



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

SECOND SECTION

CASE OF GARTUKAYEV v. RUSSIA

(Application no. 71933/01)

JUDGMENT

STRASBOURG

13 December 2005

FINAL

13/03/2006

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 Gartukayev v. Russia,

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

Mr A.B. BAKA, *President*,

MR I. CABRAL-BARRETO,

Mr V. BUTKEVYCH,

Mr M. UGREKHELIDZE,

Mr A. KOVLER,

Mrs A. MULARONI,

Mrs E. FURA-SANDSTRÖM, *judges*,

and Mrs S. DOLLÉ, *Section Registrar*,

Having deliberated in private on 22 November 2005,

Delivers the following judgment, which was adopted on the last-mentioned date:

PROCEDURE

1. The case originated in an application (no. 71933/01) 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 Vakha Gartukayev, on 5 July 2001.

2. The applicant was represented before the Court by Mr I. Timishev, a lawyer practising in Nalchik. The Russian Government (“the Government”) were represented by their Agent, Mr P. Laptev, Representative of the Russian Federation at the European Court of Human Rights.

3. The applicant alleged, in particular, that a restriction on his right to liberty of movement had not been lawful or justified.

4. The application was allocated to the Second Section of the Court (Rule 52 § 1 of the Rules of Court). Within that Section, the Chamber that would consider the case (Article 27 § 1 of the Convention) was constituted as provided in Rule 26 § 1.

5. By a decision of 30 March 2004, the Court declared the application partly admissible.

6. On 1 November 2004 the Court changed the composition of its Sections (Rule 25 § 1). This case was assigned to the newly composed Second Section (Rule 52 § 1).

THE FACTS

I. THE CIRCUMSTANCES OF THE CASE

7. The applicant is an ethnic Chechen; he was born in 1941 in the Chechen Republic and lived there. In 1994 his property in the Chechen Republic was destroyed as a result of military hostilities. Since 1996 the applicant has been living in Nalchik; on 30 December 1996 a forced migrant's card was issued to him. At the material time the applicant was the deputy chairman of the Board of the Union of Consumer Associations of the Chechen Republic.

8. On 27 January 2000 the applicant returned by car from a mission in the Chechen Republic to Nalchik in Kabardino-Balkaria. He was accompanied by Mr Ba., driver, Mr M., a member of the Parliament of the Chechen Republic, and Mr Bi., a representative of the Chechen elders.

9. At about 5 p.m. the applicant's car was stopped at the check-point "Kurp-2" on the administrative border between Ingushetia and Kabardino-Balkaria. After three hours of checking the documents and identities of the applicant and his travelling companions, officers of the Kabardino-Balkaria State Inspectorate for Road Safety (*ГИБДД МВД КБР*) refused them entry to Kabardino-Balkaria on the ground of their Chechen ethnic origin.

10. In the night of 27 January 2000, the applicant and his companions took a long detour and reached Nalchik through a different check-point.

11. On 24 February 2000 the applicant lodged a complaint with the Nalchik Town Court against the Kabardino-Balkaria Ministry of the Interior (*МВД КБР*). The applicant sought a declaration that the actions of the police officers had been unlawful, and claimed compensation for non-pecuniary damage caused by the alleged violation of his constitutional right to liberty of movement.

12. The Nalchik Town Court accepted the complaint, but no proceedings took place for more than a year. Following the applicant's complaint to the Supreme Court of the Kabardino-Balkaria Republic, the Nalchik Town Court held a hearing.

13. On 13 April 2001 the Nalchik Town Court gave its judgment. The court found that on 28 September 1999 the Ministry of the Interior of Kabardino-Balkaria had issued Directive no. 1/220 (*Указание МВД КБР № 1/220*) on the procedure for crossing the administrative border of Kabardino-Balkaria by residents of the Chechen Republic. The regulation provided for stricter checks of vehicles and passengers of Chechen origin, as well as for the special registration of Chechens on the basis of migrants' cards. The court questioned the police officers who had been on duty on 27 January 2000. The officers maintained that neither the applicant nor his companions had produced their migrants' cards; the officers had informed

their superior on duty of this situation and, pursuant to his oral order, they refused admission to the applicant and his companions. The court held that the applicant had failed to prove that he had indeed shown his migrant's card to the police officers and, therefore, there was no ground to declare their actions unlawful. The court noted that on the same night the applicant had gained admission into Kabardino-Balkaria through a different check-point. The court also inspected the registration log of 27 January 2000 and noted that on the same day other Chechen passengers carrying migrants' cards had been admitted into Kabardino-Balkaria.

14. The applicant appealed against the judgment of 13 April 2001. He submitted, in particular, that the regulation of 28 September 1999 had not been valid and enforceable because it had never been officially published.

15. On 22 May 2001 the Supreme Court of the Kabardino-Balkaria Republic upheld the judgment of 13 April 2001. The court pointed out that the burden of proof was on the applicant, who had failed to show that he had been denied entry because of his ethnic (Chechen) origin.

II. RELEVANT DOMESTIC LAW

16. Article 19 of the Constitution of the Russian Federation provides for the equality of all before the law and courts of law, and equality of rights and liberties.

17. Article 27 provides that everyone lawfully within the territory of the Russian Federation shall have the right to move freely and choose his or her place of stay or residence.

THE LAW

I. ALLEGED VIOLATION OF ARTICLE 2 OF PROTOCOL NO. 4

18. The applicant complained that he had been refused admission to Kabardino-Balkaria through the "Kurp-2" check-point. He relied on Article 2 of Protocol No. 4 which reads, in the relevant part, as follows:

"1. Everyone lawfully within the territory of a State shall, within that territory, have the right to liberty of movement and freedom to choose his residence. ...

3. No restrictions shall be placed on the exercise of these rights other than such as are in accordance with law and are necessary in a democratic society in the interests of national security or public safety, for the maintenance of *ordre public*, for the prevention of crime, for the protection of health or morals, or for the protection of the rights and freedoms of others.

4. The rights set forth in paragraph 1 may also be subject, in particular areas, to restrictions imposed in accordance with law and justified by the public interest in a democratic society.”

19. The Government acknowledged that the restriction on the applicant’s right to liberty of movement had been unlawful. It had been imposed by a regulation issued by the Ministry of the Interior of Kabardino-Balkaria, whereas the Liberty of Movement Law (no. 5242-I of 25 June 1993) required that any such restriction be established by an act of the legislature.

20. The applicant took note of the Government’s submission.

21. The Court recalls that the common requirement of paragraphs 3 and 4 of Article 2 of Protocol No. 4 is that the impugned restriction should be imposed “in accordance with law”. The Government accepted that this condition had not been met in the present case because the requirement for former Chechen residents to produce a migrant’s card at the administrative border with Kabardino-Balkaria had been introduced by a regulation which had not had the quality of “law” in the domestic legal system. The Court has no reason to doubt the Government’s interpretation of their own legislation. Accordingly, the restriction on the applicant’s right to liberty of movement was not imposed in accordance with law. This finding makes it unnecessary to determine whether it pursued a legitimate aim and was justified in a democratic society.

22. There has been therefore a violation of Article 2 of Protocol No. 4.

II. 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.”

A. Damage

24. The applicant claimed 300,000 euros in respect of compensation for non-pecuniary damage.

25. The Government submitted that the applicant’s claim was excessive and unreasonable, and that a token amount would be equitable in the circumstances of the case.

26. The Court considers that the applicant has suffered non-pecuniary damage resulting from the actions and decisions of the domestic authorities incompatible with the Convention and its Protocols, which is not sufficiently compensated by its finding of a violation. However, it considers that the amount claimed by the applicant is excessive. Making its

assessment on an equitable basis, the Court awards the applicant EUR 2,000.

B. Costs and expenses

27. The applicant claimed 40 euros in respect of costs and expenses.

28. The Government submitted that the applicant failed to substantiate his claim for costs with appropriate documents.

29. The Court notes that the applicant did not produce any receipts or vouchers showing that the expenses had been actually incurred. Accordingly, it does not make an award under this head.

C. Default interest

30. 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. *Holds* that there has been a violation of Article 2 of Protocol No. 4;
2. *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 2,000 (two thousand euros) in respect of non-pecuniary damage, to be converted into Russian roubles at the rate applicable at the date of settlement, plus any tax that may be chargeable;
 - (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;
3. *Dismisses* the remainder of the applicant's claim for just satisfaction.

Done in English, and notified in writing on 13 December 2005, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

S. DOLLÉ
Registrar

A.B. BAKA
President