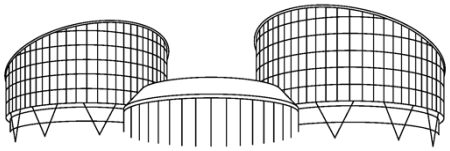

EUROPEAN COURT OF HUMAN RIGHTS
COUR EUROPÉENNE DES DROITS DE L'HOMME

THIRD SECTION

CASE OF MIKHAIL MIRONOV v. RUSSIA

(Application no. 58138/09)

JUDGMENT

Art 6 § 1 (civil proceedings) • Impartial tribunal • Judge's withdrawal statement in related proceedings, merely related to facts, not giving rise to doubts as to personal impartiality • Applicant's challenge of judge bias rejected by the judge concerned • Challenge for bias not considered an abuse of process or irrelevant and not capable of paralysing the respondent State's judicial system • Circumstances indicating it inappropriate for judge to decide on the challenge against himself • Lack of proper response to applicant's concerns about lack of impartiality • No remedy making good procedural defects

STRASBOURG

6 October 2020

FINAL

06/01/2021

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

In the case of Mikhail Mironov v. Russia,

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

Paul Lemmens, *President,*
Helen Keller,
Dmitry Dedov,
Alena Poláčková,
María Elósegui,
Lorraine Schembri Orland,
Ana Maria Guerra Martins, *judges,*
and Milan Blaško, *Section Registrar,*

Having regard to:

the application (no. 58138/09) 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 Mikhail Nikolayevich Mironov ("the applicant"), on 26 July 2009;

the decision to give notice to the Russian Government ("the Government") of the application;

the parties' observations;

Having deliberated in private on 8 September 2020,

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

INTRODUCTION

1. The case concerns the impartiality of a judge who examined the applicant's case on appeal twice in the same capacity and considered a challenge for bias against himself.

THE FACTS

2. The applicant was born in 1981 and lives in Pskov. He was represented by Mr Popov, a lawyer practising in Pskov.

3. The Government were initially 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.

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

5. On 16 August 2005 the Municipality of the Gdovskiy District of the Pskov Region (the "Municipality") agreed to sell a plot of land to the applicant. His father, who was the head of the Municipality, and he concluded a sale contract with regard to the plot of land.

6. In June 2007 the prosecutor of the Pskov Region brought civil proceedings against the applicant before the Gdovskiy District Court of the

Pskov Region, seeking to have the sale declared invalid. At the same time, he initiated criminal proceedings against the applicant's father for selling plots of land to his relatives at below market-level prices and charged him with abuse of power.

7. On 25 December 2007 the Justice of the Peace of Court Circuit No. 3 of the Gdovskiy District dismissed the prosecutor's claim.

8. On 10 June 2008 the Gdovskiy District Court, sitting in a single-judge formation composed of Judge A., quashed the decision of 25 December 2007 and declared the sale null and void in the absence of the applicant and his representative.

9. Meanwhile, the criminal case against the applicant's father was referred for trial to the Gdovskiy District Court sitting in a three-judge formation, one of whom was Judge A.

10. On 7 July 2008 Judge A. withdrew from the criminal case. His withdrawal request read as follows:

> "[P]lease be advised that I examined the civil claim against [the applicant] filed by the prosecutor of the Pskov Region, who sought to declare the sale of the plot of land invalid. The writ of indictment in the criminal case contains facts which have already been considered in civil proceedings [against the applicant]. Thus, I have already expressed my view that the sale of the plot of land to the accused's relatives was unlawful. In view of the above, please accept my withdrawal as I cannot sit as a judge ... in this criminal case."

11. On 21 July 2008 the Pskov Regional Court referred the criminal case to another court. It held that the Gdovskiy District Court was composed of only three judges, and therefore it could not allow Judge A.'s withdrawal.

12. On 10 October 2008 the Pskov Regional Court quashed the decision of 10 June 2008 in supervisory-review proceedings on the ground that neither the applicant nor his lawyer had attended the hearing, and remitted the case to the Gdovskiy District Court for a fresh examination.

13. The applicant lodged a challenge for bias against Judge A., referring to Judge A.'s withdrawal statement in the criminal case. He submitted that Judge A. had already formed his opinion about the outcome of the case and that he had a legitimate doubt as to his impartiality.

14. On 18 November 2008 Judge A. considered the applicant's challenge and dismissed it. He held that, in accordance with the Code of Civil Procedure, the withdrawal of a judge in a criminal case could not be a ground for a challenge against a judge in a civil case.

15. On 26 January 2009 the Gdovskiy District Court, sitting in a single-judge formation and composed of Judge A., quashed the decision of 25 December 2007 and allowed the prosecutor's claim.

RELEVANT LEGAL FRAMEWORK AND PRACTICE

I. CODE OF CIVIL PROCEDURE: PROVISIONS ON IMPARTIALITY

16. The Code of Civil Procedure provides that a judge may not take part in the consideration of a case if he or she:

– has previously acted in the case, whether as a prosecutor, courtroom secretary, representative, witness, expert, specialist or interpreter;

– has a parental or other close family relationship with any of the parties or their representatives;

– has a personal direct or indirect interest in the case or if for any other reason, his or her impartiality may be called into doubt.

Under Article 16, a case may not be assigned to judges who are related to each other.

17. Under Article 17, a judge who examined a case at first instance may not sit in the appellate court proceedings in the same case. A judge who ruled on a case in appellate court proceedings may not consider the case in proceedings before a first-instance court.

18. Article 19 provides that the withdrawal of a judge from a case must be reasoned and must be submitted before the examination of the merits of the case. It is not possible for a judge to withdraw during the examination of the case unless the person requesting withdrawal or the court has become aware of grounds for withdrawal during the examination of the case on the merits.

19. According to Article 20, in the case of withdrawal, the court takes into account the opinion of the parties to the proceedings and the person who wants to withdraw from the case. A challenge against a judge sitting in a single-judge formation is considered by that judge. If a case is assigned to a panel of judges, that panel will rule on the challenge against the judge in the absence of the judge. In the case of a challenge against several or all of the judges, all the judges shall decide by a simple majority vote.

II. CASE-LAW OF DOMESTIC COURTS

20. The Constitutional Court of Russia held in its decisions no. 155-O-O of 20 March 2008 and no. 465-O-O of 15 July 2008 that the procedure for challenging a judge sitting in a single-judge formation had as its aim to avoid delays due to unjustified challenges against judges, such an approach being based on the constitutional principles of the independence of judges and of the confidence in judicial authorities which should only be compromised on the basis of sound evidence. The requirement to give a reasoned decision confirming that there were no circumstances which could raise doubts as to the impartiality of the judge, and the possibility of requesting a review before a higher court which would be guided by the

Constitution and international law, constituted sufficient guarantees against arbitrariness.

21. The Constitutional Court also held that the courts were to determine whether a judge was biased on the basis of particular circumstances of each case. Where doubts exist as to the impartiality of the judge, the higher court may remit the case for a fresh examination to a different judicial formation of the relevant lower court.

THE LAW

I. ALLEGED VIOLATION OF ARTICLE 6 § 1 OF THE CONVENTION

22. The applicant complained under Article 6 § 1 of the Convention that Judge A., when considering his case in the appellate court proceedings, had been biased. The relevant part of Article 6 § 1 reads as follows:

> "In the determination of his civil rights and obligations ... everyone is entitled to a fair ... hearing ... by an independent and impartial tribunal established by law."

A. Admissibility

23. The Court notes that this complaint is neither manifestly ill-founded nor inadmissible on any other grounds listed in Article 35 of the Convention. It must therefore be declared admissible.

B. Merits

24. The applicant stated that Judge A., when examining his case in the appellate court proceedings, had demonstrated bias by indicating in his withdrawal statement in criminal proceedings against the applicant's father that he had already formed an opinion on the outcome of the applicant's case. Moreover, his challenge for bias had been rejected with no reason being given. Judge A. had considered his case twice in the same capacity although, in the applicant's opinion, he should have withdrawn from the case and the case should have been remitted to another judge.

25. The Government submitted that the mere fact that Judge A. had previously been involved in the applicant's case and had withdrawn from the criminal case relating to the same facts did not, in itself, violate Article 6 § 1. Judge A.'s decision to dismiss the applicant's challenge had been in line with the law in force.

26. The Court reiterates that impartiality denotes the absence of prejudice or bias. According to the Court's settled case-law, the existence of impartiality for the purposes of Article 6 § 1 must be determined according to (i) a subjective test, where regard must be had to the personal conviction and behaviour of a particular judge – that is, whether the judge held any

personal prejudice or bias in a given case; and (ii) an objective test, that is to say by ascertaining whether the tribunal itself and, among other aspects, its composition, offered sufficient guarantees to exclude any legitimate doubt in respect of its impartiality (see, among other authorities, *Micallef v. Malta* [GC], no. 17056/06, § 93, ECHR 2009; *Ramos Nunes de Carvalho e Sá v. Portugal* [GC], nos. 55391/13 and 2 others, § 145, 6 November 2018; and *Oleksandr Volkov v. Ukraine*, no. 21722/11, § 104, ECHR 2013).

27. As regards the objective test, even appearances may be of a certain importance or, in other words, "justice must not only be done, it must also be seen to be done" (see *De Cubber v. Belgium*, 26 October 1984, § 26, Series A no. 86; *Micallef*, cited above, § 98; and *Oleksandr Volkov*, cited above, § 106). Moreover, account must also be taken of questions of internal organisation (see *Piersack v. Belgium*, 1 October 1982, § 30, Series A no. 53).

28. The existence of national procedures for ensuring impartiality, namely rules regulating the withdrawal of judges, is a relevant factor. Such rules manifest the national legislature's concern to remove all reasonable doubts as to the impartiality of the judge or court concerned and constitute an attempt to ensure impartiality by eliminating the causes for such concerns. In addition to ensuring the absence of actual bias, they are directed at removing any appearance of partiality and so serve to promote the confidence which the courts in a democratic society must inspire in the public. Accordingly, a failure to abide by these rules means that the case has been heard by a tribunal whose impartiality was recognised by national law to be open to doubt. Provided they are not based on arbitrary assumptions, the Court will take such rules into account when making its own assessment whether a tribunal was impartial and, in particular, whether the applicant's fears can be held to be objectively justified (see *Mežnarić v. Croatia*, no. 71615/01, § 27, 15 July 2005).

29. In the instant case the fear of a lack of impartiality derived from two circumstances. Firstly, the applicant had doubts as to Judge A.'s subjective impartiality in view of what he had said in his withdrawal statement given in the criminal case relating to analogous facts. Secondly, the applicant alleged that he could not expect a favourable decision in his case because Judge A. had examined his appeal twice, his challenge for bias having been unjustifiably rejected.

30. A judge's statements in related proceedings are taken into account when assessing his or her impartiality (see *Ferrantelli and Santangelo v. Italy*, 7 August 1996, §§ 54-60, *Reports of Judgments and Decisions* 1996-III). In the present case, the only reason on which Judge A. had relied in his request to be replaced in the criminal case was that he had already dealt with an analogous matter in proceedings against the applicant. The statement made in his withdrawal request represented a simple statement of fact (see paragraph 10 above). It was neither alleged nor shown that

Judge A. had in fact made any statements or conducted the proceedings in a manner that gave rise to doubts as to his personal impartiality (see *Vogl and Vogl v. Austria* (dec.), no. 50171/99, 23 October 2001).

31. It remains to be determined whether, quite apart from the judge's personal conduct, there are ascertainable facts which may raise doubts as to his objective impartiality. There is no general rule resulting from the obligation to be impartial that a higher court which sets aside an administrative or judicial decision is bound to send the case back to a different jurisdictional authority or to a differently composed branch of that authority. The mere fact that a judge has made previous decisions concerning the same case cannot be held as in itself justifying fears as to his or her impartiality (see *Ringeisen v. Austria*, 16 July 1971, § 97, Series A no. 13, and *Thomann v. Switzerland*, 10 June 1996, §§ 35-36, *Reports* 1996-III). In particular, no ground for legitimate suspicion of a lack of impartiality can be discerned from the fact that the same judge adopts a decision and then reconsiders this decision in fresh proceedings when that decision has been quashed by a higher court (see *Marguš v. Croatia* [GC], no. 4455/10, § 86, ECHR 2014 (extracts); *Faugel v. Austria* (dec.), nos. 58647/00 and 58649/00, 24 October 2002; and *Young v. the United Kingdom* (dec.), no. 38663/08, 15 January 2013).

32. By contrast, where, after quashing, the judges are called upon to assess and determine whether their own application of the law has been adequate and sufficient, the fears as to the lack of impartiality may be found to be objectively justified (see *San Leonard Band Club v. Malta*, no. 77562/01, §§ 64-65, ECHR 2004-IX).

33. In the present case, the Regional Court quashed the appeal judgment on the ground that the applicant had not been duly notified of the hearing, and remitted the case to Judge A. for a fresh examination on appeal (see paragraph 12 above). During the re-examination of the appeal, Judge A. was called upon to reconsider the case on the merits in the applicant's presence rather than correct his own alleged mistakes in his previous judgment and he was not bound by his first decision in the case. In general, such a situation is not sufficient in itself to cast doubt on Judge A.'s impartiality (see *Thomann*, cited above, § 35).

34. However, in the present case, Judge A. stated that he had already expressed his opinion on the merits of the applicant's case in criminal proceedings relating to the same subject matter (see paragraph 10 above). The applicant challenged Judge A. on that ground. The challenge was decided by the judge himself (see paragraph 14 above). It must therefore be determined whether such situation was compatible with the applicant's right to a hearing by an impartial tribunal in the light of the principles set out below.

35. The Court has previously found that an applicant's doubts in respect of the impartiality of judges dealing with his case were objectively justified

in view of the procedure they chose to reject his complaint of bias against them, despite considering that the grounds advanced by the applicant for the alleged bias were not sufficient to raise legitimate and objectively justified doubts as to the judges' impartiality (see *A.K. v. Liechtenstein*, no. 38191/12, §§ 76-84, 9 July 2015, and *A.K. v. Liechtenstein (no. 2)*, no. 10722/13, § 66, 18 February 2016).

36. In determining whether that procedure affected a judge's impartiality, the Court must examine the nature of the grounds on which the challenge for bias was based. If an applicant based his challenge for bias on general and abstract grounds, without making reference to specific and/or material facts which could have raised reasonable doubts as to the judge's impartiality, his challenge could be classified as abusive. In such circumstances, the fact that the judge who had been challenged on such grounds decided on that applicant's challenge does not raise legitimate doubts as to his impartiality (see *Debled v. Belgium*, 22 September 1994, § 37, Series A no. 292-B, and *A.K. v. Liechtenstein*, cited above, § 78). Moreover, other elements should be taken into account, in particular, whether the grounds for dismissing the applicant's challenge for bias were adequate and whether the procedural defect was remedied by a higher court.

37. The applicant's right to a fair hearing by an impartial tribunal will not be violated if a judge examines a request for his or her exclusion in the absence, in the challenge for bias, of arguments which by their nature are relevant for determining the impartiality issue. In the present case, the applicant invoked Judge A.'s statements that he had already formed his opinion on the applicant's claim as a ground for alleged lack of impartiality. The applicant referred to important elements which it was necessary to take into account when assessing the judge's impartiality (see paragraph 13 above). His challenge for bias could not have paralysed the respondent State's judicial system and be considered an abuse of process or irrelevant, the grounds for impartiality indicated in the challenge being sufficiently specific (see *A.K. v. Liechtenstein*, cited above, § 80, and *Pastörs v. Germany*, no. 55225/14, § 63, 3 October 2019). In such situation, where there were circumstances which could, in principle, affect the judge's impartiality, such as conflict of interests, it was not appropriate for Judge A. to decide on the challenge against himself.

38. In addition, in his decision of 18 November 2008 Judge A. did not properly respond to the applicant's concerns about a lack of impartiality on his part. His statement contained a general comment that the grounds for impartiality indicated by the applicant were not listed among the reasons for recusal in the domestic law (see paragraph 14 above). He did not explain why his impartiality could not have been called into doubt in the applicant's case. In particular, he did not consider whether the grounds in the challenge fell under the "other grounds" provided for in Article 16 of the Code of Civil Procedure (see paragraph 16 above; *Vaneyev v. Russia* [Committee],

no.78168/13, § 19, 27 August 2019, and, by contrast, *Puolitaival and Pirttiaho v. Finland*, no. 54857/00, § 53, 23 November 2004).

39. Lastly, the Court reiterates that a possibility certainly exists whereby a higher court may, in some circumstances, make reparation for defects that took place in lower-instance proceedings (see *Kyprianou v. Cyprus* [GC], no. 73797/01, § 134, ECHR 2005-XIII). In the present case, there was no remedy available to make good the procedural defects described above, since the only way to complain of bias on the part of an appellate court judge was through supervisory-review proceedings, an extraordinary remedy characterised by the Court as "uncertain" and "ineffective" (see *Martynets v. Russia* (dec.), no. 29612/09, 5 November 2009).

40. In the light of the foregoing, the Court concludes, in the specific circumstances of the case, that the procedure for deciding on the applicant's challenge for bias was not in compliance with the requirement of impartiality (see, *mutatis mutandis*, *Revtyuk v. Russia*, no. 31796/10, § 26, 9 January 2018).

41. There has accordingly been a violation of Article 6 § 1 of the Convention.

II. APPLICATION OF ARTICLE 41 OF THE CONVENTION

42. 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."

43. The applicant claimed 50,000 euros in respect of non-pecuniary damage or any other amount which the Court considered appropriate.

44. The Government argued that the applicant's claim in respect of non-pecuniary damage was not substantiated.

45. The Court considers that in the circumstances of the present case the finding of a violation constitutes in itself sufficient just satisfaction for any non-pecuniary damage suffered by the applicant (see *A.K. v. Liechtenstein*, cited above, § 89).

FOR THESE REASONS, THE COURT, UNANIMOUSLY,

1. *Declares* the application admissible;

2. *Holds* that there has been a violation of Article 6 § 1 of the Convention on account of the procedure for considering challenges for bias;

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

4. *Dismisses* the applicant's claim for just satisfaction.

Done in English, and notified in writing on 6 October 2020, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Milan Blaško
Registrar

Paul Lemmens
President