

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

FIRST SECTION

DECISION

AS TO THE ADMISSIBILITY OF

Application no. 4405/05
by Andrey SHEPELIN
against Russia

The European Court of Human Rights (First Section), sitting on 29 March 2011 as a Chamber composed of:

Nina Vajić, *President,*
Anatoly Kovler,
Christos Rozakis,
Peer Lorenzen,
Elisabeth Steiner,
Mirjana Lazarova Trajkovska,
Julia Laffranque, *judges,*

and André Wampach, *Deputy Section Registrar,*

Having regard to the above application lodged on 21 January 2005,

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

Having deliberated, decides as follows:

THE FACTS

The applicant, Mr Andrey Borisovich Shepelin, is a Russian national who was born in 1956 and lives in Omsk. He is represented before the Court by Ms M. Deryabina, a lawyer practising in Omsk. The respondent Government are represented by Mr G. Matyushkin, the 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.

The applicant is a practising lawyer. On 30 June 2004 he acted as counsel for Mr N. in civil proceedings before the Tsentralnyi District Court of Omsk. After the parties had been informed of their procedural rights, the clerk asked their representatives to sign the handwritten trial record in the appropriate places. Before doing so, the applicant crossed through two blank lines that had been left between the enumeration of the rights and the place reserved for his signature.

In response, the presiding judge gave the applicant a warning for breaching court order by "making [unauthorised] entries [in the trial record] in the form of a strike-through line". The warning was entered into the trial record and the applicant was asked to sign below. He again drew a line through the empty space between the text of the warning and his signature.

The judge instructed the court bailiff to prepare a report on the administrative offence committed by the applicant. According to the report, the applicant –

> "...refused to comply with a legitimate request by the judge to discontinue breaching the established procedure for filling out the trial record in case no. []. Despite the judge's repeated request not to make marks in the trial record, he continued to do so. [The applicant] thereby committed an administrative offence envisaged in Article 17.3 § 1 of the Russian Federation Code of Administrative Offences."

On 13 July 2004 the Justice of the Peace of the 93rd Court Circuit of the Central Administrative District of Omsk examined the report and convicted the applicant of the offence under Article 17.3 § 1 of the Code of Administrative Offences. She sentenced him to a fine of 500 Russian roubles. The applicant did not attend the hearing. The judgment indicated that he had been duly informed of the hearing date and time; the applicant denied having received any summons.

Having received the judgment of 13 July 2004 by post on 23 July 2004, the applicant lodged an appeal. He raised two grievances. First, he complained that he had not received any summons for the hearing. Second, he claimed that the judge's order to sign below the blank lines could not have been legitimate and that the Justice of the Peace had omitted to examine the legitimacy of that demand.

On 18 August 2004 the Tsentralnyi District Court of Omsk dismissed the applicant's appeal in summary fashion. The appeal judgment indicated that the Justice of the Peace had not committed any violation of substantive or procedural law in the administrative proceedings. The judgment was issued in the applicant's absence.

On 10 November 2008 a deputy prosecutor of the Omsk Region filed an objection (*protest*) against the judgments of 13 July and 18 August 2004. He considered that the applicant had not committed any offence since a representative of the party had not been required to countersign the record.

Counsel for the applicant submitted her observations. She maintained that the requirement to refrain from crossing through the blank lines had no legal basis and that the applicant had not been duly notified of the hearing.

On 14 November 2008 the President of the Omsk Regional Court examined the submissions and quashed the judgments of 13 July and 18 August 2004, finding as follows:

> "The court asked the representative of the party to sign the trial record but it did not have legal grounds to leave blank lines in the said procedural document. Accordingly, there was no legal basis for prohibiting [the applicant] from making notes in the form of strike-through lines.
>
> Further, the materials of the file concerning the administrative offence do not contain any information to show that [the applicant] was appropriately notified of the place and time of the hearing, which prevented him from exercising his rights set out in Article 25.1 of the Code of Administrative Offences.
>
> Under these circumstances, the judgments must be quashed and the proceedings discontinued in accordance with Article 24.5 § 1 (2) of the Code because the [applicant's] actions did not constitute an administrative offence under Article 17.3 § 1 of the Code."

B. Relevant domestic law

The Code of Administrative Offences provides as follows:

> **Article 17.3 Failure to comply with an order of a judge or court bailiff**
>
> "1. Failure to comply with a legitimate order of a judge to discontinue actions that breach the established judicial procedure –
>
> is punishable with an administrative fine of five to ten minimum wages or administrative detention for up to fifteen days."

The Civil Code provides that damages caused to an individual by unlawful actions of State authorities, including unlawfully recovered fines, shall be compensated for at the expense of the federal or regional treasury (Articles 15 and 1069).

THE LAW

The applicant complained under Articles 6 and 7 of the Convention that he had not been duly notified of the hearings and that the act of crossing out blank lines did not constitute an offence because the judge's request to that effect had not been legitimate.

The Government submitted that the alleged violation of Article 6 of the Convention had been remedied by the Presidium's decision of 14 November 2008 and that Article 7 of the Convention had not been applicable to the original proceedings which had been administrative rather than criminal in nature.

The applicant maintained his claim that there had been a violation of Articles 6 and 7 of the Convention. He submitted that an acknowledgement of the violation of Article 6 would be sufficient just satisfaction for any non-pecuniary damage. He insisted, however, that the finding of his liability for a breach of court order had been damaging to his professional reputation and that the Government had wilfully undermined the importance of his suffering.

The Court observes that on 14 November 2008 the Omsk Regional Court quashed the judgments in the applicant's case, finding that there was no indication of an administrative offence in the applicant's actions and that the applicant had not received appropriate notification of the hearing time.

It is a well-established principle of the Court's case-law that an applicant may lose his or her victim status if two conditions are met: first, the authorities must have acknowledged, either expressly or in substance, the breach of the Convention and, second, they must have afforded redress for it (see, most recently, *Sakhnovskiy v. Russia* [GC], no. 21272/03, § 67, 2 November 2010).

In the instant case the Regional Court acknowledged, in substance, both a procedural violation of Article 6 and a substantive violation of Article 7, of which the applicant complained. It does not appear that the applicant applied to the federal treasury for repayment of the fine he had paid in the administrative proceedings or instituted civil proceedings, under Articles 15 and 1069 of the Civil Code, for any damages he may have incurred in this connection. In his submissions to the Court, he maintained that the money was of lesser importance to him than the decision on the matter of principle, namely whether the judge's request not to strike through the lines had been legitimate. The Court therefore considers that the acknowledgement of the absence of a lawful basis for the judge's request in the original proceedings and of the procedural defect in those proceedings constituted adequate redress in the circumstances of the case.

It follows that the applicant can no longer claim to be a "victim" of the alleged violations of Articles 6 and 7 of the Convention within the meaning of Article 34 of the Convention and that this complaint must be rejected pursuant to Articles 34 and 35 §§ 3 (a) and 4.

For these reasons, the Court unanimously

Declares the application inadmissible.

André Wampach
Deputy Registrar

Nina Vajić
President