



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

FIRST SECTION

CASE OF SHTUKATUROV v. RUSSIA

(Application no. 44009/05)

JUDGMENT
(Just satisfaction)

STRASBOURG

4 March 2010

FINAL

04/06/2010

This judgment has become final under Article 44 § 2 of the Convention. It may be subject to editorial revision.

In the case of Shtukaturov 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 Hajiyeu,

Giorgio Malinverni,

George Nicolaou, *judges*,

and Søren Nielsen, *Section Registrar*,

Having deliberated in private on 9 February 2010,

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

PROCEDURE

1. The case originated in an application (no. 44009/05) 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 Pavel Vladimirovich Shtukaturov (“the applicant”), on 10 December 2005. The applicant alleged that by depriving him of his legal capacity on account of his mental health problems the domestic courts had breached his rights under Articles 6 and 8 of the Convention. He further alleged that his detention in a psychiatric hospital had infringed Articles 3 and 5 of the Convention.

2. In a judgment delivered on 27 March 2008 (“the principal judgment”), the Court held unanimously that there had been a violation of Article 6 § 1 (right to a fair hearing) of the European Convention on Human Rights concerning the proceedings which deprived the applicant of his legal capacity; a violation of Article 8 (right to respect for private and family life) of the Convention on account of the complete deprivation of the applicant's legal capacity; a violation of Article 5 § 1 (right to liberty and security) concerning the applicant's confinement in a psychiatric hospital; a violation of Article 5 § 4 concerning the applicant's inability to obtain his release from hospital; and a failure by the Russian Government to comply with its obligations under Article 34 (right of individual petition) as it had hindered the applicant's access to the Court (see *Shtukaturov v. Russia*, no. 44009/05, 27 March 2008).

3. Under Article 41 of the Convention the applicant sought just satisfaction in respect of non-pecuniary damage.

4. Since the question of the application of Article 41 of the Convention was not ready for decision, the Court reserved it and invited the

Government and the applicant to submit, within three months from the date on which the judgment became final in accordance with Article 44 § 2 of the Convention, their written observations on that issue and, in particular, to notify the Court of any agreement they might reach (*ibid.*, § 154, and point 9 of the operative provisions).

5. The applicant and the Government each filed observations. On 7 April 2009 the Chamber, under Rule 54 § 2 (a) of the Rules of Court, requested the parties to submit an update on recent developments in the case. By 22 May 2009 both parties had submitted the information requested by the Chamber.

6. In their observations of 6 May 2009 the Government informed the Court that on 27 April 2009 the Vasileostrovskiy District Court of St Petersburg, at the request of the State guardianship authority and following a fresh expert examination of the applicant's mental condition, had declared him fully capable.

7. The applicant, in his observations of 22 May 2009, confirmed that information. He also informed the Court that on 12 May 2009 the decision of 27 April 2009 of the Vasileostrovskiy District Court of St Petersburg had become final and acquired legal force.

8. Furthermore, the applicant informed the Court that on 27 February 2009 the Constitutional Court of the Russian Federation had ruled on the merits of his constitutional complaint and had found unconstitutional the provisions of Article 284 of the Code of Civil Procedure which had provided for the possibility of hearing the incapacity case in the applicant's absence. The Constitutional Court also found unconstitutional parts of Articles 52, 135 and 379 of the Code of Civil Procedure, in so far as they had prevented the applicant from bringing an appeal against the incapacitation decision of the first-instance court. It further found unconstitutional the provisions of Article 28 of the Psychiatric Care Act which had made it possible to detain the applicant in a psychiatric hospital without a court review for an indefinite period of time. The applicant submitted a copy of the Constitutional Court decision.

THE LAW

9. 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.”

I. DAMAGE

A. The applicant's claims

10. In his updated claims for just satisfaction the applicant claimed 25,000 euros (EUR) in respect of non-pecuniary damage. He insisted that he had suffered particularly grave interference with his private life and personal liberty. As a result of his full legal incapacitation almost every important civil right had been taken away from him, leaving him feeling anxious, vulnerable and helpless. Moreover, all effective domestic legal avenues had been closed to him, thus reducing him to a non-person in the eyes of the law. All important decisions relating to the applicant's life had been at the discretion of his guardian, with whom he had had an unstable and often hostile relationship and who had often acted demonstrably against the applicant's wishes and interests. One of the particularly serious consequences of the applicant's incapacitation had been his unlawful prolonged detention in a psychiatric hospital (from 4 November 2005 to 16 May 2006) where he had been denied access to any of the safeguards which normally attended involuntary hospitalisation. The applicant also pointed out that the hospital authorities had prevented him from meeting his legal representative and had otherwise obstructed his efforts to pursue his ECHR complaint. That attitude on the part of the authorities had increased his feelings of anxiety, uncertainty and vulnerability. The applicant further referred to the awards made by the Court in comparable cases (see, for example, *Gajcsi v. Hungary*, no. 34503/03, §§ 28-30, 3 October 2006, and *H.F. v. Slovakia*, no. 54797/00, §§ 50-52, 8 November 2005). The applicant invited the Court, in making an award, to take into account the cumulative effect of the violations found in the principal judgment.

11. In his additional submissions the applicant alleged that the reversal of the original incapacity decision in 2009 had not provided him with an adequate remedy, as he had already suffered violations of his rights owing to his status as an incapable individual and there had been no effective remedies available to him under Russian law by which to obtain compensation for his suffering.

B. The Government's submissions

12. The Government considered these claims wholly unreasonable and excessive. Referring to the case of *Rakevich v. Russia*, no. 58973/00, 28 October 2003, where the Court had found a breach of Article 5 §§ 1 and 4 of the Convention in similar circumstances, the Government insisted that the just satisfaction for non-pecuniary damage in the present case should not exceed EUR 3,000.

C. The Court's conclusion

13. The Court reiterates that the amount of compensation for non-pecuniary damage is assessed with a view to providing “reparation for the anxiety, inconvenience and uncertainty caused by the violation” (see, for example, *Ramadhi and Others v. Albania*, no. 38222/02, § 9, 13 November 2007).

14. The Court further reiterates that a judgment in which it finds a breach imposes on the respondent State a legal obligation to put an end to the breach and make reparation for its consequences in such a way as to restore as far as possible the situation existing before the breach. The Contracting States that are parties to a case are in principle free to choose the means whereby they will comply with a judgment in which the Court has found a breach. This discretion as to the manner of execution of a judgment reflects the freedom of choice attaching to the primary obligation of the Contracting States under the Convention to secure the rights and freedoms guaranteed (Article 1). If the nature of the breach allows of *restitutio in integrum*, it is for the respondent State to effect it. If, on the other hand, national law does not allow – or allows only partial – reparation to be made for the consequences of the breach, Article 41 empowers the Court to afford the injured party such satisfaction as appears to it to be appropriate (see *Papamichalopoulos and Others v. Greece* (Article 50), 31 October 1995, § 34, Series A no. 330-B).

15. Turning to the present case the Court notes that since the adoption of the principal judgment the applicant's situation has changed. First, on 27 February 2009 the Constitutional Court of Russia struck down as unconstitutional some of the provisions of the Psychiatric Care Act and the Code of Civil Procedure applied in the applicant's case. For the purposes of Article 41 of the Convention the Court does not need to analyse in detail the decision of the Constitutional Court of Russia and its consistency with the Court's own position in the case. What is important is that the decision of the Constitutional Court should have given the applicant a certain degree of moral satisfaction, which the Court must take into account when deciding on the award under Article 41 of the Convention.

16. Furthermore, in May 2009, following the proceedings before the Vasileostrovskiy District Court of St Petersburg, the applicant's legal capacity was restored. Those proceedings were not instituted in pursuance of the Court's principal judgment or even of the judgment of the Constitutional Court of Russia. The case was brought to the District Court by the State guardianship authority in view of the improvement of the applicant's mental condition. Further, the decision of 27 April 2009 restoring the applicant's legal capacity did not cast doubt on the validity of the original decision of the same court (of 28 December 2004) by which the applicant had been declared incapable. Nevertheless, the main practical

consequence of the latter proceedings is that the applicant's legal capacity is now fully restored. The Court cannot ignore this fact and its positive effects for the applicant.

17. All that being said, the Court notes that neither of those decisions remedied the past wrongs, which persisted for over four years. During that period the State continued to infringe some of the applicant's most fundamental rights. Thus, as the Court put it in the principal judgment, the applicant was “deprived of his capacity to act independently in almost all areas of life” (§ 83). He was unlawfully detained in the hospital for more than six months, not taking into account his subsequent periods of detention. Finally, the applicant's suffering was undoubtedly aggravated by the State's failure to respect his Article 6 rights and the authorities' interference with his right of individual petition under Article 34 of the Convention.

18. The Court takes into account the cumulative effect of the violations of the applicant's rights, their duration, and the fact that the applicant, who suffered from a mental disorder, was in a particularly vulnerable situation. Ruling on an equitable basis in accordance with Article 41 of the Convention, the Court awards the applicant EUR 25,000 for non-pecuniary damage.

II. COSTS AND EXPENSES

19. The applicant did not claim any amount for the costs and expenses incurred before the domestic courts and before the Court. Consequently, the Court does not make any award under this head.

III. DEFAULT INTEREST

20. 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

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, EUR 25,000 (twenty-five thousand euros) in respect of non-pecuniary damage, plus any tax that may be chargeable, to be converted into Russian roubles at the rate applicable at the date of settlement;

(b) that from the expiry of the above-mentioned three months until settlement simple interest shall be payable on the above amount at a rate equal to the marginal lending rate of the European Central Bank during the default period plus three percentage points;

Done in English, and notified in writing on 4 March 2010, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Søren Nielsen
Registrar

Christos Rozakis
President