



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

FIRST SECTION

CASE OF VIKTOR KONOVALOV v. RUSSIA

(Application no. 43626/02)

JUDGMENT

STRASBOURG

24 May 2007

FINAL

24/08/2007

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 Viktor Konovalov v. Russia,

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

Mr C.L. ROZAKIS, *President*,

Mr L. LOUCAIDES,

Mrs N. VAJIĆ,

Mr A. KOVLER,

Mr K. HAJIYEV,

Mr D. SPIELMANN,

Mr S.E. JEBENS, *judges*,

and Mr S. NIELSEN, *Section Registrar*,

Having deliberated in private on 3 May 2007,

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

PROCEDURE

1. The case originated in an application (no. 43626/02) 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 Ukrainian national, Mr Viktor Aleksandrovich Konovalov ("the applicant"), on 25 November 2002.

2. The applicant was represented before the Court by Mr M. Minayev, a lawyer practising in Moscow. The Russian Government ("the Government") were represented by Mr P. Laptev, Representative of the Russian Federation at the European Court of Human Rights.

3. The applicant alleged, in particular, that there had been a violation of his property rights resulting from the procedurally defective sale of his car.

4. By a decision of 30 August 2005 the Court declared the application partly admissible.

5. The Government, but not the applicant, filed observations on the merits (Rule 59 § 1). The Ukrainian Government did not exercise their right to intervene (Rule 36 § 1 of the Convention).

THE FACTS**I. THE CIRCUMSTANCES OF THE CASE**

6. The applicant was born in 1957 and lives in Moscow.

A. Breach of the customs regulations and imposition of fine

7. On 19 March 1999, while travelling with his family to Ukraine, the applicant was stopped in the Moscow Region by officers of the road police. The police discovered that the applicant's car had been brought into Russia on 8 January 1999 and that customs had authorised its circulation on Russian territory for two months only. On the same day the Podolsk Customs Office seized the applicant's car as the object of a breach of customs regulations.

8. On 23 March 1999 the Podolsk Customs Office opened a case against the applicant for failure to take the vehicle out of the customs territory of the Russian Federation within the established time-limit, this being an administrative offence under Article 271 § 1 of the Customs Code.

9. On 23 July 1999 an expert identified the applicant's car as a Peugeot 305 having a depreciated value of 9,858 Russian roubles (RUR).

10. On 30 July 1999 the customs authorities found the applicant guilty of a breach of Article 271 § 1 of the Customs Code and imposed a fine equal to the car's value. The fine was payable within fifteen days of receipt of the decision or, if an appeal was lodged, within fifteen days of the final decision on the appeal.

11. On 11 August 1999 the Moscow Customs Directorate rejected the applicant's appeal against the decision of 30 July 1999. An appeal to a court lay against such a refusal.

12. On 21 August 1999 the applicant lodged an appeal with the Meshchanskiy District Court of Moscow. According to the applicant, the Podolsk Post Office confirmed that on 31 August 1999 a copy of the complaint had been delivered to the Podolsk Customs Office.

13. On 25 August 1999 the customs office forwarded the decision of 30 July 1999 to the bailiffs' service for enforcement through the sale of the car. The applicant was not informed of this.

14. On 17 September 1999 the bailiff commissioned a private company to organise the sale of the car.

15. After several reductions of the sale price, on 15 December 1999 the car was sold for RUR 3,000.

16. On 14 April 2000 the Meshchanskiy District Court heard the appeal. It found that the existence of a breach was not disputed by the parties and that the decision imposing the fine had not become time-barred. The court dismissed the complaint.

17. On 10 August 2000 the Moscow City Court upheld, on the applicant's appeal, the judgment of 14 April 2000.

B. The applicant's attempts to contest the sale of his car*1. Complaint to a prosecutor*

18. The applicant complained to a prosecutor's office that the sale of his car had been unlawful as it was effected at the time when his appeal against the customs office's decision was pending.

19. On 24 May 2001 the South-Western transport prosecutor's office sent a letter to the head of the Podolsk Customs Office. A deputy prosecutor determined that the decision of 30 July 1999 had been enforced in breach of the Customs Code. Having received, on 24 September 1999, a copy of the applicant's appeal to a court, the Podolsk Customs Office had not forwarded that information to the bailiff or suspended the enforcement proceedings. The deputy prosecutor recommended that similar violations be avoided in the future, yet in the applicant's case he refused to take action because "the State interests had not been harmed".

2. Proceedings against the bailiffs' service

20. The applicant complained to a court about the bailiff's acts. He submitted, in particular, that he had not been notified of the opening of the enforcement proceedings or informed about the reduction of the sale price and that the car had been sold outside the two-month time-limit.

21. On 14 June 2001 the Podolsk Town Court of the Moscow Region gave judgment. It found that the representative of the Podolsk bailiffs' service could not show that the applicant had been notified of the enforcement proceedings and price reduction. Nor could he explain what actions had been undertaken by the bailiff to identify the applicant's sources of income or other property and why the car had not been offered to the creditor upon expiry of the two-month time-limit but instead had been sold three months later. The court noted that the enforcement file contained the report on the impossibility of enforcement dated 21 December 1999, but the documents on which the act had been founded were missing. The court made a declaratory judgment that the enforcement procedure had been carried out in breach of the Enforcement Act.

3. Proceedings against the customs office

22. The applicant also lodged a complaint against the Podolsk Customs Office. He submitted, in particular, that the office had failed to suspend the enforcement proceedings pending the outcome of his complaint to a court.

23. On 12 March 2002 the Podolsk Town Court of the Moscow Region dismissed the complaint. As regards the allegedly premature transfer of the car to the bailiffs, the court held as follows:

“The car taken from [the applicant] was a piece of evidence that, pursuant to Article 327 of the Customs Code, was to be kept until the time-limit for lodging an appeal against the decision of the customs office... had expired or until a higher customs office or a district/town court had given a decision... The car was handed over for sale to the court bailiffs after the higher customs office had replied to [the applicant's] complaint; [the applicant] did not show that, before the handover of the car had been effected, he had informed the Podolsk Customs Office of his having lodged a complaint with a court; an acknowledgement-of-receipt coupon on p. 100 of the case file is not evidence of appropriate notification because [the text of] the notification is missing ...”

24. On 30 May 2002 the Moscow Regional Court, on the applicant's appeal, upheld the judgment of 12 March 2002.

C. Proceedings for compensation

25. The applicant sued the Moscow Region Directorate of the Ministry of Justice, the authority in charge of court bailiffs, for pecuniary and non-pecuniary damage caused by the court bailiff.

26. On 27 February 2003 a Justice of the Peace of the 13th Court Circuit of the Zyuzino District of Moscow granted the applicant's claims in part. He determined that the applicant's car had been billed for sale on 17 September 1999 and that the price had been reduced on 6 October, 19 October, 2 November and 8 December 1999. On 15 December 1999 it had been sold for RUR 3,000. The court found that, in breach of the requirement of the Enforcement Act, the applicant had not been informed of the enforcement proceedings, the bailiff had not attempted to identify his other assets or money, the creditor had not been offered to keep the car or to contest the sale price of the car. The court noted the decision of the Podolsk prosecutor's office of 22 October 2002 whereby criminal proceedings against the court bailiff were discontinued. The decision established that the bailiff might have been guilty of professional negligence (Article 293 § 1 of the Criminal Code), but prosecution was time-barred. The court ruled that there was a causal link between the bailiff's unlawful actions and the pecuniary damage caused to the applicant, and ordered the Ministry of Justice, as the bailiff's employer, to reimburse RUR 6,858 to the applicant (the difference between the car's valuation and sale price) and to pay RUR 500 in respect of non-pecuniary damage, RUR 2,000 for legal costs and also to bear court fees.

27. On 25 December 2003 the Zyuzinskiy District Court of Moscow quashed, on an appeal from the Ministry of Justice, the judgment of 27 February 2003. The court held that the applicant had failed to prove that the bailiff's actions had caused him pecuniary or non-pecuniary damage and the violations committed by the bailiff had been of “a procedural nature”.

II. RELEVANT DOMESTIC LAW

A. Customs Code (Law no. 5221-I of 18 June 1993)

28. The Customs Code, as in force at the material time, provides in relevant part as follows.

A breach of customs regulations is punishable by, in particular, forfeiture of the goods or vehicles that were the object of the offence, or payment of a fine equal to their value (Article 242 §§ 4 and 5).

29. Physical evidence includes the goods and vehicles that were the objects of a violation of the customs regulations. Such evidence is kept in the warehouse until the time-limit for lodging an appeal has expired or the appeal has been decided upon by the higher customs office or a court (Article 327).

30. The goods and vehicles that were the object of a violation of the customs regulations will be seized. If the person who is found liable for a violation of customs regulations has no permanent residence in Russia, his goods, money or vehicle may be seized as security for payment of the fine (Article 337).

31. The order on payment of a fine may be enforced by the customs office after the time-limit for lodging an appeal has expired (Article 378). The lodging of an appeal shall suspend enforcement (Article 376). The fine is payable within fifteen days after the final decision refusing the appeal against the order was issued. If the fine has not been paid within this time-limit, it may be recovered from the goods charged as security for the payment or from the person's other assets or income (Article 379).

B. Enforcement Act (Law no. 119-FZ of 21 July 1997)

32. The Enforcement Act provides in relevant part as follows.

A copy of the decision on the opening of enforcement proceedings must be sent to the debtor within one day of issue (section 9 § 4). The creditor and the debtor are the parties to the enforcement proceedings (section 29 § 1).

33. Recovery may be made out of the debtor's property if the debtor does not have sufficient cash funds in Russian roubles or foreign currency (section 46).

34. Property subject to a charge may be sold within two months of the date of the charge order. If the property has not been sold within two months, the creditor will have the right to keep the property. If the creditor refuses, the property is returned to the debtor and the writ of enforcement to the creditor (section 54).

THE LAW

I. ALLEGED VIOLATION OF ARTICLE 1 OF PROTOCOL NO. 1

35. The applicant complained under Article 1 of Protocol No. 1 that the sale of his car had not been effected in accordance with the law. Article 1 of Protocol No. 1 provides as follows:

“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. Submissions by the parties

36. The applicant submitted that he had been deprived of his property without due process of law. According to the decision of 23 March 1999, his car was seized as the object of the violation, that is, physical evidence which had to be returned to the legal owner in accordance with Article 327 of the Customs Code. No decision on charging the car as security for payment of the fine had ever been issued. The customs office must have been aware of the appeal because on 31 August 1999 the post office had delivered a copy of the appeal to customs. The applicant considered that the procedurally defective sale of the car on the basis of an unlawful decision of the customs office had violated his rights under Article 1 of Protocol No. 1.

37. The Government pointed out that the decision to fine the applicant for a breach of the customs regulations in an amount equal to the value of his car had been lawful. They acknowledged, however, that there had been a violation of Article 1 of Protocol No. 1 in that the bailiff had sold the applicant's car in breach of the requirements of the Enforcement Act. He had not advised the applicant of the institution of enforcement proceedings on 30 August 1999 or explained to him the right to be a party to those proceedings. The enforcement had not been suspended after the applicant had lodged an appeal with the Meshchanskiy District Court on 21 August 1999. Furthermore, once the initial two-month period had expired, the bailiff should have asked the creditor whether he wanted to keep the car and, if the creditor was not interested, should have returned it to the lawful owner but had not done that either. In a judgment of 14 July 2001 the Podolsk Town Court had acknowledged a breach of the Enforcement Act.

The Government nevertheless claimed that these procedural breaches could not have affected the applicant's property rights because, in any event, he had been fined for a breach of customs regulations.

B. The Court's assessment

38. Article 1 of Protocol No. 1 comprises three distinct rules: the first rule, set out in the first sentence of the first paragraph, is of a general nature and enunciates the principle of the peaceful enjoyment of property; the second rule, contained in the second sentence of the first paragraph, covers deprivation of possessions and subjects it to certain conditions; the third rule, stated in the second paragraph, recognises that the Contracting States are entitled, *inter alia*, to control the use of property in accordance with the general interest. The three rules are not, however, distinct in the sense of being unconnected. The second and third rules are concerned with particular instances of interference with the right to peaceful enjoyment of property and should therefore be construed in the light of the general principle enunciated in the first rule (see, as a recent authority, *Broniowski v. Poland* [GC], no. 31443/96, § 134, ECHR 2004-V).

39. The Court observes that the “possession” at issue in the present case was the car of which the applicant was the lawful owner. The Court notes that in the application before it the applicant did not dispute the lawfulness of the fine imposed on him for having committed a breach of customs regulations. Nor did he contest the lawfulness of the decision to seize his car as the object of that breach. The alleged violation of his property rights stemmed not from those actions by the domestic authorities but rather from the sequence of later events that ultimately led to the loss of ownership of the car. Those events included the charging of his car as security for payment of the fine, the handover of the car to the bailiff for sale with a view to recovering the fine from the proceeds, and the applicant's inability to take part in the enforcement proceedings.

40. The Court is not persuaded by the Government's contention that the breaches of the relevant law committed by the bailiff did not affect the applicant's property rights because in any event he had to pay a fine for a breach of customs regulations. That contention is based on the assumption that the applicant would have lost title to his car irrespective of the course of enforcement proceedings. The Court finds that this assumption does not have a sufficient logical and legal basis. The applicant was required to pay a specific sum of money to the State equal to the car's value. He was not, however, required to relinquish ownership of the car, which was not subject to any forfeiture or confiscation order and merely served as security for the payment of the fine. If the applicant had paid the fine after his appeal had failed at last instance, he would have recovered possession of the car (see paragraph 31 above). As it happened in the present case, the applicant was

not afforded the option of paying the fine in cash because the car was sold when the appeal was still pending. In these circumstances, the Court finds that the sequence of events culminating in the sale of the applicant's car amounted to interference with his right to peaceful enjoyment of possessions within the meaning of Article 1 of Protocol No. 1.

41. The parties did not take a clear stance on the question of the rule of Article 1 of Protocol No. 1 under which the case should be examined. The Court observes that the charging of the car as security for payment of the fine amounted to a temporary restriction on its use and thus fell under the scope of the second paragraph of Article 1 concerning “a control of the use of property” (see *Air Canada v. the United Kingdom*, judgment of 5 May 1995, Series A no. 316-A, § 34). The same can be said about the handover of the car to the bailiff, which did not involve a transfer of ownership as enforcement could be stayed at any time and the car returned to the applicant. However, the sale of the car had the effect of depriving the applicant of ownership and brought the situation into the ambit of the second rule of Article 1 of Protocol No. 1 concerning deprivation of possessions.

42. The Court has next to determine whether the interference was justified in accordance with the requirements of that provision. In this connection it reiterates that the first and most important requirement of Article 1 of Protocol No. 1 is that any interference by a public authority with the peaceful enjoyment of possessions should be “lawful”: the second paragraph recognises that the States have the right to control the use of property by enforcing “laws”. Moreover, the rule of law, one of the fundamental principles of a democratic society, is inherent in all the Articles of the Convention. The issue of whether a fair balance has been struck between the demands of the general interest of the community and the requirements of the protection of the individual's fundamental rights only becomes relevant once it has been established that the interference in question satisfied the requirement of lawfulness and was not arbitrary (see, among other authorities, *Baklanov v. Russia*, no. 68443/01, § 39, 9 June 2005, and *Frizen v. Russia*, no. 58254/00, § 33, 24 March 2005, with further references).

43. The applicant claimed that the seizure of the car as security had been unlawful because there had been no separate charge order and because it had been initially seized as physical evidence rather than as security. The Court observes that on 19 March 1999 the Customs Office issued a decision to seize the applicant's car as the object of the offence (see paragraph 7 above). The Customs Code did not require a separate charge order for seizure of a vehicle as security for payment of a fine if its owner had no permanent place of residence within Russia, which was the applicant's case (see paragraph 30 above). Contrary to the applicant's allegation, there is no

indication that the seizure of the car as security was unlawful under the domestic provisions.

44. The applicant further alleged that the car had been handed over to the bailiff prematurely, even before he had had an opportunity to have his appeal examined by a court. At the admissibility stage the Government claimed that the customs office had had no information that the applicant had contested their decision before a court (see the admissibility decision of 30 August 2005). Thus, the contentious point between the parties is whether the customs office were aware at the time of the handover that an appeal had been lodged. The Court does not need to resolve this question of fact in view of the following considerations.

45. As noted above, the handover of the car to the bailiff did not involve an automatic transfer of ownership and enforcement proceedings could be suspended at any time until the car had been sold. In a letter of 24 May 2001 the transport prosecutor determined that the customs office had been aware of the applicant's appeal to a court at least since 24 September 1999 but it had taken no steps to forward that information to the bailiff or to suspend the enforcement proceedings, in breach of the requirements of Article 376 of the Customs Code (see paragraphs 19 and 31 above). That indicates that the conduct of the Podolsk Customs Office was not in accordance with law.

46. Furthermore, it was claimed by the applicant and acknowledged by the respondent Government that the bailiff had disregarded the legal requirements applicable to the procedure for enforcement of the customs decision and sale of the applicant's property. The failure to inform the applicant about the opening of the proceedings affecting his possessions and to ensure his effective participation should be regarded as a most serious failing, undermining the substance of the guarantees of Article 1 of Protocol No. 1. The bailiff had acted unlawfully in that he had not notified the applicant about the institution of the proceedings or advised him of the right to be a party, had not attempted to identify the applicant's other assets prior to billing the car for sale, and had not offered the car to the creditor (the customs office) after the initial statutory two-month period had expired. Moreover, the bailiff had reduced the sale price on four occasions, without informing either the applicant or the customs office. The prosecutor's office, the domestic courts and the respondent Government, in their observations on the merits of the case, recognised that the bailiff's actions had not been in accordance with the law.

47. Accordingly, the Court finds that the interference with the applicant's rights under Article 1 of Protocol No. 1 did not meet the requirement of "lawfulness". There has therefore been a violation of that provision.

II. APPLICATION OF ARTICLE 41 OF THE CONVENTION

48. 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.”

49. The Court points out that under Rule 60 of the Rules of Court any claim for just satisfaction must be itemised and submitted in writing together with the relevant supporting documents or vouchers, “failing which the Chamber may reject the claim in whole or in part”.

50. In a letter of 5 September 2005, after the application had been declared admissible, the Court invited the applicant's representative to submit claims for just satisfaction by 7 November 2005. He did not submit any such claim within the specified time-limit.

51. In these circumstances, the Court makes no award under Article 41.

FOR THESE REASONS, THE COURT UNANIMOUSLY

1. *Holds* that there has been a violation of Article 1 of Protocol No. 1;
2. *Decides* not to make an award under Article 41 of the Convention.

Done in English, and notified in writing on 24 May 2007, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Søren NIELSEN
Registrar

Christos ROZAKIS
President