



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

FIRST SECTION

CASE OF LOTOREVICH v. RUSSIA

(Application no. 16048/06)

JUDGMENT

STRASBOURG

22 January 2009

FINAL

22/04/2009

This judgment may be subject to editorial revision.

In the case of Lotorevich v. Russia,

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

Christos Rozakis, *President*,

Anatoly Kovler,

Elisabeth Steiner,

Dean Spielmann,

Sverre Erik Jebens,

Giorgio Malinverni,

George Nicolaou, *judges*,

and André Wampach, *Deputy Section Registrar*,

Having deliberated in private on 16 December 2008,

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

PROCEDURE

1. The case originated in an application (no. 16048/06) 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 Andrey Yevgenyevich Lotorevich (“the applicant”), on 6 April 2006.

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

3. On 7 May 2007 the President of the First Section decided to communicate the complaint concerning non-enforcement of a binding judgment to the Government. It was 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 Krasnoznamensk, a town in the Moscow Region.

5. At the material time the applicant was a lieutenant colonel of Space Forces. After 22 years of service, he was due to retire on reaching the age limit in August 2004. Under domestic law, long-serving servicemen in need of better housing (the applicant met this condition) could be discharged against their will only if the command provided them with such housing.

When preparing his discharge, the applicant insisted that the command provide him with a flat and did not agree to be discharged “flatless” (*бесквартирным*).

6. As the flat had not been provided in time, the applicant sued his command. On 25 February 2005 the Krasnoznamensk Garrison Military Court ordered the command to provide the applicant with housing at his place of service and, once this done, to discharge him. This judgment became binding on 10 March 2005 but was not enforced immediately.

7. In February 2006 the applicant was offered a flat in Bolshie Vyazyomy, a village 3.5 km away from Krasnoznamensk. The applicant refused this offer, insisting that the flat should be located in Krasnoznamensk itself.

8. On 15 June 2007 the applicant received a flat in Krasnoznamensk. He was discharged later the same year.

II. RELEVANT DOMESTIC LAW

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

10. Under section 23 § 1 of the Federal Law on the Status of Servicemen, servicemen who have served ten years and more and whose housing needs to be improved cannot be discharged against their will without the provision of such housing.

11. According to the Ruling of the Constitutional Court 322-O of 30 September 2004, after expiry of a serviceman’s contract and in the absence of his written agreement to a “flatless” discharge, he should be considered as serving voluntarily only until the provision of housing.

THE LAW

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

12. 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

13. The Government argued that the application was inadmissible. The proceedings in question had not been “civil” within the meaning of Article 6, because as a serviceman, the applicant had wielded a portion of the State’s sovereignty, and because the subject matter of case had been excluded from ordinary courts’ competence. The applicant had failed to exhaust domestic remedies, because he had not brought proceedings against bailiffs, had not requested a change of the mode of enforcement, and had not complained to a court. The authorities had not idled. The bailiffs had fined the defendant and threatened it with a criminal prosecution. The applicant had rejected the flat in Bolshie Vyazyomy unreasonably, given that this village could also have been considered as his place of service. The delay had been caused by the scarcity of flats, and by the applicant’s failure to submit enforcement papers in time.

14. The applicant maintained his complaint. Article 6 did apply to the proceedings, because at the material time his contract had expired, and he should have been discharged. He had had to reject the flat in Bolshie Vyazyomy, because this village had not been as well-planned as Krasnoznamensk, and because it could not have been considered as his place of service, given that during twelve years he had served in Krasnoznamensk. He did exhaust domestic remedies. The scarcity of flats had not been an excuse.

15. With regard to application of Article 6, the Court recalls that it has already dismissed the Government’s similar arguments in another case (see *Tetsen v. Russia*, no. 11589/04, § 18, 3 April 2008).

16. With regard to domestic remedies, the Court notes that the Government have not shown how the remedies suggested to them would be effective in bringing the applicant closer to his desired goal – the provision of the flat.

17. The Court notes that this complaint 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

18. 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 (see *Raylyan v. Russia*, no. 22000/03, § 31, 15 February 2007).

19. In the case at hand the enforcement lasted two years and three months: from the date the judgment became binding to the date the applicant received the flat in Krasnoznamensk. This period is in itself incompatible with the requirements of the Convention, and the justifications put forward by the Government are unconvincing.

20. In particular, the Court has not at its disposal a domestic judicial decision that would confirm that under domestic law Bolshie Vyazyomy can indeed be considered as the applicant's place of service. Besides, the scarcity of flats cannot be considered as a mitigating circumstance (see *Burdov*, cited above, § 35). Lastly, where a judgment is against the State, the State must take the initiative to enforce it (see *Akashev v. Russia*, no. 30616/05, § 21–23, 12 June 2008).

21. The foregoing considerations are sufficient to enable the Court to conclude that there has been a violation of Article 6 § 1 of the Convention and Article 1 of Protocol No. 1.

II. ALLEGED VIOLATION OF ARTICLE 4 OF THE CONVENTION AND OF ARTICLE 2 OF PROTOCOL No. 4

22. The applicant complained under Article 4 § 2 of the Convention and Article 2 of Protocol No. 4 that pending the provision of the flat he had to continue to serve. Insofar as relevant, these Articles read as follows:

Article 4

“2. No one shall be required to perform forced or compulsory labour.

3. For the purpose of this article the term ‘forced or compulsory labour’ shall not include:

...

(b) any service of a military character....”

Article 2 of Protocol No. 4

“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.

2. Everyone shall be free to leave any country, including his own.

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.”

23. The Court considers that this complaint is inadmissible as follows.

24. Article 4 § 3 (b) expressly excludes military service from the otherwise prohibited “forced or compulsory labour”. Hence this complaint would have had no merit, even if the applicant had been retained in the army against his will.

25. However, in any event, there was no “forced” or “compulsory” labour in this case because the applicant was a professional serviceman who had enlisted voluntarily and had had a long career in the army. His continued service in the anticipation of the housing fell outside the scope of Article 4.

26. It follows that this complaint is manifestly ill-founded and must be rejected in accordance with Article 35 §§ 3 and 4 of the Convention.

III. APPLICATION OF ARTICLE 41 OF THE CONVENTION

27. 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

28. The applicant claimed 10,000 euros (EUR) in respect of non-pecuniary damage alone.

29. The Government argued that this claim was excessive and unsupported by evidence.

30. The Court accepts that the applicant must have been distressed by the delayed enforcement of the judgment. Making its assessment on an equitable basis, the Court awards EUR 2,000 under this head.

B. Costs and expenses

31. The applicant made no claim for the costs and expenses. Accordingly, the Court makes no award.

C. Default interest

32. 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 concerning non-enforcement of the judgment admissible and the remainder of the application inadmissible;
2. *Holds* that there has been a violation of Article 6 § 1 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 2,000 (two thousand 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 22 January 2009, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

André Wampach
Deputy Registrar

Christos Rozakis
President