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

THIRD SECTION

DECISION

Application no. 37957/15
Sanet SOYUPOVA
against Russia

The European Court of Human Rights (Third Section), sitting on 19 April 2016 as a Chamber composed of:
Luis López Guerra, *President,*
Helena Jäderblom,
Helen Keller,
Dmitry Dedov,
Branko Lubarda,
Pere Pastor Vilanova,
Alena Poláčková, *judges,*
and Stephen Phillips, *Section Registrar,*
Having regard to the above application lodged on 19 October 2015,
Having deliberated, decides as follows:

THE FACTS

1. The applicant, Ms Sanet Soyupova, is a Russian national, who was born in 1944 and lives in Zakan-Yurt, a village in the Chechen Republic.

A. The circumstances of the case

2. The facts of the case, as submitted by the applicant, may be summarised as follows.

3. The applicant is a Chechen. In 1944, during the Second World War, the USSR State Defence Committee issued a decree (*Постановление ГОКО № -5073сс от 31 января 1944 г.*) by which it ordered the deportation of her family and other Chechens to a special settlement in the Kazakh Soviet Republic and placed them under police surveillance. In 1956

the Presidium of the Supreme Soviet of the USSR allowed the deportees out of exile, but banned them from returning to their homeland and ruled out the return of confiscated property. In 1958 the applicant left the special settlement.

4. In 1991, after the break-up of the Soviet Union, Russia passed the Law on the Rehabilitation of Victims of Political Persecution (*Закон "О реабилитации жертв политических репрессий"*), whose preamble provided for the rehabilitation of victims and compensation for material damage and personal suffering.

5. In 2005 the mention of personal suffering was removed from the preamble.

6. In 2008 the applicant was recognised as a victim of Soviet political and ethnic persecution and in 2014 she sued the State for 5,000,000 Russian roubles (RUB) (about 98,000 euros) in damages for the suffering she had undergone in her childhood.

7. On 13 March 2015 the Achkhoy-Martan District Court dismissed her claim. The applicant appealed to the Supreme Court of the Chechen Republic. Relying on Article 1 of Protocol No. 1 to the Convention, she argued that the Law had given her a "legitimate expectation" of redress.

8. On 16 June 2015 the Supreme Court upheld the judgment of the lower court, considering that the applicant had had no legitimate expectation: the Law had not provided for compensation for people who had been deported as they had not been "deprived of their liberty" within the meaning of section 15; the Law had made no promise of damages for personal suffering, nor could such damages be awarded under the Civil Code because the Code had introduced the notion of personal suffering into Russian law long after the persecution had taken place.

B. Relevant domestic and international law

9. At the heart of the present case lie differences between two versions of the Law on the Rehabilitation of Victims of Political Persecution: the original version (18 October 1991) and the one in force at the time of the applicant's claim (30 November 2011).

Preamble (1991)

"This Law aims to rehabilitate all victims of political persecution ... and to compensate them ... for their material damage and personal suffering."

Preamble (2011)

"This Law aims to rehabilitate all victims of political persecution ... and to compensate them ... for their material damage."

Section 15(1) (1991)

"Those who have been persecuted by way of deprivation of liberty and rehabilitated ... shall be paid RUB 180 per month of captivity, but no more than RUB 25,000 ..."

Section 15(1) (2011)

"Those who have been persecuted by way of deprivation of liberty or forced psychiatric custody and rehabilitated ... shall be paid RUB 75 per month of captivity ... but no more than RUB 10,000."

10. Article 4 § 1 of the Civil Code of 1994 reads:

"Provisions of civil legislation shall have no retroactive effect and shall be applied to legal relationships which have arisen after [the provisions] have entered into force ..."

11. On 24 September 2012 the Constitutional Court found the 2011 version of section 15 of the Law compatible with the Constitution and confirmed that the compensation mentioned in the Law aimed to provide redress for the most severe acts of political persecution, that is, imprisonment and forced psychiatric custody (judgment 1765-O).

COMPLAINTS

12. Without specifying any Article, the applicant referred to Protocol No. 4 to the Convention, complaining that she had been subjected to collective expulsion by the Soviet authorities, a crime against humanity with no statutory limitation.

13. The applicant complained under Article 1 of Protocol No. 1 to the Convention that the Russian authorities had interfered with her right to receive compensation.

14. The applicant complained under Article 3 of Protocol No. 7 to the Convention[1] that she had been denied compensation for her forced resettlement.

THE LAW

A. Complaint under Protocol No. 4 to the Convention

15. The applicant complained under Protocol No. 4 to the Convention that she and the Chechen people had been subjected to collective expulsion by the Soviet authorities in 1944. She did not specify which Article of that

[1] In an apparent misprint the application form mentions "Article 3 of Protocol No. 11"

Protocol was breached, and it is not for the Court to speculate which of the possible relevant provisions – freedom of movement, expulsion of nationals, or collective expulsion of aliens – she had in mind. In any event, the complaint lies outside the Court's temporal jurisdiction, for the following reasons.

16. The Convention applies to a Contracting Party only in relation to facts occurring after its entry into force in respect of that Party. This principle, established in the Court's case-law, is based on the general rule of international law embodied in Article 28 of the Vienna Convention on the Law of Treaties of 23 May 1969 (see *Blečić v. Croatia* [GC], no. 59532/00, § 70, ECHR 2006-III).

17. Acts of the Soviet State lie outside the Convention's temporal reach (see, for example, *Timofeyev v. Russia* (dec.), no. 58263/00, 5 September 2002; *Burkov v. Russia* (dec.), no. 46671/99, 30 January 2001; *mutatis mutandis Janowiec and Others v. Russia* [GC], nos. 55508/07 and 29520/09, § 151, ECHR 2013), even if the unsuccessful proceedings which aimed to redress those acts took place after ratification of the Convention (see *Blečić*, cited above, §§ 77–79). The applicant was in exile between 1944 and 1958, the Convention entered into force in respect of Russia in 1998 and her litigation over compensation ended in 2015. However, the "constitutive" fact within the meaning of *Blečić* was the exile itself.

18. It follows that this complaint is incompatible *ratione temporis* with the provisions of the Convention within the meaning of Article 35 § 3 of the Convention and must be declared inadmissible pursuant to Article 35 § 4 of the Convention.

B. Complaint under Article 1 of Protocol No. 1 to the Convention

19. The applicant complained under Article 1 of Protocol No. 1 to the Convention that she had not been paid any compensation for her forced resettlement. In so far as relevant, this Article reads:

> "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."

20. Firstly, the Convention does not oblige a member State to provide compensation to the victims of wrongs committed by its predecessors (see, with further references, *Klaus and Yuri Kiladze v. Georgia*, no. 7975/06, § 53, 2 February 2010). But if the State does assume this obligation by passing a law, and an applicant meets statutory entitlement conditions, he or she may acquire a "possession" within the meaning of Article 1 of Protocol No. 1 in the form of a "legitimate expectation" of receiving compensation (see *Gratzinger and Gratzingerova v. the Czech Republic*

(dec.), no. 39794/98, § 69, ECHR 2002-VII; *Klaus and Yuri Kiladze*, cited above, § 54).

21. In the case at hand the applicant had no such possession because she did not have a "legitimate" expectation.

22. The State has the freedom to define how it operates compensation schemes (see *Klaus and Yuri Kiladze*, cited above, § 53).

23. Further, section 15 of the Law only promised compensation to people who had been deprived of their liberty, whereas the applicant was a forced migrant. The domestic courts refused to equate the two notions and it is not for the Court to question the authorities' interpretation of their own laws unless there has been a flagrant violation of domestic law (see *DMD GROUP, a.s., v. Slovakia*, no. 19334/03, § 61, 5 October 2010).

24. Nor could an expectation on the part of the applicant have arisen from the Civil Code provisions on compensation for personal suffering, because they only appeared in 1994 and had no retroactive effect.

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

C. Complaint under Article 3 of Protocol No. 7 to the Convention

26. The applicant complained under Article 3 of Protocol No. 7 to the Convention that she had been denied compensation for her forced resettlement. This Article reads:

> "When a person has by a final decision been convicted of a criminal offence and when subsequently his conviction has been reversed, or he has been pardoned, on the ground that a new or newly discovered fact shows conclusively that there has been a miscarriage of justice, the person who has suffered punishment as a result of such conviction shall be compensated according to the law or the practice of the State concerned, unless it is proved that the non-disclosure of the unknown fact in time is wholly or partly attributable to him."

27. The word "conviction" implies the finding of an offence in accordance with the law (see *Guzzardi v. Italy*, 6 November 1980, § 100, Series A no. 39), proven guilt and the imposition of a penalty (see *Grosskopf v. Germany*, no. 24478/03, § 43, 21 October 2010, and *James, Wells and Lee v. the United Kingdom*, nos. 25119/09, 57715/09 and 57877/09, § 189, 18 September 2012).

28. The Soviet State inflicted harm on the applicant without convicting her. There was no finding of her individual guilt after a trial in a court of law. The deportation was decreed by an executive body, the State Defence Committee, and applied to a large group of individuals, including the applicant.

29. In any event, for Article 3 of Protocol No. 7 to the Convention to apply, the pardon or reversal of a conviction must have been triggered by a new or a newly discovered fact. No such facts existed in the applicant's

case. The legitimacy of her wartime deportation was reconsidered from a new historical perspective and her rehabilitation was part of the nation's recognition of her role as a victim of political and ethnic persecutions.

30. It follows that this complaint is incompatible *ratione materiae* with the provisions of the Convention within the meaning of Article 35 § 3 (a) of the Convention and must be rejected in accordance with Article 35 § 4 of the Convention.

For these reasons, the Court unanimously

Declares the application inadmissible.

Done in English and notified in writing on 12 May 2016.

Stephen Phillips
Registrar

Luis López Guerra
President