



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

FIRST SECTION

CASE OF FILONENKO v. RUSSIA

(Application no. 22094/04)

JUDGMENT

STRASBOURG

31 July 2008

FINAL

26/01/2009

This judgment may be subject to editorial revision.

In the case of Filonenko v. Russia,

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

Christos Rozakis, *President*,

Nina Vajić,

Anatoly Kovler,

Khanlar Hajiyeu,

Dean Spielmann,

Sverre Erik Jebens,

Giorgio Malinverni, *judges*,

and Søren Nielsen, *Section Registrar*,

Having deliberated in private on 3 July 2008,

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

PROCEDURE

1. The case originated in an application (no. 22094/04) 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 Viktor Nikolayevich Filonenko (“the applicant”), on 11 May 2004.

2. The Russian Government (“the Government”) were represented by Mrs V. Milinchuk, the Representative of the Russian Federation at the European Court of Human Rights.

3. On 22 May 2007 the Court decided to give notice of the application to the Government. It 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 1959 and lives in Kemerovo.

5. As a retired serviceman, the applicant was entitled to a State flat. The flat was not provided, and the applicant brought an action against the Kemerovo Town Council.

6. In the course of the proceedings, on 6 May 2003, the Town Council offered the applicant to settle the case by providing him with a “State housing voucher” – a registered instrument entitling its owner to a housing subsidy. The applicant rejected this and several subsequent similar offers.

7. On 12 May 2003 the Tsentralnyi District Court of Kemerovo ordered the Town Council to

“provide the applicant’s family of four with a dwelling by way of, among other means, State housing vouchers valid for acquisition and construction of dwellings and financed by the Federal budget, and also by way of off-budget financial sources.”

8. This judgment became binding on 23 May 2003.

9. In 2004–06 the Town Council several times offered the applicant the voucher. The applicant refused these offers and asked the District Court to change the mode of enforcement to a cash payment, but on 7 November 2005 the District Court refused this request.

10. On 20 August 2007 a bailiff terminated the enforcement proceedings because the applicant had refused the voucher.

II. RELEVANT DOMESTIC LAW

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

12. Under section 2 of the Federal Programme “State Housing Vouchers” of 20 January 1998, a housing voucher is a registered instrument entitling its owner to a housing subsidy. The vouchers are issued and liquidated by the Ministry of Finance. An owner of the voucher may open a blocked account in an authorised bank, and the Treasury will credit to this account a subsidy for purchasing property.

THE LAW

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

13. The applicant complained under Article 6 of the Convention and Article 1 of Protocol No. 1 about the non-enforcement of the judgment. Insofar 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

14. The Government argued that this complaint was inadmissible.

First, Article 6 had not applied to the proceedings in question, because the applicant had been a serviceman, and hence his dispute with the authorities had not been “civil”.

Second, the applicant had not exhausted domestic remedies, because he had not complained to bailiffs, prosecutors, or courts.

Third, the applicant had obstructed the enforcement of the judgment. He had been a serviceman, and his social benefits had been subject to special regulations. Under these regulations, servicemen’s dwelling conditions could have been improved by means of “State housing vouchers”. From 2003 to 2007 the Town Council had several times proposed to the applicant to apply for the voucher, but he had persistently refused.

15. The applicant maintained his complaint.

First, Article 6 had applied to the proceedings in question, because at the material time the applicant had been retired.

Second, the applicant had complained about the non-enforcement, but his complaints had been futile. A complaint against the bailiffs would have been ineffective.

Third, the applicant had refused the voucher, because of slim chances that the voucher would have been provided promptly, because the voucher had not covered the price of a flat, and because the applicant would have been struck off the waiting list for an in-kind provision of a flat.

16. With regard to the applicability of Article 6, the Court reiterates that this Article does not apply only to cases where domestic law expressly excludes access to a court for the category of staff in question, and where this exclusion is justified by the State’s objective interest (see *Vilho Eskelinen and Others v. Finland* [GC], no. 63235/00, § 62, ECHR 2007-...) In the case at hand, however, the applicant did have access to a court under domestic law. He used this right and sued his former employer. The Military Court examined and granted the applicant’s claim. Nothing suggests that domestic law barred the applicant’s access to a court. Accordingly, Article 6 is applicable (compare with *Dovguchits v. Russia*, no. 2999/03, § 24, 7 June 2007), and the Government’s objection must be dismissed.

17. As to domestic remedies, the Court reiterates that it is the Government who bear the burden of proof of the remedies' existence. The Government must show that the remedy was effective, accessible, capable of providing redress, and that it offered reasonable prospects of success (see, *mutatis mutandis*, *Selmouni v. France* [GC], no. 25803/94, § 76, ECHR 1999-V). In the present case, the Government have not shown how complaints to bailiffs, prosecutors, or courts would have met these requirements (compare with, for example, *John Sammut and Visa Investments Limited v. Malta* (dec.), no. 27023/03, §§ 39–46, 16 October 2007). It follows that the application cannot be rejected for non-exhaustion of domestic remedies.

18. 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

19. 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).

20. The enforcement proceedings in respect of the applicant's judgment lasted four years and two months, and the judgment could never be enforced. This period is considerable, but it appears that the delay was caused by the applicant's opposition to the enforcement. In compliance with the judgment the Town Council several times offered to the applicant the housing voucher provided for in the judgment, but he refused it and instead sought alternatives modes of enforcement. In these circumstances, the Court sees no fault on the part of the authorities in the non-enforcement of the judgment.

21. There has, accordingly, been no violation of Article 6 § 1 of the Convention or Article 1 of Protocol No. 1.

FOR THESE REASONS, THE COURT

1. *Declares* the application admissible unanimously;

2. *Holds* by six votes to one that there has been no violation of Article 6 § 1 of the Convention or Article 1 of Protocol No. 1.

Done in English, and notified in writing on 31 July 2008, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Søren Nielsen
Registrar

Christos Rozakis
President

In accordance with Article 45 § 2 of the Convention and Rule 74 § 2 of the Rules of Court, the dissenting opinion of Judge Kovler is annexed to this judgment.

C.L.R.
S.N.

DISSENTING OPINION OF JUDGE KOVLER

I cannot share the conclusion of the Chamber. On 12 May 2003 the Tsentralnyi District Court of Kemerovo ordered the Town Council to provide the applicant's family with a dwelling ("*zhiloe pomeschenie*" in Russian) in strict conformity with the provisions of section 15(14) of the Law on the Status of Servicemen: to provide retired servicemen who have served in the army for more than ten years with a dwelling within three months. Taking into account the fact that the Town Council did not provide the applicant with a dwelling "for a long time", the District Court specified that enforcement could be secured "by way, among other means, of State housing vouchers ... and also by way of off-budget financial sources" (paragraph 7). To my mind, the proposed alternative did not deprive the applicant of his right to have a council flat within the time fixed by the above-mentioned Law, as its purpose was to find a solution to that end.

The applicant refused the voucher "because of slim chances that the voucher would have been provided promptly, because the voucher had not covered the price of a flat and because the applicant would have been struck off the waiting list for in-kind provision of a flat" (paragraph 15). The Government did not show that the voucher was an effective mode of enforcement of the District Court's judgment, nor did it give any example of this means of enforcement, at least in the Kemerovo region. I regret the lack of any concrete information regarding the implementation of the Federal Programme on "State Housing Vouchers" of 20 January 1998. Unfortunately, there are several examples of non-enforcement of national courts' judgments ordering the provision of citizens with flats (see, among other authorities, *Sypchenko v. Russia*, no. 38368/04, 1 March 2007) in which the Court has held that the enforcement of these judgments should be secured by appropriate means.

The only possible alternative in the absence of "real" flats was a cash payment permitting the applicant to buy a flat, as was decided in other Russian cases (see, among other authorities, *Malinovskiy v. Russia*, no. 41302/02, ECHR 2005-VII; *Tarasov v. Russia*, no. 13910/04, 28 September 2006; and *Gorlova v. Russia*, no. 29898/03, 15 February 2007). It was not the applicant's fault that he had to insist on a really effective mode of enforcement of a judgment in his favour.

To my great regret, the reasoning of the present judgment took into account only the formal context of the situation, regardless of the specific circumstances of the case.