CONSEIL DE L'EUROPE

COUNCIL OF EUROPE

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

FIRST SECTION

CASE OF SHILYAYEV v. RUSSIA

(Application no. 9647/02)

JUDGMENT

STRASBOURG

6 October 2005

FINAL

06/01/2006

This judgment will become final in the circumstances set out in Article 44 § 2 of the Convention. It may be subject to editorial revision.

In the case of Shilyayev v. Russia,

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

Mr C.L. ROZAKIS, *President*,
Mr P. LORENZEN,
Mrs N. VAJIĆ,
Mrs S. BOTOUCHAROVA,
Mr A. KOVLER,
Mrs E. STEINER,
Mr K. HAJIYEV, *judges*,
and Mr S. QUESADA, *Deputy Section Registrar*,

Having deliberated in private on 15 September 2005,

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

PROCEDURE

1. The case originated in an application (no. 9647/02) 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 Shilyayev ("the applicant"), on 7 February 2002.

2. The Russian Government ("the Government") were represented by Mr P. Laptev, Representative of the Russian Federation at the European Court of Human Rights.

3. On 16 March 2004 the Court decided to communicate the complaint about the delays in enforcement of the decisions 20 July and 11 September 2001 to the Government. Under the provisions of Article 29 § 3 of the Convention, it decided to examine the merits of the application at the same time as its admissibility. In this respect, the Court decided to reject the Government's request to discontinue the application of Article 29 § 3 of the Convention.

THE FACTS

I. THE CIRCUMSTANCES OF THE CASE

4. The applicant is a Russian national, born in 1959 and living in the Perm Region.

1. The applicant's conviction and its subsequent reversal

5. By a first instance judgment of 24 October 1997 the Perm Regional Court sentenced the applicant to nineteen years' imprisonment for murder and rape. On 19 February 1998 the judgment was upheld by the Supreme Court and came into force.

6. On 20 January 1999 the Regional Court reversed the conviction by reference to newly discovered circumstances and remitted the case for a fresh investigation to a prosecutor. On 8 February 1999 the prosecutor took a decision fully to acquit the applicant.

2. Proceedings for damages against the State

7. Thereafter the applicant brought court proceedings against the State, claiming damages for the wrongful conviction and unlawful detention for twenty months.

8. On 20 July 2001 the Lysva Town Court of the Perm Region examined and granted his action. The court took account of the circumstances of the criminal proceedings against the applicant and his conviction, including total length of his remand in custody which was of one year, eight months and twenty one days, and related after-effects, such as personal anxiety, anguish and feeling of isolation. The applicant was awarded RUR 70,000 (~2,740 euros) in damages to be paid by the Ministry of Finance.

9. On 11 September 2001 the decision was upheld by the Perm Regional Court and came into force.

3. Enforcement proceedings

10. On an unspecified date the applicant obtained an execution writ and forwarded it, together with supporting documents, to the bailiffs' service. By two letters of 30 March and 21 May 2001 the bailiffs refused to institute enforcement proceedings and returned the writ and documents to the applicant. They stated, in particular, that under the legislation in force execution writs issued against the State should be submitted directly to the Ministry of Finance (see the relevant domestic law section below).

11. The applicant followed the instruction and applied to the said Ministry. Upon receipt of the documents on 13 November 2001, the Ministry discovered that the address and details of the debtor in the writ had been mistaken. By a letter of 2 June 2002 the Ministry returned the documents to the applicant.

12. Having obtained an amended writ from the court, on 3 October 2002 the applicant re-submitted the documents. They reached the Ministry on 11 October 2002. By a letter of 4 June 2003 the Ministry informed the applicant that the new writ was invalid in that it did not contain a submission period and again returned him the documents.

13. On 20 June 2003 the applicant sent off the documents and 15 October 2003 the Ministry of Finance transferred him the money due pursuant to the decisions of 20 July and 11 September 2001.

II. RELEVANT DOMESTIC LAW

1. Compensation for unlawful conviction

14. Under Sections 151 and 1070 of the Civil Code the State is liable for damage inflicted as a result of unlawful conviction, prosecution, detention on remand, imposition of an undertaking not to leave a place of residence and administrative penalties such as arrest and correctional works irrespective of whether any such measure was imposed as a result of relevant officials' misconduct.

2. Enforcement proceedings

15. Section 9 of the Federal Law on Enforcement Proceedings of 21 July 1997 provides that a bailiff's order on the institution of enforcement proceedings must fix a time-limit for the defendant's voluntary compliance with a writ of execution. The time-limit may not exceed five days. The bailiff must also warn the defendant that coercive action will follow, should the defendant fail to comply with the time-limit.

16. Under Section 13 of the Law, the enforcement proceedings should be completed within two months of the receipt of the writ of enforcement by the bailiff.

17. Under Sections 1 to 4 of the special rules governing enforcement of execution writs against the recipients of allocations from the federal budget, adopted by the Federal Government on 22 February 2001 (Decree No. 143, as in force at the relevant time), a creditor should apply to a relevant branch of the Federal Treasury holding debtor's accounts.

18. Within the next five days the branch examines the application as well as the supporting documents. It either accepts the application in which case it notifies the debtor of the writ, compelling the latter to abide by the respective court decisions (Sections 7 to 12) or rejects it as inadmissible on formal grounds (see Section 5). In the latter case the branch returns the documents to the creditor within the said time-limit. In case of the debtor's failure to comply within two months, the branch may temporarily freeze the debtor's accounts (Section 13).

THE LAW

I. ALLEGED VIOLATION OF ARTICLE 5 OF THE CONVENTION AND ARTICLE 3 OF PROTOCOL No. 7 TO THE CONVENTION

19. The applicant complained that the court award of 20 July 2001 was insufficient. He relied on Article 5 of the Convention and Article 3 of Protocol No. 7 which insofar as relevant provide as follows:

Article 5 § 5

"Everyone who has been the victim of arrest or detention in contravention of the provisions of this Article shall have an enforceable right to compensation."

Article 3 of Protocol No. 7

"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."

20. The Court recalls that the above provisions provide for a right to compensation of those whose detention was found in breach of one of the paragraphs of Article 5 of the Convention (see *Solduk v. Turkey*, no. 31789/96, Commission decision of 16 April 1998) and a right to compensation for miscarriages of justice, when an applicant has been convicted of a criminal offence by a final decision and suffered consequential punishment (see, e.g., *Nakov v. Macedonia* (dec.), no. 68286/01, 24.10.2002). These Convention provisions do not however prohibit the Contracting States from making the award of compensation dependent upon the ability of the person concerned to show damage resulting from the breach, nor do they actually refer to any specific amounts (see *Wassink v. the Netherlands*, judgment of 27 September 1990, Series A no. 185-A, § 38 and *Cumber v. UK*, no. 28779/95, Commission decision of 27 November 1996.

21. On the facts, the Court observes that the domestic authorities recognised the miscarriage of justice in the applicant's criminal case, quashed his conviction of 24 October 1997, as upheld on appeal on 19 February 1998, as unlawful and granted him damages of RUR 70,000 (~2,740 euros) in this connection. This award does not appear arbitrary or unreasonable as the courts at two instances carefully examined all relevant circumstances of the applicant's personal situation including the nature of the criminal case against him, total length of his detention and

personal after-effects and reached reasoned conclusions as to the amount of the award. The applicant was fully able to take part in this procedure and the amount of the award does not appear disproportionate even in the domestic terms.

22. Having regard to the above, the Court considers this part of the application manifestly ill-founded within the meaning of Article 35 § 3 of the Convention. It must therefore be rejected pursuant to Article 35 § 4.

II. ALLEGED VIOLATION OF ARTICLE 6 § 1 OF THE CONVENTION AND ARTICLE 1 OF PROTOCOL No. 1 TO THE CONVENTION

23. The applicant complained that the delayed enforcement of the judgment of 20 July 2001 violated his Convention rights. The Court will examine this complaint under Article 6 § 1 of the Convention and Article 1 of Protocol No. 1 which, in so far as relevant, provide 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

24. The Government made two objections to the admissibility of the complaint. Firstly, they alleged that under domestic law it was open to the applicant to claim enforcement of the judgment in his favour from the relevant branch of the Ministry of Finance and also apply to the bailiffs service in the same connection. According to the Government, the former option provided for a voluntary execution of the judgment whereas in the latter case the State would have been compelled to comply with it. They submitted that the applicant had only used the former option and had failed to avail himself of the latter one. Accordingly, they invited to reject the case for the applicant's failure to exhaust. Secondly, the Government submitted

that the judgment in question had already been enforced and that the applicant was no longer a victim of the violations alleged.

25. The applicant contested both objections and maintained his complaints.

26. As regards the first objection, the Court observes that even assuming that the applicant was required by Article 35 § 1 of the Convention to apply to the bailiffs' service for execution of the judgment in his case, it is clear from the case-file that he did so and by two letters dated 30 March and 21 May 2001 respectively was refused. The objection should therefore be dismissed.

27. Insofar as the Government's second argument is concerned, the Court reiterates that "a decision or measure favourable to the applicant is not in principle sufficient to deprive him of his status as a 'victim' unless the national authorities have acknowledged, either expressly or in substance, and then afforded redress for, the breach of the Convention" (see *Amuur v. France*, judgment of 25 June 1996, *Reports of Judgments and Decisions* 1996-III, p. 846, § 36, *Dalban v. Romania* [GC], no. 28114/95, § 44, ECHR 1999-VI, and *Rotaru v. Romania* [GC], no. 28341/95, § 35, ECHR 2000-V). Only when these conditions are satisfied does the subsidiary nature of the protective mechanism of the Convention preclude examination of an application (see, for example, *Jensen and Rasmussen v. Denmark* (dec.), no. 52620/99, 20 March 2003).

28. The mere fact that the authorities complied with the judgment after substantial delay cannot be viewed in this case as automatically depriving the applicant of his victim status under the Convention. The Court is unable to conclude that the Government or other domestic authorities have acknowledged the violations alleged by the applicant and provided redress for them and thus deprived him of the victim status (see, e.g., *Petrushko v. Russia*, no. 36494/02, § 16, 24 February 2005).

29. The Court concludes that this part of application 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

30. The Government did not dispute the validity of the judgment in question and admitted that the authorities were under obligation to enforce it. They did not present any justification for the failure to do so.

31. The applicant maintained their complaints.

Article 6 § 1 of the Convention

32. The Court reiterates that Article 6 § 1 secures to everyone the right to have any claim relating to his civil rights and obligations brought before a

court or tribunal; in this way it embodies the "right to a court", of which the right of access, that is the right to institute proceedings before courts in civil matters, constitutes one aspect. However, that right would be illusory if a Contracting State's domestic legal system allowed a final, binding judicial decision to remain inoperative to the detriment of one party. It would be inconceivable that Article 6 § 1 should describe in detail the procedural guarantees afforded to litigants – proceedings that are fair, public and expeditious – without protecting the implementation of judicial decisions; to construe Article 6 as being concerned exclusively with access to a court and the conduct of proceedings would be likely to lead to situations incompatible with the principle of the rule of law which the Contracting States undertook to respect when they ratified the Convention. Execution of a judgment given by any court must therefore be regarded as an integral part of the "trial" for the purposes of Article 6 (see *Burdov v. Russia*, no. 59498/00, § 34, ECHR 2002-III, and *Hornsby v. Greece*, judgment of 19 March 1997, *Reports of Judgments and Decisions* 1997-II, p. 510, § 40).

33. The Court further observes that a delay in the execution of a judgment may be justified in particular circumstances, but the delay may not be such as to impair the essence of the right protected under Article 6 § 1. The applicant should not be prevented from benefiting from the success of the litigation on the ground of alleged financial difficulties experienced by the State (see *Burdov v. Russia*, cited above, § 35).

34. Turning to the instant case, the Court notes that the judgment of 20 July 2001 remained without enforcement for two years, one month and four days between 11 September 2001 which is the date on which it came into force and 15 October 2003 when the money due was paid to the applicant. It is true that the Ministry of Finance twice rejected his requests for payment on formal grounds. The Court notes however that each time the reason for refusal was an informality of the writ issued by the domestic court and it is difficult to see how and whether at all the resulting delays may be attributable to the applicant. Even assuming that both refusals occurred through the applicant's own fault, it took the Ministry six months and nineteen days and seven months and twenty-four days respectively to respond to the applicant's requests. These delays are in flagrant disregard of the respective domestic rules (see § 18 above) which require the Ministry to examine and answer the applications within the five days and the Government failed to advance any arguments to justify them.

35. Having regard to the above, the Court concludes that by failing for such a substantial period of time to take the necessary measures to comply with the final judicial decision in the present case, the Russian authorities deprived the provisions of Article 6 § 1 of their useful effect.

36. There has accordingly been a violation of Article 6 § 1 of the Convention.

Article 1 of Protocol No. 1 to the Convention

37. The Court reiterates that a "claim" can constitute a "possession" within the meaning of Article 1 of Protocol No. 1 if it is sufficiently established to be enforceable (see *Burdov v. Russia*, cited above, § 40, and *Stran Greek Refineries and Stratis Andreadis v. Greece*, judgment of 9 December 1994, Series A no. 301-B, p. 84, § 59). The judgment of 20 July 2001 provided the applicant with enforceable claim, it had become final as no further ordinary appeal laid against it, and enforcement proceedings had been instituted. It follows that the impossibility for the applicant to have the judgment enforced for a substantial period of time constitutes an interference with his right to peaceful enjoyment of his possessions, as set forth in the first sentence of the first paragraph of Article 1 of Protocol No. 1.

38. By failing to comply with above judgment, the national authorities prevented the applicant from receiving his award. The Government have not advanced any justification for the failure to do so.

39. There has accordingly been a violation of Article 1 of Protocol No. 1 to the Convention.

III. APPLICATION OF ARTICLE 41 OF THE CONVENTION

40. 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

41. The applicant claimed a just satisfaction of EUR 100,000.

42. The Government considered that the amount claimed was unreasonable and excessive.

43. The Court does not discern any causal link between the violation found and the extensive amount of the pecuniary damage alleged; it therefore rejects this claim. On the other hand, it accepts that the applicant must have suffered distress because of the State's failure timely to enforce the judgment in question and awards the applicant EUR 3,000 in respect of non-pecuniary damage, plus any tax that may be chargeable on this amount.

B. Costs and expenses

44. The applicant made no claims under this head.

C. Default interest

45. 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 about the prolonged non-enforcement of the judgment of 20 July 2001 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 according to Article 44 § 2 of the Convention, EUR 3,000 (three thousand euros) be converted into the Russian roubles at the rate applicable at the date of settlement in respect of non-pecuniary damage, plus any tax that may be chargeable on the above amount;
   (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 6 October 2005, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Santiago QUESADA
Deputy Registrar

Christos ROZAKIS
President