



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

FIRST SECTION

DECISION

Application no. 53556/08
Kazbek Mairbekovich LOLAYEV
against Russia

The European Court of Human Rights (First Section), sitting on 10 July 2012 as a Chamber composed of:

Nina Vajić, *President*,
Anatoly Kovler,
Peer Lorenzen,
Khanlar Hajiyev,
Mirjana Lazarova Trajkovska,
Linos-Alexandre Sicilianos,
Erik Møse, *judges*,

and Søren Nielsen, *Section Registrar*,

Having regard to the above application lodged on 28 August 2008,
Having deliberated, decides as follows:

THE FACTS

1. The applicant, Mr Kazbek Mairbekovich Lolayev, is a Russian national, who was born in 1967 and lives in Ivanteyevka, Republic of North Ossetia-Alania. He is represented before the Court by Ms T.I. Baskayeva, a lawyer practising in Vladikavkaz.

2. The Russian Government (“the Government”) are represented by Mr G. Matyushkin, the Representative of the Russian Federation at the European Court of Human Rights.

3. The facts of the case, as submitted by the parties, may be summarised as follows.

4. The applicant and other claimants served in the law-enforcement agencies of the Ministry of the Interior of the Republic of North Ossetia-Alania and were entitled to additional remuneration for service in the conditions of emergency and armed conflict. They brought proceedings against the regional office of the Ministry of the Interior seeking recovery of the additional remuneration which included double salary, special rank salary, non-recurrent monetary allowance, and allowances for length of service, food and sanatorium treatment.

5. By a judgment of 11 June 2002 the Leninskiy District Court of Vladikavkaz (“the Leninskiy District Court”) granted the applicant’s claim and awarded him 553,598 Russian roubles (RUB) against the Ministry of the Interior of the Republic of North Ossetia-Alania.

6. That judgment became final on 21 June 2002.

7. On 23 July 2003 by the Pravoberezhniy District Court of the Republic of North Ossetia-Alania (“the Pravoberezhniy District Court”) delivered a judgment on seemingly identical claims for additional remuneration for service in the conditions of emergency and armed conflict and including a non-recurrent monetary allowance, an allowance for sanatorium treatment, double salary, special rank salary, an allowance for length of service and an allowance for hardship of service. As transpires from the text of the judgment, the applicant and approximately two hundred other claimants were represented by a certain Mr V.A. Em who attended the hearing. Mr Em requested the court to order that the debts be paid from the federal funds specifically allocated for compensation of damage inflicted by unlawful acts or omissions of the executive bodies and their officials, instead of the funds allocated to the Ministry of the Interior.

8. Having taken into account the inflation losses, the court allowed the claims. In particular, it awarded the applicant RUB 721,841 payable by the State Treasury.

9. On 2 December 2005 the Pravoberezhniy District Court examined the application of the claimants in the above proceedings for adjustment of the awards due to inflation losses and recovery of those amounts from the regional Ministry of the Interior. In those proceedings the applicant was represented by a certain Mr A.A. Begletsov. The materials of the case contain a power of attorney signed by the applicant on 26 April 2005 in the name of Mr Begletsov entitling him, inter alia, to bring claims and to receive money on his behalf.

10. The court stated, in particular, the following:

“By a judgment of 23 July 2003 in the case no. 3-173 the Pravoberezhniy District court granted the claims of the servicemen of the Ministry of the Interior of the Republic of North Ossetia-Alania and the State Treasury represented by the Ministry of the Interior concerning compensation of damages caused by the failure to pay them allowance for service in the conditions of emergency and armed conflict.

That judgment has been enforced.

...

As evidence of the time (day) of the transfer of the amounts due in accordance with the writs of enforcement, the applicants submitted certified excerpts from their bank accounts which demonstrate the following:

...

The bank account of A.A. Begletsov...was credited by way of bank orders dated 10 and 11 February 2004 with the amounts due to...[the applicant].”

11. The court granted the application for adjustment of the original amount and awarded the applicant RUB 137,149 which on 2 March 2006 was credited to the account of Mr Begletsov *per procurationem*.

12. By letter of 17 April 2006 the president of the Leninskiy District Court addressed the head of the regional office of the Federal Treasury with the following request:

“[Your department] is in possession of the enforcement documents of the employees of the regional law-enforcement agencies issued pursuant to the judgments of the Leninskiy District Court of Vladikavkaz, concerning payment of compensation for participation in the clearing-up of the aftermath of the Ossetian-Ingush conflict, which were subsequently quashed on account of newly discovered circumstances.

New court judgments have been delivered and enforced in respect of the above individuals. Therefore, you are requested to return to us the enforcement documents according to the enclosed list, without enforcement.”

13. On 15 May 2006 the enforcement documents, including those concerning the applicant, were returned to the Leninskiy District Court.

A letter of 27 October 2010 addressed by the president of the Supreme Court of the Republic of North Ossetia-Alania to the Representative of the Russian Federation at the European Court of Human Rights stated the following:

“...The documents concerning enforcement (non-enforcement) of [the judgment of 11 June 2002] were destroyed together with the relevant case-file following expiration of the time-limit for their preservation...

As the operative part of the judgment of 11 June 2002 did not authorise recovery of the award from the Ministry of the Interior of the Republic of North Ossetia-Alania at the expense of the State Treasury and following impossibility of enforcement of the judgment concerned, K.M. Lolayev and others sued the State Treasury represented by the Ministry of the Interior and [its regional department], seeking recovery of the same payments...

...[B]y a judgment of the Pravoberezhniy District Court of the Republic of North Ossetia-Alania of 23 July 2003 [the above claims] were granted. Having taken into account the amended claims and inflation losses, that judgment recovered in favour of K.M. Lolayev 721,841 roubles.

That judgment was enforced. The documents proving the enforcement were destroyed together with the case-file following expiration of the time-limit for their preservation...

It transpires from the correspondence of the president of the Leninskiy District Court of Vladikavkaz of the Republic of North Ossetia-Alania with the head of the [regional office of the Federal Treasury] that the judgment of 11 June 2002 was quashed on account of newly discovered circumstances following adoption of the judgment of 23 July 2003 by the Pravoberezhniy District Court of the Republic of North Ossetia-Alania...”

14. The Government has not been able to provide any direct evidence or a date of the quashing of the judgment of 11 June 2002.

THE LAW

15. The applicant complained under Articles 6 § 1 and 13 of the Convention about the authorities’ failure to enforce the judgment of 11 June 2002. The Court will examine this complaint under Article 6 § 1 of the Convention and Article 1 of Protocol No. 1, which, as far as relevant, reads 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. Arguments of the parties

16. The Government argued that the judgment of 11 June 2002 had been quashed due to the adoption of the judgment of 23 July 2003 which essentially concerned the same claims. The applicant had been paid the award under the latter judgment and therefore did not have any outstanding debt. In addition, according to the Government, the applicant had failed to

exhaust the available domestic remedies in respect of his complaint, in particular, by seeking damages or compensation for lengthy non-enforcement.

17. The applicant insisted that he had only lodged with the domestic court the claims which had been considered by the judgment of 11 June 2002 and had remained unaware of the judgment of 23 July 2003 because he had never sought or obtained it. He also submitted that he was not acquainted with Mr V.A. Em and had never authorized the latter to represent his interests.

B. The Court's assessment

18. Having examined the circumstances of the present case, the Court observes that the proceedings which ended in the judgment of 11 June 2002 appear to be the only ones where the applicant represented himself. He was represented by two other individuals in the proceedings that resulted in the court decisions of 23 July 2003 and 2 December 2005. It further observes that the amounts awarded to the applicant by the court decisions of 23 July 2003 and 2 December 2005 were credited to the bank account of the individual who claimed to represent him. The Court notes that the power of attorney in the name of Mr Begletsov bearing the applicant's signature remains the only evidence of the applicant's link to the court proceedings that followed the judgment of 11 June 2002.

19. In these circumstances the Court can accept the possibility that the applicant was indeed unaware of the court decisions of 23 July 2003 and 2 December 2005 and did not receive the money due to him. Accordingly, it cannot be established that the present application was knowingly based on untrue facts.

20. Nonetheless, the Court observes that the judgments of 11 June 2002 and 23 July 2003 concerned essentially analogous claims brought against different respondents. Therefore, it cannot be ruled out - and is indeed demonstrated by the letter of the president of the Leninskiy District Court dated 17 April 2006 which the Court has no reason to mistrust - that the judgment of 11 June 2002 was quashed following the adoption of the judgment of 23 July 2003 due to newly discovered circumstances. The Court has no reason to believe that the latter judgment was not properly enforced and cannot speculate on the legal relationship between the applicant and his representatives. Thus, leaving aside the question of compliance with the six month rule, the Court considers that the present case does not disclose any appearance of a breach of the guarantees provided to the applicant by Article 6 of the Convention and Article 1 of Protocol No. 1.

21. The Court accordingly finds the present application should be rejected pursuant to Article 35 §§ 3 (a) and 4 of the Convention.

For these reasons, the Court unanimously

Declares the application inadmissible.

Søren Nielsen
Registrar

Nina Vajić
President