CONSEIL DE L'EUROPE

COUNCIL OF EUROPE

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

FIRST SECTION

PARTIAL DECISION

AS TO THE ADMISSIBILITY OF

Application no. 26601/02
by Sergey MATVEYEV and Lyubov MATVEYEVA
against Russia

The European Court of Human Rights (First Section), sitting on 14 December 2004 as a Chamber composed of:

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

Having regard to the above application lodged on 15 June 2002,

Having deliberated, decides as follows:

THE FACTS

The applicants, Mr. Sergey Matveyev and Mrs. Lyubov Matveyeva, are Russian nationals, who were born in 1949 and 1948 respectively and live in Arkhangelsk.

A. The circumstances of the case

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

Proceedings against the applicants

In the 1980s the applicants, a married couple, organised short-wave radio broadcasting from their home.

In November 1980 Mrs Matveyeva was dismissed from her job with a State enterprise.

On 1 May 1981 their broadcasting was closed down by the authorities. A number of searches were conducted in the applicants' flat.

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

On 12 May 1981, in administrative proceedings against the applicants, an order was issued seizing their broadcasting equipment and revoking their licence.

On 11 August 1981 the Lomonosovskiy District Court of the Arkhangelsk Region convicted Mr Matveyev of forgery of a stamp and sentenced him to two years' imprisonment.

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.

In 1984 the case file concerning the above administrative proceedings was destroyed pursuant to the courts' archives policy after it had been stored for 3 years.

Administrative proceedings concerning the restoration of the administrative order of 12 May 1981

In 1989 the order of 12 May 1981 concerning the revocation of the licence was declared void and the validity of the applicants' broadcasting licence as from 1981 was confirmed.

In 2001 the applicants applied for restoration of the administrative order of 12 May 1981.

On 23 May 2001 the Lomonosovskiy District Court of Arkhangelsk refused their application on the grounds that documents destroyed due to expiration of the term for their storage could not be restored.

On 19 June 2001 the Arkhangelsk Regional Court upheld the refusal.

On 29 March 2002 and 21 May 2002 the Supreme Court of Russia dismissed the complaints against the refusal.

On 19 April 2003, after enactment of the new Code of Civil Proceedings, Mr Matveyev again applied for the decision of 12 May 1981 to be restored.

On 28 April 2003 the Lomonosovskiy District Court of Arkhangelsk refused the application on the grounds that the new code did not provide for restoration of the materials destroyed due to expiration of the term for their storage. It appears that the applicants did not appeal against the ruling.

Proceedings for reinstatement in their previous jobs

On 5 March 1992 the Lomonosovskiy District Court of Arkhangelsk granted the claim of Mrs Matveyeva for reinstatement in her job and held that her dismissal was a result of political persecution of both applicants in the 1980s.

On 6 October 2000 the Lomonosovskiy District Court of Arkhangelsk granted the claim of Mr Matveyev for reinstatement as of the date of delivery of the judgment. On 25 September 2002 the Presidium of the Arkhangelsk Regional Court quashed this judgment and remitted the case for a fresh examination.

On 1 November 2002 the Lomonosovskiy District Court of Arkhangelsk granted the claim for reinstatement as of 19 October 1981.

Proceedings concerning the purchase of shares

In 2000 the applicant Matveyev brought proceedings against the Ministry of Finance, the administration of Arkhangelsk and his employer asking the court to order the defendants to purchase for his benefit 14 preferred shares in the employer company which he believed he would have been entitled to if he had not been dismissed in 1981.

On 22 October 2001 the Oktyabrskiy District Court of Arkhangelsk dismissed the claim. The court noted that criminal proceedings against the applicant were instituted in 1981, long before the applicant's employer company had been reorganised into a joint stock company in 1994. Therefore, he owned no shares at the time concerned and had suffered no damage. The court held that the applicant had no claim in domestic law to the shares.

On 17 December 2001 the Arkhangelsk Regional Court upheld the judgment.

In 2002 Mr Matveyev requested the re-opening of the proceedings which ended on 17 December 2001 due to newly discovered circumstances,

referring to the judgment of 1 November 2002 reinstating him in his previous job.

On 24 December 2002 the Oktyabrskiy District Court of Arkhangelsk dismissed the claim.

Proceedings for compensation for non-pecuniary damages

On 6 October 1999 the Presidium of the Arkhangelsk Regional Court under supervisory review reversed Mr Matveyev's conviction of forgery of a stamp as wrongful as there was no indication that a crime had been committed.

In 2001 Mr Matveyev brought proceedings for compensation for moral harm caused by the wrongful conviction.

On 20 December 2001 the Lomonosovskiy District Court of Arkhangelsk dismissed the claim on the grounds that at the time the wrongful sentence was delivered there was no provision in domestic law to obtain such damages.

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

On an unspecified date the applicant applied for reopening of the proceedings due to newly discovered evidence.

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

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

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

Proceedings for compensation for pecuniary damages

Following the delivery of the ruling of 6 October 1999 Mr Matveyev brought proceedings for compensation for pecuniary damages caused by the wrongful conviction within the framework of criminal proceedings.

On 27 September 2000 the Lomonosovskiy District Court of Arkhangelsk granted the claim and awarded damages in the amount of RUR 531,269.73 and costs in the amount of RUR 1,214.98. On an unspecified date a Chairman of the Arkhangelsk Regional Court filed an application for supervisory review of the judgment.

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 composition of judges.

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

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

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

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

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

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.

On an unspecified date the applicant instituted proceedings against the Ministry of Finance for indexation of the amounts due under the judgments because of the failure to execute them in due time. The proceedings are still pending.

B. Relevant domestic law

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

Article 151. Compensation for Moral Harm

"If moral harm has been caused to a citizen (physical or moral suffering) by actions violating his personal non-pecuniary rights or infringing on other nonmaterial benefits belonging to a citizen, and also in other instances provided for by law, the court may impose on the offender the duty to make monetary compensation for the said harm."

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

Article 1069. Responsibility for Harm Caused by State Agencies, Agencies of Local Self-Government, and Also Their Officials

"Harm caused to a citizen or juridical person as a result of the illegal actions (a failure to act) of State agencies, agencies of local self-government, or officials of these agencies, including as a result of the issuance of an act of a State agency or agency of local self-government which does not correspond to a law or other act, shall be subject to compensation. Harm shall be compensated at the expense, respectively, of the treasury of the Russian Federation, treasury of the subject of the Russian Federation, or treasury of the municipal formation."

Article 1070. Responsibility for Harm Caused by Illegal Actions of Agencies of Inquiry or Preliminary Investigation, Office of the Prosecutor, and Court.

"1. Harm caused to a citizen as a result of illegal conviction, illegal bringing to criminal responsibility, illegal application of confinement under guard or written undertaking not to leave as a measure of restraint, or the illegal imposition of an administrative sanction in the form of arrest or correctional tasks shall be compensated at the expense of the treasury of the Russian Federation, and in the instances provided for by a law, at the expense of the treasury of the subject of the Russian Federation or treasury of the municipal formation, in full irrespective of the fault of the officials of the agencies of inquiry or preliminary investigation, office of the prosecutor, and court in the procedure provided for by a law. [...]"

Article 1071. Agencies and Persons Acting in the Name of the Treasury When Compensating Harm at its Expense

"In instances when in accordance with the present Code or other laws the harm caused is subject to compensation at the expense of the treasury of the Russian Federation, treasury of the subject of the Russian Federation, or treasury of the municipal formation, the respective financial agencies shall act in the name of the treasury..."

Article 1099. General provisions

"1. The grounds and amount of compensation payable to a citizen for moral harm shall be determined by the rules provided for by the present Chapter and Article 151 of the present Code.

2. [...]

3. Compensation for moral harm shall be made irrespective of the pecuniary harm subject to compensation."

Article 1100. Grounds for Compensation for Moral Harm

"Compensation for moral harm shall be made irrespective of the fault of the causer of the harm when:

...the harm is caused to a citizen as a result of his illegal conviction, illegal bringing to criminal responsibility, illegal application of confinement under guard or undertaking not to leave as a measure of restraint, or illegal imposition of an administrative sanction in the form of arrest or correctional tasks."

COMPLAINTS

1. The applicants complain under Articles 8, 9 and 10 of the Convention that in 1981 their broadcasting equipment was unlawfully seized and the licence was unlawfully revoked.

2. Invoking Article 13 of the Convention, Article 1 of Protocol No. 1, Articles 2 and 3 of Protocol No. 7 the applicants complain about the refusal of the application to have the administrative order of 12 May 1981 restored. They argue that it hinders their right to an effective remedy, because without the order they cannot appeal against it, claim compensation for the seized broadcasting equipment and for Mr Matveyev's wrongful conviction as they cannot prove their status as victims of political persecutions.

3. Invoking Article 4 of Protocol No. 7 Mr Matveyev alleges that he was punished twice for the broadcasting.

4. Mr Matveyev complains under Article 5 § 5 of the Convention about the dismissal of his claim for non-pecuniary damages caused by the wrongful conviction.

5. Mr Matveyev also invokes Article 3 of Protocol No. 7 to his complaint about the dismissal of his claim for non-pecuniary damages caused by the wrongful conviction.

6. Mr Matveyev complains under Article 3 of Protocol No. 7 about the dismissal of his claim for the purchase of shares.

7. Invoking Article 5 § 5 of the Convention and Article 3 of Protocol No. 7 Mr Matveyev complains about the failure to execute the judgments of 21 January 2002, 7 and 28 February 2002 in due time.

THE LAW

1. The applicants complain under Articles 8, 9 and 10 of the Convention about the allegedly unlawful seizure of their broadcasting equipment and revocation of the broadcasting licence in 1981.

However, the facts complained of relate to a period prior to 5 May 1998 when the Convention entered into force in respect of the Russian Federation.

It follows that this part of the application is outside the Court's competence *ratione temporis* and is incompatible with the provisions of the Convention within the meaning of Article 35 § 3, and must be rejected in accordance with Article 35 § 4.

2. The applicants also complain about the refusal to restore physically the administrative order of 12 May 1981 which, they argue, hinders their right to an effective remedy, prevents them from appealing against the order and from claiming compensation for the seized broadcasting equipment and the

applicant Matveyev's wrongful conviction. They refer to Article 13 of the Convention, Article 1 of Protocol No. 1, and Articles 2 and 3 of Protocol No. 7.

The Court recalls that the administrative order of 12 May 1981 was declared void in 1989. The Court further notes that the applicants' complaint concerns the refusal to physically restore the document destroyed due to the expiration of the term for its storage. However, it is self-evident that in such circumstances the courts were unable to restore the administrative order of 12 May 1981. The Court finds that the refusal to restore physically the document does not give rise to any issues under the Convention.

It follows that this part of the application must be rejected as being manifestly ill-founded, pursuant to Article 35 §§ 3 and 4 of the Convention.

3. Mr Matveyev complains under Article 4 of Protocol No. 7 that he was punished twice for broadcasting.

Article 4 of Protocol No. 7 reads as follows:

> "1. No one shall be liable to be tried or punished again in criminal proceedings under the jurisdiction of the same State for an offence for which he has already been finally acquitted or convicted in accordance with the law and penal procedure of that State.
>
> 2. The provisions of the preceding paragraph shall not prevent the reopening of the case in accordance with the law and penal procedure of the State concerned, if there is evidence of new or newly discovered facts, or if there has been a fundamental defect in the previous proceedings, which could affect the outcome of the case.
>
> 3. No derogation from this Article shall be made under Article 15 of the Convention."

The Court notes that Mr Matveyev was finally convicted on 25 September 1981 of forgery of a stamp following which he served two years' imprisonment. The conviction took place before 5 May 1998 when the Convention entered into force in respect of the Russian Federation. There is no indication that the applicant was tried or punished again for this or any similar offence. In particular, the refusal to restore the administrative order of 12 May 1981 cannot be regarded as constituting "trial or punishment again" in respect of the charge of forgery, and there is therefore no factual basis for the complaint under Article 4 of Protocol No. 7.

It follows that this part of the application must be rejected as being manifestly ill-founded, pursuant to Article 35 §§ 3 and 4 of the Convention.

4. Mr Matveyev complains under Article 5 § 5 of the Convention that his claim for non-pecuniary damages caused by the wrongful conviction was dismissed.

The Court observes that Mr Matveyev had served his sentence and ceased to be detained long before 5 May 1998 when the Convention entered into force in respect of the Russian Federation. Therefore, in the absence of a violation of Article 5 §§ 1 – 4 of the Convention, the complaint under

Article 5 § 5 falls outside the Court's competence *ratione temporis* (see *Kocsis v. Hungary*, no. 66597/01, decision of 4 March 2003).

It follows that this part of the application is incompatible with the provisions of the Convention within the meaning of Article 35 § 3, and must be rejected in accordance with Article 35 § 4.

5. Mr Matveyev also invokes Article 3 of Protocol No. 7 to his complaint about the dismissal of his claim for non-pecuniary damages caused by the wrongful conviction.

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."

The Court considers that it cannot, on the basis of the case file, determine the admissibility of this complaint and that it is therefore necessary, in accordance with Rule 54 § 2 (b) of the Rules of Court, to give notice of this part of the application to the respondent Government.

6. Under Article 3 of Protocol No. 7, Mr Matveyev complains also that his claim for purchase of shares was dismissed by domestic courts. He claims that because of his dismissal from work following the conviction he was unable to benefit from a share option which he would have had if he had remained with his employer throughout the period from 1981 to 2002.

However, Article 3 of Protocol no. 7 relates to the right to compensation for wrongful conviction. It does not guarantee that a person whose conviction is quashed in circumstances such as the present will necessarily be put in the same position as if the conviction, and the events which followed it, had never happened. The complaint therefore falls outside the scope of Article 3 of Protocol No. 7

It follows that this part of the application is incompatible *ratione materiae* with the provisions of the Convention within the meaning of Article 35 § 3, and must be rejected in accordance with Article 35 § 4.

7. Mr Matveyev complains under Article 5 § 5 of the Convention and Article 3 of Protocol No. 7 that the judgments of the Lomonosovskiy District Court of Arkhangelsk of 21 January 2002, 7 and 28 February 2002 were not executed in due time.

However, the Court notes that the proceedings in domestic courts concerning the applicant's claim for indexation of the amounts due under the judgments because of the alleged failure to execute them in due time are still pending. The complaint is, therefore, premature.

It follows that this complaint must be rejected under Article 35 §§ 1 and 4 of the Convention.

For these reasons, the Court

unanimously

Decides to adjourn the examination of the complaint concerning the compensation for wrongful conviction;

by a majority

Declares the remainder of the application inadmissible.

Søren NIELSEN
Registrar

Christos ROZAKIS
President