



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

FIRST SECTION

**CASE OF ZAYTSEV v. RUSSIA**

*(Application no. 22644/02)*

JUDGMENT

STRASBOURG

16 November 2006

**FINAL**

***26/03/2007***

*This judgment will become final in the circumstances set out in Article 44 § 2 of the Convention. It may be subject to editorial revision.*



**In the case of Zaytsev v. Russia,**

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

Mr C.L. ROZAKIS, *President*,

Mrs N. VAJIĆ,

Mr A. KOVLER,

Mrs E. STEINER,

Mr K. HAJIYEV,

Mr D. SPIELMANN,

Mr S.E. JEBENS, *judges*,

and Mr S. QUESADA, *Deputy Section Registrar*,

Having deliberated in private on 24 October 2006,

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

**PROCEDURE**

1. The case originated in an application (no. 22644/02) 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 Yuriy Mikhaylovich Zaytsev ("the applicant"), on 13 May 2002.

2. The Russian Government ("the Government") were represented by Mr P. Laptev, Representative of the Russian Federation at the European Court of Human Rights.

3. The applicant alleged, in particular, that the proceedings before the trial court were unfair and that he was not notified of the hearing on appeal.

4. By a decision of 3 March 2005, the Court declared the application admissible.

5. The applicant and the Government each filed further written observations (Rule 59 § 1). The Chamber having decided, after consulting the parties, that no hearing on the merits was required (Rule 59 § 3 *in fine*), the parties replied in writing to each other's observations.

## THE FACTS

### I. THE CIRCUMSTANCES OF THE CASE

6. The applicant was born in 1977 and lives in Novomoskovsk, Tula Region.

7. On 21 September 2001 the Novomoskovskiy Town Court of the Tula Region convicted the applicant, a school teacher, of cruel treatment of his pupils and sentenced him to one year and six months' imprisonment, suspended. The applicant and his counsel were present at the hearing. The court heard statements from a number of witnesses and victims and examined a transcript of a meeting of the school disciplinary committee.

8. The applicant appealed against the judgment on points of fact.

9. On 26 October 2001 the Tula Regional Court upheld the judgment on appeal. The applicant was not present at the hearing. The appeal court reviewed the applicant's conviction both on points of law and on points of fact. The prosecutor, who was present at the hearing, submitted that the conviction should stand. The appeal court did not hear any witnesses and there is no evidence that any were summoned.

10. On 28 February 2002 the applicant received a copy of the appeal judgment.

11. On 14 June 2005, following an application for supervisory review lodged by a deputy prosecutor of the Tula Region on 10 June 2005, a judge of the Tula Regional Court decided to institute supervisory review proceedings. The judge stated that in the absence of any evidence that the applicant had been duly notified of the appeal hearing on 26 October 2001, the examination of his appeal in his absence had violated his defence rights. The applicant was notified of the decision to institute supervisory review proceedings and sent his written pleadings to the court on 22 June 2005.

12. On 27 June 2005 the Presidium of the Tula Regional Court, having examined the case under the supervisory review procedure, quashed the appeal judgment of the Tula Regional Court of 26 October 2001 and remitted the case for a fresh examination on appeal. The Presidium noted that among the documents in the case file there was a notification of the appeal hearing dated 11 October 2001. The applicant had not appeared at the hearing and, later, in his numerous complaints repeatedly stated that he had never received the notification. The case file contained no conclusive evidence that the applicant had been duly notified of the hearing. The Presidium found that in these circumstances the examination of the applicant's appeal in his absence had violated his defence rights.

13. On 20 July 2005 the Tula Regional Court examined the case on appeal. The applicant was duly notified of the hearing, but did not appear. The appeal court upheld the findings of fact of the Novomoskovskiy Town

Court. However, it set aside the judgment of 21 September 2001 and terminated the criminal proceedings against the applicant on account of the expiry of the statutory time-limits.

## II. RELEVANT DOMESTIC LAW

14. Article 336 of the Code of Criminal Procedure of 1960, in force at the material time, provided that appellants should be notified of the date of the hearing on appeal. The failure of appellants who had been duly notified of the relevant date to appear at the hearing did not preclude the court from examining the case. A notice indicating the time of the hearing on appeal should be displayed at the court not later than three days before the hearing.

## THE LAW

### I. THE GOVERNMENT'S OBJECTION

15. The Government submitted that in his application the applicant had used abusive language in respect of the Russian authorities. They contended that this amounted to an abuse of the right of application within the meaning of Article 35 § 3.

Article 35 § 3, in so far as relevant, reads as follows:

“The Court shall declare inadmissible any individual application submitted under Article 34 which it considers ... an abuse of the right of application.”

16. The Court reiterates that, except in extraordinary cases, an application may only be rejected as abusive if it was knowingly based on untrue facts (see *Akdivar and Others v. Turkey*, judgment of 16 September 1996, *Reports of Judgments and Decisions* 1996-IV, §§ 53-54; *I.S. v. Bulgaria* (dec.), no. 32438/96, 6 April 2000; and *Varbanov v. Bulgaria*, no. 31365/96, § 36, ECHR 2000-X).

17. Having regard to the statements made by the applicant in the present case, the Court does not consider that they amount to an abuse of the right of application. Accordingly the Government's objection is dismissed.

### II. ALLEGED VIOLATION OF ARTICLE 6 OF THE CONVENTION

18. The applicant complained under Article 6 § 1 of the Convention that the criminal proceedings against him had been unfair. He alleged, in particular, that the trial court had erred in its assessment of the evidence, accepted inadmissible evidence and gathered certain evidence of its own

motion. He further complained, under Article 6 §§ 1 and 3 (c) of the Convention, about the failure to notify him of the appeal hearing of 26 October 2001, which had resulted in his absence at the hearing. He maintained that this had deprived him of the right to make his submissions before the appeal court and violated his defence rights, precluding him from being represented at the hearing by counsel.

19. Article 6, insofar as relevant, reads as follows:

“1. In the determination 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:

(c) to defend himself in person or through legal assistance of his own choosing or, if he has not sufficient means to pay for legal assistance, to be given it free when the interests of justice so require[.]”

20. The Government submitted that the Russian authorities had acknowledged that the applicant had not been duly notified of the appeal hearing of 26 October 2001. The appeal judgment had been quashed under the supervisory review procedure precisely on that ground. In the course of the fresh appeal examination the appeal court had carefully examined the findings of the first-instance court and the arguments raised by the applicant in his appeal. The court had discontinued the criminal proceedings against the applicant on account of the expiry of the statutory time-limits. The Government contended that the criminal proceedings against the applicant had been fair. They also claimed, in substance, that the applicant could no longer be considered a victim of the alleged violation since his Convention rights had been restored at the domestic level.

21. The applicant contested the Government's submissions. He stated that the supervisory review of the appeal judgment of 26 October 2001 had not restored his rights because it had been conducted after the term of his suspended sentence had expired and his criminal record had been cleared. He argued that his rights could have been restored only if he had been rehabilitated following the termination of the criminal proceedings against him and had had a claim for damages.

22. In so far as the applicant's complaint concerns the failure to notify him of the appeal hearing of 26 October 2001, the Court notes that the appeal judgment was quashed precisely on that ground and the case remitted for a fresh appeal examination. The Court reiterates that, where criminal proceedings are reopened after a conviction has become final, a decision quashing the conviction is, in itself, not sufficient to deprive an individual of his status as a “victim” unless the national authorities have acknowledged, either expressly or in substance, and afforded redress for, the

breach of the Convention (see, among many other authorities, *Dalban v. Romania*, judgment of 28 September 1999, *Reports* 1999-VI, § 44).

23. In the present case, on 27 June 2005 the Presidium of the Tula Regional Court quashed the applicant's final conviction on the ground that the examination of his appeal in his absence, without his having been duly notified of the hearing, had violated his right to a defence. Accordingly, the Presidium expressly acknowledged that the applicant's right to a fair trial had been breached.

24. The Court further notes that the applicant's conviction in 2001 had not involved a deprivation of liberty. Furthermore, on 27 June 2005 the Presidium of the Tula Regional Court not only set aside the appeal judgment, but further remitted the applicant's case for a new appeal examination. This time the applicant was duly notified of the appeal hearing. In such circumstances the Court finds that the Presidium's decision of 27 June 2005, taken together with the subsequent proceedings, constituted sufficient redress for the alleged procedural unfairness of the first appeal examination. The applicant thus ceased to be a victim of the alleged violation of his rights under Article 6 of the Convention in this respect (see *Popov and Vorobyev v. Russia* (dec.), no. 1606/02, 2 March 2006).

25. In so far as the applicant's complaint concerns the taking and assessment of evidence by the first-instance court and the outcome of the proceedings, the Court notes that it is not its task to review alleged errors of fact and law committed by the domestic judicial authorities and that the admissibility of evidence is primarily a matter for regulation by national law, and, as a rule, it is for the national courts to assess the evidence before them. The Court's task is to ascertain whether the proceedings considered as a whole, including the way in which evidence was taken, were fair. In particular, all the evidence must normally be produced in the presence of the accused at a public hearing with a view to adversarial argument (see *Asch v. Austria*, judgment of 26 April 1991, Series A no. 203, §§ 26-27).

26. The Court notes that the Novomoskovskiy Town Court of the Tula Region, in its judgment of 21 September 2001, based the applicant's conviction of cruel treatment of his pupils on, *inter alia*, the statements of witnesses and victims of the offences. They were heard in person at the hearing, where the applicant, who was assisted by counsel, had the opportunity to put questions to them and to challenge their credibility. The applicant did not specify what evidence he alleged had been obtained by the trial court of its own motion. The Court notes that the only evidence relied on in the judgment, apart from the aforementioned statements of the witnesses and victims, was a transcript of a meeting of the school disciplinary committee, at which the applicant had been present. There is no evidence that the applicant had not had access to that document before the hearing and could not contest it at the hearing. Accordingly, there is no

indication of an infringement of the applicant's defence rights or of the principle of equality of arms.

27. The Court further notes that, after the appeal judgment of 26 October 2001 had been quashed under the supervisory review procedure, the judgment of 21 September 2001 was reviewed on appeal on 20 July 2005. The applicant was duly notified of the appeal hearing, but did not appear. The Tula Regional Court upheld the findings of fact of the first-instance court. However, it set aside the judgment of 21 September 2001 on the ground that the criminal proceedings against the applicant should be terminated on account of the expiry of the statutory time-limits. In these circumstances the Court finds no evidence of an infringement of the applicant's defence rights protected by Article 6 § 3 (c) or of any unfairness within the meaning of Article 6 § 1.

28. Accordingly, there has been no violation of Article 6 of the Convention.

#### FOR THESE REASONS, THE COURT UNANIMOUSLY

1. *Dismisses* the Government's objection;
2. *Holds* that there has been no violation of Article 6 of the Convention;

Done in English, and notified in writing on 16 November 2006, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Santiago QUESADA  
Deputy Registrar

Christos ROZAKIS  
President