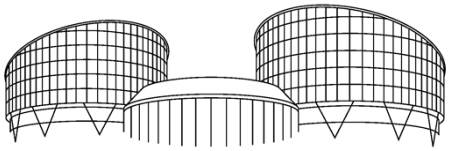

EUROPEAN COURT OF HUMAN RIGHTS
COUR EUROPÉENNE DES DROITS DE L'HOMME

THIRD SECTION

CASE OF VYACHESLAV KORCHAGIN v. RUSSIA

(Application no. 12307/16)

JUDGMENT

STRASBOURG

28 August 2018

FINAL

28/11/2018

This judgment has become final under Article 44 § 2 of the Convention. It may be subject to editorial revision.

In the case of Vyacheslav Korchagin v. Russia,

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

Helena Jäderblom, *President,*
Branko Lubarda,
Helen Keller,
Dmitry Dedov,
Pere Pastor Vilanova,
Alena Poláčková,
Jolien Schukking, *judges,*
and Stephen Phillips, *Section Registrar,*

Having deliberated in private on 10 July 2018,

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

PROCEDURE

1. The case originated in an application (no. 12307/16) 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 a Russian national, Mr Vyacheslav Viktorovich Korchagin ("the applicant"), on 11 February 2016.

2. The applicant was represented by Mr A. Zhuzhukin, a lawyer practising in Voronezh. The Russian Government ("the Government") were represented by Mr G. Matyushkin, Representative of the Russian Federation to the European Court of Human Rights, and then by his successor in that office, Mr M. Galperin.

3. The applicant alleged, in particular, that Article 6 of the Convention had not been complied with on account of defective notifications made during the administrative offence proceedings against him.

4. On 19 September 2016 this complaint was 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

5. The applicant was born in 1977 and lives in Liski, Voronezh Region.

6. In 2009 the applicant started to run a business as an "individual entrepreneur" (*индивидуальный предприниматель*).

7. In February 2013 he lodged a notification with the Liski unit of the south-eastern branch of the Consumer Protection Agency ("the Liski Unit") about his intention to extend his business to the sale of foods. In this notification he specified, *inter alia*, three different addresses as follows: the address at which he was actually residing (that he called "*адрес места жительства*"), his "registration address" (*адрес места регистрации*) which corresponded to his registered residence address and the address of the place of this new business (*адрес фактического осуществления заявленного вида деятельности*) for stands selling food.

8. The applicant's business was subject to an inspection in July 2014. It appears that the applicant was aware that this inspection took place. The inspection was recorded in an inspection document dated 23 July 2014.

9. On 28 July 2014 an official of the Liski Unit contacted the applicant on his mobile number and, it appears, informed the applicant of the intention to institute administrative offence proceedings against him and that a hearing in this regard would be held on 6 August 2014 (see, however, paragraph 10 below). On the basis of the inspection document the Liski Unit compiled on 6 August 2014 a record of the alleged administrative offence, accusing the applicant of non-compliance with the technical regulations (Article 14.43 of the Federal Code of Administrative Offences – "the CAO"). Specifically, the applicant was accused of several counts relating to (i) the absence of equipment and/or proper storage arrangements respecting temperature requirements for food products, in particular for perishable foods; (ii) the fact that certain stored goods had not been accompanied by documents certifying their origin, quality and safety. The offence record contained the applicant's mobile telephone number; his registered residence address and the business address (the location of the stalls); his actual residence address was not specified in the offence record.

10. The offence record states that the applicant came to the Liski Unit on 6 August 2014 but then left the building before any offence record could be compiled, having stated that he had not been properly informed of the actual purpose of the meeting. Thus, the applicant was not present during the compiling of the record.

11. It is unclear whether the applicant received a copy of it at the time.

12. The Liski Unit instituted proceedings before the Commercial Court of the Voronezh Region (see paragraph 36 below).

13. On 12 August 2014 the court adopted a decision to initiate a case and to examine it by way of a summary procedure. According to the Government, on 13 August 2014 this decision was dispatched, by registered mail, "to the applicant's two addresses"; both letters were subsequently returned following expiry of the retention period. Unlike for subsequent proceedings (see paragraphs 15 and 21 below), the Court has not been provided with any relevant evidence such as postal slips or dispatch cards. However, it appears that one letter was dispatched to the applicant's

registered residence address and was then returned to the court for lack/absence of the addressee at that address (see paragraph 31 below).

14. On 10 October 2014 the court decided to examine the case by way of an ordinary procedure because it was necessary to hear the defendant (that is to say the applicant). A preliminary hearing was scheduled for 11 November 2014 and the applicant's or his representative's presence was required. It was indicated in the relevant court order that information on the progress of the case (including the time and place of hearings) was available on the court's Internet site and at the information stand at the entrance to the court.

15. According to the Government, the notification was dispatched on 13 October 2014 but then was returned to the court following expiry of the retention period. The Government has provided the Court with a dispatch card showing that the notification was dispatched on 14 October 2014 to the applicant's registered residence address and then returned to the court on 24 October 2014 with a note listing reasons for return with "expiry of the retention period" being checked.

16. On 11 November 2014 the court adjourned to 9 December 2014 and it required the parties to be present. On 12 November 2014 letters were sent by registered mail to the applicant's registered residence address and the location of the business (the stalls). Those letters were subsequently returned to the court as undelivered. The dispatch card listed reasons for re-dispatch, with "expiry of the retention period" being checked.

17. The Government has also submitted a dispatch card showing that the notification was delivered to the Liski Unit on 19 November 2014.

18. On 10 December 2014 the court heard the case and acquitted the applicant. Neither the applicant nor his representative was present, and they lodged no submissions. It was indicated in the judgment that the applicant had been "duly informed" of the hearing.

19. The Government has submitted no specific information or documents relating to the dispatch of the trial judgment.

20. The Liski Unit appealed to the 19th Commercial Court of Appeal. According to the Government, on 19 December 2014 a copy of their statement of appeal was dispatched to the applicant. The Court has not been provided with any relevant dispatch card or postal slip.

21. By a decision of 26 December 2014 the appeal court scheduled a hearing for 28 January 2015. According to the Government, this decision was dispatched to the applicant but was then returned to the court as not claimed within the retention period.

22. The Government has also submitted a dispatch card showing that the notification was dispatched to the Liski Unit on 30 December 2014 and was handed over to it on 12 January 2015 as confirmed by a signature (of its official).

23. On 4 February 2015 the appeal court adjourned the hearing to 4 March 2015. According to the Government, the correspondence enclosing

this decision was dispatched to the applicant by registered mail but was then returned to the court as not claimed within the retention period. The Court has not been provided with any relevant dispatch cards or postal slips.

24. On 12 March 2015 the 19th Commercial Court of Appeal held an appeal hearing and heard the Liski Unit's representative. The appellate court admitted as evidence new documents submitted by the Unit, one of which was meant to demonstrate that the applicant had indeed been aware of the administrative hearing on 6 August 2014 (see paragraph 9 above).

25. By a decision of the same date the appeal court then quashed that judgment, found the applicant guilty, and imposed a fine of 20,000 Russian roubles (RUB – equivalent to 298 euros (EUR) at the time). This decision became final and enforceable on the same date. The appeal decision reads as follows:

> "[The applicant] is absent from the appeal hearing; he has been duly informed about the time and place of the hearing. Pursuant to Articles 123, 156 and 266 of the CComP [Code of Commercial Procedure] the case is being examined in his absence ...
>
> This decision ... may be challenged by way of a cassation appeal before the Commercial Court of the Central Circuit within two months ..."

26. According to the Government, the correspondence enclosing the appeal decision was dispatched to the applicant but was then returned to the court undelivered. The Court has not been provided with any relevant dispatch card or postal slip.

27. According to the applicant, he first learnt about the trial and appeal decisions on 3 June 2015 during a conversation with an official of the Liski transport prosecutor's office. The applicant then accessed the website of the Commercial Court of the Voronezh Regional Court. At his request, on 29 June 2015 he was given access to the case file at the registry of that court and was provided with the court decisions of 10 December 2014 and 12 March 2015. The applicant then lodged an application for a cassation-appeal review in respect of the appeal decision of 12 March 2015 and requested the restoration of the time-limit for a valid reason.

28. In his statement of appeal the applicant argued, as to the matter of notification in the appeal proceedings, that he had not been provided with the Liski Unit's statement of appeal and had not been informed of the start of the appeal proceedings. It should have been clear to the appeal court from the case file that the notifications to the registered residence address had been returned. However, the appeal court persisted in sending notifications to that address while failing to use alternative means such as a telephone communication on his mobile number that was mentioned in the case file. Moreover, the appeal court could have asked the Liski Unit's representative whether she had the applicant's actual residence address or his telephone contacts. The appeal court could have required the representative to hand over a notification to the applicant in person. The appeal court had been aware of a business notification and, specifically, could have sought

submission of the 2013 notification document (see paragraph 7 above) indicating the applicant's actual residence address while the Liski Unit's representative had omitted to disclose it. The applicant insisted that he had not received any notifications; no correspondence, including by registered mail, had been handed over to him by any official of the postal service; he had never refused any such correspondence. In particular, despite the requirements of the law, when returning correspondence, the postal service had not specified that the addressee had not been present/residing at the address and had not indicated the source of their information about that.

29. On 22 July 2015 the Commercial Court of the Central Circuit examined the applicant's application for the restoration of the time-limit for cassation review. The court held as follows:

> "Under Article 276 of the CComP an application for cassation review may be lodged within two months of the date on which an impugned judicial decision acquired legal force, unless otherwise provided by the CComP.
>
> It is noted, however, that the statement of cassation appeal in respect of the appeal decision of 12 March 2015 was dispatched to the first-instance court on 8 July 2015 – that is to say after the expiry of the relevant period ...
>
> The case file contains no indisputable proof that the impugned court decision was in a timely manner dispatched to and received by [the applicant]. It is also noted that he was actually served with the court decisions in respect of the present case on 29 June 2015 in the Commercial Court of the Voronezh Region. Thus, the court finds it acceptable to grant the application for restoration of the time-limit ..."

30. On 6 October 2015 the Commercial Court of the Central Circuit held a public hearing while noting the absence of the parties and that they had been duly notified of the cassation hearing but had chosen not to attend. The cassation court then proceeded with the examination of the case on the basis of the case file and the parties' arguments concerning the charge and procedural matters. The cassation court then upheld the appeal decision. In particular as regards the matter of notification, it considered that the decision to start proceedings had been dispatched to the applicant but that he had avoided being served with judicial notifications; however, he had been able to continue to keep himself informed, via the court's website, of the appeal proceedings after the first-instance judgment against him (see the "Relevant domestic law and practice" section below). The decision of 6 October 2015 reads, in the relevant parts, as follows:

> "In his cassation appeal [the applicant] asks this court to set aside the appeal decision of 12 March 2015, referring to the wrong application of the substantive and procedural laws. In their observations in reply the administrative authority objects ... The parties were duly notified of the time and place of the [cassation] hearing but their representatives have not appeared before this court. Thus, the cassation appeal has been examined in their absence ... Having examined the case file and having examined the arguments raised in the cassation appeal and observations in reply, the cassation court finds no grounds for granting the cassation appeal ...

This court dismissed the cassation appeal in the part concerning the alleged non-notification of the appeal hearing.

Pursuant to Article 121 § 1 of the CComP, a commercial court informs parties to a case of the initiation of that case, the time and place of a hearing, or a procedural act, by way of dispatching a court decision. When applying the above provision it is relevant that it follows from Article 121 § 6 and Article 123 § 1 that before a hearing or before taking a procedural act a court must have information that the participants have received a copy of the first judicial act in a given case or must have information relating to Article 123 § 4.

A first judicial act means a decision to initiate a case. ...

Where a case file contains a document concerning the handing over (*о вручении*) of the first judicial act to the person or information relating to Article 123 § 4, this person is deemed to have been duly notified of appeal, cassation or supervisory review proceedings ... , provided that the relevant court fulfils its obligations relating to the posting of information regarding dates and places of hearings on the official Internet site ...

Pursuant to Article 9 § 1 and Article 41 §§ 2 and 3 of the CComP, participants in commercial-court proceedings bear the risk of adverse consequences that may arise from their taking a certain procedural action or from omitting to take it; they use their procedural rights in good faith and fulfil their procedural obligations ... failure to comply with such obligations entail the consequences prescribed by the CComP ...

The decisions to initiate a case and to start the examination of the case were dispatched to [the applicant], as required by the law, but he evaded (*уклонился*) receipt of the court notifications.

Given the above-mentioned legal provisions and the presumption of good-faith conduct on the part of the participants in a commercial case, this court concludes that [the applicant] should have been aware of the time and place of the appeal hearing and could have accessed the relevant information on the processing of the case via accessible official sources ...

This decision may be challenged before the Supreme Court of Russia within two months of the adoption of this decision, as prescribed by Article 291.1 of the CComP."

31. In his cassation appeal before the Supreme Court of Russia the applicant mentioned, *inter alia*, the following information:

"As can be seen from a certificate on registered mail postal dispatches (I have received this certificate on 25 July 2015; see its original enclosed herewith) the decision of 12 August 2014 ... was dispatched on 13 August to the following address [the applicant's registered residence address]. It was then sent back to the court on 21 August 2014, as indicated "because there was no addressee", and was handed over to the court on 1 September 2014. This confirms that I did not evade the receipt of this notification or any subsequent notification ..."

32. Referring to Article 30.12 of the CAO, on 30 December 2015 the Supreme Court upheld the appeal decision and the first cassation-appeal decision.

II. RELEVANT DOMESTIC LAW AND PRACTICE

A. Code of Commercial Procedure

33. Participants in commercial-court proceedings are expected to show diligence and to keep themselves informed of the progress of those proceedings. They bear the burden of any consequences that may arise from their taking a certain procedural action or from omitting to take it (Article 9 § 1 and Article 41 of the Code of Commercial Procedure (CComP).

34. The CComP contains the following rules concerning notifications in the commercial court proceedings:

Chapter 12. Court notifications
Article 121. Court notifications

"1. The commercial court notifies the persons participating in the case and other participants of the commercial proceedings of the registration of the statement of claim or application and of the institution of proceedings in the case, of the time and place of a court session or of the performance of a specific procedural action, by forwarding a copy of the court decision in the manner established by this Code ...

Information on the registration of the statement of claim or application, on the time and place of the court session or on the performance of a specific procedural action is placed by the commercial court on its official website ...

3. In urgent situations the commercial court may notify or summon the persons participating in the case and other participants of commercial proceedings by a telephone message, a telegram, a fax message or an e-mail, or with the use of other means of communication.

4. ... Court notifications addressed to individuals, including individual entrepreneurs, are sent to their place of residence. The place of residence of an individual entrepreneur is determined on the basis of an excerpt from the Unified State Register of Individual Entrepreneurs ... If a person participating in the case files a motion for the court notifications to be sent to a different address, the commercial court also sends a court notification to this address. In this case, a court notification is regarded as served to the person participating in the case, if it is delivered to the address, indicated by the person.

...

6. Persons participating in the case – upon the receipt of a ruling on the registration of the statement of claim or application and after the institution of proceedings in the case, and persons, who joined the case or were summoned to take part in the case later, as well as other participants of commercial proceedings – after receiving the first court act on the case under consideration, take their own measures to obtain information on the progress of the case with the use of any kind of information sources and of any means of communication.

Persons participating in the case bear the risk of unfavourable consequences, occurring as a result of failure to take measures to obtain information on the progress of the case, if the court has information, that the said persons were properly informed about the initiated proceedings."

Article 122. Dispatch of copies of court decisions by the commercial court

"1. A commercial court dispatches a copy of a court decision by registered mail with acknowledgment of receipt or by handing over it on the addressee, who signs for receipt, in the court or at the addressee's location (*место нахождения*); in urgent situations a copy of a court decision is dispatched by a telephone message, a telegram, by fax or email or other means of communication.

Where the commercial court has proof of receipt by the persons participating in the case and by other participants of commercial proceedings of the ruling on the registration of a statement of claim or application, on the institution of proceedings in a case, as well as information on the time and place of the first court session, the court may inform them about subsequent court sessions or specific procedural actions by means of a telephone message or a telegram, by fax or e-mail, or other means of communication.

...

4. If the addressee refuses to accept or receive a copy of a court decision, the person delivering or serving it must record the refusal by making a note about it on the receipt or on the copy of the court decision. Both documents should be returned to the commercial court.

5. Documents that confirm that copies of court decisions were dispatched and received by the addressee as required by this Article (acknowledgment of receipt, signature of receipt, another document) are enclosed into the case file.

6. If the addressee's location or place of residence is unknown, the person delivering the correspondence makes a note about it on the acknowledgment-of-receipt card, indicating the date and time of the action performed and the source of information."

Article 123. Proper Notification

"1. Persons participating in the case and other participants of the commercial proceedings are regarded as properly notified where by the beginning of the court session or by the performance of a specific procedural action the commercial court has information that the addressee received a copy of the decision - on the registration of the statement of claim or application and the institution of proceedings - dispatched in the manner established in this Code, or where the court has another proof that the persons participating in the case received information about the pending proceedings ...

2. Individuals are regarded as properly notified where the court notification is handed over to them in person or to an adult person, residing with the individual, and this person signed the acknowledgement-of-receipt card which is to be returned to the commercial court, or on another document, indicating the date and time of service and the source of information.

...

4. Persons participating in the case and other participants of the commercial proceedings are also regarded as properly notified by the commercial court where:

1) the addressee refused to receive a copy of the court decision and this refusal is established by the postal organisation or by the commercial court;

2) despite the postal notification, the addressee did not come to receive a copy of the court decision forwarded by the commercial court in the established manner, and the postal organisation informed the commercial court accordingly;

3) a copy of the court act was not handed over because the addressee was not at the indicated address and the postal organisation notified the commercial court accordingly indicating the source of such information; ...”

Article 124. Change of a person’s name or address during the consideration of the case

“...

2. Persons participating in the case must notify the commercial court of the change of their address during the proceedings. In the absence of such notification, copies of court decisions are dispatched to the most recent address known to the commercial court and are regarded as served, even if the addressee is not present or no longer resides at that address.

3. Where a person participating in the case informed the commercial court of its telephone and fax numbers, e-mail addresses and other similar data, this person must inform the commercial court about their change during the proceedings.

4. The commercial court mentions the change in its ruling or in the minutes of the court session ...

...”

Article 156. Consideration of the case in the absence of observations in reply, additional evidence and in the absence of persons participating in the case

“1. Where no observations in reply are presented or additional evidence is adduced after the commercial court invited the persons participating in the case to do so, this omission does not impede the examination of the case on the basis of the evidence which is already contained in the case file.

...

3. If the plaintiff and (or) the respondent, who was properly notified of the time and place of the judicial proceedings, fail to appear at the hearing, the court may consider the case in his or her absence.

...”

Chapter 25. Examination of cases concerning administrative offences

...

Article 202. Examination of cases on liability for administrative offences

“1. The cases ... are considered in accordance with the general rules of adversarial procedure, as stipulated in this Code, with regard to the special rules, established in this Chapter and in the federal law on administrative offences ...”

Article 203. Filing an application on liability for an administrative offence

“An application is filed with the commercial court at the location or place of residence of the person concerned ...”

Article 204. Requirements for an application on liability for an administrative offence

“...

2. An administrative offence record and documents attached to it, as well as an acknowledgment of delivery or another document confirming that a copy of the application has been dispatched to that person should be enclosed with the application.

..."

Article 205. Court proceedings in cases relating to liability for an administrative offence

"...

3. The commercial court notifies the persons participating in the case of the time and place of the court session. Failure of the said persons, being properly notified of the time and place of the court session, to appear is not an obstacle to the examination of the case unless the court deems their appearance obligatory."

35. Chapter 35 of the CComP concerns cassation appeal proceedings and states as follows:

Article 284. Procedure for the examination of a case by a cassation court

"1. A case is examined in a court session by a cassation court in a collegiate composition in accordance with the rules for the examination of a case by a first-instance court, subject to the special rules established in this Chapter ...

2. The rules of this Code which are specific to the examination of the case by a first-instance court are not applied during the examination of the case by a cassation court unless otherwise stipulated in this Chapter.

..."

Article 286. Scope of the examination of a case by a cassation court

"1. The cassation court controls the legality of decisions and judgments ... by ascertaining the correct application of the substantive and procedural rules during the consideration of the case and the delivery of the disputed judicial act, on the basis of the arguments in the statement of a cassation appeal and in the objections to it unless otherwise stipulated in this Code.

2. Regardless of the arguments in the statement of cassation appeal, the cassation court controls whether the first-instance or appeal court violated any of the procedural rules which, according to section 4 of Article 288 of this Code, constitute grounds for the reversal of a first-instance judgment or an appeal decision ...

3. A cassation court ascertains whether the conclusions of the first-instance and appeal courts as to the application of the law correspond to the evidence in the case and the facts of the case as established by [those courts]."

B. Federal Code of Administrative Offences

36. Where a person, who is the subject of administrative-offence proceedings, has been notified, following the applicable procedure (see paragraph 39 below), of the compiling of an offence record but has not appeared before the relevant official, the compiling of the record is carried

out in his or her absence. A copy of the record should be dispatched to the person concerned within three days (Article 28.2 (4.1) of the CAO). An offence record should then be submitted, within three days, to a court or another competent official for adjudication (Article 28.8 of the CAO).

37. As to the determination of the charge, as a rule, administrative offence cases should be examined at a public hearing (under Article 24.3 of the CAO).

38. Article 25.1 of the CAO provides that a defendant has the right to be present during a hearing. A case may be examined without the defendant being present if the available evidence confirms that he or she has been properly notified of the date and place of the hearing and if the defendant has not sought an adjournment, or if a request for an adjournment has been rejected. The defendant's presence may be declared mandatory. In the event that the defendant runs the risk of administrative detention, administrative expulsion or mandatory community service, his or her presence at the relevant hearing is mandatory.

39. In December 2011 Article 25.15 of the CAO was enacted. It specifies that people involved in an administrative offence case, including the defendant and his lawyer, should be notified or summoned by registered letter (with acknowledgment of receipt), by a summons (with acknowledgment of receipt), by a telephone message or a telegram, by fax, or by any other means that ensures the recording of contact with the person in question and his or her receipt of such a notification or summons. Notifications to an individual, including when he or she is acting as an individual entrepreneur, should be dispatched to his or her "place of residence" ("*место жительства"*), which is to be determined by reference to the public register of individual entrepreneurs.

40. When starting the examination of a case the judge or the competent authority must ascertain that the defendant, his lawyer and other people involved in the case have been notified; if they are absent the judge must clarify the reasons for their absence and decide whether it is appropriate to examine the case in their absence or to adjourn proceedings (Article 29.7 of the CAO). In the case of appeal proceedings, the respective court or authority must clarify the reasons for their absence and decide whether it is appropriate to review the case in their absence or to adjourn proceedings (Article 30.6). The Supreme Court of Russia has specified that the above-mentioned provisions also imply that in appeal proceedings the respective court or authority must ascertain, with reference to appropriate evidence, whether the defendant has been properly notified of the review hearing in question (Supreme Court decision no. 18-AD06-4 of 12 May 2006; Supreme Court decision no. 2-AD10-6 of 29 October 2010; and Supreme Court decision no. 18-AD15-47 of 29 December 2015).

41. A defendant is deemed to have been notified of the time and place of a court hearing after (i) that court has received information (*сообщение*)

from the place of residence (or registration) and it can be seen from this information that s/he is absent from that address or that s/he does not actually reside there or refused to receive the postal notification, or (ii) the notification has been returned to the court because the retention period has expired, provided that the regulations for the retention and return of court correspondence have been respected (order no. 343 of 31 August 2005 issued by the Federal Postal Service; and ruling no. 5 of 24 March 2005 given by the Plenary Supreme Court of Russia, paragraph 6).

C. Other relevant legislation

42. Federal Law no. 129-FZ of 8 August 2001 "On State registration of legal entities and individual entrepreneurs" (section 5 § 2) specifies that the State register of individual entrepreneurs contains, *inter alia*, the following information about an individual entrepreneur: "a place of residence in Russia (here should be indicated the address at which the entrepreneur is registered, in line with the applicable procedure, as at the place of residence)".

THE LAW

ALLEGED VIOLATION OF ARTICLE 6 OF THE CONVENTION

43. The applicant complained of a violation of Article 6 of the Convention on account of defective notifications made during the administrative offence proceedings against him, namely as regards notifications during the proceedings before the first-instance court and in the appeal proceedings. Article 6 reads as follows in the relevant parts:

> "1. In the determination of his civil rights and obligations or of any criminal charge against him, everyone is entitled to a fair and public hearing ...
>
> 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 ...;
>
> (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; ..."

A. Admissibility

1. Six-month rule

44. In reply to the Court's specific question regarding the review procedure under Article 30.12 of the CAO in respect of final judgments, the respondent Government submitted that this procedure did not require an oral hearing and was not subject to any time-limit in respect of initiating such a procedure. Thus, in the Government's view, the review procedure could not be considered as constituting a "remedy" to be exhausted in terms of Article 35 § 1 of the Convention.

45. The applicant made no specific comment on this aspect of the case.

46. The Court notes that the Commercial Court of Appeal stated in clear terms in its appeal decision of 12 March 2015 that this decision was amenable to review by way of the cassation procedure under the CComP "within two months" (see paragraph 25 above). The Commercial Court of the Central Circuit then confirmed this view when restoring the time-limit for seeking a cassation review (see paragraph 29 above). Furthermore, as regards the second tier of the cassation-review procedure (that is to say before the Supreme Court of Russia), the Court notes that the cassation-review decision of 6 October 2015 also unequivocally stated that such a further review could be sought under the CComP within two months of the first cassation-review decision (see paragraph 30 above).

47. Relying on the above information, the applicant submitted his statement of cassation appeal within two months. Thus, it could be reasonably assumed that each of two tiers of the cassation procedure in administrative offence cases concerning legal entities or entrepreneurs was subject to a time-limit. Therefore, the Court dismisses the Government's argument.

48. Therefore, the Court finds it appropriate to calculate the six-month period under Article 35 § 1 of the Convention as beginning with the decision of 30 December 2015 issued by the Supreme Court of Russia. The applicant complied with the six-month rule by lodging the present application before the Court on 11 February 2016.

2. Applicability ratione materiae *of Article 6 of the Convention*

49. The Government argued that the recent case-law of the Court suggested that the severity of a penalty was the decisive element in determining whether related proceedings fell under the criminal limb of Article 6 of the Convention. The applicant, who was running a business, had not incurred any particular disadvantage from having to pay a fine of RUB 20,000. Furthermore, the proceedings had not concerned any "civil right" or "civil obligation" relating to the applicant.

50. The applicant disagreed with this assessment.

51. The Court notes that the present complaint concerns domestic proceedings under the Federal Code of Administrative Offences; the impugned offence was punishable at the material time by a fine of between RUB 20,000 and RUB 30,000. Having regard to the fact that the applicant was accused of an "offence" under this Code and the imputed facts concerned the protection of public health (see paragraph 9 above), the punitive nature of the sentence and its own findings in earlier cases (see *Mikhaylova v. Russia*, no. 46998/08, §§ 57-65, 19 November 2015 with further references; *Karelin v. Russia*, no. 926/08, § 42, 20 September 2016; and paragraph 32 above; see also *Flisar v. Slovenia*, no. 3127/09, §§ 17 and 26, 29 September 2011, and *Nicoleta Gheorghe v. Romania*, no. 23470/05, §§ 25-26, 3 April 2012), the Court concludes that the criminal limb of Article 6 of the Convention was applicable.

3. Absence of a significant disadvantage

52. Referring to the Court's decision in the case of *Rinck v. France* ((dec.), no. 18774/09, 19 October 2010), the Government argued that the applicant, who had been engaging in a business activity, sustained no significant disadvantage in so far as a fine of RUB 20,000 (equivalent to 298 euros at the time) was imposed on him.

53. The applicant contested this argument, arguing that the present case raised important questions under the Convention in relation to the administrative offence procedure.

54. The Court observes that the present case raises an admissibility issue relating to the domestic remedies in CAO cases examined by commercial courts, matters relating to the applicability of the "criminal limb" of Article 6 of the Convention and matters relating to the procedural safeguards in this type of case. The Court considers that it is not appropriate to dismiss the present complaint with reference to Article 35 § 3 (b) of the Convention.

4. Conclusion

55. Lastly, 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.

B. Merits

1. The parties' submissions

56. The Government submitted that it was confirmed by the materials in the domestic case file that the texts of the judicial decisions to initiate the judicial proceedings and to proceed with the examination of the case had

been dispatched to the applicant in accordance with the established procedure. However, he had not received the court notifications. Referring to Article 121 §§ 1 and 6 and Article 123 § 1 of the Code of Commercial Procedure and the presumption of good faith conduct on the part of parties to the proceedings, the cassation-appeal court concluded the applicant could have learnt about the date and time of the appeal hearing from the official sources accessible to the public. In this connection the Government specified that prior to the court proceedings, that is during the inspection procedure of which he was aware, the applicant had had to provide his current addresses for postal correspondence. The courts had sent notification to the addresses indicated by the applicant. In any event, as a business entity, the applicant should have taken appropriate measures to enquire about the results of the administrative proceedings against him, especially given that he had been notified that those proceedings had been started by the administrative authority.

57. The applicant submitted that he had acted in good faith in the initial non-judicial proceedings; in February 2013 he had notified the competent authority of his actual residence address (see paragraph 7 above). In the applicant's view, the decision of 22 July 2015 (see paragraph 29 above) confirmed his position that he had not been informed of "the date and time of the hearing in his case" and that the "court decision" had not been timely served on him. As a result, the proceedings had been conducted in his absence, in breach of the principle of equality of arms and had not been adversarial; he had not been afforded an adequate opportunity to put forward a defence.

2. The Court's assessment

(a) General principles

(i) Personal participation in cases concerning a "criminal charge"

58. In the interests of a fair criminal process it is of capital importance that an accused should appear at his trial, and the duty to guarantee the right of a criminal defendant to be present in the courtroom – either during the original proceedings or in a retrial – ranks as one of the essential requirements of Article 6 of the Convention. Although this is not expressly mentioned in paragraph 1 of Article 6, the object and purpose of this Article taken as a whole indicate that a person "charged with a criminal offence" is entitled to take part in such a hearing. Moreover, sub-paragraphs (c), (d) and (e) of paragraph 3 guarantee to "everyone charged with a criminal offence" the right "to defend himself in person", "to examine or have examined witnesses" and "to have the free assistance of an interpreter if he cannot understand or speak the language used in court", and it is difficult to see how he could exercise these rights without being present (see *Hermi*

v. Italy [GC], no. 18114/02, §§ 58-59, ECHR 2006-XII). An oral, and public, hearing constitutes a fundamental principle enshrined in Article 6 § 1. This principle is particularly important in the criminal context, where generally there must be at first instance a tribunal which fully meets the requirements of Article 6, and where an applicant has an entitlement to have his case "heard", with the opportunity, *inter alia*, to give evidence in his own defence, hear the evidence against him, and examine and cross-examine the witnesses (see *Jussila v. Finland* [GC], no. 73053/01, § 40, ECHR 2006-XIV).

59. The Court also notes that a matter involving an allegedly deficient notification of the details of a hearing (such as its date, time and place) and the resulting absence of the party to the proceedings from such a hearing may give rise to issues relating to the principle of the equality of arms and adversarial procedure, in particular by way of depriving the party of an adequate opportunity to have knowledge of the adverse material and to put forward a defence and related arguments. In addition, the defending party's right to an oral hearing or, in so far as the criminal limb of Article 6 of the Convention was applicable, the right to be present at a hearing may be pertinent.

60. The obligation to hold a hearing is not absolute. There may be proceedings in which an oral hearing may not be required: for example, where there are no issues of credibility or contested facts which necessitate a hearing and the courts may fairly and reasonably decide the case on the basis of the parties' submissions and other written materials (see *Jussila*, cited above, § 41). The national authorities may have regard to the demands of efficiency and economy and find, for example, that the systematic holding of hearings could constitute an obstacle to the particular diligence required in social-security cases and ultimately prevent compliance with the reasonable-time requirement of Article 6 § 1 (ibid., § 42). The character of the circumstances that may justify dispensing with an oral hearing essentially comes down to the nature of the issues to be decided by the relevant national court, not to the frequency of such situations (see also *Flisar*, cited above, §§ 38-39). It does not mean that refusing to hold an oral hearing may be justified only in rare cases. The overarching principle of fairness embodied in Article 6 is, as always, the key consideration.

61. As regards appeal proceedings, the manner of the application of Article 6 to proceedings before courts of appeal depends on the special features of the proceedings involved; account must be taken of the entirety of the proceedings in the domestic legal order and of the role of the appellate court therein. Leave-to-appeal proceedings and proceedings involving only questions of law (as opposed to questions of fact) may comply with the requirements of Article 6, even if the appellant in question was not given an opportunity of being heard in person by the appeal or cassation courts, provided that a public hearing was held at the first instance

(see *Hermi*, cited above, §§ 60-62). Even where the court of appeal has jurisdiction to review a case both as to facts and as to law, Article 6 does not always require a right to a public hearing, still less a right to appear in person. In order to decide this question, regard must be had, among other considerations, to the specific features of the proceedings in question and to the manner in which the applicant's interests were actually presented and protected before the appellate court, particularly in the light of the nature of the issues to be decided by it. Where an appellate court has to examine a case in respect of both the facts and the law and make a full assessment of the issue of guilt or innocence, it cannot determine the issue without a direct assessment of the evidence given in person by the accused for the purpose of proving that he did not commit the act allegedly constituting a criminal offence (see *Kamasinski v. Austria*, 19 December 1989, § 107, Series A no. 168, albeit in the context of detained appellants).

62. In addition, it is noted that the requirements of a fair hearing are the strictest within the sphere of criminal law (see *Jussila*, cited above, § 43). Notwithstanding the consideration that a certain gravity attaches to proceedings that are concerned with the allocation of criminal responsibility and the imposition of a punitive and deterrent sanction, it is self-evident that there are cases which do not carry any significant degree of stigma. There are clearly "criminal charges" of differing weight. What is more, the autonomous interpretation adopted by the Court of the notion of a "criminal charge" has underpinned a gradual broadening of the criminal head to cases not strictly belonging to the traditional categories of the criminal law – for example, administrative penalties, prison disciplinary proceedings, customs law, competition law, and penalties imposed by a court with jurisdiction in financial matters (ibid.).

63. By comparison, in cases which do not concern the determination of a "criminal charge", Article 6 § 1 of the Convention does not guarantee the right to be present in court but rather a more general right to present one's case effectively before a court and to enjoy equality of arms with the opposing side. Article 6 § 1 leaves States a free choice as to the means to be used in guaranteeing litigants those rights (see *Gankin and Others v. Russia*, nos. 2430/06 and 3 others, § 25, 31 May 2016, with further references).

(ii) Notification of a hearing

64. The Convention is intended to guarantee rights that are practical and effective and not those that are theoretical or illusory (see, among many other authorities, *Cudak v. Lithuania* [GC], no. 15869/02, § 58, ECHR 2010). The right to a public hearing would be devoid of substance if a party to a case were not apprised of a hearing in such a way as to have an opportunity to attend it, should he or she decide to exercise the right to appear that is established in the domestic law (see *Yakovlev v. Russia*, no. 72701/01, § 21, 15 March 2005).

65. Article 6 § 1 cannot be construed as conferring on litigants the right to obtain a specific form of service of court documents, such as by registered post (see *Kolegovy v. Russia*, no. 15226/05, § 40, 1 March 2012; *Perihan and Mezopotamya Basın Yayın A.Ş. v. Turkey*, no. 21377/03, § 39, 21 January 2014; and *Avotiņš v. Latvia* [GC], no. 17502/07, § 119, ECHR 2016). Nonetheless, the Court considers that in the interests of the administration of justice a litigant should be notified of a court hearing in such a way as to not only have knowledge of the date, time and place of the hearing, but also to have enough time to prepare his or her case and to attend the court hearing (see *Kolegovy*, cited above, § 40, and the cases cited therein, and *Ždajić v. Slovenia*, no. 71872/12, § 48, 8 October 2015).

(b) Application of the principles in the present case

66. First of all, given the scope of the applicant's complaint and in so far as the first-instance judgment was favourable to him and he was satisfied with it and that he was able to obtain cassation review of the appeal decision following its receipt, the Court finds it appropriate to focus in the present case essentially on examining whether the applicant was properly notified of the appeal proceedings initiated by the Liski Unit so as to afford him an adequate opportunity to defend himself against the charge against him.

67. As to the applicable provisions of Russian law, the Court notes that it provided at the relevant time for an oral hearing in this type of cases (see paragraph 34 above) and the first-instance court considered that one was appropriate in the applicant's case (see paragraph 14 above). Furthermore, under Russian law notifications were to be sent to "the place of [one's] residence" which, in the present case, corresponds to the applicant's registered residence address (see, in this connection, paragraphs 34 and 42 above; see also *Sergey Smirnov v. Russia*, no. 14085/04, §§ 29-30, 22 December 2009). While the case file before the Court contain no specific evidence such as postal slips relating to the dispatch of the court decision of 12 August 2014, the applicant himself appeared to concede in the domestic proceedings that those court decisions had been dispatched to his registered residence address and had then been returned to the court undelivered (see paragraph 31 above). So there is no doubt that the correct address was used for the purpose of notifying the applicant.

68. Next, the Court observes that under Article 123 § 1 of the CComP one was regarded as properly notified where the court "had information of receipt by the addressee" of a copy of the ruling on the registration of the statement of claim or application or on the institution of proceedings in the case, or other proof of receipt by the addressee of the information on the instituted judicial proceedings.

69. Article 123 § 4 of the CComP provided for several "deemed notified" scenarios. In particular, one was regarded as properly notified if (i) despite the postal notification, the addressee did not appear to receive the

copy of the court act, forwarded by the commercial court in the established manner, about which the postal organisation informs the commercial court; or (ii) the copy of the court act was not served because the addressee was not at the indicated address, about which the postal organisation notifies the commercial court with an indication of the source of such information.

70. The Court reiterates that it is not its task to examine *in abstracto* the domestic rules of notification but rather to consider, with due regard to all the circumstances of the case, whether the guarantees of Article 6 of the Convention were respected. Article 6 of the Convention does not prescribe any particular method for making notifications of hearings or court decisions (see paragraph 65 above).

71. The applicant argued at the domestic level and before this Court that he had received no notifications in relation to the trial and appeal proceedings and that the courts should have been more diligent in apprising him of those proceedings, for instance by way of correspondence to his actual residence address, a telephone communication or another method which would give them certainty that the defendant had been made aware of the hearing(s) date(s).

72. The issue of notifications of an appeal hearing was examined by the cassation appeal court in its decision of 6 October 2015 (see paragraph 30 above). The cassation court considered that the applicant's procedural rights had not been violated because the decision "to initiate the case" had been dispatched to the applicant but that he had then "evaded" receipt of the court notification. With reference to the presumption of good faith on the part of participants in a commercial case, it was concluded that the applicant should have thus been aware of the time and place of the appeal hearing and could have received the relevant information on the processing of the case from accessible official sources. So, it was concluded that (i) the applicant had been given a chance to apprise himself of the fact that a case concerning him had been initiated and (ii) that it had then been up to him to keep track of the progress in the case, including at the appeal stage of the proceedings.

73. Thus, even though the thrust of the applicant's grievance before the Court is related to the appeal proceedings, it is relevant to have regard to the parties' conduct at earlier stages of the proceedings, namely at the beginning of the judicial proceedings before the first-instance court.

74. For its part, the Court notes that as regards specifically the judicial stage of the proceedings against the applicant it is common ground between the parties that the notification relating to and enclosing the decision of 12 August 2014 was dispatched to the applicant's registered residence address as required by Russian law. Moreover, it is noted that it was then returned to the court undelivered. The parties seem to disagree as to the reason for that non-delivery. The applicant mentioned that it had been returned with a note saying that the addressee had not been at that address (see paragraph 31 above), which might mean that the addressee had not

been there to receive this notification or that the applicant had not been known at that address because, for instance, there had been no mailbox or alike. The Government mentioned that the notification had returned because it had not been claimed at the post office within the retention period (see paragraph 13 above). In the absence of conclusive evidence the Court is not able to take a stance on that matter.

75. Be that as it may, no such uncertainty persists as to the fact that following the commercial court's decision on 10 October 2014 to move from a summary procedure to an ordinary procedure, a hearing was listed for 11 November 2014. The notification was dispatched to the applicant's registered residence address and then re-dispatched back to the court with a note listing "expiry of the retention period" as the reason for the return (see paragraph 15 above).

76. In addition, the Court notes that prior to that the applicant had been aware of the inspection in respect of his business and, more importantly, had been made aware, by a telephone communication, of the date and time for an administrative hearing when an offence record was going to be compiled. However, he chose not to be present when an offence record was being compiled by the Liski Unit (see paragraphs 9 and 36 above). While it is true that the business notification in 2013 (see paragraph 7 above) did mention his actual residence address, it does not appear that this notification was inserted into any official database such as the register of individual entrepreneurs (see paragraph 42 above). Nor does it appear that this notification was part of the administrative-offence file or that the applicant formally requested the Liski Unit to correspond to his actual residence address. At the same time, the Court has been given no reason to rule out that the Liski Unit would be authorised, under Russian law, to use this other address for official purposes. Thus, while it remains unclear whether and when the applicant became aware of or received a copy of the offence record, the above elements contain indications that the applicant could realise, in early August 2014, that he could be subject to an administrative-offence charge and that that charge would be determined by a commercial court and, specifically, the Commercial Court of the Voronezh Region (see paragraph 36 above and the provisions of Chapter 25 of the CComP mentioned in paragraph 34 above). Furthermore, in the circumstances of the case he had no valid reason to expect to be notified at the address at which he was actually residing at the time (in particular, as regards the decision to start the judicial proceedings). Russian law made it a rule that notifications be dispatched to a person's registered residence address. Even though the above considerations do not suggest that the applicant was thereby actually informed of any decision to bring the matter for adjudication before a commercial court or informed of any judicial order to initiate proceedings, they point toward a certain lack of diligence on the part of the applicant (compare *Gadzhikhanov and Saukov v. Russia*, nos. 10511/08 and 5866/09,

§ 22, 31 January 2012 in the context of a judgment creditor's conduct in enforcement proceedings) and indicate that he was aware of the existence of "the proceedings" in its wider meaning including the initial non-judicial stage of such proceedings.

77. Thus, the Court considers that the applicant should have realised that, following the compiling of the offence record, he was about to be cited before a commercial court and that a related notification would be sent to his registered residence address, at which he was, probably, not actually residing but remained formally registered. In fact, both at the domestic level and before the Court the applicant did not specify any factual circumstances in that respect confining his submissions to a general statement that he had not received any notifications.

78. As regards the domestic authorities' attitude in the present case, the Court first notes that they acted in compliance with Russian law by sending notifications to the registered residence address. The Court also notes that the commercial court took care to send a notification to the place where the business (the food sale stalls or alike) was located (see paragraph 16 above). It is also uncontested that the information relating to scheduled hearings was timely and in an adequate manner made accessible via the court's Internet site. In the Court's view, thereby they displayed sufficient diligence to enable the applicant, who was to be aware of the applicable rules on notifications relating to entrepreneurs, to apprise himself of the proceedings pending against him, namely as regards the appeal proceedings in the case.

79. Taking into account the above considerations cumulatively and the fact that the present case concerns hearing notifications under the CComP against an entrepreneur in relation to a charge classified as an administrative one (see *Jussila*, cited above, §§ 38-42, and *Kammerer v. Austria*, no. 32435/06, § 27, 12 May 2010), the Court considers that in the particular circumstances of the case it was justified to deem the applicant duly notified even though it was common ground that the notifications did not actually reach him. By implication it was justified to conduct the appeal hearing in his absence.

80. The Court also points out that the applicant had an opportunity to have his case reviewed by a cassation court (see paragraphs 30 and 35 above). It is uncontested before the Court in this connection that the applicant was afforded an opportunity to prepare his defence (for instance, by way of having access to the case file or commenting on the Liski Unit's observations) and to attend the cassation hearing. He chose not to attend it, confining his defence to the submission of written pleadings to the court. The cassation appeal court carefully examined the applicant's arguments, including regarding the notifications in the appeal proceedings. The Court further notes in that respect the narrow scope of the applicant's grievance before the Court, namely that there is no indication of any issue relating to the rights protected under Article 6 § 3, for instance under its

paragraphs (a), (b) or (d) (see paragraph 58 above). In particular, it does not transpire that the applicant ever wanted, but was not afforded an opportunity, to have an opportunity to examine any witnesses (see the case-law cited in paragraph 58 above).

81. Assessing the above considerations cumulatively, the Court concludes that there has been no violation of Article 6 of the Convention in the particular circumstances of the present case.

FOR THESE REASONS, THE COURT, UNANIMOUSLY,

1. *Declares* the complaint under Article 6 of the Convention admissible;

2. *Holds* that there has been no violation of Article 6 § 1 of the Convention.

Done in English, and notified in writing on 28 August 2018, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Stephen Phillips Registrar	Helena Jäderblom President