



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

FIRST SECTION

CASE OF TOLSTOV v. RUSSIA

(Application no. 40078/03)

JUDGMENT

STRASBOURG

26 June 2008

FINAL

26/09/2008

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 Tolstov v. Russia,

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

Nina Vajić, *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 5 June 2008,

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

PROCEDURE

1. The case originated in an application (no. 40078/03) 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 Konstantin Anatolyevich Tolstov (“the applicant”), on 5 December 2003.

2. The Russian Government (“the Government”) were represented by Mr P. Laptev, the Representative of the Russian Federation at the European Court of Human Rights.

3. On 1 March 2006 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

I. THE CIRCUMSTANCES OF THE CASE

4. The applicant was born in 1973 and lives in Rostov-on-Don.

5. At the material time the applicant was a serviceman about to retire. Under domestic law the command had to provide retirees with housing, but none was given to the applicant, and the applicant applied to a court.

6. On 6 June 2002 the Military Court of Rostov-on-Don held for the applicant and ordered the applicant’s command to “provide [him] with

housing in accordance with legislation in force”. This judgment became binding on 7 August 2002, but was not enforced immediately.

7. On the command’s requests, the court several times extended the time-limit for the enforcement: from 19 November 2002 to 19 February 2003, from 5 August 2004 to 5 September 2004, from 11 October 2004 to 11 November 2004.

8. On 15 June 2004 the command offered to the applicant a flat in Taganrog, but he refused from it because he wished to receive a flat in Rostov-on-Don.

9. On 31 March 2005 the applicant received a flat in Rostov-on-Don.

II. RELEVANT DOMESTIC LAW

10. Under section 9 of the Federal Law on Enforcement Proceedings of 21 July 1997, a bailiff must enforce a judgment within two months.

THE LAW

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

11. The applicant complained about the lengthy non-enforcement of the judgment. The court will examine this complaint under Article 6 § 1 of the Convention and Article 1 of Protocol No. 1. As 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.

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

12. The Government argued that this complaint was manifestly ill-founded. The authorities had done their best to enforce the judgment. They had started soliciting a flat for the applicant even before the enforcement proceedings had begun. The flat had not been immediately available because there had been no funding. A bailiff had several times fined the applicant's commander for the non-enforcement. The court had several times extended the period of enforcement. The applicant had refused the flat in Taganrog.

13. The applicant argued that the flat in Taganrog had been unacceptable because it was far from his place of service. The fines imposed on the commander had not sped up the enforcement. The enforcement had lasted too long.

14. The Court notes that the application 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

15. The Court reiterates that an unreasonably long delay in the enforcement of a binding judgment may breach the Convention (see *Burdov v. Russia*, no. 59498/00, ECHR 2002-III). To decide if the delay was reasonable, the Court will look at how complex the enforcement proceedings were, how the applicant and the authorities behaved, and what the nature of the award was (*Raylyan v. Russia*, no. 22000/03, § 31, 15 February 2007).

16. The enforcement of the judgment lasted in total two years and seven months: from the day the judgment became binding to the day the applicant received the flat. From this period it is appropriate to deduct five months – the extensions granted by the district court. Therefore, the period to be considered by the Court is two years and two months.

17. The applicant is responsible for nine months of delay, because he refused the flat in Taganrog. Even though he argues that the flat was unacceptable, it does not follow from the judgment that the flat had to be in any specific town.

18. The Government are responsible for the remaining one year and five months' delay. Even though throughout this period the bailiffs pursued the matter actively, and the command was mindful of the need to provide the applicant with housing, this period is, in the circumstances of this case, incompatible with the requirements of the Convention.

19. There has, accordingly, been a breach of Article 6 § 1 of the Convention and Article 1 of Protocol No. 1.

II. APPLICATION OF ARTICLE 41 OF THE CONVENTION

20. 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.”

21. The applicant did not submit a claim for just satisfaction. Accordingly, the Court considers that there is no call to award him any sum on that account.

FOR THESE REASONS, THE COURT UNANIMOUSLY

1. *Declares* the application admissible;
2. *Holds* that there has been a violation of Article 6 § 1 of the Convention and Article 1 of Protocol No. 1.

Done in English, and notified in writing on 26 June 2008, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Søren Nielsen
Registrar

Nina Vajić
President