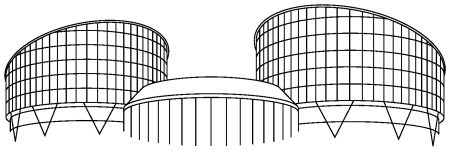

EUROPEAN COURT OF HUMAN RIGHTS
COUR EUROPÉENNE DES DROITS DE L'HOMME

THIRD SECTION

CASE OF SHENOYEV v. RUSSIA

(Application no. 65783/09)

JUDGMENT

STRASBOURG

25 September 2018

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

In the case of Shenoyev v. Russia,

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

Alena Poláčková, *President,*
Dmitry Dedov,
Jolien Schukking, *judges,*
and Stephen Phillips, *Section Registrar,*

Having deliberated in private on 4 September 2018,

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

PROCEDURE

1. The case originated in an application (no. 65783/09) 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 Anton Igorevich Shenoyev ("the applicant"), on 9 November 2009.

2. The applicant was represented by Mr B. Ilyunov, a lawyer practising in Ulan-Ude. The Russian Government ("the Government") were represented by Mr G. Matyushkin, Representative of the Russian Federation at the European Court of Human Rights, and then by his successor in that office, Mr M. Galperin.

3. On 30 August 2016 the complaint concerning trial in camera in the applicant's criminal case 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

4. The applicant was born in 1971 and serves his life sentence in a correctional colony in the Yamalo-Nenetskiy Region of Russia.

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

6. On 27 March 2003 the applicant was arrested on charges of illegal possession of firearms, two armed robberies of local post offices, murder of three Russian Post Service cash messengers and attempted murder of the fourth one. On 14 October 2003 the case was sent to the Supreme Court of the Buryatia Republic ("the Regional Court") for trial.

7. Twice, on 20 April 2004 and 22 May 2007, the applicant was convicted as charged. Both convictions were set aside by the Supreme Court of Russia. On 12 September 2008, in the course of the third round of jury trial, the Regional Court decided, upon a request by a representative of the Russian Post, to close proceedings to the public. It dismissed the applicant's objections made with reference to Article 6 § 1 of the Convention. In doing so the Presiding judge referred to the case-file documents containing information about security measures and equipment in post offices, weaponry, schedules and routes of cash messengers, etc. Under the relevant Russian Post regulations that information was classified as "for internal use only". The Regional Court found that that information was a trade secret protected by the Commercial Secrets Act (Federal Law no. 98-FZ of 29 July 2004) and that its disclosure could have harmed public interests. Every hearing after 12 September 2008 was held in camera.

8. On 14 December 2008 the jury convicted the applicant as charged. In the last days of December the trial judge sentenced him to life imprisonment. On 4 June 2009 the Supreme Court quashed the conviction on one count and upheld the remainder of the verdict and sentence. The hearing was public. The court of appeal held, in particular, that the decision to dispense with a public hearing had been lawful and rejected, in a summary fashion, the relevant arguments by the applicant.

II. RELEVANT DOMESTIC LAW

9. For the relevant domestic law see *Lambin v. Russia*, no. 12668/08, §§ 11 and 12, 21 November 2017, and *Sutyagin v. Russia*, no. 30024/02, § 131, 3 May 2011.

THE LAW

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

10. The applicant complained about the decision of the trial court to hear his case in private. He relied on Article 6 § 1 of the Convention which, in so far as relevant, reads as follows:

> "In the determination of ... any criminal charge against him, everyone is entitled to a ... public hearing ... Judgment shall be pronounced publicly but the press and public may be excluded from all or part of the trial in the interests of morals, public order or national security in a democratic society, where the interests of juveniles or the protection of the private life of the parties so require, or to the extent strictly necessary in the opinion of the court in special circumstances where publicity would prejudice the interests of justice."

11. The Government argued that the decision of the trial court to dispense with the public hearing had not affected the overall fairness of the proceedings and that it had been justified given that a public examination of the documents in issue could have jeopardised the normal functioning of the Russian Post. They further pointed out that before 12 September 2008 there had been a number of public hearings during which jury members had been chosen, charges against the applicant had been presented and the victims' representative, as well as a victim, had been heard. The Government also contended that the applicant could have asked the trial court to only close those hearings in which the confidential documents had been studied and that after the examination he could have asked to open the trial to the public.

A. Admissibility

12. 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 and it must therefore be declared admissible.

B. Merits

13. General principles concerning public hearings have been well-entrenched in the Court's case-law (for their summary see, for example, *Krestovskiy v. Russia*, no. 14040/03, §§ 24-25, 28 October 2010).

14. Turning to the circumstances of the present case, the Court is prepared to accept the validity of the reasons invoked by the trial court in its decision to close the hearings to the public. However, as the Court has held on a number of occasions, courts, when excluding the public from criminal proceedings, must limit secrecy to the extent strictly necessary to preserve a compelling government interest (see *Romanova v. Russia*, no. 23215/02, § 155, 11 October 2011, with further references). Contrary to what the Government have argued in their submissions, even in the absence of requests from the applicant to resume open hearings, it was for the Presiding judge of the trial court to continuously question the necessity to bar the public from the courtroom and to ensure the transparency of the proceedings to the maximum extent possible. The Government, on the other hand, did not argue – and there is no indication to the contrary in the documents submitted by the parties – that it was not open to the Regional Court to return to the public trial after a single or, if need be, a number of non-public sessions during which the classified documents or information had been examined (see *Belashev v. Russia*, no. 28617/03, § 84, 4 December 2008, and *Romanova*, cited above, § 156). The Court therefore concludes that the trial court failed to mitigate the detrimental effect that the decision to hold the proceedings in camera had on the applicant's right to a public trial.

15. The Court notes that the appeal hearing was public. However, the lack of a public hearing could not in any event be remedied by anything other than a complete re-hearing before the appellate court (see *Riepan v. Austria*, no. 35115/97, § 40, ECHR 2000‑XII). In the present case, due to the peculiarities of a jury trial, the scope of appeal review, by virtue of Article 379 § 2 of the Code of Criminal Procedure, as in force at the material time, was strictly limited to questions of law and sentencing (see *Sutyagin*, cited above). The appeal proceedings in the present case, therefore, did not have the requisite scope and were incapable of remedying the breach of the public hearing requirement.

16. Having regard to the above considerations, the Court concludes that there has been a violation of Article 6 § 1 of the Convention on account of the Regional Court's decision to close the hearings from the public.

II. APPLICATION OF ARTICLE 41 OF THE CONVENTION

17. Article 41 of the Convention provides:

> "If the Court finds that there has been a violation of the Convention or the Protocols thereto, and if the internal law of the High Contracting Party concerned allows only partial reparation to be made, the Court shall, if necessary, afford just satisfaction to the injured party."

A. Damage

18. The applicant claimed 10,000 euros (EUR) in respect of non-pecuniary damage. He also claimed EUR 500 for legal costs and EUR 40 for postal expenses incurred before the Court.

19. The Government submitted that Article 41 should be applied in accordance with the Court's case-law.

20. The Court does not consider it necessary to make an award in respect of non-pecuniary damage in the circumstances of the case (compare *Ibrahim and Others v. the United Kingdom* [GC], nos. 50541/08 and 3 others, § 315, ECHR 2016). It further refers to its settled case-law to the effect that when an applicant has suffered an infringement of his rights guaranteed by Article 6 of the Convention, he should, as far as possible, be put in the position in which he would have been had the requirements of that provision not been disregarded, and that the most appropriate form of redress would, in principle, be the reopening of the proceedings, if requested (see, *mutatis mutandis*, *Öcalan v. Turkey* [GC], no. 46221/99, § 210 *in fine*, ECHR 2005‑IV, and *Popov v. Russia*, no. 26853/04, § 263, 13 July 2006). The Court notes, in this connection, that Articles 413 of the Russian Code of Criminal Procedure provides the basis for the reopening of the proceedings if the Court finds a violation of the Convention.

B. Costs and expenses

21. As regards the reimbursement of costs and expenses sought by the applicant, the Court recalls, that an applicant is entitled to such reimbursement only in so far as it has been shown that they have been actually and necessarily incurred and are reasonable as to quantum (see *Belziuk v. Poland*, 25 March 1998, § 49, *Reports of Judgments and Decisions* 1998-II). The applicant has not submitted any documents supporting his claim in the part concerning legal costs. The Court, therefore, rejects this part of the claim. On the other hand, the Court observes that the applicant provided copies of bills proving his postal expenses. The Court, accordingly, awards him EUR 40 under this head, plus any tax that may be chargeable to him.

C. Default interest

22. The Court considers it appropriate that the default interest rate should be based on the marginal lending rate of the European Central Bank, to which should be added three percentage points.

FOR THESE REASONS, THE COURT, UNANIMOUSLY,

1. *Declares* the application admissible;

2. *Holds* that there has been a violation of Article 6 § 1 of the Convention;

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

4. *Holds*
   (a) that the respondent State is to pay the applicant, within three months, EUR 40 (forty euros), plus any tax that may be chargeable, in respect of costs and expenses, to be converted into the currency of the respondent State at the rate applicable at the date of settlement:
   (b) that from the expiry of the above-mentioned three months until settlement simple interest shall be payable on the above amount at a rate equal to the marginal lending rate of the European Central Bank during the default period plus three percentage points;

5. *Dismisses* the remainder of the applicant's claims for just satisfaction.

Done in English, and notified in writing on 25 September 2018, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Stephen Phillips Registrar	Alena Poláčková President