CONSEIL DE L'EUROPE

COUNCIL OF EUROPE

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

FIRST SECTION

CASE OF SHITIKOV v. RUSSIA

(Application no. 10833/03)

JUDGMENT

STRASBOURG

30 November 2006

FINAL

28/02/2007

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 Shitikov 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 9 November 2006,

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

PROCEDURE

1. The case originated in an application (no. 10833/03) 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 Valeriy Ivanovich Shitikov ("the applicant"), on 20 February 2003.

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

3. On 28 February 2005 the Court decided to give notice of the application 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.

THE FACTS

4. The applicant was born in 1945 and lives in the village of Khrenovoye in the Voronezh region.

5. On 11 September 2002 the Justice of the Peace of the 1st Court Circuit of the Bobrovskiy District of the Voronezh Region granted the applicant's and his wife's civil action against the Voronezh Regional Administration and awarded them 3,026.24 Russian roubles (RUR, approximately 100 euros). The judgment was not appealed against and became final.

6. Enforcement proceedings were instituted but the judgement was not enforced because the Regional Administration lacked necessary funds.

7. On 29 April 2005 the Bobrovskiy District Administration Division of Labour and Social Development transferred RUR 3,026.24 to the applicant's wife's bank account. According to the Government, on the same day the applicant was paid additional RUR 3,026.24 as an adjustment of the judgment award to take account of inflation.

THE LAW

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

8. The applicant complained under Articles 13 and 17 of the Convention and Article 1 of Protocol No. 1 that the judgment of 11 September 2002 had not been enforced in good time. The Court considers that this complaint falls to be examined under Article 6 § 1 of the Convention and Article 1 of Protocol No. 1 (see *Burdov v. Russia*, no. 59498/00, § 26, ECHR 2002-III). The relevant parts of these provisions read as follows:

Article 6 § 1

"In the determination of his civil rights and obligations ..., everyone is entitled to a fair ... hearing within a reasonable time... 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..."

A. Admissibility

9. The Government informed the Court that the Bobrovskiy District Administration had attempted to secure a friendly settlement which the applicant had refused. The Government indicated that the District Administration had enforced the judgment of 11 September 2002 and had also paid the applicant RUR 3,026.24, amounting to 100 percent adjustment of the judgment award, to take account of inflation. The Government provided the Court with a copy of payment order no. 175 of 29 April 2006, showing that the District Administration had instructed its bank to transfer

RUR 3,026.24 to an account according to “attached lists”. The Government included a copy of the list showing that RUR 3,026.24 had been credited to the applicant's wife's account. Referring to the Court's decision in the case of *Aleksentseva and Others v. Russia* (nos. 75025/01 et seq., 4 September 2003), the Government invited the Court to strike the application out of its list of cases, in accordance with Article 37 of the Convention.

10. The applicant disagreed with the Government and maintained his complaints. He claimed that the District Administration had only enforced the judgment of 11 September 2002. Neither he nor his wife had received any adjustment of the judgment award to compensate the loss of its value.

11. The Court firstly observes that the parties were unable to agree on the terms of a friendly settlement of the case. Whilst under certain circumstances an application may indeed be struck out of the Court's list of cases under Article 37 § 1 (c) of the Convention on the basis of a unilateral declaration by the respondent Government even if the applicant wishes the examination of the case to be continued, this procedure is not, as such, intended to circumvent the applicant's opposition to a friendly settlement (see *Tahsin Acar v. Turkey* [GC], no. 26307/95, § 76, ECHR 2003; and *Androsov v. Russia*, no. 63973/00, § 44, 6 October 2005).

12. Moreover, a distinction must be drawn between, on the one hand, declarations made in the context of strictly confidential friendly settlement proceedings (Article 38 § 2 of the Convention and Rule 62 § 2 of the Rules of Court) and, on the other hand, unilateral declarations made by a respondent Government in public and adversarial proceedings before the Court.

13. On the facts, the Court observes that the Government failed to submit any formal statement capable of falling into that category and offering a sufficient basis for finding that respect for human rights as defined in the Convention does not require the Court to continue its examination of the case (see, by contrast, *Akman v. Turkey* (striking out), no. 37453/97, §§ 23-24, ECHR 2001-VI).

14. As regards the Government's argument that the judgment in question have already been enforced, the Court considers that the mere fact that the authorities complied with the judgments after a substantial delay cannot be viewed in this case as automatically depriving the applicant of his victim status under the Convention (see, e.g., *Petrushko v. Russia*, no. 36494/02, § 16, 24 February 2005).

15. As to the Government's argument that in addition to the judgment award the applicant received 100 percent adjustment of that award, the Court notes that as it appears from the documents included in the Government's memorandum, on 29 April 2006 the District Administration had instructed the bank to credit RUR 3,026.24 to a certain account whose holder had been indicated in the attached list. According to a copy of the list, that sum had been transferred to the applicant's wife's bank account.

There is no evidence that any other payments, save for the judgment award, had been made to the applicant and/or his wife.

16. In the light of the above considerations, the Court rejects the Government's request to strike the application out under Article 37 of the Convention.

17. The Court notes that the 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 Government claimed that the debt to the applicant had been fully paid in April 2006.

19. The applicant maintained his complaints.

20. The Court observes that on 11 September 2002 the applicant and his wife obtained a judgment in their favour by which they were to be paid a certain sum of money by the Voronezh Regional Administration. The judgment was not appealed against and became final and enforceable. However, it was only enforced on 29 April 2006. It follows that the judgment of 11 September 2002 remained without enforcement for approximately three years and seven months.

21. 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 the ones in the present case (see *Burdov v. Russia*, no. 59498/00, § 35, ECHR 2002-III.; *Wasserman v. Russia*, no. 15021/02, § 35 et seq., 18 November 2004; and *Gerasimova v. Russia*, no. 24669/02, § 17 et seq., 13 October 2005).

22. Having examined the material submitted to it, the Court notes that the Government have 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 more than forty-three months to comply with the enforceable judgment in the applicant's favour the domestic authorities impaired the essence of his right to a court and prevented him from receiving the money he could reasonably have expected to receive.

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

II. APPLICATION OF ARTICLE 41 OF THE CONVENTION

24. 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

25. The applicant claimed the increase of the judgement award of RUR 3,026.24 by two or three times in respect of pecuniary damage. He further claimed RUR 90,000 in respect of non-pecuniary damage.

26. The Government averred that the applicant's claims should not be granted and the Court should strike the application out of its list of cases because the applicant had turned down the friendly-settlement offer.

27. The Court does not consider it necessary to address the Government's request to strike the application out of the list of cases as it has already been examined and dismissed (see paragraphs 9-16 above).

28. The Court reiterates that in the present case it has found a violation of Article 6 § 1 of the Convention and Article 1 of Protocol No. 1 in that the award in the applicant's favour had not been paid to him in good time. It recalls that the adequacy of the compensation would be diminished if it were to be paid without reference to various circumstances liable to reduce its value, such as an extended delay in enforcement (see *Gizzatova v. Russia*, no. 5124/03, § 28, 13 January 2005; *Metaxas v. Greece*, no. 8415/02, § 36, 27 May 2004). In this respect, the Court observes that the applicant did not substantiate his claim in respect of pecuniary damage. At the same time, the Government indicated the sum of RUR 3,026.24 as an appropriate adjustment of the judgment debt with the view to the period of non-enforcement. Having regard to the materials in its possession and the fact that the domestic authorities are better placed and equipped for assessment and application of a method of calculation of inflation losses, the Court awards the applicant RUR 3,026 in respect of pecuniary damage, plus any tax that may be chargeable.

29. The Court further considers that the applicant must have suffered distress and frustration resulting from the State authorities' failure to enforce the judgment in his favour. The Court takes into account the relevant aspects, such as the length of the enforcement proceedings and the nature of the award, and making its assessment on an equitable basis, awards the applicant EUR 500 in respect of non-pecuniary damage, plus any tax that may be chargeable on that amount.

B. Costs and expenses

30. The applicant did not make any claims for the costs and expenses incurred before the domestic courts and before the Court.

31. Accordingly, the Court does not award anything under this head.

C. Default interest

32. 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 application admissible;

2. *Holds* that there has been a violation of Article 6 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 in accordance with Article 44 § 2 of the Convention, the following amounts:
      (i) RUR 3,026 (three thousand and twenty-six Russian roubles) in respect of pecuniary damage;
      (ii) EUR 500 (five hundred euros) in respect of non-pecuniary damage, to be converted into Russian roubles at the rate applicable at the date of the settlement;
      (iii) any tax that may be chargeable on the above amounts;
   (b) 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;

4. *Dismisses* the remainder of the applicant's claim for just satisfaction.

Done in English, and notified in writing on 30 November 2006, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Søren NIELSEN
Registrar

Christos ROZAKIS
President