



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

FIRST SECTION

CASE OF KOTLYAROV v. RUSSIA

(Application no. 750/02)

JUDGMENT

STRASBOURG

18 December 2008

FINAL

18/03/2009

This judgment may be subject to editorial revision.

In the case of Kotlyarov v. Russia,

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

Christos Rozakis, *President*,

Nina Vajić,

Anatoly Kovler,

Elisabeth Steiner,

Khanlar Hajiyeu,

Giorgio Malinverni,

George Nicolaou, *judges*,

and Søren Nielsen, *Section Registrar*,

Having deliberated in private on 27 November 2008,

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

PROCEDURE

1. The case originated in an application (no. 750/02) 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 Russian national, Mr Yuriy Grigoryevich Kotlyarov (“the applicant”), on 14 September 2001.

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

3. On 27 April 2004 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).

4. The Government objected to the joint examination of the admissibility and merits of the application. Having examined the Government’s objection, the Court dismissed it.

THE FACTS

I. THE CIRCUMSTANCES OF THE CASE

5. The applicant was born in 1950 and lives in Perm, the Perm Region. He is a retired military officer.

1. Proceeding concerning payment of the food allowance for the period until 31 July 1998

6. At the material time the applicant performed his military service at the Department of Military Science of the Perm State Technical University. He sued the authorities for repayment of arrears in respect of the food allowance.

7. On 15 July 1998 the Perm Garrison Military Court granted the applicant's action in part. The court established that the applicant was receiving the food allowance from military unit 04163 of the Privolzhskiy Military Circuit and ordered the Catering Service of the Privolzhskiy Military Circuit to pay him monetary compensation instead of uncollected food allowance for the period from 1 January 1997 to 31 July 1998, the amount of compensation to be calculated on the basis of the real value of the food allowance at the day of payment. The judgment was not appealed against and became final on 25 July 1998.

8. On 15 March 1999 the Perm Garrison Military Court amended the operative part of the judgment and ordered the respondent authority to pay to the applicant 9,807.27 Russian Roubles (RUB) in arrears relating to the food allowance. The judgment entered into force ten days later.

9. On 16 March 1999 the writ of execution was issued in respect of the judgment and on 29 March 1999 the enforcement proceedings were opened by the bailiffs.

10. As from 22 November 1999 the employees of the Department of Military Science of the Perm State Technical University started receiving the food allowance from the Perm Military Missile Force Institute ("the Institute"). The applicant forwarded the judgments of 15 July 1998 and 15 March 1999 to the Institute, for repayment of the allowances due to him before his dismissal from the military service.

11. On 14 April 2000 the Institute proposed to pay the applicant RUB 4,853.33 of the uncollected food allowance in respect of the period specified in the judgment of 15 July 1998. The applicant refused to accept the payment, since he was entitled to a bigger sum pursuant to the judgment.

12. On 15 April 2000 the applicant was dismissed from military service.

13. At some point he asked the Perm Garrison Military Court to replace the defendant in his case by the Catering Service of the Institute.

14. On 4 May 2000 the Perm Garrison Military Court informed the applicant that his motion could not be examined, since the enforcement proceedings were pending in respect of the judgment and the writ of execution was with the bailiffs' office, and invited the applicant to address his inquiries directly to the bailiffs.

15. On 12 May 2000 the Missile Force Institute paid to the applicant RUB 11,840 in respect of the food allowance for the period from August 1998 to April 2000. According to the applicant, the Institute refused to make any payments in respect of the period between 1 January 1997 to

31 July 1998, since the compensation for the unpaid allowance in respect of this period should have been paid to him by the Catering Service of the Privolzhskiy Military Circuit, as ordered by the judgments of 15 July 1998 and 15 March 1999.

16. On 15 June 2000 and 15 August 2000 the bailiff fined the Head of the respondent service for the failure to comply with the judgment. The decisions to impose the fines were annulled by the Leninskiy District Court of Samara, on 6 July 2000 and 2 October 2000 respectively.

17. On 31 July 2001 the bailiffs concluded that the execution was impossible, due to the respondent authority's lack of funds, discontinued the enforcement proceedings and returned the unexecuted writ to the domestic court.

18. On 18 October 2001 the Perm Garrison Military Court found that the shortage of funds could not be regarded as justification for delayed enforcement of the judgment. The court further ordered the replacement of the respondent by the Catering Service of the Privolzhsko-Uralskiy Military Circuit, on account or re-organisation of the military circuits. The decision entered into force ten days later.

19. On 22 March 2002 the Perm Garrison Military Court ordered the replacement of the defendant in the applicant's case by the Financial and Economics Department of the Privolzhsko-Uralskiy Military Circuit. The decision was not appealed against and entered into force on 2 April 2002.

20. On 31 May 2002 the Financial and Economics Department asked the court to reopen the case due to the newly established circumstances, to replace the defendant by the Institute and to stay the execution of the judgment.

21. By letter of 8 July 2002 a judge of the Perm Garrison Military Court informed the defendant, *inter alia*, that its motion could not be granted. The court found it established that during the period at stake the applicant was receiving the food allowance from military unit 04163 of the Privolzhskiy Military Circuit, and there was no ground to replace the Catering Service of the respective circuit by the Institute. The court urged the defendant to pay the judgment debt without further delay.

22. On 26 August 2002 the amount awarded by the judgment of 15 July 1998, as modified on 15 March 1999, was paid to the applicant in full.

2. Proceedings concerning the applicant's dismissal

23. The applicant challenged at the court his dismissal of 15 April 2000 from the military service. He argued that he could not have been dismissed from the military service until all the allowances were paid to him in full.

24. On 11 May 2000 the Perm Garrison Military Court rejected his claim as having no grounds under the domestic law. The court acknowledged that the allowances he was entitled to had not been paid to him in their entirety by the date of dismissal. However, in the court's view,

that this fact did not affect lawfulness of the dismissal, since the applicant himself had refused to receive a part of the allowance proposed to him.

25. On 14 June 2000 the Privolzhskiy Circuit Military Court upheld the judgment on appeal.

II. RELEVANT DOMESTIC LAW

26. 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 OF THE CONVENTION AND ARTICLE 1 OF PROTOCOL NO.1 TO THE CONVENTION

27. The applicant complained under Article 6 of the Convention and Article 1 of Protocol No. 1 that the judgment of 15 July 1998, as amended by the decision of 15 March 1999, had not been enforced in good time. The relevant parts of the invoked provisions read as follows:

Article 6

“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

28. The Government, relying on the Court’s judgment in the case of *Pellegrin v. France* ([GC], no. 28541/95, ECHR 1999-VIII), argued that the applicant’s complaint under Article 6 of the Convention was inadmissible

ratione materiae. The applicant had been a military officer and the dispute concerned an allowance paid to him in connection with the obligations he performed in the sphere of State defence. The disputes raised by servants of the State such as military officers over their conditions of service could not be regarded as “civil” and were excluded from the ambit of Article 6.

29. The applicant contested that argument. He submitted that the case had concerned the respondent authorities’ failure to perform their contractual obligations and had been examined within the civil proceedings. There was nothing in his case to suggest that Article 6 would not apply.

30. The Court reiterates that this Article does not apply 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 made use of this right and sued the respondent Service. 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.

31. The Court further notes that this complaint is not manifestly ill-founded within the meaning of Article 35 § 3 of the Convention and is not inadmissible on any other grounds. It must therefore be declared admissible.

B. Merits

32. The Court observes that the judgment of 15 July 1998, as clarified on 15 March 1999, was enforced on 26 August 2002.

33. The Government submitted that in 2000 the Institute had invited the applicant to receive RUB 11,840 of unpaid food allowance in respect of the entire period of his service, but he himself had refused to receive that sum. Accordingly, the subsequent period of non-enforcement had not been attributable to the authorities.

34. The applicant contested that argument. He submitted that in April 2000 the Institute has indeed proposed to pay him arrears in the food allowance for a period specified in the judgment. However, the Institute was not a defendant in the case, and the proposal had been made outside the framework of the enforcement proceedings. On 4 May 2000 the domestic court clearly refused to replace the defendant by the Catering Service of the Institute. Pursuant to the domestic court’s clarifications of 4 May 2000, the Institute refused to make any payment in respect of the period between 1 January 1997 and 31 July 1998. In any event, the amount proposed by the Institute was smaller than ordered by the judgment of 15 March 1999, and under the domestic law the applicant was not under obligation to accept a

partial enforcement of the judgment. As regards RUB 11,840, contrary to the Government's submissions, he had duly received that sum. However, that payment had been made in respect of the period from 1 August 1998 to 14 April 2000. Thus, it had been unrelated to the applicant's non-enforcement grievance and had had no impact on his victim status.

35. The Court observes, first, that the payment of RUB 11,840 referred to by the Government was made in respect of a different period of time than that specified in the judgment, and was of no connection to the enforcement proceedings at stake. As regards the proposal of compensation in respect of the period between 1 January 1997 and 31 July 1998, it was made by the Institute which was not a respondent in the case. Moreover, on 4 May 2000 the domestic court refused to examine the applicant's request for replacement of the initial defendant in the case by the Institute and on 8 July 2002 rejected the defendant service's motion in this respect. Furthermore, the Institute accepted to pay the applicant an amount which was manifestly smaller than that ordered by the domestic court on 15 March. Thus, it cannot be said that the amount at stake was indeed proposed pursuant to the judgment of 15 July 1998, as clarified on 15 March 1999. Therefore, there is nothing in the present case to suggest that any delay in paying the amount due was caused by the applicant's opposition to the execution of the judgment.

36. The Court further observes that the judgment in the applicant's favour has remained without execution for more than 4 years and 1 month. The Government did not point out at any circumstances justifying such a delay.

37. The Court has frequently found violations of Article 6 § 1 of the Convention and Article 1 of Protocol No. 1 in 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 *Pridatchenko and Others v. Russia*, nos. 2191/03 et seq., 21 June 2007). Having regard to its case-law on the subject, the Court finds that by failing, for more than four years, to comply with the enforceable judgment in the applicant's favour the domestic authorities impaired the essence of his right to a court and prevented him from receiving the money he could reasonably have expected to receive.

38. There has accordingly been a violation of Article 6 § 1 of the Convention and Article 1 of Protocol No.1 thereto.

II. OTHER ALLEGED VIOLATIONS OF THE CONVENTION

39. The applicant complained under Article 6 about unfair outcome and incorrect application of the domestic law in the proceedings concerning his dismissal. He averred, in particular, that he had been unlawfully dismissed from the military service on 15 April 2000, while he should have remained in service until 26 August 2002, the date than the judgment awarding him

with arrears in allowances had been enforced in full. He complained under Article 13 that his attempts to challenge the judgment by way of supervisory review procedure had been unsuccessful.

40. As regards the unfairness of the dismissal proceedings, Court notes that the applicant introduced this complaint to the Court on 14 September 2001 and the final judgment in the proceedings was taken on 14 June 2000. It follows that this part of the application is inadmissible for failure to observe the six months' time-limit in Article 35 § 1 of the Convention and must be rejected pursuant to Article 35 § 4.

41. The Court has further examined the remaining complaints as submitted by the applicant. Having regard to all the material in its possession, it 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. It follows that this part of the application must be rejected as being manifestly ill-founded, pursuant to Article 35 §§ 3 and 4 of the Convention.

III. APPLICATION OF ARTICLE 41 OF THE CONVENTION

42. 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

43. The applicant claimed RUB 230,804 (6,411 euro) of the allowance he could have received if he had not been dismissed from the military service and RUB 39,072 (1,085 euro) of compensation for the loss in the amount of pension as a result of unlawful early dismissal. He further claimed 20,000 euro (EUR) in respect of non-pecuniary damage. The Government contested the claim for pecuniary damage as unsubstantiated and having no causal link with the alleged violations and submitted that the claim for non-pecuniary damage was excessive and unreasonable.

44. As regards the claim of pecuniary damage, the Court does not discern any link between the amounts claimed and the violation found and therefore dismisses the applicant's claim under this head. At the same time, the Court considers that the applicant suffered distress and frustration because of the State authorities' failure to enforce the judgments in his favour in good time. The Court takes into account the amount and nature of the award in the instant case and the period of the authorities' inactivity. Making its assessment on an equitable basis, it awards the applicant

EUR 1,200, plus any tax that may be chargeable on it, and dismisses the remainder of his claim for just satisfaction.

B. Costs and expenses

45. The applicant did not claim costs or expenses within the specified time-limit. Accordingly, there is no call to make an award under this head.

C. Default interest

46. 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 under Article 6 and Article 1 of Protocol no.1 about non-enforcement of the judgment in the applicant's favour admissible and the remainder of the application inadmissible;
2. *Holds* that there has been a violation of Article 6 of the Convention and Article 1 of Protocol No.1;
3. *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 1,200 (one thousand two hundred euros), plus any tax that may be chargeable, in respect of non-pecuniary damage, to be converted into 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;
4. *Dismisses* the remainder of the applicant's claim for just satisfaction.

Done in English, and notified in writing on 18 December 2008, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Søren Nielsen
Registrar

Christos Rozakis
President