



The impartiality of Russian administrative offence proceedings is undermined by the absence of a prosecuting party, and this must be reformed

In today's **Chamber judgment**¹ in the case of **Karelin v. Russia** (application no. 926/08) the European Court of Human Rights held, unanimously, that there had been:

a violation of Article 6 (right to a fair trial) of the European Convention on Human Rights.

The applicant complained that the absence of a prosecuting party in proceedings against him for an administrative offence meant that they had been conducted in way that was neither fair nor impartial.

The Court found in particular that there had been no prosecuting party at either Mr Karelin's trial or his appeal; that the absence of a prosecuting party could make the judge perform the role of a prosecutor; and that that gave legitimate grounds to doubt the impartiality of the court.

Noting that the violation was the result of the law and general practice applied by the Russian courts for administrative offences, rather than just an error in Mr Karelin's case alone, the Court held under **Article 46 (binding force and implementation of judgments)** that the Russian government had to secure a mechanism which provided sufficient safeguards for ensuring impartiality of the courts dealing with such cases, by way of introducing a prosecuting authority for oral hearings, or by other appropriate means.

Principal facts

The applicant, Mikhail Karelin, is a Russian national who was born in 1970 and lives in Naberezhnyye Chelny (Russia).

On 4 March 2012 Mr Karelin was arrested by a police officer for drunk and disorderly behaviour in a public place. At the police station the officer instituted administrative offence proceedings against him under the Code of Administrative Offences. The officer subsequently submitted the administrative offence record to his superior, who decided that the case should be transferred to a court for examination. A hearing was held at which Mr Karelin, who is a lawyer and represented himself, pleaded not guilty and made oral submissions. Though no public official or authority was made an official party to proceedings, the police officer who had compiled the offence record gave evidence and answered questions. However, he did not present the charges against Mr Karelin. By judgment of 29 March 2012 the justice of the peace found him guilty of using foul language in the presence of other people and thus breaching public order. He was given a fine of 500 Russian roubles (the equivalent of 13 euros at the time). This judgment was upheld by the appeal court, following a further hearing at which no official appeared on behalf of the prosecution. Mr Karelin's application for judicial review to the Supreme Court of the Tatarstan Republic was dismissed in June 2012.

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

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

Complaints, procedure and composition of the Court

Relying on Article 6 § 1 (right to a fair hearing) of the European Convention, Mr Karelin complained about there having been no prosecuting party in the proceedings. He alleged in particular that, in the absence of any prosecuting authority or official, the burden of proving the accusation had laid exclusively with the judge. That, in his view, had had implications on the principle of equality of arms and adversarial procedure as well as on the impartiality of the trial and appeal courts.

The application was lodged with the European Court of Human Rights on 19 November 2007.

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

Luis **López Guerra** (Spain), *President*,
Helena **Jäderblom** (Sweden),
Johannes **Silvis** (the Netherlands),
Dmitry **Dedov** (Russia),
Branko **Lubarda** (Serbia),
Alena **Poláčková** (Slovakia),
Georgios A. **Serghides** (Cyprus),

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

Decision of the Court

Article 6 (right to a fair trial)

The Court noted that the lack of a prosecuting party could undermine the impartiality of a trial, when the judge or tribunal had to assume roles that would have been performed by a prosecution had one been present. That could cause the court to confuse the roles of prosecutor and judge, and gave legitimate grounds to doubt its impartiality.

In regard to Mr Karelin's trial, the Court noted that the Russian Code of Administrative Offences did not require a prosecutor to attend such hearings. In the case of Mr Karelin, the Court accepted that a police officer had compiled the offence record, and had attended the trial. However, that officer had not become party to the proceedings, could not have influenced the conduct of the proceedings through applications, and could not have appealed the judgment. He had therefore not been a prosecuting party. The lack of any such party had impacted the presumption of innocence, and had undermined the trial court's impartiality. The Court rejected the government's argument that there had been no need for a prosecutor, given the lightness of the possible punishments that Mr Karelin had faced in the proceedings: the need for impartiality did not grow or shrink depending on the severity of the potential penalties faced by the defendant.

As for the appeal, the Court noted that the need for a prosecuting party might be less compelling in some appeals, particularly when they are merely on points of law. However, the Court identified that the Russian Code of Administrative Offences had allowed the appeal court to re-assess the entire case; including an analysis of the evidence at trial, and a review of new evidence. In this kind of hearing, the lack of a prosecuting party was a serious shortcoming. In Mr Karelin's case, there had been no official present at the appeal to represent the prosecution, and no written submissions had been made for the prosecution – indeed, it appeared that the official who had initiated the proceedings and who had attended the trial had had no right to make any submissions on appeal. Therefore, there had been no prosecuting party, and that had prevented the appellate court from remedying the defects of Mr Karelin's trial.

The Court therefore held that there had been a violation of Mr Karelin's right to have an impartial hearing, due to the lack of any prosecution at his trial and appeal.

Given that conclusion, the Court found that it was not necessary to examine separately whether there had been a violation of Mr Karelin's right to a fair trial as concerned the principle of the equality of arms and the requirement of adversarial procedure.

Article 46 (binding force and implementation)

The Court held that the violation of the right to an impartial trial had emerged from the state of Russian law and judicial practice for administrative offence cases in general, rather than just for Mr Karelin's case in particular. It also noted that there were a number of pending applications before the Court that raised similar issues. In order to prevent similar violations in the future, the Court therefore found that the Russian government had to secure a mechanism which provided sufficient safeguards for ensuring impartiality of the courts dealing with such cases; by way of introducing a prosecuting authority for oral hearings, or by other appropriate means.

In regard to Mr Karelin in particular, the Court noted that the most appropriate form of redress for such cases was the reopening of proceedings, and that the government should directly address whether the proceedings relating to Mr Karelin should be reopened.

Article 41 (just satisfaction)

The Court held that Russia was to pay Mr Karelin 2,500 euros (EUR) in respect of non-pecuniary damage (plus any tax that may be chargeable).

The judgment is available only in English.

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The European Court of Human Rights was set up in Strasbourg by the Council of Europe Member States in 1959 to deal with alleged violations of the 1950 European Convention on Human Rights.