



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

FIRST SECTION

CASE OF TISHKEVICH v. RUSSIA

(Application no. 2202/05)

JUDGMENT

STRASBOURG

4 December 2008

FINAL

06/04/2009

This judgment may be subject to editorial revision.

In the case of Tishkevich 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 13 November 2008,

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

PROCEDURE

1. The case originated in an application (no. 2202/05) 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 Leonid Eduardovich Tishkevich (“the applicant”), on 18 October 2004.

2. The Russian Government (“the Government”) were represented by Ms V. Milinchuk, former Representative of the Russian Federation at the European Court of Human Rights.

3. On 26 March the Court decided to give notice of the application to the Government. Under the provisions of Article 29 § 3 of the Convention, it decided to examine the merits of the application at the same time as its admissibility.

THE FACTS

4. The applicant was born in 1936 and lives in Novyi Urengoy, a town in the Tyumen Region.

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

6. In 1998 the applicant sued Mr T. for damages. On 26 November 2001 the Oktyabrskiy District Court of Tomsk held for the applicant. Mr T. was absent from this hearing because he did not live at the address to which the summons had been mailed.

7. On 10 December 2001 the applicant collected the writ of enforcement from the court and submitted it to bailiffs for enforcement.

8. On 13 February 2003 the bailiffs returned the writ to the applicant, because it contained wrong information on Mr T.'s identity. The applicant asked the court to rectify Mr T.'s identity, and on 23 December 2003 the court issued a new writ of enforcement.

9. On 30 December 2003 the bailiffs instituted enforcement proceedings and on 26 January 2004 they attached Mr T.'s flat in Tomsk.

10. On 17 September 2004 the bailiffs transferred the enforcement file to the service having territorial competence over Mr T.'s residence.

11. On 9 September 2004 the District Court restored for Mr T. the time-limit for supervisory review of the judgment. On 20 October 2004 the Tomsk Regional Court stayed the enforcement pending the supervisory review.

12. On 9 March 2005 the Presidium of the Tomsk Regional Court granted Mr T.'s application for supervisory review, quashed the judgment, and remitted it for a rehearing. The Presidium found that the District Court had gone beyond the applicant's claims by adjusting the award for inflation, and had failed to notify Mr T. of the proceedings.

13. On 23 June 2005 the District Court adjourned the proceedings for the applicant's persistent failure to appear.

THE LAW

I. ALLEGED VIOLATION OF ARTICLE 6 OF THE CONVENTION AND OF ARTICLE 1 OF PROTOCOL NO. 1 ON ACCOUNT OF NON-ENFORCEMENT

14. The applicant complained that the bailiffs needlessly delayed the enforcement of the judgment. The Court will examine this complaint under Article 6 of the Convention and Article 1 of Protocol No. 1 which, as far as relevant, read as follows:

Article 6

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

Article 1 of Protocol No. 1

"Every natural or legal person is entitled to the peaceful enjoyment of his possessions. No one shall be deprived of his possessions except in the public interest and subject to the conditions provided for by law and by the general principles of international law."

The preceding provisions shall not, however, in any way impair the right of a State to enforce such laws as it deems necessary to control the use of property in accordance with the general interest or to secure the payment of taxes or other contributions or penalties.”

15. The Government argued that this complaint was inadmissible. First, the applicant had failed to exhaust domestic remedies, as Article 35 § 1 of the Convention required, because he had not applied, among other things, for a judicial review of the bailiffs’ actions. Second, the complaint was manifestly ill-founded. The bailiffs had taken initiatives and had done everything they could to enforce the judgment. Any delays had been caused by the applicant who had misidentified the debtor, had failed to submit the writ of enforcement in time, and had not paid the costs of locating Mr T.

16. The applicant argued that this complaint was admissible because it had been the authorities, not him, who had had to identify and locate Mr T.

17. The Court finds for the Government. Where a judgment is against a private person, and the main alleged cause of the judgment’s non-enforcement is the bailiffs’ procrastination, it is appropriate to bring proceedings against the bailiffs to give the State a chance to put matters right internally (see, *a contrario*, *Jasiūnienė v. Lithuania* (dec.), no. 41510/98, 24 October 2000; *Plotnikov v. Russia*, no. 43883/02, § 17, 24 February 2005).

18. It follows that this complaint must be rejected under Article 35 §§ 1 and 4 of the Convention for non-exhaustion of domestic remedies.

II. ALLEGED VIOLATION OF ARTICLE 6 OF THE CONVENTION ON ACCOUNT OF SUPERVISORY REVIEW

19. The applicant complained about the quashing of the binding judgment by way of supervisory review. The Court will examine this complaint under Article 6 of the Convention.

A. Admissibility

20. The Government argued that this complaint was manifestly ill-founded. Under domestic law, higher courts had been obliged to correct judicial mistakes to maintain justice. When a court corrected a judicial error, it did not impair legal certainty. In the applicant’s case the District Court had made two judicial errors: it had gone beyond the plaintiff’s claims, and had failed to notify Mr T., the defendant, of the proceedings.

21. The applicant maintained his complaint.

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

B. Merits

23. The Court reiterates that for the sake of legal certainty implicitly required by Article 6, final judgments should generally be left intact. They may be disturbed only to correct fundamental defects (see *Ryabykh v. Russia*, no. 52854/99, § 51–52, ECHR 2003-IX). To answer this complaint the Court will hence have to determine if the grounds for the quashing of the applicant's judgment fell within this exception (see *Protsenko v. Russia*, no. 13151/04, § 29, 31 July 2008).

24. The first ground cited by the Presidium – the District Court's discretionary increase of the award – did not justify the quashing. Indeed, it may be regarded as akin to misevaluation of evidence or misinterpretation of law, both of which the Court has earlier found not to disclose fundamental defects (see, for example, *Sitkov v. Russia*, no. 55531/00, § 32, 18 January 2007; *Boris Vasilyev v. Russia*, no. 30671/03, § 34, 15 February 2007).

25. By contrast, the second ground cited by the Presidium – the failure to notify the defendant of the proceedings – was fundamental. Indeed, by hearing the case unbeknownst to Mr T. the District Court deprived the trial of its requisite adversarial character. This omission was grave, similar to failings disclosing breaches of a trial's fairness in many previous Court cases (see *Nunes Dias v. Portugal* (dec.), nos. 2672/03 and 69829/01, ECHR 2003-IV; *Yakovlev v. Russia*, no. 72701/01, § 21, 15 March 2005).

26. As at least one ground was based on a fundamental defect, the Court concludes that the Presidium was justified to set aside the District Court's judgment.

27. There has accordingly been no violation of Article 6 of the Convention.

FOR THESE REASONS, THE COURT UNANIMOUSLY

1. *Declares* the complaint concerning the supervisory review admissible and the remaining part of the application inadmissible;
2. *Holds* that there has been no violation of Article 6 of the Convention on account of supervisory review.

Done in English, and notified in writing on 4 December 2008, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Søren Nielsen
Registrar

Christos Rozakis
President