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

FIRST SECTION

CASE OF SHATUNOV v. RUSSIA

(Application no. 31271/02)

JUDGMENT

STRASBOURG

1 June 2006

FINAL

01/09/2006

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 Shatunov v. Russia,

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

Mr C.L. ROZAKIS, *President*,
Mrs N. VAJIĆ,
Mr A. KOVLER,
Mrs E. STEINER,
Mr K. HAJIYEV,
Mr D. SPIELMANN,
Mr S.E. JEBENS, *judges*,
and Mr S. NIELSEN, *Section Registrar*,

Having deliberated in private on 11 May 2006,

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

PROCEDURE

1. The case originated in an application (no. 31271/02) 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 two Russian nationals, Mr Sergey Nikolayevich Shatunov and Mrs Irina Valeryevna Shatunova (“the applicants”), on 23 July 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. Mr Shatunov alleged, in particular, that the final decisions of the Kursk Regional Court of 14 May 2002 and of the Leninskiy District Court of Kursk of 17 June 2002 had not been executed in due time.

4. The application was allocated to the First Section of the Court (Rule 52 § 1 of the Rules of Court). Within that Section, the Chamber that would consider the case (Article 27 § 1 of the Convention) was constituted as provided in Rule 26 § 1.

5. By a decision of 30 June 2005, the Court declared the application partly admissible. In particular, the complaints made by Mrs Shatunova were declared inadmissible.

6. The applicant and the Government each filed further written observations (Rule 59 § 1). The Chamber having decided, after consulting the parties, that no hearing on the merits was required (Rule 59 § 3 *in fine*), the parties replied in writing to each other’s observations.

THE FACTS

I. THE CIRCUMSTANCES OF THE CASE

7. The applicant was born in 1954 and lives in Kursk.

1. Proceedings against the applicant

8. The applicant worked as a forwarding agent for a catering enterprise. In January 1999 the enterprise's director instructed him to sell 10 tonnes of flour. The applicant sold the flour, purchased certain foodstuffs with the money thus raised and paid the transportation expenses. The director refused to accept the foodstuffs and asked the applicant to remit the value of the flour. The applicant sold the foodstuffs but the amount raised was insufficient to cover that value. The applicant offered various other goods in payment of the outstanding amount. The director refused to accept them. It appears that the applicant was subsequently dismissed. In January 2000 criminal proceedings for embezzlement were brought against the applicant. From 25 January 2000 to 4 February 2000 he was held in pre-trial detention.

9. On an unspecified date the applicant fully reimbursed the value of the flour.

10. On 17 May 2000 the Leninskiy District Court of Kursk convicted the applicant of embezzlement. He was given a two-year suspended prison sentence and fined 2,087.25 Russian roubles (RUR), which he paid.

11. The Kursk Regional Court upheld the judgment on 20 June 2000.

12. On 18 July 2001, following an application for supervisory review lodged by the Deputy President of the Supreme Court of Russia, the Presidium of the Kursk Regional Court quashed the sentence and terminated the criminal proceedings against the applicant on the basis that there was no indication that an offence had been committed.

2. Proceedings for damages instituted by the applicant

13. On 17 August 2001 the applicant brought proceedings against the Ministry of Finance seeking compensation for pecuniary and non-pecuniary damage caused by the criminal proceedings against him, in particular as a result of his detention between 25 January 2000 and 4 February 2000 and his conviction of 17 May 2000.

14. The Leninskiy District Court of Kursk partially granted the claim for damages on 12 November 2001.

15. On 18 December 2001 the Kursk Regional Court quashed the judgment and remitted the case for a fresh examination.

16. The Leninskiy District Court of Kursk partially granted the claim for damages on 10 January 2002.

17. On 14 March 2002 the Kursk Regional Court once more quashed the judgment and remitted the case for a fresh examination.

18. On 16 April 2002 the Leninskiy District Court of Kursk partially granted the claim for damages. The court awarded the applicant RUR 15,000 in damages and RUR 3,700 for costs. The judgment stated:

> "Under Article 1070 of the Civil Code, damage caused to a citizen as a result of unlawful conviction, unlawful criminal prosecution, unlawful application of detention as a preventive measure ... shall be compensated at the expense of the Treasury of the Russian Federation. ...
>
> Under Article 1100 compensation for non-pecuniary damage shall be effectuated irrespective of the fault of the causer of the damage where the damage is caused as a result of unlawful conviction, unlawful criminal prosecution. ...
>
> On the foregoing grounds ... the court has decided to award [damages] against the Ministry of Finance in favour of [Mr] Shatunov..."

19. By a final decision of 14 May 2002 the Kursk Regional Court varied the judgment and awarded the applicant RUR 25,000 in damages and RUR 4,700 for costs.

20. On 23 April 2002 the applicant brought proceedings seeking compensation for the fine he had been ordered to pay in the judgment of 17 May 2000.

21. By a final decision of 17 June 2002 the Leninskiy District Court of Kursk granted the claim and ordered the Ministry of Finance to pay the applicant RUR 2,087.

3. *Enforcement proceedings*

22. On 28 May 2002 the Leninskiy District Court of Kursk issued a writ of execution for recovery of RUR 29,700 from the Ministry of Finance, pursuant to the judgment of 16 April 2002, which had been varied on appeal on 14 May 2002.

23. On an unspecified date the same court issued a writ of execution for recovery of RUR 2,087 from the Ministry of Finance, pursuant to the ruling of 17 June 2002.

24. It appears that the applicant initially sent the writs to the First Department of the Bailiffs' Service for the Central District of Moscow. In a letter of 5 September 2002 the Ministry of Justice informed the applicant that a writ of execution had been transferred to the Second Department of the Bailiffs' Service for the Central District of Moscow. It is not clear which of the two writs was referred to in the letter. Nevertheless, it appears that both writs either remained in, or were subsequently returned to, the First Department of the Bailiffs' Service.

25. The First Department of the Bailiffs' Service transferred both writs to the Second Department of the Bailiffs' Service on 22 April 2004.

26. On 1 June 2004 the Second Department of the Bailiffs' Service returned the writ for recovery of RUR 29,700 to the applicant because it did not meet the statutory requirements. In particular, the date of issue of the writ and the time-limit for its submission for execution had not been indicated. The applicant was also advised that, pursuant to a Government Decree of 9 September 2002, writs against the Treasury of the Russian Federation were to be sent for execution to the Ministry of Finance. It appears that the applicant applied to the Leninskiy District Court of Kursk to have the writ amended.

27. On 5 July 2004 the Second Department of the Bailiffs' Service transferred the writ for recovery of RUR 2,087 to the Leninskiy District Court of Kursk, apparently because it too failed to meet the statutory requirements.

28. On an unspecified date the Leninskiy District Court of Kursk returned the writ for recovery of RUR 2,087 to the applicant and advised him that it should be sent to the Ministry of Finance.

29. The Leninskiy District Court of Kursk sent the writ for recovery of RUR 29,700 to the applicant on 26 July 2004.

30. In July and August 2004 the applicant sent both writs to the Ministry of Finance.

31. According to the Government, on 27 July 2004 the Ministry of Finance had received the writ of execution for recovery of RUR 2,087. On 6 October 2004 the Ministry of Finance had returned the writ of execution to the applicant, stating that it did not meet the statutory requirements in that the time-limit for its submission for execution had not been indicated and the operative part of the judgment had been cited incorrectly.

32. According to the Government, on 24 August 2004 the Ministry of Finance had received the writ of execution for recovery of RUR 29,700. On 27 May 2005 the writ had been returned to the applicant because it did not meet the statutory requirements. In particular, the time-limit for its submission for execution had not been indicated. Furthermore, the decision of the Kursk Regional Court of 14 May 2002 had not specified that the amount was to be recovered from the Treasury of the Russian Federation.

33. On 2 November 2004 the applicant applied to the Leninskiy District Court of Kursk to have the writ for recovery of RUR 2,087 amended. On 1 December 2004 the writ was again received by the Ministry of Finance. According to the Government, the payment pursuant to the writ had been made by the Ministry of Finance on 5 May 2005. According to the applicant, the writ had never been executed.

34. According to the Government, on 4 July 2005 the writ of execution for recovery of RUR 29,700 had again been received by the Ministry of

Finance. However, its defects had not been rectified. For these reasons it had again been returned to the applicant.

35. According to the applicant, neither writ has been executed.

II. RELEVANT DOMESTIC LAW

36. Section 9 of the Enforcement Proceedings Act 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.

37. Under section 13 of the Act, enforcement proceedings must be completed within two months of the receipt of the writ of execution by the bailiff.

38. The Rules on execution by the Ministry of Finance of the Russian Federation of judicial acts concerning claims against the Treasury of the Russian Federation in respect of damage caused by the unlawful acts (omissions) of agencies of State authority or officials of the agencies of State authority, approved by Government Decree No. 666 of 9 September 2002, provide that a writ of execution should be sent to the Ministry of Finance together with a copy of the judicial act and the claimant's bank-account details (Rule 2). Within five days from the receipt of the above documents the Ministry of Finance sends them to the debtor State agency in order to find out whether the underlying judicial decision is being appealed against. The time-limit for execution of the writ by the Ministry of Finance is two months (Rule 5). The writ of execution may be returned without execution in the following situations: if the time-limit for its submission has expired, if the documents submitted do not meet the statutory requirements or some of the documents are missing, or if the execution of the underlying judicial decision has been stayed or discontinued (Rule 6).

39. On 20 May 2003 the Supreme Court of the Russian Federation in its decision no. KAC 03-205 held that the Rules adopted by Decree No. 666 concerned the voluntary execution of court decisions against the Federal Treasury and did not prevent the creditor from seeking enforcement through the court bailiffs.

40. On 14 July 2005 the Constitutional Court of the Russian Federation in its decision no. 8-П held, *inter alia*, that Rules 3, 5 and 6 of the Rules adopted under Decree No. 666 were unconstitutional and were to become invalid from 1 January 2006.

THE LAW

I. ALLEGED VIOLATION OF ARTICLE 6 OF THE CONVENTION AND ARTICLE 1 OF PROTOCOL NO. 1

41. Relying on Article 5 § 5 of the Convention, Article 1 of Protocol No. 1 and Article 3 of Protocol No. 7, the applicant complained about non-execution of the judgment of the Kursk Regional Court of 14 May 2002 and the ruling of the Leninskiy District Court of Kursk of 17 June 2002. The Court will examine this complaint under Article 6 § 1 of the Convention and Article 1 of Protocol No. 1. Article 6, in so far as relevant, provides as follows:

> "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 reads as follows:

> "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."

1. The parties' submissions

42. In their observations submitted prior to the decision on admissibility of 30 June 2005 the Government noted that, pursuant to the Government Decree of 9 September 2002, writs of execution against the Treasury were to be sent to the Ministry of Finance. They further submitted that the writ for recovery of RUR 2,087 had been received by the Ministry of Finance on 27 July 2004 and had been found not to meet the statutory requirements, which constituted a ground for returning it to the claimant without execution. As regards the writ for recovery of RUR 29,700, the Government submitted that the Ministry of Finance had never received it. They maintained that the judgment of 14 May 2002 and the ruling of 17 June 2002 had not been executed because the applicant had failed to submit valid writs of execution to the Ministry of Finance, an option which remained open to him.

43. In their observations submitted after the decision on admissibility of 30 June 2005 the Government stated that that the writ for recovery of RUR 2,087 had been received again by the Ministry of Finance on 1 December 2004 and executed on 5 May 2005. The writ for recovery of

RUR 29,700 had been received by the Ministry of Finance on 24 August 2004. It had subsequently been returned twice to the applicant for not meeting the statutory requirements. The Government submitted that it was open to the applicant to resubmit the writ for execution.

44. The applicant disagreed with the Government and contended that the decisions in his favour had not been executed because of numerous failures on the part of various domestic authorities. In the first place, the writs of execution had remained for a long period with the First Department of the Bailiffs' Service for the Central District of Moscow, which had taken no steps to enforce them. They had later been returned to him, first by another department of the Bailiffs' Service and then by the Ministry of Finance, on the ground that they did not meet the statutory requirements. The applicant claimed that any such failure was not attributable to him but to the court that had issued the writs. He contended that neither writ had been executed because of the State authorities' failure.

2. The Court's assessment

45. The Court notes firstly that the Government did not furnish any documents to confirm that the applicant had received the amount due under the writ of execution for recovery of RUR 2,087. Accordingly, the Court accepts the applicant's submission that neither the decision of the Kursk Regional Court of 14 May 2002 awarding him RUR 29,700 for damage caused by the criminal prosecution and for costs, nor the decision of the Leninskiy District Court of Kursk of 17 June 2002 awarding him RUR 2,087 in reimbursement of the fine, has been executed. Therefore, the final decisions in the applicant's favour have remained unexecuted for a period of over three years and ten months.

46. The Court further notes that the applicant first submitted the writs of execution for enforcement to the Bailiffs' Service in accordance with the domestic rules then in force. After having been informed by the bailiffs about the changes in the procedure, he resubmitted the writs to the Ministry of Finance in accordance with the new rules. The Court observes that the writs remained unenforced by the bailiffs for almost two years between summer 2002 and summer 2004 until they were returned for not complying with the statutory requirements. Then they remained unexecuted with the Ministry of Finance, which also returned them a number of times for the same reasons. The writs were submitted to the domestic courts several times for rectification, and more than once the courts failed to make the proper amendments.

47. The Court considers that the failure of the domestic courts to issue writs of execution in compliance with the statutory requirements, and even more so the failure to bring them into conformity with such requirements when their defects had been pointed out, is entirely attributable to the State. The Court further observes that the Government advanced no explanation

for the lengthy periods of non-enforcement when the writs were either with the Bailiffs' Service or with the Ministry of Finance.

48. The Court has frequently found violations of Article 6 § 1 of the Convention and Article 1 of Protocol No. 1 in cases raising issues similar to those in the present case (see, among other authorities, *Burdov v. Russia*, no. 59498/00, ECHR 2002-III and *Poznakhirina v. Russia*, no. 25964/02, 24 February 2005).

49. Having examined the material submitted to it, the Court notes that the Government did not put forward any fact or argument capable of persuading it to reach a different conclusion in the present case. Having regard to its case-law on the subject, the Court finds that by failing for years to execute the final judicial decisions in the applicant's favour the domestic authorities deprived the provisions of Article 6 § 1 of their useful effect and prevented the applicant from receiving the money he could reasonably have expected to receive.

50. There has accordingly been a violation of Article 6 § 1 of the Convention and Article 1 of Protocol No. 1.

2. APPLICATION OF ARTICLE 41 OF THE CONVENTION

51. 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

52. The applicant claimed RUR 600,000 in respect of pecuniary and non-pecuniary damage caused by the domestic authorities' failure to execute final judicial decisions in his favour. The applicant also claimed to have suffered non-pecuniary damage caused by the criminal proceedings against him, his loss of employment and the length of the proceedings for damages.

53. The Government considered that should the Court find a violation in this case that would in itself constitute sufficient just satisfaction. They also contended that in any event the applicant's claims were excessive and that there was no causal link between the damage alleged and the length of the enforcement proceedings in the present case.

54. The Court notes that the State has provided no evidence that it had complied, at least in part, with its obligation to execute the judicial decisions at issue. Accordingly, the applicant is still entitled to recover the

principal amount of the debt in the course of domestic proceedings. The Court recalls that the most appropriate form of redress in respect of a violation of Article 6 is to ensure that the applicant is as far as possible put in the position he would have been in had the requirements of Article 6 not been disregarded (see *Piersack v. Belgium* (Article 50), judgment of 26 October 1984, Series A no. 85, p. 16, § 12, and, *mutatis mutandis*, *Gençel v. Turkey*, no. 53431/99, § 27, 23 October 2003). The Court finds that this principle applies also in the present case, having regard to the violations found. It therefore considers that the Government should secure, by appropriate means, the enforcement of the awards made by the domestic courts. For this reason the Court does not find it necessary to make an award for pecuniary damage in so far as it relates to the principal amount of the debt.

55. The Court considers that the applicant must have suffered distress and frustration resulting from the State authorities' failure to execute final judicial decisions in his favour, and that this cannot sufficiently be compensated for by the finding of a violation. However, the amount claimed appears excessive. The Court takes into account the award it made in the case of *Burdov v. Russia* (cited above, § 47), the nature of the award of which the non-enforcement was at issue in the present case, the delay in the enforcement proceedings and other relevant aspects. Making its assessment on an equitable basis, it awards the applicant 3,000 euros (EUR) in respect of non-pecuniary damage, plus any tax that may be chargeable on that amount.

B. Costs and expenses

56. The applicant did not make any claims in respect of the costs and expenses incurred before the domestic courts and before this Court.

57. Accordingly, the Court makes no award under this head.

C. Default interest

58. 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. *Holds* that there has been a violation of Article 6 § 1 of the Convention;

2. *Holds* that there has been a violation of Article 1 of Protocol No. 1 to the Convention;

3. *Holds*
(a) that the respondent State, within three months from the date on which the judgment becomes final according to Article 44 § 2 of the Convention, shall secure, by appropriate means, the enforcement of the award made by the domestic court, and in addition pay the applicant EUR 3,000 (three thousand euros) in respect of non-pecuniary damage, to be converted into the national currency of the respondent State at a rate applicable at the date of settlement, plus any tax that may be chargeable;
(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 1 June 2006, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Søren NIELSEN
Registrar

Christos ROZAKIS
President