CONSEIL DE L'EUROPE

COUNCIL OF EUROPE

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

FIRST SECTION

DECISION

AS TO THE ADMISSIBILITY OF

Application no. 31271/02
by Sergey Nikolayevich SHATUNOV and Irina Valeryevna SHATUNOVA
against Russia

The European Court of Human Rights (First Section), sitting on 30 June 2005 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. QUESADA, *Deputy Section Registrar*,

Having regard to the above application lodged on 23 July 2002,

Having regard to the observations submitted by the respondent Government and the observations in reply submitted by the applicants,

Having deliberated, decides as follows:

THE FACTS

The applicants, Mr Sergey Nikolayevich Shatunov and Mrs Irina Valeryevna Shatunova, are Russian nationals who were born in 1954 and 1963 respectively and live in Kursk. The respondent Government are represented by Mr Laptev, Representative of the Russian Federation at the European Court of Human Rights.

A. The circumstances of the case

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

1. Proceedings against the applicants

Mr Shatunov worked as a forwarding agent in a catering enterprise. In January 1999 the enterprise's director instructed him to sell 10 tonnes of flour. Mr Shatunov 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 Mr Shatunov to return the value of the flour. The applicants sold the foodstuffs. However, the amount raised was insufficient to pay for the flour. Mr Shatunov offered various other goods in payment of the outstanding amount. The director refused to accept them. It appears that thereafter the applicant was dismissed. In January 2000 criminal proceedings for embezzlement were instituted against Mr Shatunov. From 25 January 2000 to 4 February 2000 he was kept in pre-trial detention.

On 25 January 2000 a search was conducted at the applicants' home. On the same date Mrs Shatunova was brought to the police station where she was detained overnight.

On an unspecified date Mr Shatunov underwent a psychiatric examination.

On 26 January 2000 Mrs Shatunova was ordered to pay an administrative fine of 850 roubles (RUR) for hindering the conduct of the search.

On an unspecified date Mr Shatunov fully reimbursed the value of the flour.

On 17 May 2000 Leninskiy District Court of Kursk convicted Mr Shatunov of embezzlement and sentenced him to two years' imprisonment conditionally and a fine of RUR 2,087.25, which he paid.

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

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

On an unspecified date Mrs Shatunova complained to the Prosecutor's Office about the administrative fine imposed on her on 26 January 2000. In a reply of 20 March 2003 the Prosecutor of the Central District of Kursk replied that she had failed to appeal against the fine through the standard procedure and that her complaint had therefore to be dismissed.

2. Proceedings for damages instituted by Mr Shatunov

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

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

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

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

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

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

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

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

On 23 April 2002 Mr Shatunov brought proceedings for compensation of the fine imposed on him by the judgment of 17 May 2000.

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. Proceedings for reinstatement in post and recovery of salary instituted by Mr Shatunov against his former employer

On 17 August 2001, in addition to the claim in respect of pecuniary and non-pecuniary damage brought against the Ministry of Finance, Mr Shatunov brought a claim for reinstatement in post and recovery of his salary against his former employer.

The Leninskiy District Court of Kursk on 12 November 2001 separated this claim into a separate set of proceedings and remitted it to a Justice of the Peace.

The Justice of the Peace of District No. 9 of the Kursk Central Circuit received the case file on 10 December 2001 and ordered a stay of proceedings on account of the applicant's failure to provide supporting documents.

On 24 December 2001 the applicant submitted a statement to the Justice of the Peace, withdrawing his claim. The statement read as follows:

> "I ask you to terminate the proceedings concerning my claim for [reinstatement] because I withdraw the claim."

The Justice of the Peace issued a ruling on termination of the proceedings on the same date. The Government submit that a copy of the ruling was sent to the applicant on 25 December 2001. The applicant submits that he did not receive it.

On 9 April 2004 the applicant asked the Justice of the Peace to provide him with copies of all rulings delivered in respect of his claim for reinstatement. On the same date the Justice of the Peace sent him a copy of the ruling of 24 December 2001.

4. Enforcement proceedings

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.

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.

It appears that the applicant initially sent the writs to the First Department of the Bailiffs' Service of 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 of 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.

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

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 were not 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.

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.

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.

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

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

On 6 October 2004 the Ministry of Finance returned the writ for recovery of RUR 29,700 to the applicant, stating that it did not meet the statutory requirements in that the time-limit for its submission for execution was not indicated and the operative part of the judgment had been cited incorrectly.

The applicant applied to the Leninskiy District Court of Kursk to have the writ amended on 2 November 2004.

Neither writ has yet been executed.

B. Relevant domestic law

1. Execution of judgments

Article 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.

Under Article 13 of the Law, enforcement proceedings must be completed within two months of the receipt of the writ of execution by the bailiff.

The Rules on execution by the Ministry of Finance of the Russian Federation of judicial acts concerning claims to the Treasury of the Russian Federation for recovery of damage caused by the unlawful acts (omission) 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 details (Rule 2).

The time-limit for execution of the writ by the Ministry of Finance is two months (Rule 5).

2. Termination of civil proceedings due to withdrawal of the claim

Under Article 219 § 4 of the 1964 Code of Civil Procedure, in force at the material time, the court or judge was to terminate proceedings if the claimant withdrew the claim.

COMPLAINTS

1. The first applicant complained under Article 5 § 1 of the Convention that he had been unlawfully detained from 25 January to 4 February 2000.

2. The second applicant complained under Article 5 § 1 of the Convention that she had been unlawfully brought to the police station on 25 January 2000 and kept there overnight.

3. The second applicant complained that she had been unlawfully ordered to pay a fine of RUR 850.

4. The applicants complained under Article 8 § 1 of the Convention about the search conducted at their home which, they alleged, was unlawful because the first applicant's conviction was ultimately quashed. The first applicant also complained that during the preliminary investigation he underwent a psychiatric examination without his consent.

5. The first applicant complained under Article 6 § 1 and Article 7 § 1 of the Convention that he had been wrongfully convicted.

6. Relying on Article 1 of Protocol No. 4, the first applicant alleged that he had been arrested and convicted on the ground of inability to fulfil a contractual obligation.

7. He furthermore complained under Article 6 § 1 of the Convention about the courts' failure to consider his claim for reinstatement and recovery of his salary within a reasonable time.

8. The applicant also invoked Article 1 of Protocol No. 1 complaining about the unreasonable length of the proceedings concerning his claim for reinstatement and recovery of his salary.

9. Relying on Article 5 § 5 of the Convention, Article 1 of Protocol No. 1 and Article 3 of Protocol No. 7, the first applicant complained about the failure to execute the judgment of the Kursk Regional Court of 14 May 2002 and the ruling of 17 June 2002 of the Leninskiy District Court of Kursk.

THE LAW

1. The first applicant complained under Article 5 § 1 of the Convention about his detention between 25 January and 4 February 2000.

Insofar as relevant, Article 5 § 1 provides:

> "1. Everyone has the right to liberty and security of person. No one shall be deprived of his liberty save in the following cases and in accordance with a procedure prescribed by law:
>
> (c) the lawful arrest or detention of a person effected for the purpose of bringing him before the competent legal authority on reasonable suspicion of having committed an offence or when it is reasonably considered necessary to prevent his committing an offence or fleeing after having done so [...]"

The Court notes that on 17 August 2001 the applicant brought a claim for compensation arising, *inter alia*, from his detention between 25 January and 4 February 2000. The claim was granted by a final judgment of the Kursk Regional Court of 14 May 2002. Therefore, in the present case the Court is not called upon to decide whether the applicant's detention was lawful in terms of Article 5 § 1 (c), since the award of damages in any event constituted an acknowledgement of the alleged violation and adequate redress (see, by contrast, *Dalban v. Romania* [GC], no. 28114/95, § 44, ECHR 1999-VI). Accordingly, the applicant can no longer claim to be a "victim".

It follows that this part of the application must be rejected pursuant to Article 34 and Article 35 §§ 3 and 4 of the Convention.

2. The second applicant complained that she had been unlawfully brought to the police station on 25 January 2000 and held there overnight in breach of Article 5 of the Convention.

The applicant has not, however, provided the Court with any documents to show that she raised the complaint before the competent domestic authorities. Accordingly, the Court finds that the applicant failed to exhaust domestic remedies.

It follows that this part of the application must be rejected pursuant to Article 34 and Article 35 §§ 3 and 4 of the Convention.

3. The second applicant also complained about the fact that an administrative fine of RUR 850 had been imposed on her. She did not rely on any Convention provision in this respect.

The Court notes that from the facts of the case it appears that she failed to appeal against the fine.

It follows that this part of the application must be rejected for non-exhaustion of domestic remedies pursuant to Article 35 §§ 1 and 4 of the Convention.

4. The applicants complained under Article 8 § 1 of the Convention that the search conducted at their home had been unlawful because the first

applicant's conviction was ultimately quashed. The latter also complained about the psychiatric examination he had undergone during the preliminary investigation, allegedly without his consent.

However, the applicants have not provided the Court with any documents to show that either of those complaints was raised before the competent domestic authorities.

It follows that this part of the application must also be rejected for non-exhaustion of domestic remedies pursuant to Article 35 §§ 1 and 4 of the Convention.

5. Relying on Articles 6 § 1 and 7 § 1 of the Convention, the first applicant complained that he had been wrongfully convicted.

In so far as this complaint may be understood to concern the assessment of the evidence and results of the proceedings before the domestic courts, and leaving aside in this respect the fact that the applicant's conviction was subsequently quashed, the Court recalls that, according to Article 19 of the Convention, its duty is to ensure the observance of the engagements undertaken by the Contracting Parties to the Convention. In particular, it is not its function to deal with errors of fact or law allegedly committed by a national court unless and in so far as they may have infringed rights and freedoms protected by the Convention (see *García Ruiz v. Spain* [GC], no. 30544/96, § 28, ECHR 1999-I).

In so far as the applicant may be understood to complain that he did not have a fair trial within the meaning of Article 6 § 1 of the Convention, the Court recalls that the applicant's conviction of 17 May 2000 was quashed by a final ruling of the Presidium of the Kursk Regional Court of 18 July 2001 and criminal proceedings against him were discontinued on the ground that there was no indication of a crime. The applicant later obtained damages by a final judgment of the Kursk Regional Court of 14 May 2002 and the fine he had initially paid was returned to him through the final decision of the Leninskiy District Court of Kursk of 17 June 2002. Therefore, in the present case the Court considers that any possible infringement to the applicant's rights under Article 6 or Article 7 of the Convention was rectified by the domestic authorities for which reason the applicant may no longer complain before the Court of the above alleged violations of the Convention.

It follows that this part of the application must be rejected pursuant to Article 35 §§ 3 and 4 of the Convention.

6. The first applicant complained under Article 1 of Protocol No. 4 that he had been arrested and convicted on the ground of inability to fulfil a contractual obligation.

Having regard to its above finding, the Court does not find that this part of the application discloses any appearance of a violation of the provision invoked.

It follows that this part of the application must be rejected pursuant to Article 35 §§ 3 and 4 of the Convention.

7. The first applicant complained under Article 6 § 1 of the Convention that his claim for reinstatement and recovery of his salary was not determined within a reasonable time.

Insofar as relevant, Article 6 provides:

> "1. In the determination of his civil rights and obligations ..., everyone is entitled to a fair and public hearing within a reasonable time [...]."

The Government submitted that the proceedings were discontinued on 24 December 2001 because the first applicant had withdrawn the claim. Furthermore, he did not appeal against the ruling on termination of the proceedings. The Government concluded that the overall duration was not unreasonable.

The first applicant contested the Government's submissions. He contended that he wrote the statement seeking to withdraw his claim on an instruction from the Justice of the Peace which he had apparently misunderstood, since he had believed that the case would subsequently be transmitted from the Justice of the Peace to the Leninskiy District Court of Kursk. The applicant maintained that the courts had deliberately misled him so that they would not have to consider his claim. He further claimed that he had not received a copy of the ruling on termination of the proceedings allegedly sent to him on 25 December 2001. He had received another copy only in April 2004 and had therefore been unable to appeal against the ruling. In sum, the proceedings had lasted unreasonably long.

The Court must first determine the period to be taken into consideration. The proceedings in question commenced on 17 August 2001, when the first applicant brought his claim. The Court notes that, in his statement of 24 December 2001, the applicant asked the Justice of the Peace to terminate the proceedings because he was withdrawing the claim. The proceedings were closed on the same date. The Court considers the statement of 24 December 2001 to be sufficiently clear and is not satisfied that the first applicant could not understand its meaning. The Court is therefore unable to find that the proceedings were closed other than in accordance with the applicant's request.

The Court recalls that, according to its case-law, proceedings terminate on the date of the final judgment or, where later, when the written judgment is served upon the applicant (see *Soares Fernandes v. Portugal*, no. 59017/00, § 17, 8 April 2004). In the present case, however, the proceedings were closed because the first applicant had withdrawn his claim which, in the Court's view, cannot be treated in the same way as delivery of a judgment. Pursuant to Article 219 of the Code of Criminal Procedure in force at the material time, a court was obliged to terminate proceedings following a claimant's withdrawal of the claim. Accordingly, the first

applicant could not have expected any continuation of the proceedings following the withdrawal of his claim. As regards the allegation that the first applicant did not receive a copy of the ruling on termination of the proceedings in due time and that he could not therefore appeal against it, the Court recalls that it is incumbent on the interested party to display special diligence in the defence of his interests (see *Teuschler v. Germany* (dec.), no. 47636/99, 4 October 2001). The Court notes that the first applicant applied to the court for a copy of the rulings concerning his claims only on 9 April 2004, that is more than two years after he withdrew the claim. In the light of the foregoing the Court considers 24 December 2001 as the date of termination of the proceedings.

The Court recalls that the application was lodged on 23 July 2002, that is more than six months after the proceedings had terminated. Nevertheless, even assuming that the first applicant may be considered as having complied with the six months rule set out in Article 35 § 1 of the Convention, the Court notes that the proceedings only lasted approximately four months. Accordingly, there is no appearance of a violation of Article 6 § 1 in this respect and it follows that this complaint must be rejected in accordance with Article 35 §§ 1 and 4 of the Convention.

8. The first applicant also invokes Article 1 of Protocol No. 1 complaining that the proceedings concerning his claim for reinstatement and recovery of his salary lasted unreasonably long.

Having regard to its above finding, the Court finds that this part of the application does not disclose any appearance of a violation of the provision invoked. The complaint should accordingly also be rejected in accordance with Article 35 §§ 1 and 4 of the Convention.

9. Relying on Article 5 § 5 of the Convention, Article 1 of Protocol No. 1 and Article 3 of Protocol No. 7, the first 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.

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 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.

The first applicant disagreed with the Government and contended that the judgment and the ruling 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 of the Central District of Moscow, which took no steps to enforce them. They had later been returned to the first applicant, 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 further submitted that he had indeed sent the writ for recovery of RUR 29,700 to the Ministry of Finance, as confirmed by a copy of his application and a postal receipt.

The Court considers, in the light of the parties' submissions, that the complaint raises serious issues of fact and law under the Convention, the determination of which requires an examination of the merits. It concludes that this complaint is not manifestly ill-founded within the meaning of Article 35 § 3 of the Convention. No other ground for declaring it inadmissible has been established.

For these reasons, the Court unanimously

Declares admissible, without prejudging the merits, the first applicant's complaint that 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 have not been executed;

Declares inadmissible the remainder of the application.

Santiago QUESADA
Deputy Registrar

Christos ROZAKIS
President