal had been dismissed as being out of time. The applicants had submitted a request for the reopening of the time allowed for appeal as provided for by Article 112 of the Code of Civil Procedure, four months after their appeal had been declared inadmissible. The Court noted that the applicants had not disputed the effectiveness of the remedy enabling them to submit such a request.

The Court pointed out that reopening the time allowed for appeal was a departure from the *res judicata* principle. Persons lodging an appeal out of time should therefore act with sufficient expedition. However, the Court observed that the applicants had waited four months after the appeal lodged out of time had been declared inadmissible before submitting their request for reopening of the time allowed for appeal. The Court considered that the domestic courts' rejection of that request had complied with the principle of legal certainty.

It therefore declared Mr Bezzubko's and Mr Tribitsin's complaint inadmissible for non-exhaustion of domestic remedies.

[In the case of Mr Kuznetsov](#)

The Court reiterated that the right of appeal had to be used as soon as the person in question had access to the full version of the judicial decision. In the present case the applicant had counted the time-limit as from the date on which he had received the full copy by post, while the domestic courts

had taken as the starting-point for that time-limit the date of deposition of the full text with the registry. In other words, when he had received the full copy of the decision, the applicant had, according to the courts, already been barred from lodging his appeal. The Court noted that even though the applicant had exercised his right of appeal within the prescribed time-limit, that is to say within ten days after receiving the full text of the decision, he had nonetheless raised the matter of the time bar in his appeal. The appellate court had therefore been confronted with a request for the reopening of the time allowed for appeal, even if such request had not been couched in the formal terms laid down in Article 112 of the Code of Civil Procedure. The Court held that the appellate court's reply to the effect that a formal request had to be submitted had been excessively formalistic. The applicant had given the domestic courts an opportunity to correct the alleged violation and the latter had failed to respond. The Court rejected the Government's inadmissibility plea.

The Court considered that by rejecting the applicant's appeal as being out of time, the domestic courts had effected a rigid interpretation of domestic law which had resulted in imposing on Mr Kuznetsov an obligation which he could not have honoured, even by displaying the utmost diligence. In view of the severity of the penalty imposed on the applicant, the Court held that the impugned measure had been disproportionate to the aim of safeguarding certainty of the law and the proper administration of justice. Consequently, there had been a violation of Article 6 § 1 of the Convention.

Other articles

The Court considered that the complaint of a violation of Article 13 and Article 1 of Protocol No. 1 revealed no breaches of any right set out in the Convention or its Protocols. It therefore rejected that part of both applications as manifestly ill-founded.

Just satisfaction (Article 41)

The Court held that Russia was to pay Mr Kuznetsov 2,500 euros (EUR) in respect of non-pecuniary damage and EUR 200 in respect of costs and expenses.

The judgment is available only in French.

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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.