



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

FIFTH SECTION

CASE OF LEVISHCHEV v. RUSSIA

(Application no. 34672/03)

JUDGMENT

STRASBOURG

29 January 2009

FINAL

06/07/2009

This judgment may be subject to editorial revision.

In the case of Levishchev v. Russia,

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

Peer Lorenzen, *President*,

Rait Maruste,

Karel Jungwiert,

Anatoly Kovler,

Mark Villiger,

Isabelle Berro-Lefèvre,

Zdravka Kalaydjieva, *judges*,

and Claudia Westerdiek, *Section Registrar*,

Having deliberated in private on 6 January 2009,

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

PROCEDURE

1. The case originated in an application (no. 34672/03) 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 Sergey Vasilyevich Levishchev (“the applicant”), on 13 October 2003.

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

3. On 3 May 2007 the President of the Fifth Section decided to communicate the complaints concerning non-enforcement of a judgment and compulsory labour 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 1973 and lives in Klin, a town in the Moscow Region.

5. At the material time the applicant was a captain of the Army. His unit was stationed in Vatutinki-1 near Moscow.

6. In 2000 the applicant requested an early discharge for health reasons. Under domestic law, long-serving servicemen in need of better housing (the

applicant met these conditions) could be discharged against their will only if the command provided them with such housing. When asking for discharge, the applicant specified that he wished to receive the housing.

7. On 14 December 2000 the command offered the applicant a flat in Vatutinki-1, but he rejected this offer and sued his command.

8. On 13 February 2001 the Moscow Garrison Military Court ordered the command to provide the applicant's family with housing at his place of duty without specifying the exact location. In addition, the court ordered to discharge the applicant, to pay outstanding service-related benefits, to pay 1,000 Russian roubles (RUB) in respect of legal costs, and to pay RUB 1,000 in respect of non-pecuniary damage. This judgment became binding on 16 March 2001 and was enforced as follows.

9. On 26 March 2001 the command offered the applicant a flat in Krasnogorsk, but he rejected this offer.

10. On April 2001 the applicant was discharged from active duty but was retained on the roster pending the provision of the housing. In April 2001 the command paid the benefits. In May 2001 the command paid the costs and damages.

11. On 21 November 2001 the command offered the applicant a flat in Domodedovo, but he rejected this offer.

12. On 21 March 2002 the command offered the applicant a flat in Zelenograd, and he accepted this offer. However, higher authorities in the Ministry of Defence found that the offered flat was too big for the applicant's family, because his wife and son had another flat. In 2002–03 courts upheld this decision.

13. On 2 June 2004 the command offered the applicant a flat in Moscow. On 25 February 2005 the applicant accepted this offer. On 5 May 2005 city authorities invited the applicant to formalise his ownership, but he avoided this procedure because he considered the flat too small. He sued his command, and on 18 October 2005 the Moscow Garrison Military Court found that the flat in Moscow met the conditions of the judgment of 13 February 2001.

14. On 5 December 2005 the applicant was removed from the roster.

15. In September 2006 the applicant agreed to formalise his ownership of the flat in Moscow and moved in.

II. RELEVANT DOMESTIC LAW

16. 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.

17. 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 discharge without provision of housing, 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

18. The applicant complained under Articles 6, 8, and 14 of the Convention, Article 1 of Protocol No. 1, Article 2 of Protocol No. 4, and Article 5 of Protocol No. 7 about the delayed enforcement of the judgment 13 February 2001. The Court will examine this complaint under Article 6 § 1 of the Convention and Article 1 of Protocol No. 1. 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

19. The Government argued that this complaint was inadmissible. Article 6 had not applied to the proceedings in question because they had concerned military service. The applicant had abused his right of petition by misrepresenting facts. The judgment had been enforced within a reasonable time. The applicant had unreasonably rejected offers, overstated his family’s housing needs, and pursued his command with litigation.

Even though the judgment had not expressly specified this, the flat had had to be provided in Moscow. The applicant’s command had not had such

flats available immediately and had done all it could to obtain them. The command had shown good will to settle the case by offering the flat in Vatutinki-1 (the actual station of the applicant's unit).

20. The applicant maintained his complaint. Article 6 did apply to the proceedings in question. He had not misrepresented any facts. The judgment had remained unenforced because the flat in Moscow had not satisfied his family's housing needs. He had had to reject the flats in Vatutinki-1, Krasnogorsk, and Domodedovo because they had been outside Moscow's administrative border. The command had idled, and the applicant's litigation with the command had been justified.

21. With regard to the applicability 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). With regard to abuse of the right of petition, the Court does not discern on the applicant's part any intent to deceive.

22. 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

23. 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).

24. In the case at hand, the judgment awarded the applicant a flat at his place of duty. Even though the judgment did not name the applicant's place of duty, the parties agree that the flat had to be provided in Moscow.

25. This being so, the Court considers that the period of enforcement was four years and one month: from the date when the judgment became binding (16 March 2001) to the date when the city authorities invited the applicant to formalise his ownership of the flat in Moscow (5 May 2005). This period is incompatible with the requirements of the Convention, and in the circumstances of the present case the Court finds no justification for this delay.

26. There has, accordingly, 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

27. The applicant complained under Article 4 of the Convention that he had to continue to serve against his will awaiting the provision of the housing. Insofar as relevant, this Article reads as follows:

“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...”

28. The Government argued that this complaint was inadmissible. The applicant had himself chosen to continue to serve awaiting the provision of the housing.

29. The applicant maintained his complaint.

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

31. Article 4 § 3 (b) expressly excludes military service from the otherwise prohibited “forced or compulsory labour”. This rule covers also the obligation to continue a service entered into voluntarily (see *W, X, Y, and Z v. United Kingdom*, nos 3435/67, 3436/67, 3437/67, and 3438/67, Commission decision of 19 July 1968, Collection 28, pp. 109–131). Hence this complaint would have had no merit, even if the applicant had been retained in the army against his will.

32. Be that as it may, the Court notes that the applicant enlisted voluntarily and had had a career in the army. Furthermore, he stayed in the service after term by his own choice. Indeed, section 23 § 1 of the Federal Law on the Status of Servicemen as cited above and interpreted by the Constitutional Court, may be considered as a social guarantee to servicemen: it protects them against homelessness by making discharge conditional on provision of housing. This law does not prevent a serviceman from leaving if he is prepared to leave without the housing. In the case at hand, the applicant refused to be retired “flatless”, and it is not open to him to blame the authorities for compelling him to labour. Admittedly, the “flatless” discharge would have entailed economic hardship for the applicant. But this hardship cannot be equated with the compulsion prohibited by Article 4 of the Convention.

33. 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. OTHER ALLEGED VIOLATIONS OF THE CONVENTION

34. Lastly, the applicant complained under Articles 6, 8, and 14 of the Convention, and Article 5 of Protocol No. 7 that the flat he received was too small for his family.

35. However, in the light of all the material in its possession, and in so far as the matters complained of are within its competence, the Court finds that they 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 is manifestly ill-founded and must be rejected in accordance with Article 35 §§ 3 and 4 of the Convention.

IV. APPLICATION OF ARTICLE 41 OF THE CONVENTION

36. 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

37. The applicant claimed 250,000 euros (EUR) in respect of non-pecuniary damage alone. The Government argued that this claim was excessive. 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

38. The applicant claimed no costs and expenses. Accordingly, the Court makes no award under this head.

C. Default interest

39. 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 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 29 January 2009, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Claudia Westerdiek
Registrar

Peer Lorenzen
President