CONSEIL DE L'EUROPE

COUNCIL OF EUROPE

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

FIRST SECTION

CASE OF MATVEYEV v. RUSSIA

(Application no. 26601/02)

JUDGMENT

STRASBOURG

3 July 2008

FINAL

29/09/2008

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 Matveyev 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,
Dean Spielmann,
Sverre Erik Jebens, *judges,*
and Søren Nielsen, *Section Registrar*,

Having deliberated in private on 12 June 2008,

Delivers the following judgment, which was adopted on the last-mentioned date:

PROCEDURE

1. The case originated in an application (no. 26601/02) 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 Sergey Nilovich Matveyev ("the applicant"), on 15 June 2002.

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

3. The applicant alleged, in particular, that his right to compensation for unlawful conviction had been violated.

4. By a decision of 1 February 2007, the Court declared the application admissible.

5. 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

6. The applicant, Mr. Sergey Matveyev, is a Russian national who was born in 1949 and lives in Arkhangelsk.

A. Criminal proceedings against the applicant

7. In the 1980s the applicant and his spouse, Mrs Matveyeva, organised short-wave radio broadcasts from their home.

8. On 1 May 1981 their broadcasting was terminated by the authorities. A number of searches were conducted in their flat.

9. On 12 May 1981 criminal proceedings were instituted against Mr Matveyev.

10. On 11 August 1981 the Lomonosovskiy District Court of the Arkhangelsk Region convicted Mr Matveyev of forgery of a postal stamp and of having used it to send personal correspondence free of charge, and sentenced him to two years' imprisonment. The District Court held, in particular:

> "The court finds untenable the argument of the accused [Mr] Matveyev that the postal stamp he took from the radio-technical school ... could not be used for sending correspondence free of charge [since it] was invalid according to Price List no. 125 "Postal Rates and Services", adopted by the USSR Ministry of Communication and to Decree of the State Committee on Pricing no. 517 of 25 June 1980 [in force from] 1 October 1980 [*Прейскурант № 125 «Тарифы и услуги связи», утвержденный Министерством связи СССР введенный в действие с 1 октября 1980 г. и Постановление Госкомцен СССР от 25 июля 1980 г. № 517*].
>
> At the time of theft of [the] postal stamp and the subsequent sending of letters with [the use of] the stamp [Mr] Matveyev did not know about the above-mentioned documents and his intent was directed at sending his [personal] correspondence free of charge, [which he did] repeatedly as corroborated by the ... evidence."

11. On 25 September 1981 the Arkhangelsk Regional Court upheld the judgment. The applicant served the sentence and was dismissed from his job with a State enterprise.

B. Proceedings seeking compensation for non-pecuniary damage

12. On 6 October 1999, in supervisory review proceedings, the Presidium of the Arkhangelsk Regional Court reversed Mr Matveyev's conviction for forgery of a stamp, finding that it had been wrongful as there was no indication that a crime had been committed. The Presidium held:

> "The letter of the Head [of the Arkhangelsk postal service] of 10 July 1981 contained in the case file makes clear that the stamp "To be sent free of charge" was used by the postal enterprises for correspondence between radio associations until 1980. [After] the entry into force on 1 October 1980 of Price List no. 125 "Postal Rates and Services", correspondence free of charge between short-wave radio broadcasters was permitted only on the basis of postal receipt cards... [T]herefore, the stamp was no longer valid.
>
> Having regard to the fact that ... the stamp [could not be used to obtain profit unlawfully], the criminal case should be closed."

13. In 2001 Mr Matveyev brought proceedings seeking compensation for non-pecuniary damage sustained as a result of his wrongful conviction.

14. On 20 December 2001 the Lomonosovskiy District Court of Arkhangelsk dismissed the claim on the ground that at the time of the conviction there had been no provision in domestic law for claiming such damages.

15. On 21 January 2002 the Arkhangelsk Regional Court upheld the judgment on appeal.

16. On an unspecified date the applicant applied for the proceedings to be reopened on account of newly discovered evidence.

17. On 24 December 2002 the Lomonosovskiy District Court of Arkhangelsk dismissed the application.

18. On an unspecified date the applicant applied for supervisory review of the judgment of 20 December 2001 and the ruling of 24 December 2002.

19. On 4 and 17 February 2004 respectively the Arkhangelsk Regional Court dismissed the applications.

C. Proceedings seeking compensation for pecuniary damage

20. Following the delivery of the ruling of 6 October 1999 Mr Matveyev brought proceedings seeking compensation for pecuniary damage sustained as a result of his wrongful conviction within the framework of criminal proceedings.

21. On 27 September 2000 the Lomonosovskiy District Court of Arkhangelsk granted the claim and awarded damages in the amount of 531,269.73 Russian roubles (RUB) and costs in the amount of RUB 1,214.98. On an unspecified date the Chairman of the Arkhangelsk Regional Court lodged an application for supervisory review of the judgment.

22. On 7 February 2001 the Presidium of the Arkhangelsk Regional Court quashed the judgment of 27 September 2000 and remitted the case for a fresh examination by a different bench.

23. On 7 March 2001 the Lomonosovskiy District Court of Arkhangelsk reclassified the proceedings as civil proceedings. On 13 April 2001 the Arkhangelsk Regional Court quashed the ruling of 7 March 2001 and remitted the case for a fresh examination.

24. On 11 October 2001 the Lomonosovskiy District Court of Arkhangelsk awarded the applicant damages in the amount of RUB 124,583.57.

25. On 23 November 2001 the Arkhangelsk Regional Court quashed the judgment of 11 October 2001 and remitted the case for a fresh examination.

26. On 21 January 2002 the Lomonosovskiy District Court of Arkhangelsk awarded the applicant damages in the amount of RUB 2,225. Damages in the amount of RUB 393,574.87 were awarded on 7 February 2002. Costs in the amount of RUB 1,481.18 were awarded on 28 February 2002.

27. After the writs of execution were issued, the applicant transmitted them directly to the defendant, namely the Federal Treasury of the Ministry of Finance.

28. The judgments of 7 and 28 February 2002 were executed on 26 November 2003. The judgment of 21 January 2002 was executed on 31 May 2004.

II. RELEVANT DOMESTIC LAW

29. Civil Code of the Russian Federation, Part I, in force since 1 January 1995

Article 151. Compensation for non-pecuniary damage

"If a person has sustained non-pecuniary damage (physical or mental suffering) as a result of actions violating his personal non-pecuniary rights or other non-material benefits enjoyed by citizens, and also in other instances provided for by law, the court may require the perpetrator to afford monetary compensation for the said damage."

30. Civil Code of the Russian Federation, Part II, in force since 1 March 1996

Article 1069. Liability for damage caused by State bodies, local self-government bodies and their officials

"Damage caused to an individual or a legal entity as a result of an unlawful act (failure to act) of State and local self-government bodies or of their officials, including as a result of the issuance of an act of a State or self-government body which is contrary to the law or any other legal act, shall be subject to compensation. The damage shall be compensated at the expense, respectively, of the treasury of the Russian Federation, the treasury of the subject of the Russian Federation or the treasury of the municipal authority."

Article 1070. Liability for damage caused by unlawful actions of agencies of inquiry and preliminary investigation, prosecutor's offices and the courts

"1. Damage caused to an individual as a result of his or her unlawful conviction, unlawful criminal prosecution, unlawful application, as a measure of restraint, of remand in custody or of a written undertaking not to leave a specified place and unlawful imposition of an administrative penalty in the form of arrest or corrective labour, shall be compensated in full at the expense of the treasury of the Russian Federation and in certain cases, stipulated by law, at the expense of the treasury of the subject of the Russian Federation or of the municipal authority, regardless of the fault of the officials of agencies of inquiry or preliminary investigation, prosecutor's offices or courts in the procedure established by law. ..."

Article 1071. Agencies and persons acting on behalf of the treasury in awarding compensation for damage at its expense

"In instances where, in accordance with the present Code or other laws, the damage caused is subject to compensation at the expense of the treasury of the Russian Federation, the treasury of the subject of the Russian Federation or the treasury of the municipal authority, the respective financial agencies shall act on behalf of the treasury..."

Article 1099. General provisions

"1. The grounds and amount of compensation payable to an individual for non-pecuniary damage shall be determined by the rules laid down in the present Chapter and in Article 151 of the present Code.

2. ...

3. Compensation for non-pecuniary damage shall be awarded irrespective of any award for pecuniary damage."

Article 1100. Grounds for compensation for non-pecuniary damage

"Compensation for non-pecuniary damage shall be awarded irrespective of the fault of the perpetrator, when:

...the damage is caused to a person as a result of his or her unlawful conviction, unlawful criminal prosecution, unlawful application, as a measure of restraint, of remand in custody or of a written undertaking not to leave a specified place, or unlawful imposition of an administrative penalty in the form of arrest or corrective labour."

III. RELEVANT COUNCIL OF EUROPE DOCUMENTS

31. Explanatory Report to Protocol No. 7 to the Convention for the Protection of Human Rights and Fundamental Freedoms (ETS No. 117)

Article 3

"22. This article provides that compensation shall be paid to a victim of a miscarriage of justice, on certain conditions.

First, the person concerned has to have been convicted of a criminal offence by a final decision and to have suffered punishment as a result of such conviction. According to the definition contained in the explanatory report of the European Convention on the International Validity of Criminal Judgments, a decision is final "if, according to the traditional expression, it has acquired the force of *res judicata*. This is the case when it is irrevocable, that is to say when no further ordinary remedies are available or when the parties have exhausted such remedies or have permitted the time-limit to expire without availing themselves of them". It follows therefore that a judgment by default is not considered as final as long as the domestic law allows the proceedings to be taken up again. Likewise, this article does not apply in cases where the charge is dismissed or the accused person is acquitted either by the court of first instance or, on appeal, by a higher tribunal. If, however, in one of the States in which such a possibility is provided for, the person has been granted leave to appeal after the normal time of appealing has expired, and his conviction is then reversed on appeal, then subject to the other conditions of the article, in particular the conditions described in paragraph 24 below, the article may apply.

23. Secondly, the article applies only where the person's conviction has been reversed or he has been pardoned, in either case on the ground that a new or newly discovered fact shows conclusively that there has been a miscarriage of justice - that is, some serious failure in the judicial process involving grave prejudice to the convicted person. Therefore, there is no requirement under the article to pay compensation if the conviction has been reversed or a pardon has been granted on some other ground. Nor does the article seek to lay down any rules as to the nature of the procedure to be applied to establish a miscarriage of justice. This is a matter for the domestic law or practice of the State concerned. The words "or he has been pardoned" have been included because under some systems of law pardon, rather than legal proceedings leading to the reversal of a conviction, may in certain cases be the appropriate remedy after there has been a final decision.

24. Finally, there is no right to compensation under this provision if it can be shown that the non-disclosure of the unknown fact in time was wholly or partly attributable to the person convicted.

25. In all cases in which these preconditions are satisfied, compensation is payable "according to the law or the practice of the State concerned". This does not mean that no compensation is payable if the law or practice makes no provision for such compensation. It means that the law or practice of the State should provide for the payment of compensation in all cases to which the article applies. The intention is that States would be obliged to compensate persons only in clear cases of miscarriage of justice, in the sense that there would be acknowledgement that the person concerned

was clearly innocent. The article is not intended to give a right of compensation where all the preconditions are not satisfied, for example, where an appellate court had quashed a conviction because it had discovered some fact which introduced a reasonable doubt as to the guilt of the accused and which had been overlooked by the trial judge."

THE LAW

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

32. Relying on Article 3 of Protocol No. 7, the applicant complained that his claim in respect of non-pecuniary damage sustained as a result of his wrongful conviction had been dismissed.

33. Article 3 of Protocol No. 7 reads as follows:

"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."

A. The parties' submissions

34. The applicant insisted that his right to compensation for wrongful conviction was violated. As regards the applicability of Article 3 of Protocol No. 7, he contended that at the time of his trial the relevant postal instructions concerning the use of the stamp and the receipt cards that replaced it had not been available to the court or to the parties. Accordingly, his conviction had eventually been reversed due to newly discovered evidence. He further argued that the consequences of his unlawful conviction in 1981 had lasted until its reversal in 2001. Therefore, the Court was competent *ratione temporis* to examine his complaint.

35. The Government submitted that the applicant's conviction had been quashed by the Presidium of the Arkhangelsk Regional Court on 6 October 1999 on the ground that the postal stamp in question could not have been an instrument of the crimes of which the applicant had been accused because it had no longer been valid and therefore could not be used for those purposes. Price List no. 125 "Postal Rates and Services" was available both to the courts and to the parties and was referred to in the judgment of the District Court. Therefore, the applicant's conviction had

been quashed on account of the incorrect assessment of evidence, which did not constitute a new or newly discovered fact. Furthermore, the applicant's conviction had been reversed within the framework of the supervisory review procedure and not as a result of the reopening of the case due to newly discovered circumstances. Therefore, the grounds for reversal of the applicant's conviction by the ruling of the Presidium of the Arkhangelsk Regional Court of 6 October 1999 did not satisfy the conditions set out in Article 3 of Protocol No. 7. Accordingly, that provision was not applicable to the applicant's complaint.

36. The Government also pointed out that the applicant had been convicted in 1981, that is, before 1 August 1998, when Protocol No. 7 to the Convention entered into force in respect of Russia. Even though the applicant's claim in respect of non-pecuniary damage had been dismissed after 1 August 1998, the circumstances on which the claim was based had taken place before that date. In the Government's view, divorcing the domestic courts' decisions from the events which gave rise to those proceedings would amount to giving retroactive effect to the Convention (see *Litovchenko v. Russia* (dec.), no. 69580/01, 18 April 2002), and the Court therefore had no jurisdiction *ratione temporis* to examine the complaint.

B. The Court's assessment

37. The Court notes firstly that in the decision as to admissibility of 1 February 2007 it decided to join to the merits the issues of the applicability of Article 3 of Protocol No. 7 and its competence *ratione temporis*.

38. The Court will first determine whether it has temporal jurisdiction to examine the circumstances relating to the applicant's complaint under Article 3 of Protocol No. 7. The Court observes that the aim of this provision is to confer the right to compensation on persons convicted as a result of a miscarriage of justice, where such conviction has been reversed by the domestic courts. Therefore, Article 3 of Protocol No. 7 does not apply before the conviction has been reversed. In the present case, inasmuch as the applicant's conviction was quashed after 1 August 1998, the date of entry into force of Protocol No. 7 in respect of Russia, the conditions for jurisdiction *ratione temporis* are satisfied.

39. The Court also has to decide whether the conditions of applicability of Article 3 of Protocol No. 7 are satisfied in the present case. The Court reiterates that the Explanatory Report to Article 3 of Protocol No. 7 provides:

> "[T]he article applies only where the person's conviction has been reversed ... on the ground that a new or newly discovered fact shows conclusively that there has been a miscarriage of justice - that is, some serious failure in the judicial process involving

> grave prejudice to the convicted person. Therefore, there is no requirement under the article to pay compensation if the conviction has been reversed or a pardon has been granted on some other ground. Nor does the article seek to lay down any rules as to the nature of the procedure to be applied to establish a miscarriage of justice."

40. As regards the facts of the present case, the applicant was convicted by a final decision of 25 September 1981 and sentenced to two years' imprisonment, which he subsequently served. His conviction was quashed under the supervisory review procedure on 6 October 1999 by the Presidium of the Arkhangelsk Regional Court. Having regard to the Explanatory Report to Article 3 of Protocol No. 7, the Court points out that it is immaterial which procedure was applied by the domestic courts for the purpose of reversing the judgment.

41. The Court further notes that the parties disagreed as to whether the applicant's conviction was reversed on the ground of "a new or newly discovered fact". The applicant argued that Price List no. 125 "Postal Rates and Services", which constituted the basis of the quashing of his conviction by the Presidium of the Arkhangelsk Regional Court on 6 October 1999, had not been available at the time of his conviction either to the parties or to the courts. The Government disagreed and averred that not only had the Price List been available, but it had been expressly referred to in the judgment of the Lomonosovskiy District Court of 11 August 1981.

42. The Court observes that Price List no. 125 "Postal Rates and Services" was referred to by the applicant himself in the proceedings before the Lomonosovskiy District Court. The applicant argued that he could not have used the postal stamp because according to the Price List it had become invalid. The District Court dismissed the applicant's argument, having found that at the time of the theft the applicant had not been aware of the Price List and had had the intent to use the postal stamp unlawfully. It follows that at the time of the proceedings both the District Court and the applicant were aware of the contents of the Price List.

43. The Court further notes that on 6 October 1999 the Presidium of the Arkhangelsk Regional Court quashed the applicant's conviction on the ground that according to the Price List the postal stamp had no longer been valid at the material time and could not have been used to obtain profit unlawfully. Accordingly, the conviction was not quashed with regard to "a new or newly discovered fact", but due to reassessment by the Presidium of the evidence that had been used in the criminal proceedings against the applicant.

44. Having regard to the foregoing and to the Explanatory Report to Article 3 of Protocol No. 7, the Court considers that the conditions of applicability of Article 3 of Protocol No. 7 have not been complied with. It observes that the complaint does not give rise to issues under any other provision of the Convention or Protocols thereto.

45. It follows that the application is incompatible *ratione materiae* with the provisions of the Convention within the meaning of Article 35 § 3.

FOR THESE REASONS, THE COURT UNANIMOUSLY

Holds that it is unable to take cognisance of the merits of the case.

Done in English, and notified in writing on 3 July 2008, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Søren Nielsen Registrar	Christos Rozakis President