



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

FIRST SECTION

CASE OF FOKIN v. RUSSIA

(Application no. 75893/01)

JUDGMENT

STRASBOURG

18 September 2008

FINAL

18/12/2008

This judgment may be subject to editorial revision.

In the case of Fokin v. Russia,
The European Court of Human Rights (First Section), sitting as a
Chamber composed of:
Christos Rozakis, *President*,
Anatoly Kovler,
Elisabeth Steiner,
Dean Spielmann,
Sverre Erik Jebens,
Giorgio Malinverni,
George Nicolaou, *judges*,
and Søren Nielsen, *Section Registrar*,
Having deliberated in private on 28 August 2008,
Delivers the following judgment, which was adopted on that date:

PROCEDURE

1. The case originated in an application (no. 75893/01) 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 Aleksandr Pavlovich Fokin (“the applicant”), on 6 August 2001.
2. The Russian Government (“the Government”) were represented by Mr P. Laptev, former Representative of the Russian Federation at the European Court of Human Rights.
3. On 15 December 2004 the Court decided to give notice of the application to the Government. It also decided to examine the merits of the application at the same time as its admissibility (Article 29 § 3).

THE FACTS

I. THE CIRCUMSTANCES OF THE CASE

4. The applicant was born in 1961 and lives in Insar, Republic of Mordoviya.
5. On 20 April 1999 the applicant was dismissed from his job as a security guard in a private company. He sued his former employer for reinstatement, payment of wage arrears and compensation for non-pecuniary damage.
6. On 19 November 1999 the Insarskiy District Court of the Republic of Mordoviya granted his claim in part and ordered his reinstatement in the

job. This judgment was reversed on appeal by the Supreme Court of the Republic of Mordoviya, which remitted the case for fresh examination by the first-instance court.

7. On 9 January 2001 the Insarskiy District Court of the Republic of Mordoviya found the applicant's dismissal justified and rejected the claims in full.

8. The applicant filed his statement of appeal on 18 January 2001. According to him, in the following months he regularly enquired with the court secretariat about the state of proceedings in his case but was informed each time that the date of the appeal hearing had not yet been fixed.

9. According to the Government, on 1 February 2001 the applicant was notified about the pending appeal hearing in his case. The applicant contested that he had received any notification.

10. In June 2001 the applicant went to the court in person and found out that the appeal hearing in his case had already taken place on 13 February 2001. He learned that his claim had been dismissed at the final instance.

11. After that, on 14 June 2001 the applicant received the appeal decision of the Supreme Court of the Republic of Mordoviya, which, *inter alia*, read as follows: "At the [appeal] hearing Mr Fokin maintained his claims and asked the court to grant them". The decision also indicated that the other party to the proceedings was present at the hearing and maintained its objections to the claim.

II. RELEVANT DOMESTIC LAW

12. The RSFSR Code of Civil Procedure of 11 June 1964 (in force at the material time):

Article 106. Court summonses

"Parties and their representatives are to be notified with court summonses of the date and place of a court hearing or certain procedural actions ...

A summons is to be served on parties and their representatives in such a way that they have enough time to appear at a hearing and prepare their case ...

Where necessary, parties and their representatives ... may be summonsed by a phone call or a telegram."

Article 108. Service of summonses

"Summonses are to be sent by mail or by courier. The time when a summons was served on an addressee is to be recorded on the summons and its copy, which is to be returned to the court ..."

Article 109. Receipt of summonses

“A summons is to be served on a person against his/her signature made on a copy of the summons, which is to be returned to the court ...”

Article 144. Court hearing

“A civil case is to be heard in a court session with mandatory notification to all parties to the case ...”

Article 157. Consequences of a party's or representative's failure to attend a court hearing

“If a party to the case fails to appear and there is no evidence that the party was duly summonsed, the hearing is to be adjourned ...”

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

13. The applicant complained that the examination of the appeal without giving him an effective opportunity to attend the hearing had violated his right to a fair hearing under Article 6 § 1 of the Convention, which reads as follows:

“In the determination of his civil rights and obligations ..., everyone is entitled to a fair ... hearing ... by [a] ... tribunal ...”

A. Admissibility

14. The Court notes that this complaint is not manifestly ill-founded within the meaning of Article 35 § 3 of the Convention. It further notes that it is not inadmissible on any other grounds. It must therefore be declared admissible.

B. Merits

15. The Government argued that the applicant had been duly notified of the appeal hearing on 1 February 2001. They contended that the usual practice in the town of Insara was to send notification by a court courier, who would report to the court President any difficulty in finding the person concerned. The Government provided the Court with a copy of the

notification letter and contended that the case file did not contain any report by the courier of a failure to deliver the notification. In any event, the applicant's presence had not been necessary, as his written submissions before the appeal court reiterated the arguments that had already been examined at the first-instance hearing, at which he had presented them in person.

16. The applicant contested the Government's allegations. He claimed that he had not received the notification although the courier, had there been one, would have had no trouble finding him at his address.

17. The Court notes that the notification letter allegedly delivered to the applicant contains his correct address and states that the hearing before the appeal instance was scheduled for 9 a.m. on 13 February 2001. However, the Government did not present any evidence, such as an acknowledgment of receipt, showing that it had reached the applicant, and that it had done so in good time. Having regard to the provisions of the Russian law on service of courts summonses (see paragraph 12 above), the Court considers that the Government should have been in possession of such evidence, or at least reasons should be given why the court courier could not have had the applicant sign for the receipt of the letter. The failure on the Government's part to submit evidence without a satisfactory explanation gives rise to the drawing of inferences as to the ill-foundedness of their allegations. In these circumstances, the Court is not persuaded that the domestic authorities had notified the applicant of the appeal hearing in such a way as to provide him with an opportunity to attend it and present his case.

18. The Court reiterates that it has frequently found violations of Article 6 § 1 of the Convention in cases raising issues similar to the one in the present case (see *Yakovlev v. Russia*, no. 72701/01, §§ 19 et seq., 15 March 2005; *Groshev v. Russia*, no. 69889/01, §§ 27 et seq., 20 October 2005; *Mokrushina v. Russia*, no. 23377/02, §§ 20 et seq., 5 October 2006; and *Prokopenko v. Russia*, no. 8630/03, §§ 15 et seq., 3 May 2007).

19. Having examined the materials submitted to it, the Court notes that the Government have not put forward any fact or argument capable of persuading it to reach a different conclusion in the present case. The Court has established that owing to the missing notification the applicant was deprived of the opportunity to attend the appeal hearing. The Court also notes that there is nothing in the appeal judgment to suggest that the appeal court examined the question whether the applicant had been duly summonsed and, if he had not, whether the examination of the appeal should have been adjourned. On the contrary, it erroneously stated in the decision that the applicant was in fact present at the hearing.

20. It follows that there was a violation of the applicant's right to a fair hearing enshrined in Article 6 § 1 of the Convention.

II. OTHER ALLEGED VIOLATIONS OF THE CONVENTION

21. Relying on Articles 3, 14 and 17 of the Convention, the applicant complained that his dismissal from the job constituted inhuman and degrading treatment. Under Article 10 of the Convention he complained that he had been unable to express his arguments at a public hearing before the appeal instance. He also complained under Article 34 of the Convention that the authorities' failure to notify him of the appeal proceedings interfered with his right of individual petition.

22. Having regard to all the material in its possession, and in so far as these complaints fall within its competence *ratione materiae*, the Court finds that they do not disclose any appearance of a violation of the rights and freedoms set out in the Convention or its Protocols. It follows that this part of the application must be rejected as being manifestly ill-founded, pursuant to Article 35 §§ 3 and 4 of the Convention.

III. APPLICATION OF ARTICLE 41 OF THE CONVENTION

23. 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.”

24. The applicant did not submit a claim for just satisfaction within the time-limit indicated by the Court. Accordingly, the Court considers that there is no call to award him any sum on that account.

FOR THESE REASONS, THE COURT UNANIMOUSLY

1. *Declares* the complaint concerning the domestic authorities' failure to apprise the applicant of the appeal hearing admissible and the remainder of the application inadmissible;
2. *Holds* that there has been a violation of Article 6 § 1 of the Convention.

Done in English, and notified in writing on 18 September 2008, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Søren Nielsen
Registrar

Christos Rozakis
President