THIRD SECTION

CASE OF KOMOLOV v. RUSSIA

(Application no. 32811/17)

JUDGMENT

STRASBOURG

25 February 2020

*This judgment is final but it may be subject to editorial revision.*

In the case of Komolov v. Russia,

The European Court of Human Rights (Third Section), sitting as a Committee composed of:

 Georgios A. Serghides, *President,* Erik Wennerström, Lorraine Schembri Orland, *judges,*
and Stephen Phillips*, Section Registrar,*

Having regard to:

- the application 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 Aleksandr Anatolyevich Komolov (“the applicant”), on 17 April 2017;

- the decision to give notice to the Russian Government (“the Government”) of the complaint concerning the ban imposed on the applicant’s leaving the territory of Russia and to declare inadmissible the remainder of the application;

- the parties’ observations;

- the decision to reject the Government’s objection to examination of the application by a Committee;

Having deliberated in private on 28 January 2020,

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

INTRODUCTION

The case concerns the ban imposed by the bailiffs’ service on the applicant’s leaving the territory of Russia for his failure to pay a judgment debt.

1. THE FACTS

1.  The applicant was born in 1961 and lives in Moscow. The applicant was represented by Mr Loskutov and Mr Laptev, lawyers practising in Moscow.

2.  The Government were represented by Mr M. Galperin, the Representative of the Russian Federation to the European Court of Human Rights.

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

A.  Judgment debt and enforcement proceedings

4.  On 10 December 2013 the Zelenogradskiy District Court, Moscow (“the District Court”), awarded 6,493.500 Russian roubles (RUB) to the Ministry of Finance to be paid by the applicant and RUB 40,667 for the reimbursement of legal costs, also to be paid by the applicant. The judgment of 10 December 2013 entered into force on 14 April 2014.

5.  On 8 July 2014 the District Court issued a writ of execution.

6.  By a ruling of 12 September 2014 a bailiff with the bailiffs’ service of the Zelenogradskiy administrative circuit, Moscow (“the bailiff”), initiated enforcement proceedings. The applicant was invited to voluntarily comply with the judgment debt within five days of the date on which he received a copy of that ruling.

7.  On 18 September 2014 a copy of that ruling was sent to the applicant by a registered mail. After an unsuccessful attempt to deliver the letter to the applicant, the letter remained available at the post office between 23 September and 27 October 2014. The applicant submitted that he had not received the post office’s notification whereby the letter of 18 September 2014 had been available at the post office. The applicant did not pick up the letter and it was returned to the bailiffs’ service on 29 October 2014. It was not until 9 September 2015 that the applicant acquainted himself with the ruling of 12 September 2014.

8.  On 6 October 2014 the Ministry of Finance asked the bailiffs’ service to impose travel restrictions on the applicant for his failure to pay the judgment debt.

9.  On 7 November 2014 the bailiff issued a ruling restricting the applicant’s right to leave the country for a period of six months (until 7 May 2015) on the grounds that the applicant had not paid the judgment debt within the prescribed time-limit. The ruling also stated that the applicant had not confirmed that his failure to comply with the set time‑limits had been caused by extraordinary unavoidable circumstances and other unsurmountable obstacles which were beyond his control. The ruling further stated that the applicant had been duly notified of the decision to initiate enforcement proceedings and warned that he would be subjected to coercive measures, including travel restrictions. The ruling was based on the 2007 Federal Act on Enforcement Proceedings and on the 1996 Federal Act on Leaving and Entering the Russian Federation (procedures) (see “Relevant legal framework” below).

10.  The Government have not provided any information regarding the date on which a copy of the ruling of 7 November 2014 was sent to the applicant. The applicant submitted that the bailiff had not notified him of the ruling 7 November 2014. The applicant received its copy on 25 June 2015 following a request submitted by his representative.

11.  On 19 November 2014 the bailiff attached the applicant’s property (several plots of land and a house).

12.  On 2 January 2015 the applicant, who was allegedly not aware of the travel restrictions imposed on him on 7 November 2014, decided to travel to Thailand, but was stopped by border guards as he was attempting to board the plane.

B.  Proceedings to challenge the ruling of 7 November 2014

13.  On 25 June 2015 the applicant challenged in court the bailiff’s ruling of 7 November 2014 imposing a travel ban. He submitted that he had not been duly notified of the enforcement proceedings initiated on 12 September 2014 and therefore the bailiff had no right to impose the travel restriction on him. The bailiff’s decision was therefore in breach of Section 30 (12) of the 2007 Federal Act on Enforcement Proceedings (see “Relevant legal framework” below).

14.  On 17 July 2015 the District Court examined and dismissed the applicant’s complaint. The District Court held that the travel restrictions had been lawful; the time-limit set in the ruling of 12 September 2014 had expired, whereas the applicant had not started paying the debt. In any event, by the moment when the applicant applied to the court, the travel restrictions had expired as well.

15.  In his appeal against the judgment of 17 July 2015, the applicant submitted that the District Court, in taking its decision, had not examined whether the requirements of the 2007 Federal Act on Enforcement Proceedings had been complied with.

16.  On 10 November 2015 the Moscow City Court (“the City Court”) upheld the judgment of 17 July 2015. The City Court found that the applicant had not provided any valid reason for his failure to pay the judgment debt and therefore the travel restrictions had been proportionate to the aims sought to achieve.

17.  In his cassation appeal against the decision of 10 November 2015, the applicant submitted that the District and City Courts had not examined whether he had been duly notified of the enforcement proceedings and of the time-limit set for the payment of the judgment debt.

18.  On 9 June 2016 a judge of the City Court refused to refer the applicant’s cassation appeal to the cassation court.

19.  In his second cassation appeal the applicant submitted that the bailiff had failed to justify the necessity of the travel restrictions and applied that measure automatically.

20.  On 20 September 2016 a judge of the Supreme Court of the Russian Federation refused to refer the applicant’s cassation appeal to the civil chamber of the Supreme Court. The applicant received a copy of that decision on 14 April 2017.

1. RELEVANT LEGAL FRAMEWORK
	* 1. The 1996 Federal Act on Leaving and Entering the Russian Federation (Procedures), as worded at the material time

21.  The right of a Russian citizen to leave the Russian Federation could be temporarily restricted if he or she had evaded obligations imposed on him or her by a court. In such cases the restriction was valid until the obligation had been complied with or until the parties had settled the matter (section 15(5)).

* + 1. The 2007 Federal Act on Enforcement Proceedings, in force since 1 February 2008, as worded at the material time

22.  Section 30 of the Act set out the procedure for instituting enforcement proceedings. In particular, it provided that enforcement proceedings could be instituted by the bailiffs’ service upon the request of a judgment creditor (section 30 (1)). When submitting a request for enforcement proceedings to be instituted, the judgment creditor could ask the bailiffs’ service to seize the debtor’s property in order to secure the enforcement of the judgment debt. The judgment creditor could also ask for the application of the restrictions set out in the Act (section 30 (2)). In its decision to institute enforcement proceedings the bailiffs’ service set a time‑limit for voluntary compliance with the judgment (section 30 (11)). The time-limit for voluntary compliance with the judgment was five days from the date of receipt by the debtor of the ruling on the institution of enforcement proceedings (sections 30 (12)). A copy of the bailiff’s decision to institute enforcement proceedings had to be sent to the judgment creditor, the debtor and to the court (or other body or State official) that had issued the writ of execution no later than the day following the day on which the decision to institute enforcement proceedings was issued (section 30 (17)).

23.  Section 67 established a framework for imposing restrictions on a debtor’s right to leave the country. In particular, it provided that a restriction on leaving the country could be imposed in the event of all the following criteria being met: enforcement proceedings had been initiated following a court decision; the bailiffs’ service had set a time-limit for voluntary compliance with the decision (and the debtor had failed to comply within that time-limit); and the debtor had no valid reason for not having complied with the judgment (section 67 (1)). A travel restriction could also be imposed at the request of the judgment creditor, which had to be submitted together with his request for enforcement proceedings to be instituted (section 67 (2)).

1. THE LAW
	1. ALLEGED VIOLATION OF ARTICLE 2 OF PROTOCOL No. 4 TO THE CONVENTION

24.  The applicant complained that the ban imposed by the bailiffs’ service on his leaving the territory of Russia had been in breach of Article 2 of Protocol No. 4 to the Convention which reads as follows:

“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.”

* + 1. Submissions by the parties

25.  The Government submitted that the interference had been in accordance with law, pursued the legitimate aim of protecting the rights of the creditor and had been necessary in a democratic society. In particular, the amount of the debt was significant, the creditor had the right to obtain the enforcement of the judgment debt and the bailiff had taken all necessary measures to notify the applicant about the enforcement proceedings and the travel restrictions.

26.  The applicant submitted that the interference had not been in accordance with law, had not pursued any legitimate aim and had not been necessary in a democratic society. In particular, he had not been duly notified neither about the opening of enforcement proceedings nor about the travel restrictions. The bailiff had not provided relevant and sufficient reasons to justify the necessity of the travel restrictions. The domestic courts had not examined the proportionality of the travel restrictions.

* + 1. Admissibility

27.  The Court notes that the application is neither manifestly ill-founded nor inadmissible on any other grounds listed in Article 35 of the Convention. It must therefore be declared admissible.

* + 1. Merits

28.  Article 2 of Protocol No. 4 to the Convention guarantees to any person a right to liberty of movement, including the right to leave any country for such country of the person’s choice to which he or she may be admitted. Any measure restricting that right should be “in accordance with law”, pursue one or more of the legitimate aims contemplated in the third paragraph of Article 2 of Protocol No. 4 and “be necessary in a democratic society” (see, among many other authorities, *De Tommaso v. Italy* [GC], no. 43395/09, § 104, 23 February 2017).

29.  In the present case it is not disputed that the restrictions on the applicant’s leaving Russia constituted interference with his right to leave the country, as guaranteed by Article 2 § 2 of Protocol No. 4. The Court is also ready to accept that the interference was “in accordance with law” and pursued a legitimate aim of the protection of the rights of others. The main issue to be determined in the present case is whether the travel restrictions imposed on the applicant were “necessary in a democratic society” in order to achieve that aim.

30.  Relying on principles which are well-established in its case-law (see, among numerous other authorities, *Gochev v. Bulgaria*, no. 34383/03, §§ 49-50, 26 November 2009; *Khlyustov v. Russia*, no. 28975/05, § 91, 11 July 2013; and *Battista v. Italy*, no. 43978/09, §§ 41-42, ECHR 2014), the Court will examine the question whether a fair balance has been struck between the applicant’s right to leave his country guaranteed by Article 2 of Protocol No. 4 to the Convention and the creditor’s right to obtain the enforcement of the judgment debt.

31.  The Court observes that the applicant was prohibited from leaving the country by a travel ban which was issued on 7 November 2014 for a period of six month. The applicant did not claim that the length of the travel restriction was disproportionate in itself.

32.  While the need to secure the enforcement of the judgment debt and the high amount of the debt are relevant factors for the assessment of the proportionality of the travel restrictions, the Court observes that the bailiff did not cite any other reasons which would justify the imposition of the travel ban. In particular, the bailiff did not examine whether the applicant had evaded the payment of the debt and whether other measures to secure the enforcement of the judgment could have been more appropriate. The bailiff did not explain how the travel ban could have served the aim of collecting the debt, nor did he examine the applicant’s individual situation or his ability to pay the amounts due and other relevant circumstances of the case. The Court also observes that the Government have not provided any confirmation that the applicant had been duly notified of the travel restriction imposed on him.

33.  As regards the judicial review of the travel restriction applied to the applicant, the Court notes that the domestic courts merely stated that the bailiff had applied the travel restrictions in accordance with law. In none of their decisions, contrary to what is indicated in the decision of the City Court of 10 November 2015 (see paragraph 16 above), did the domestic courts asses the justification and proportionality of the travel ban imposed on the applicant.

34.  Having regard to the above, the Court considers that the domestic authorities had failed to strike a fair balance between the competing interests at stake in the present case.

35.  There has accordingly been a violation of Article 2 of Protocol No. 4 to the Convention.

* 1. 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.”

* + 1. Damage

37.  The applicant claimed 824.75 euros (EUR) in respect of pecuniary damage which represented the costs of his plane tickets to Thailand, costs of his travel from a railway station in Moscow to the airport and back and the penalty for not staying in the hotel booked in Thailand. He also claimed EUR 5,000 in respect of non-pecuniary damage.

38.  The Government submitted that the applicant’s claims in respect of pecuniary damage had not been supported by evidence and his claims in respect of non-pecuniary damage had been excessive and unreasonable.

39.  Having regard to the documents at its possession, the Court awards the applicant EUR 50 in respect of pecuniary damage. Making an assessment on an equitable basis, the Court awards the applicant EUR 1,600 in respect of non-pecuniary damage.

* + 1. Costs and expenses

40.  The applicant also claimed EUR 4,958.55 for the costs and expenses incurred in the domestic proceedings and before the Court.

41.  The Government contested those claims.

42.  Regard being had to the documents in its possession, the Court considers it reasonable to award the sum of EUR 1,500 covering costs under all heads, plus any tax that may be chargeable on the applicant.

* + 1. Default interest

43.  The Court considers it appropriate that the default interest rate should be based on the marginal lending rate of the European Central Bank, to which should be added three percentage points.

1. FOR THESE REASONS, THE COURT, UNANIMOUSLY,
2. *Declares* the application admissible;
3. *Holds* that there has been a violation of Article 2 of Protocol No. 4 to the Convention;
4. *Holds*
	1. that the respondent State is to pay the applicant, within three months, the following amounts, to be converted into the currency of the respondent State at the rate applicable at the date of settlement:
		1. EUR 50 (fifty euros), plus any tax that may be chargeable, in respect of pecuniary damage;
		2. EUR 1,600 (one thousand six hundred euros), plus any tax that may be chargeable, in respect of non-pecuniary damage;
		3. EUR 1,500 (one thousand five hundred euros), plus any tax that may be chargeable to the applicant, in respect of costs and expenses;
	2. that from the expiry of the above-mentioned three months until settlement simple interest shall be payable on the above amounts 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 25 February 2020, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

 Stephen Phillips Georgios A. Serghides
 Registrar President