CONSEIL DE L'EUROPE

COUNCIL OF EUROPE

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

FIRST SECTION

CASE OF SLADKOV v. RUSSIA

(Application no. 13979/03)

JUDGMENT

STRASBOURG

18 December 2008

FINAL

18/03/2009

This judgment may be subject to editorial revision.

In the case of Sladkov 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 Hajiyev,
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. 13979/03) 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 Borisovich Sladkov ("the applicant"), on 26 March 2003.

2. The applicant was represented by Mr M. Rachkovskiy, a lawyer practising in Moscow. The Russian Government ("the Government") were represented by Ms V. Milinchuk, former Representative of the Russian Federation at the European Court of Human Rights, Mr A. Savenkov, First Deputy Minister of Justice, and Mr G. Matyushkin, Representative of the Russian Federation at the European Court of Human Rights.

3. On 7 December 2007 the President of the First Section decided to communicate to the Government the complaints concerning non-enforcement of binding judgments, the lack of effective remedies against the non-enforcement, and compulsory labour. It was also decided to examine the merits of the application at the same time as its admissibility (Article 29 § 3). The Government objected to the joint examination of the admissibility and merits, but the Court rejected this objection.

THE FACTS

I. THE CIRCUMSTANCES OF THE CASE

4. The applicant was born in 1956 and lives in Dushanbe, a city in Tajikistan.

5. At the material time the applicant was a colonel of the Russian Border Guard Service. In 1996 he 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.

6. Since no housing was provided, the applicant sued his command. On 21 January 1998 the Military Court 10514 ordered the Director of the Border Guard Service to discharge the applicant with the provision of housing in Russia, and to pay 7,000 Russian roubles (RUB) by way of non-pecuniary damages. This judgment became binding on 31 January 1998.

7. From March 1998 to August 2006 the command offered the applicant flats in Vyazma (Smolensk Region), Kursk (Kursk Region), Kovrov (Vladimir Region), Galich (Kostroma Region), Voronezh (Voronezh Region), and Krasnodar (Krasnodar Region). The applicant rejected these offers because he wished to receive a flat in Tver.

8. For this reason, the applicant once again sued his command. On 8 February 2002 the Military Court of Garrison 109 ordered the Director of the Border Guard to discharge the applicant with the provision of housing in Russia and to pay RUB 5,000 by way of non-pecuniary damages. This judgment became binding on 16 April 2002 after the appeal court had upheld it having specified that the housing should be provided in Tver.

9. In October 2006, December 2006, and June 2007 the command offered the applicant three flats in Tver. The applicant rejected these offers because he considered that the command should have first satisfied his claims for other benefits, and because he disliked the flats' characteristics.

II. RELEVANT DOMESTIC LAW

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 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

12. The applicant complained that despite the judgments he had not been provided with housing. 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

13. The Government argued that this complaint was inadmissible. Article 6 had not applied to the proceedings in question because they had been within the competence of military courts, and because this restriction had been justified by the nature of military service. The complaint had been incompatible with the Convention *ratione temporis* in the part concerning the judgment of 21 January 1998 because the Convention had entered into force in respect of Russia only on 5 May 1998. The applicant had unreasonably rejected the flats offered to him. The authorities had done all they could to enforce the judgments. Flats in Tver had not been available immediately, and their construction had had to be preceded by public bidding. Once the flats had become available, they had been offered to the applicant, but he had rejected them for no good reason.

14. The applicant maintained his complaint. Article 6 did apply to the proceedings in question. The complaint had been compatible *ratione temporis*, because the non-enforcement had been lasting. The authorities had idled. The flats offered by the command had not met requisite characteristics.

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 the compatibility *ratione temporis*, the Court notes that on the date of introduction of the application the judgment of 21 January 1998 remained unenforced, and the Court is hence competent to examine this complaint (see *Grigoryev and Kakaurova v. Russia*, no. 13820/04, § 26, 12 April 2007).

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. With regard to the judgment of 21 January 1998, the Court considers that the authorities have respected their obligations under the Convention. Indeed, they offered the applicant the first flat as early as two months after the judgment had become binding. The applicant rejected this and other subsequent offers on the ground that the flat should be in Tver, but the judgment did not specify the flat's location.

20. With regard to the judgment of 8 February 2002, however, the Court considers that the authorities have not respected their obligations under the Convention. Indeed, they only offered the applicant the first flat in Tver (as specified in the judgment) some four years and five months after the judgment had become binding. This period is incompatible with the requirements of the Convention. The shortage of flats in this town did not dispense the State from the obligation to enforce the judgment (see, *mutatis mutandis*, *Burdov*, cited above, § 35).

21. 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 13 OF THE CONVENTION

22. The applicant complained under Article 13 of the Convention that he had no effective domestic remedy against the non-enforcement of the judgments. Article 13 of the Convention reads as follows:

"Everyone whose rights and freedoms as set forth in [the] Convention are violated shall have an effective remedy before a national authority notwithstanding that the violation has been committed by persons acting in an official capacity."

A. Admissibility

23. The Government argued that his complaint was inadmissible. To bring about enforcement, the applicant could have sued negligent officials, and applied to the prosecutor's office. Besides, seeing that the Border Guard Service had failed to comply with the judgments, the applicant could have applied to bailiffs who would have taken measures against officials of the Service.

24. The applicant maintained his complaint.

25. 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

26. The Court reiterates that Article 13 guarantees an effective remedy before a national authority for a prolonged non-enforcement of a binding judgment (see, *mutatis mutandis*, *Kudła v. Poland* [GC], no. 30210/96, § 156, ECHR 2000-XI).

27. The Court considers that a claim for negligence would have been ineffective, because it would yield a declaratory judgment that would reiterate what was in any event evident from the original judgment: the State was to honour its debt. This new judgment would not bring the applicant closer to his goal, that is the actual enforcement (see *Jasiūnienė v. Lithuania* (dec.), no. 41510/98, 24 October 2000; *Plotnikovy v. Russia*, no. 43883/02, § 16, 24 February 2005).

28. Equally, the Government have not shown how recourse to a prosecutor would have given preventive or compensatory relief against the non-enforcement. Nor have the Government given an example from domestic practice of a successful application of that remedy (see *Kudła*, cited above, § 159).

29. Lastly, recourse to bailiffs would have hardly sped up the enforcement, because the delay had been caused by an economic circumstance – the shortage of flats in Tver.

30. It follows that the applicant had no effective domestic remedy against the non-enforcement. There has, accordingly, been a violation of Article 13 of the Convention.

III. ALLEGED VIOLATION OF ARTICLE 4 OF THE CONVENTION

31. 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...."

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

33. The applicant maintained his complaint.

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

35. 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.

36. Be that as it may, the Court notes that the applicant enlisted voluntarily and had had a long 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 who had served long years outside his home country. But this hardship cannot be equated with the compulsion prohibited by Article 4 of the Convention.

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

IV. OTHER ALLEGED VIOLATIONS OF THE CONVENTION

38. Lastly, the applicant complained under Article 2 of Protocol No. 4 that by failing to issue him travel papers, the authorities made it impossible for him to enter Russia.

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.

V. APPLICATION OF ARTICLE 41 OF THE CONVENTION

39. 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

40. In respect of pecuniary damage, the applicant claimed RUB 4,417,268.68. This sum represented his estimate of allegedly underpaid benefits that were due to him as a serviceman from March 2002. The Government argued that this claim was unreasonable. The Court does not discern any causal link between the violation found and the pecuniary damage alleged; it therefore rejects this claim.

41. In respect of non-pecuniary damage, the applicant claimed 20,000,000 euros (EUR). The Government argued that this claim was unreasonable, excessive, and unsupported by evidence. 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 3,500 under this head.

B. Costs and expenses

42. The applicant made no claim for the costs and expenses. Accordingly, the Court makes no award under this head.

C. Default interest

43. 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 complaints concerning non-enforcement of binding judgments and the lack of remedies against it 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* that there has been a violation of Article 13 of the Convention;

4. *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 3,500 (three thousand five 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;

5. *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