



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

FIRST SECTION

CASE OF TOLSTOBROV v. RUSSIA

(Application no. 11612/05)

JUDGMENT

STRASBOURG

4 March 2010

FINAL

04/06/2010

This judgment has become final under Article 44 § 2 of the Convention. It may be subject to editorial revision.

In the case of Tolstobrov v. Russia,

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

Christos Rozakis, *President*,

Nina Vajić,

Anatoly Kovler,

Elisabeth Steiner,

Khanlar Hajiyeu,

Giorgio Malinverni,

George Nicolaou, *judges*,

and Søren Nielsen, *Section Registrar*,

Having deliberated in private on 9 February 2010,

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

PROCEDURE

1. The case originated in an application (no. 11612/05) 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, Vladimir Pavlovich Tolstobrov (“the applicant”), on 11 March 2005.

2. The applicant was represented by Mr I. Telyatyev, a lawyer practising in Arkhangelsk. 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 9 November 2007 the President of the First Section decided to give notice of the application to the Government. It was 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 Arkhangelsk.

5. The applicant sued a private company for salary arrears.

6. By judgment of 16 March 2004, the Justice of Peace in the Varavino-Faktoriya Circuit awarded the applicant 92,073.93 Russian roubles (RUB) against the defendant company.

7. The defendant company appealed.

8. On 16 June 2004, both parties being present in the court-room, the Lomonosovskiy District Court of Arkhangelsk adjourned the hearing until 13 July 2004, which was noted in the minutes. The parties were also notified about the hearing of 13 July 2004 by post, in accordance with the domestic law. However, the court made a mistake in the defendant company's address, which never received the summons.

9. On 13 July 2004 the Lomonosovskiy District Court of Arkhangelsk, in the absence of the defendant company's representative, upheld the judgment on appeal.

10. The defendant company applied for supervisory review of the above judgments. On 21 September 2004 a judge in the Arkhangelsk Regional Court granted it leave for supervisory review. On 29 September 2004 the Presidium of the Regional Court set aside the judgment of 13 July 2004 and ordered a re-examination of the case by the District Court on the grounds that the defendant company had not been informed about the hearing of 13 July 2004. The Presidium found that though the defendant company's representative was present in the court-room when the district court adjourned the hearing to 13 July 2004, the defendant company could not be considered as duly informed about it.

11. On 26 January 2005 the District Court quashed the judgment of 16 March 2004 and awarded the applicant RUB 38,123.85.

II. RELEVANT DOMESTIC LAW

12. The relevant domestic law governing the supervisory review procedure at the material time is summed up in the Court's judgment in the case of *Kot v. Russia* (no. 20887/03, § 17, 18 January 2007).

13. Under Article 113 of the Code of Civil Procedure of 2002, in force at the material time, parties to the proceedings are to be summoned to a hearing by a letter sent by registered mail with an acknowledgment of receipt, by court summons with an acknowledgment of receipt, by telegram, by phone or fax or by any other means which can guarantee a record of the fact that the summons was sent and was received by the party.

THE LAW

I. ALLEGED VIOLATION OF ARTICLE 6 § 1 OF THE CONVENTION AND OF ARTICLE 1 OF PROTOCOL No. 1 ON ACCOUNT OF SUPERVISORY REVIEW

14. The applicant complained under Article 6 of the Convention and under Article 1 of Protocol No. 1 that the final judgment of 16 March 2004, as upheld on 13 July 2004, had been quashed by way of supervisory review on 29 September 2004. In so far as relevant, these Articles read as follows:

Article 6 § 1

“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.[...]”

15. The Government contested that argument. They argued, *inter alia*, that the supervisory review had been compatible with the Convention as it was aimed to correct a judicial error, namely the failure of the appeal court to notify the defendant company about the appeal hearings.

A. Admissibility

16. The Court notes that the 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

1. Article 6

17. The Court reiterates that for the sake of legal certainty implicitly required by Article 6, the mere possibility of there being two views on the subject is not a ground for re-examination of final judgments and they should generally be left intact. They may be disturbed only to correct fundamental errors (see *Ryabykh v. Russia*, no. 52854/99, §§ 51-52, ECHR

2003-IX). 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).

18. In the present case the final judgment was quashed for the district court's failure to duly inform the defendant company about the appeal hearing of 13 July 2004.

19. The Court considers that the circumstances referred to were in their nature and significance such as to justify the quashing of the final judgment and that this was not inconsistent with the principle of legal certainty (see *Protsenko*, cited above, §§ 33, 34). Indeed, by hearing the case unbeknownst to the defendant company the District Court deprived the trial of its requisite adversarial character (see *Tishkevich v. Russia*, no. 2202/05, § 25, 4 December 2008).

20. The Court finds, therefore, that in the circumstances of this particular case the quashing of the final judgment via supervisory review did not deprive the applicant of the "right to a court" under Article 6 § 1 of the Convention. There has been accordingly no violation of that Article.

2. Article 1 of Protocol No. 1

21. The Court observes that as a result of the supervisory review the applicant was awarded significantly less sums than under the initial quashed judgment.

22. However, the interference with the applicant's possession rights created by the quashed judgment was lawful and pursued a legitimate aim of protecting the rights of the defendant company, and, having regard to the findings under Article 6 of the Convention, was proportionate.

23. Accordingly, there has been no violation of Article 1 of Protocol No. 1.

II. OTHER ALLEGED VIOLATIONS OF THE CONVENTION

24. The applicant complained under Article 6 about the outcome of the proceedings.

25. Having regard to all the material in its possession, and in so far as these complaints fall within its competence, the Court finds that there is no 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.

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 and of Article 1 of Protocol No. 1 on account of supervisory review.

Done in English, and notified in writing on 4 March 2010, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Søren Nielsen
Registrar

Christos Rozakis
President