



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

FIRST SECTION

CASE OF LAPIN v. RUSSIA

(Application no. 16152/03)

JUDGMENT

STRASBOURG

20 September 2011

FINAL

20/12/2011

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

In the case of Lapin v. Russia,

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

Nina Vajić, *President*,

Anatoly Kovler,

Peer Lorenzen,

George Nicolaou,

Mirjana Lazarova Trajkovska,

Julia Laffranque,

Linos-Alexandre Sicilianos, *judges*,

and Søren Nielsen, *Section Registrar*,

Having deliberated in private on 30 August 2011,

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

PROCEDURE

1. The case originated in an application (no. 13296/03) 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 Igor Aleksandrovich Lapin, on 25 April 2003.

2. The Russian Government (“the Government”) were represented by the former Representatives of the Russian Federation at the European Court of Human Rights, Mr P. Laptev and Mrs V. Milinchuk.

3. The applicant alleged initially that the competent domestic authorities had failed to comply with a final and binding judgment in his favour and that he had been unsuccessful in various court proceedings against the Ministry of the Defence. Subsequently the applicant also complained that the military prosecution authorities had put pressure on him in connection with his application to the Court.

4. On 5 September 2006 the President of the First Section decided to give notice of the application to the Government. It was also decided to rule on the admissibility and merits of the application at the same time (Article 29 § 1).

THE FACTS

I. THE CIRCUMSTANCES OF THE CASE

5. The applicant was born in 1959 and lives in the town of Yaroslavl.

A. The court proceedings concerning the applicant's housing rights

6. The applicant is a retired serviceman. On an unspecified date in 2002 he applied to the commander of military unit no. 19689 and requested documents confirming his priority rights to housing at the place of his choice in connection with his retirement. The applicant also asked for relevant documents which would enable him to get a State housing certificate. This document would allow him to claim a pecuniary compensation from the State partly covering the cost of acquiring the housing of the applicant's choice.

7. Having faced the refusal, the applicant then applied to the courts in this connection. By final judgment of the Moscow Regional Military Court of 20 January 2004 the applicant's claim was granted. The court decided that:

“... the commander of military unit [no. 19689] must prepare the relevant documents and make an application to the competent official for the applicant to be put on the priority list of persons in need of housing ... and ... prepare the relevant documents so that [the applicant] could subsequently receive the State housing certificate for acquisition of housing at the place of his choice ...”

8. On 10 March 2004 the Yaroslav Garrison Military Court issued the applicant with an enforcement writ and by decision of 6 April 2004 the competent bailiffs instituted enforcement proceedings and demanded military unit no. 19689 to comply with it.

9. By decision of 4 June 2004 the bailiffs considered the court judgment in question had been enforced and discontinued the proceedings accordingly.

10. On 25 August 2004 the Souzdal District Court of the Vladimir Region quashed the bailiffs' decision of 4 June 2004 as premature.

11. On 9 September 2004 the enforcement proceedings were again resumed.

12. On 25 August 2005 the applicant's family was entered into the list of priority housing of military unit no. 19689.

13. On 5 June 2006 the applicant and his family of five was entered as the first candidate into the waiting list of the recipients of the State housing certificate of military unit no. 19689 for the year 2006 with the city of Moscow as the chosen place of future residence.

14. On 15 November 2006 the enforcement proceedings were terminated, since the judgment in question has been complied with in full.

15. On 27 November 2006 the applicant was issued with the State housing certificate. He refused to receive it, claiming that the certificate did not cover the entire cost of the flat and that the Ministry of Defence should now resolve his housing problem at its own expense in full.

B. Alleged interference by the authorities with the applicant's right of individual petition

16. By letters of 11 May, 5 June, 19 July 2007 the applicant submitted that on 17 April 2007 he had been invited to the Military Prosecutor's Office for "explanations".

17. The respondent Government submitted that this had been unrelated to the proceedings before this Court, since the competent military authorities had been under the impression that the applicant, an active serviceman, evaded his work-related duties.

18. In relation to those allegations, on 30 March 2007 an investigator of the Tver Military Prosecutor's office issued a decision not to institute criminal proceedings.

19. This decision was quashed on 28 May 2007 and, following an additional investigation, the investigator again decided not to institute criminal proceedings in this connection for the lack of evidence of any crime.

C. Other court proceedings brought by the applicant against various military authorities and the Ministry of Defence

20. The applicant was also unsuccessful in three sets of court proceedings against various military authorities and the Ministry of Defence, which ended with final judgments dated 4 February, 4 March 2003 and 18 January 2005 respectively.

II. RELEVANT DOMESTIC LAW

21. According to Articles 13, 209 and 338 of the Code of Civil Procedure (*Гражданский процессуальный кодекс РСФСР*), in force at the material time, a court judgment, which has become final, is binding and must be executed.

22. Section 9 of the Law on Enforcement Proceedings of 21 July 1997 (*Закон об исполнительном производстве*) provides that a bailiff's order on the institution of enforcement proceedings shall fix a time-limit for the defendant's voluntary compliance with the writ of execution. The time-limit cannot exceed five days. The bailiff shall also warn the defendant that coercive action will follow, should the defendant fail to comply within the time-limit.

23. Government's Decree no. 168 dated 19 March 2002 defined a State housing certificate as an official document confirming personal entitlement of a participant of the relevant State programme to receive a social benefit in the form of a sum of money from the Federal budget for the acquisition of a residence/housing.

THE LAW

I. ALLEGED VIOLATION OF ARTICLE 6 OF THE CONVENTION AND ARTICLE 1 OF PROTOCOL No. 1 TO THE CONVENTION

24. The applicant complained about the non-enforcement of the court judgment of 20 January 2004 in his favour. He relied on Article 6 of the Convention and Article 1 of Protocol No. 1, which, in so far as relevant, provide 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.

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.”

A. Admissibility

25. The Government accepted that there had been a delay in the enforcement of the judgment of 20 January 2004 in favour of the applicant, but argued that the Convention provisions relied on had been inapplicable, because the court judgment had ordered the authorities merely to assist the applicant, as opposed to issuing him with the certificate or the housing straight away. They also maintained that the applicant had had an uncooperative attitude, which contributed to the supplementary delays in the enforcement proceedings.

26. The applicant maintained his complaints and argued that the court judgment had not been properly enforced, because the military authorities ought to resolve his housing problem by buying him an apartment in Moscow.

27. As regards the Government's objection, the Court observes that the ruling of the court judgment dated 20 January 2004 consisted of two parts (see paragraph 7). Though it indeed appears questionable whether an obligation to assist the applicant to be put on the priority housing list could be viewed as affecting his "civil" rights within the meaning of Article 6 of the Convention, let alone as constituting his "possessions" in the sense of Article 1 of Protocol No. 1, the Court has little doubt that the second part of the ruling which compelled the commander of military unit "to prepare the relevant documents so that [the applicant] could subsequently receive the State housing certificate for acquisition of housing at the place of his choice" did affect his "civil" rights and constituted his "possessions" within the meaning of the Convention.

28. The valid certificate would enable the applicant to claim a monetary compensation from the State partly covering the cost of acquiring the housing of his choice, which represented a clear and immediate pecuniary interest to the applicant (see paragraph 23 above). As it is clear from the circumstances of the enforcement proceedings, the ruling was understood and followed by the competent authorities as imposing on them an obligation to secure the availability of such a certificate to the applicant (see paragraphs 8-15). In such circumstances, the Court concludes that the court judgment in question determined the applicant's Article 6 "civil" rights and constituted his "possession" within the meaning of Article 1 of Protocol No. 1. Accordingly, the Court rejects the Government's objection.

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

B. Merits

30. The Court first notes that the judgment in the applicants' favour dated 20 January 2004 became final and binding on the date of its adoption. It remained without enforcement until 15 November 2006, which is the date on which the bailiffs established that the judgment had been complied with and terminated the enforcement proceedings. It follows that the judgment remained without enforcement for the period of two years and ten months.

31. The Court has found violations of Article 6 § 1 of the Convention and Article 1 of Protocol No. 1 in many cases raising issues similar to the ones in the present case (see, among other authorities, *Burdov v. Russia*, no. 59498/00, ECHR 2002-III; and, more recently, *Petrushko v. Russia*, no. 36494/02, 24 February 2005, or *Poznakhirina v. Russia*, no. 25964/02, 24 February 2005).

32. Having regard to its case-law on the subject, the Court finds that by failing for such substantial period to comply with the enforceable judgment

in the applicant's favour the domestic authorities prevented him from receiving a State housing certificate which he was entitled to receive under the final and binding judgment.

33. There has accordingly been a violation of Articles 6 § 1 of the Convention and 1 of Protocol No. 1.

II. OTHER ALLEGED VIOLATIONS OF THE CONVENTION

34. In so far as the applicant generally claimed that the military authorities ought to resolve his housing problem by buying him an apartment in Moscow instead of providing him with a State housing certificate and also complained about the unsuccessful outcome of his other court proceedings against various authorities and the Ministry of Defence, the Court finds that these complaints do not disclose any appearance of a violation of the rights and freedoms set out in the Convention or its Protocols.

35. It follows that this part of the application should be rejected pursuant to Article 35 §§ 3 (a) and 4 of the Convention.

III. ALLEGATION OF HINDRANCE OF THE RIGHT OF INDIVIDUAL PETITION UNDER ARTICLE 34 OF THE CONVENTION

36. Lastly, the applicant complained that the authorities had put pressure on him in connection with proceedings before the Court by summoning him to an interview with a military prosecutor on 17 April 2007. The Court will examine this complaint under Article 34 of the Convention, which provides as follows:

“The Court may receive applications from any person, non-governmental organisation or group of individuals claiming to be the victim of a violation by one of the High Contracting Parties of the rights set forth in the Convention or the Protocols thereto. The High Contracting Parties undertake not to hinder in any way the effective exercise of this right.”

37. The Government disagreed with the applicant and argued that the applicant's summons on 17 April 2007 had been totally unrelated to the proceedings before the Court. According to them, the military prosecution authorities had had reason to believe that the applicant evaded his work-related duties and asked him to appear for an interview on that date to determine the relevant circumstances in more detail.

38. The applicant maintained his complaints.

39. The Court reiterates that it is of the utmost importance for the effective operation of the system of individual petition instituted by Article 34 that applicants or potential applicants should be able to communicate freely with the Court without being subjected to any form of

pressure from the authorities to withdraw or modify their complaints (see, among other authorities, *Akdivar and Others v. Turkey*, 16 September 1996, § 105, *Reports and Judgments* 1996-IV, and *Aksoy v. Turkey*, 18 December 1996, § 105, *Reports* 1996-VI). In this context, “pressure” includes not only direct coercion and flagrant acts of intimidation but also other improper indirect acts or contacts designed to dissuade or discourage applicants from pursuing a Convention remedy (see *Kurt v. Turkey*, 25 May 1998, § 159, 1998-III).

40. Furthermore, whether or not contacts between the authorities and an applicant are tantamount to unacceptable practices from the standpoint of Article 34 must be determined in the light of the particular circumstances of the case. In this respect, regard must be had to the vulnerability of the complainant and his or her susceptibility to influence exerted by the authorities (see *Akdivar and Others* and *Kurt*, both cited above, § 105 and § 160 respectively).

41. The Court notes that from the materials in its possession it follows that the applicant was contacted by the authorities on 17 April 2007 (see paragraph 16). The Government explained, and in the absence of any indication to the contrary the Court is satisfied with this explanation, that the interview took place within the framework of a criminal complaint lodged by the applicant’s former employer (see paragraphs 18 and 19). From the case file it is clear that the applicant ignored the summons and that the relevant complaint was eventually rejected for lack of evidence of any crime without the applicant being disturbed further in any other way. In such circumstances, there is insufficient factual basis to enable the Court to conclude that any undue pressure or any form of coercion was put on the applicant as a result of the case before the Court.

42. In the light of the above facts and considerations, the Court finds that a breach of the State’s obligation under Article 34 of the Convention has not been established.

IV. APPLICATION OF ARTICLE 41 OF THE CONVENTION

43. 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.”

44. The applicant claimed 102,500 euros (EUR) in respect of the damage suffered.

45. The Government considered that the claims had been excessive and unsubstantiated.

46. The Court observes that the applicant must have suffered a certain degree of stress and frustration as a result of the delayed enforcement of the

judgment at issue. The actual amount claimed is, however, excessive. Making its assessment on an equitable basis, it awards the applicant the sum of EUR 2,400 in respect of non-pecuniary damage.

A. Costs and expenses

47. The applicant did not seek reimbursement of his costs and expenses incurred before the domestic authorities and the Court. Accordingly, the Court does not make any award under this head.

B. Default interest

48. The Court considers it appropriate that the default interest should be based on the marginal lending rate of the European Central Bank, to which should be added three percentage points.

FOR THESE REASONS, THE COURT UNANIMOUSLY

1. *Declares* the complaint about the lengthy non-enforcement of the judgment of 20 January 2004 admissible and the remainder of the case inadmissible;
2. *Holds* that there has been a violation of Article 6 of the Convention and Article 1 of Protocol No. 1 to the Convention;
3. *Holds* that there has been no breach of the respondent Government's obligation under Article 34 of the Convention;
4. *Holds*
 - (a) that the respondent State is to pay the applicant, within three months from the date on which the judgment becomes final in accordance with Article 44 § 2 of the Convention, EUR 2,400 (two thousand four hundred euros), in respect of non-pecuniary damage, plus any tax that may be chargeable to the applicant, to be converted into the Russian roubles at the rate applicable at the date of settlement;
 - (b) that from the expiry of the above-mentioned three months until settlement simple interest shall be payable on the above amount at a rate equal to the marginal lending rate of the European Central Bank during the default period plus three percentage points;
5. *Dismisses* the remainder of the applicant's claim for just satisfaction.

Done in English, and notified in writing on 20 September 2011, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Søren Nielsen
Registrar

Nina Vajić
President