



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

FIRST SECTION

CASE OF KAZMIN v. RUSSIA

(Application no. 42538/02)

JUDGMENT

STRASBOURG

13 January 2011

FINAL

20/06/2011

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

In the case of Kazmin v. Russia,

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

Christos Rozakis, *President*,

Anatoly Kovler,

Khanlar Hajiyeu,

Dean Spielmann,

Sverre Erik Jebens,

Giorgio Malinverni,

George Nicolaou, *judges*,

and Søren Nielsen, *Section Registrar*,

Having deliberated in private on 9 December 2010,

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

PROCEDURE

1. The case originated in an application (no. 42538/02) 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 Anatoliy Vasilyevich Kazmin (“the applicant”), on 29 November 2002.

2. The Russian Government (“the Government”) were represented by Ms V. Milinchuk and subsequently by Mr G. Matyushkin, the Representatives of the Russian Federation at the European Court of Human Rights.

3. On 1 July 2008 the President of the First Section decided to give notice of the application to the Government. It was also decided to examine the merits of the application at the same time as its admissibility (Article 29 § 1).

THE FACTS

I. THE CIRCUMSTANCES OF THE CASE

4. The applicant was born in 1963 and lives in Novovoronezh, the Voronezh Region.

5. He sued the authorities for recovery of a number of unpaid social benefits due to him, being a victim of the Chernobyl nuclear accident.

A. First round of the court proceedings (pension arrears)

6. On 27 October 2000 the Novovoronezh Town Court of the Voronezh Region (“the Town Court”) allowed the applicant's claim against the Social Welfare Office of Novovoronezh (“the Welfare Office”) and ordered the respondent authority to pay him 949.70 Russian roubles (RUB) in pension arrears and RUB 47.48 for court fees.

7. On 7 November 2000 the judgment became enforceable. On 16 November 2000 the bailiff's office opened the enforcement proceedings. On 29 May 2003 the enforcement proceedings were discontinued, for the debtor's lack of funds.

8. On 29 July 2008 the award was paid to the applicant.

B. Second round of the court proceedings (penalty payment and food allowance)

9. On 7 December 2000 the Town Court decided that the Welfare Office should pay the applicant RUB 3,593.51 as a penalty relating to certain unpaid compensation for health damage. The court further index-linked the applicant's food allowance in line with the domestic legislation and awarded him RUB 1,625.28 in this respect. On 27 February 2001 the Voronezh Regional Court upheld the judgment and it entered into force.

10. On 26 November 2002 RUB 3,593.51 of the judgment debt was paid to the applicant. The remainder of the award was not executed.

11. On 17 February 2003 the Presidium of Voronezh Regional Court quashed the judgment of 7 December 2000, as upheld on 27 February 2001, on supervisory review following the request by the respondent authority and remitted the case to the first instance. The Presidium found that the lower court had incorrectly applied domestic law in the part relating to the calculation of the penalty.

12. On 3 April 2003 the Novovoronezh Town Court examined the case afresh. It found that the respondent authority was liable to pay the applicant the unpaid food allowance in the amount of RUB 1,625.28. It further rejected the applicant's penalty claim and ordered him to reimburse RUB 3,593.51 to the Novovoronezh Welfare Office.

13. At some point the applicant returned to the Welfare Office RUB 3,593.51 already paid to him.

14. On 3 June 2003 the Voronezh Regional Court dismissed the applicant's appeal and upheld the judgment. Enforcement proceedings commenced against the Welfare Office for payment of RUB 1,625.28. On 16 March 2004 the bailiffs discontinued the proceedings, because the respondent authority lacked funds for the execution of the award.

15. According to the Government, the judgment of 3 April 2003 has not been enforced by the Welfare Office to date.

C. Third round of the court proceedings

16. The applicant brought a court action against the Welfare Office claiming compensation for belated payments in respect of his pension as a Chernobyl victim. He considered that such compensation should be in line with the increase of the minimum subsistence amount in the Voronezh Region.

17. On 14 May 2001 the Town Court granted the claim and awarded the applicant RUB 605.52, to be paid by the Welfare Office.

18. On 24 May 2001 the judgment acquired legal force.

19. On 24 September 2003 the award was paid to the applicant.

D. Fourth round of the court proceedings (pension increase)

20. The applicant claimed recalculation of the amount of compensation for health damage due to him since 1997. He submits, without further details, that he introduced a respective action with a domestic court at some point in 1999.

21. On 11 April 2000 the Novovoronezh Town Court rejected his claim as having no basis in domestic law.

22. On 11 May 2000 the Voronezh Regional Court upheld the judgment.

23. At some point the applicant applied for supervisory review of the case.

24. On 2 February 2004 the Presidium of Voronezh Regional Court quashed the judgments of 11 April 2000 and 11 May 2000 by reference to the incorrect application of domestic law and remitted the case for a fresh examination by the first instance court.

25. It appears that on 31 March 2004 the Novovoronezh Town Court stayed the proceedings, because the Plenary Supreme Court of the Russian Federation was to examine the legal provisions on which the applicant's claims were based and issue a ruling on the application of those provisions by the domestic courts. The applicant challenged the stay of the proceedings. On 9 April 2004 the Town Court returned the grounds of appeal to the applicant as lodged in violation of the rules of procedure.

26. Despite the fact that the Plenary Supreme Court had not yet decided on the matter, on 3 June 2004 the Town Court resumed the examination of the applicant's case and dismissed his claim.

27. On 29 July 2004 the Voronezh Regional Court, however, quashed the judgment on appeal and remitted the case for a new examination by the Town Court.

28. It appears that on 28 September 2004 the Town Court allowed the respondent authority's request to postpone the case for an unspecified period.

29. The applicant appealed. On 8 October 2004 the Town Court informed him that in accordance with the domestic law on civil procedure he could not challenge the decision to postpone the examination of the case and advised him that a new hearing was scheduled for 14 December 2004.

30. On 14 December 2004 the Town Court stayed the proceedings pending the Plenary Supreme Court's ruling relevant to the dispute. The decision was upheld on 3 March 2005 by the Voronezh Regional Court.

31. On 5 April 2005 the Plenary Supreme Court of the Russian Federation adopted Resolution No.7 providing clarifications as regards application of various provisions of the domestic law regulating the disability payments. The Supreme Court also filed a request with the Constitutional Court of the Russian Federation to review the constitutionality of certain legal provisions determining the amount of compensations to Chernobyl victims (para. 18 of the Resolution).

32. On 18 April 2005 the Town Court scheduled the hearing for 4 May 2005 and sent the summons to the applicant with a view to securing his presence. As the applicant could not appear and due to the proceedings before the Constitutional Court, on 16 August 2005 the Town Court stayed the proceedings until the decision of the Constitutional Court of Russia had been rendered.

33. On 4 October 2005 the Constitutional Court of the Russian Federation by Ruling № 364-O reviewed constitutionality of certain legal provisions determining the amount of compensations to Chernobyl victims.

34. It appears that at some point the Town Court resumed the examination of the case and scheduled the hearing for 10 May 2006.

35. On 10 May 2006 the Town Court postponed the case examination as the applicant was absent.

36. On 24 May 2006 the Town Court again summoned the parties to a new hearing and indicated that the applicant's presence in the court room was obligatory.

37. On 16 August 2006 the Town Court examined the applicant's action and dismissed it as having no basis in domestic law.

38. On 19 October 2006 the Voronezh Regional Court upheld the judgment on appeal.

E. Fifth round of the court proceedings (recalculation of allowances)

39. On 21 July 2003 the Town Court granted the applicant's new action against the Welfare Office, recalculated the amount of the allowances in line with the increase of the minimum subsistence level in 2002-2003 and accordingly awarded the applicant a lump sum of RUB 2,653.17 in arrears relating to payments of the food allowance for the period between 1 July 2002 and 31 July 2003 and RUB 85 of unpaid yearly compensation for health damage in respect of 2002-2003.

40. On 27 November 2003 the judgment was upheld by the Voronezh Regional Court and entered into force.

41. On 24 April 2006 the Town Court dismissed the applicant's request for a reopening of the case in view of discovery of the new circumstances. The decision was upheld on 6 June 2006 by the Voronezh Regional Court.

42. The judgment of 21 July 2003, as upheld on 27 November 2003, has not been enforced to date.

F. Sixth round of the court proceedings (customs duties)

43. The applicant brought a court action against the Voronezh Customs Office which refused to exempt his imported car from duties. On 22 January 2004 the Leninskiy District Court of Voronezh by a final judgment dismissed his action as having no basis in domestic law.

G. Seventh round of the court proceedings

44. The applicant sued the Welfare Office and the Ministry of Finance for further recalculation of various allowances and recovery of the debt accrued as a result of the previous underpayment.

45. On 18 December 2006 the Novovoronezh Town Court granted the applicant's action in part and made a pecuniary award. Alleging incorrect application of the domestic law and insufficiency of the award, the applicant appealed.

46. On 21 August 2007 the Voronezh Regional Court upheld the lower court's findings.

47. On 15 October 2007 the Town Court, upon the applicant's request, annulled the judgment of 18 December 2006 on account of discovery of the new circumstances.

48. On 14 December 2007 the Town Court examined the case afresh and made a new pecuniary award in the applicant's favour.

49. On 13 March 2008 the Town Court modified the way of execution of the decision of 14 December 2007. The applicant submits that he was not notified of the hearing and was not present. He appealed against the decision.

50. On 29 April 2008 the Regional Court upheld the lower court's findings.

51. The case file does not contain any further information as regards the enforcement status of the judgment of 14 December 2007, as modified on 13 March 2008.

II. RELEVANT DOMESTIC LAW

52. For the relevant provisions on the supervisory review proceedings contained in the Code of Civil Procedure of the Russian Federation see the Court's judgment in the case of *Sobelin and Others v. Russia* (nos. 30672/03 et al., § 34, 3 May 2007).

53. For the relevant provisions of the domestic law regarding enforcement of final judgments, see *Burdov v. Russia* (no. 2) (no. 33509/04, §§ 22 and 26-29, 15 January 2009).

54. Federal Law № 68-ФЗ of 30 April 2010 (in force as of 4 May 2010) provides that in case of a violation of the right to trial within a reasonable time or of the right to enforcement of a final judgment, the Russian citizens are entitled to seek compensation of the non-pecuniary damage. Federal Law № 69-ФЗ adopted on the same day introduced the pertinent changes in the Russian legislation.

55. Section 6.2 of the Federal Law № 68-ФЗ provides that everyone who has a pending application before the European Court of Human Rights concerning a complaint of the nature described in the law has six months to bring the complaint to the domestic courts.

THE LAW

I. ALLEGED VIOLATION OF ARTICLE 6 OF THE CONVENTION AND ARTICLE 1 OF PROTOCOL No. 1 ON ACCOUNT OF SUPERVISORY REVIEW OF THE JUDGMENT OF 7 DECEMBER 2000

56. The applicant complained under Article 6 § 1 and Article 1 of Protocol No. 1 about the quashing, on 17 February 2003, of the judgment of 7 December 2000 on supervisory review and averred that he had to reimburse to the respondent authority the sum already paid to him pursuant to that judgment. These Articles, insofar as relevant, read as follows:

Article 6 § 1

“In the determination of his civil rights and obligations ..., everyone is entitled to a fair ... hearing ... by [a] ... tribunal...”

Article 1 of Protocol No. 1

“Every natural or legal person is entitled to the peaceful enjoyment of his possessions. No one shall be deprived of his possessions except in the public interest

and subject to the conditions provided for by law and by the general principles of international law.

The preceding provisions shall not, however, in any way impair the right of a State to enforce such laws as it deems necessary to control the use of property in accordance with the general interest or to secure the payment of taxes or other contributions or penalties.”

57. The Government argued that the supervisory-review proceedings were held in compliance with the domestic law requirements, and the Presidium had reversed the judgment because of a serious violation of substantive law. They provided detailed information on the material norms allegedly misinterpreted by the first instance court and concluded that the proceedings before the lower courts were tarnished with a fundamental defect. As regards the complaint under Article 1 of Protocol No. 1, the Government submitted that the applicant had not acquired property rights in respect of the award made on 7 December 2000, since the lower court's findings in the applicant's favour were erroneous.

58. The applicant maintained his claim submitting that the supervisory instance judgment was arbitrary and unlawful.

A. Admissibility

59. The Court notes that this complaint is not manifestly ill-founded within the meaning of Article 35 § 3 of the Convention. It further notes that it is not inadmissible on any other grounds. It must therefore be declared admissible.

B. Merits

1. Article 6 § 1 of the Convention

60. The Court reiterates that the quashing by way of supervisory review of a judicial decision which has become final and binding may render the litigant's right to a court illusory and infringe the principle of legal certainty (see, among many other authorities, *Ryabykh v. Russia*, no. 52854/99, §§ 56-58, 24 July 2003). Departures from that principle are justified only when made necessary by circumstances of a substantial and compelling character (see *Kot v. Russia*, no. 20887/03, § 24, 18 January 2007, and *Protsenko v. Russia*, no. 13151/04, §§ 25-34, 31 July 2008).

61. The Court observes that in the case at hand the judgment was set aside by way of a supervisory review solely on the ground that the lower courts had incorrectly applied the substantive law. The Court reiterates its constant approach that in the absence of a fundamental defect in the previous proceedings a party's disagreement with the assessment made by

the first-instance and appeal courts is not a circumstance of a substantial and compelling character warranting the quashing of a binding and enforceable judgment and re-opening of the proceedings on the applicant's claim (see *Dovguchits v. Russia*, no. 2999/03, § 30, 7 June 2007; and *Kot*, cited above, § 29). The Government did not put forward any arguments which would enable the Court to reach a different conclusion in the present case.

62. There has been, accordingly, a violation of Article 6 § 1 of the Convention.

2. Article 1 of Protocol No. 1

63. The Court reiterates that the existence of a debt confirmed by a binding and enforceable judgment constitutes the beneficiary's "possession" within the meaning of Article 1 of Protocol No. 1 (see, among other authorities, *Androsov v. Russia*, no. 63973/00, § 69, 6 October 2005). The Court further observes that by virtue of the judgment of 7 December 2000 the applicant's food allowance was considerably increased and he received a lump sum relating to compensation for health damage. The quashing of the enforceable judgment frustrated the applicant's reliance on a binding judicial decision and deprived him of an opportunity to receive the money he had legitimately expected to receive. Furthermore, following the quashing, on 3 April 2003, as upheld on 3 June 2003, the domestic court ordered the applicant to return to the respondent authority the amount he had already received pursuant to the judgment of 7 December 2000, and the applicant reimbursed the respective sum to the Welfare Office. In these circumstances, even assuming that the interference was lawful and pursued a legitimate aim, the Court considers that the quashing of the enforceable judgment of 7 December 2000 by way of supervisory review placed an excessive burden on the applicant and was incompatible with Article 1 of Protocol No. 1.

64. There has therefore been a violation of that Article.

II. ALLEGED VIOLATION OF ARTICLE 6 OF THE CONVENTION AND ARTICLE 1 OF PROTOCOL No. 1 ON ACCOUNT OF NON-ENFORCEMENT OF THE JUDGMENTS IN THE APPLICANT'S FAVOUR

65. The applicant complained about the domestic courts' failure to properly enforce the judgments of 27 October 2000, 7 December 2000, 14 May 2001, 3 April 2003 and 21 July 2003 in his favour. He relied on Article 6 § 1 of the Convention and Article 1 of Protocol No. 1, both cited above.

66. The Government argued that the applicant failed to exhaust domestic remedies available to him, such as a claim for damages, an adjustment for the cost of living, and a negligence action. They advanced a detailed

argument as regards the effectiveness of the purported remedies similar to that in the *Burdov (no. 2)* case (cited above, §§ 91-93). While acknowledging the authorities' responsibility for several delays in execution of the judgments, they claimed that the applicant's conduct had also contributed to the length of the enforcement proceedings, because in several rounds of the proceedings the applicant had submitted enforcement papers either with delay or to an undue authority and had not applied for replacement of the respondent in the enforcement proceedings following reorganisation of the Welfare Office in 2006.

67. The applicant maintained his complaint.

A. Admissibility

68. As regards exhaustion of domestic remedies, the Court has already found that the suggested remedies are ineffective (see, among others, *Burdov (no. 2)*, cited above, §§ 103 and 106-116; and *Moroko v. Russia*, no. 20937/07, §§ 25-30, 12 June 2008).

69. The Court further takes cognisance of the existence of a new remedy introduced by the federal laws № 68-ФЗ and № 69-ФЗ in the wake of the pilot judgment adopted in the case of *Burdov (no. 2)* (cited above). These statutes, which entered into force on 4 May 2010, set up a new remedy which enables those concerned to seek compensation for the damage sustained as a result of the non-enforcement of final judgments and the unreasonable length of proceedings (see paragraphs 54-55 above).

70. The Court observes that in the present case the parties' observations arrived before 4 May 2010 and did not contain any references to the new legislative development. However, it accepts that as of 4 May 2010 the applicant has had a right to use the new remedy.

71. The Court recalls that in the pilot judgment cited above it stated that it would be unfair to request the applicants whose cases have already been pending for many years in the domestic system and who have come to seek relief at the Court to bring again their claims before domestic tribunals (*Burdov (no. 2)*, cited above, § 144). In line with this principle, the Court decides to examine the present application on its merits. However, the fact of examination of the present case on its merits should in no way be interpreted as prejudging the Court's assessment on the quality of the new remedy.

72. The Court further notes that the applicant's complaint concerning non-enforcement is not manifestly ill-founded within the meaning of Article 35 § 3 of the Convention. It further notes that it is not inadmissible on any other grounds. It must therefore be declared admissible.

B. Merits

73. The Court reiterates that an unreasonably long delay in the enforcement of a binding judgment may breach the Convention (see *Burdov v. Russia*, no. 59498/00, ECHR 2002-III). To decide if the delay was reasonable, the Court will look at the time element involved, how complex the enforcement proceedings were, how the applicant and the authorities behaved, and what the nature of the award was (see *Raylyan v. Russia*, no. 22000/03, § 31, 15 February 2007).

74. As regards the pecuniary award made on 7 December 2000, the Court reiterates that the quashing of a judgment in a manner which has been found to have been incompatible with the principle of legal certainty and the applicant's "right to a court" cannot be accepted as justification for the failure to enforce the judgment (see *Sukhobokov v. Russia*, no. 75470/01, § 26, 13 April 2006). In the present case the judgment in the applicant's favour was enforceable under domestic law from 27 February 2001 until at least 17 February 2003 when the judgment was quashed, and it was incumbent on the State to abide by its terms (see *Velskaya v. Russia*, no. 21769/03, § 18, 5 October 2006). However, the State avoided paying the judgment debt for almost two years.

75. As regards the four remaining judicial decisions, the delays of enforcement of the three judgments varied from 2 years and 4 months (judgment of 14 May 2001) to more than 7 years. The Court reiterates in this respect that where a judgment is against the State, the State must take the initiative to enforce it (see *Akashev v. Russia*, no. 30616/05, §§ 21–23, 12 June 2008).

76. The Court has frequently found violations of Article 6 § 1 of the Convention and Article 1 of Protocol No. 1 in cases raising issues similar to the ones in the present case (see, for instance, *Burdov*, cited above, § 35). Having regard to its case-law on the subject, the Court finds that by failing, for the periods from two to more than seven years, to comply with the five enforceable judgments in the applicant's favour the domestic authorities impaired the essence of his right to a court and prevented him from receiving the money he could reasonably have expected to receive.

77. There has accordingly been a violation of Article 6 § 1 of the Convention and Article 1 of Protocol No. 1 on account of non-enforcement of the judgments of 27 October 2000, 7 December 2000, 14 May 2001, 3 April 2003 and 21 July 2003.

III. ALLEGED VIOLATION OF ARTICLE 6 OF THE CONVENTION ON ACCOUNT OF THE LENGTH OF THE FOURTH SET OF PROCEEDINGS

78. The applicant complained under Articles 6 and 13 about the excessive length of the proceedings set out under point D above.

79. The Court reiterates its position regarding the remedy introduced on 4 May 2010 that it would be unfair to request the applicants whose cases have already been pending for many years in the domestic system and who have come to seek relief at the Court to bring again their claims before domestic tribunals (see paragraph 71 above). In line with this approach, the Court decides to examine the present part of the application. However, in the Court's view, the complaint is in any event inadmissible as follows.

A. Period to be considered

80. In the applicant's submission the case was introduced by him in 1999. However, the Court notes that the applicant did not submit a copy of his initial complaint to a domestic court. The earliest document in the file concerning the proceedings in question is a copy of the first instance judgment dated 11 April 2000. If calculated from that date, the total length would be of 6 years and 6 months.

81. The Court further reiterates that only those periods when the case was actually pending before the domestic courts, that is, the periods when there was no effective judgment in the determination of the merits of the applicant's dispute and when the authorities were under an obligation to pass such a judgment, should be taken into account (see, for example *Skorobogatova v. Russia*, no. 33914/02, § 39, 1 December 2005, with further references). Accordingly, the period between 11 May 2000 and 2 February 2004 (date of the supervisory review) is not to be counted towards the total length, since there was already an effective judgment in the applicant's case and the courts were not under an obligation to determine his civil rights within a "reasonable time". Therefore, the proceedings were pending during the following periods: (a) between 11 April and 11 May 2000 (one month); and (b) between 2 February 2004 and 19 October 2006 (two years, eight months and seventeen days).

82. Accordingly, the period under consideration is approximately two years and ten months during which the case was examined at two levels of jurisdiction.

B. Reasonableness of the length of proceedings

83. The Court reiterates that the reasonableness of the length of proceedings must be assessed in the light of the circumstances of the case

and with reference to the following criteria: the complexity of the case, the conduct of the applicant and the relevant authorities and what was at stake for the applicant in the dispute (see, among many other authorities, *Frydlender v. France* [GC], no. 30979/96, § 43, ECHR 2000-VII). In addition, only delays attributable to the State may justify a finding of a failure to comply with the “reasonable time” requirement (see, among other authorities, *Zimmermann and Steiner v. Switzerland*, 13 July 1983, p. 11, § 24, Series A no. 66; see also *Pélissier and Sassi v. France* [GC], no. 25444/94, § 67, ECHR 1999-II).

84. Although the case does not appear particularly complex, it involved certain issues which were not sufficiently clarified by the domestic law in force at the material time. The dispute concerned the amount of compensation for health damage allegedly due to the applicant for the period from 1997 onwards, and thus was of some importance for the applicant.

85. As regards the applicant's conduct, it appears that in 2006 the examination of the case was postponed due to his inability to attend the hearings, for four months in total. Otherwise he did not contribute to the overall length of the proceedings.

86. As to the authorities' conduct, the Court observes that, once remitted for a fresh consideration on 2 February 2004, the case remained unexamined until 16 May 2006, that is for two years and three months.

87. However, during this period the proceedings were stayed pending rulings and clarifications by the Supreme Court and the Constitutional Court respectively. The Court considers that the adjournment of the proceedings until 4 October 2005, the date of the respective Ruling by the Constitutional Court (see paragraph 33 above) was a reasonable measure taken in the interests of a fair resolution of the applicant's case. The subsequent seven-month period of inaction between 4 October 2004 and 10 May 2005 appears to be attributable to the authorities. Otherwise, once having resumed the proceedings in the instant case, the domestic courts speedily dealt with it. The courts did not idle and handled the case with reasonable expedition (see, insofar as relevant, *Kravchuk v. Russia (dec.)*, no. 72749/01, 1 February 2005; and *Pronina v. Russia (dec.)*, no. 65167/01, 30 June 2005).

88. In the Court's view, regard being had to the above elements and in the light of the Court's previous judgments in cases of this kind, the length of the proceedings was not excessive.

89. It follows that this complaint is manifestly ill-founded and must be rejected in accordance with Article 35 §§ 3 and 4 of the Convention.

IV. OTHER COMPLAINTS RAISED BY THE APPLICANT

90. The applicant further raised a number of complaints under Articles 2, 3, 6 § 1, 13, 14 and 17 and Article 1 of Protocol No. 1 in respect of the second, fourth, fifth, sixth and seventh rounds of the proceedings.

91. The Court examined these complaints as submitted by the applicant. Having regard to all the material in its possession, it finds that these complaints do not disclose any appearance of a violation of the rights and freedoms set out in the Convention or its Protocols.

92. 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.

V. APPLICATION OF ARTICLE 41 OF THE CONVENTION

93. 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.”

A. Damage

94. In respect of pecuniary damage, the applicant claimed the amounts due to him pursuant to the judgments of 7 December 2000 and 21 July 2003 which had not been executed by the authorities, including the part recovered from him pursuant to the quashing of the judgment of 7 December 2000 on supervisory review. He further claimed 234 Russian roubles (RUB) in respect of the alleged violations of the Convention in the seventh round of the proceedings and 1,339 United States dollars (USD) regarding the sixth round. As regards non-pecuniary damage, he claimed 15,000 euros (EUR) in respect of the fifth set of proceedings and, in respect of the remainder of the proceedings he was involved in, EUR 20,000 per round of the domestic proceedings.

95. The Government contested the claims for non-pecuniary damage as manifestly unreasonable and excessive. As regards the pecuniary damage, they admitted that the applicant had reasonably claimed RUB 1,625 of unpaid part of the judgment debt of 7 December 2000 and RUB 2,738 of the outstanding judgment debt of 21 July 2003. However, they argued that RUB 3,593 recovered from the applicant pursuant to the quashing of the judgment should not be reimbursed to him, as the initial award had been made erroneously and was unlawful.

96. As regards the claim for pecuniary damage, the Court reiterates its constant approach that the most appropriate form of redress in respect of a violation of Article 6 is to ensure that the applicant as far as possible is put

in the position he would have been in had the requirements of Article 6 not been disregarded (see *Piersack v. Belgium (Article 50)*, 26 October 1984, Series A no. 85, p. 16, § 12). The Court finds that in the present case this principle applies as well, having regard to the violations found.

97. First, it observes that the award made on 21 July 2003 remains unenforced. Secondly, it notes that the judgment of 7 December 2000 had remained unenforced in part until its quashing. Finally, as regards the remainder of that award paid to the applicant pursuant to the judgment of 7 December 2000 in the amount of RUB 3,593, the applicant had to repay it after the annulment of the judgment on supervisory review (see paragraph 13 above). In these circumstances, the Court accepts the applicant's claim in respect of the full amount of the unpaid award of 7 December 2000 and the outstanding judgment debt of 21 July 2003 and awards him EUR 225 under this head, plus any tax that may be chargeable. As regards the remainder of the claim in respect of the pecuniary damage, the Court does not see a causal link between the sums claimed and the violations found, and rejects it.

98. The Court further awards the applicant EUR 3,000 on an equitable basis in respect of non-pecuniary damage, plus any tax that may be chargeable on that amount, and rejects the remainder of the claims under this head.

B. Costs and expenses

99. The applicant claimed EUR 1,192.50 in respect of costs and expenses "related to the hearing at the Court". In his view, this sum would cover his visa fees, as well as housing and travel expenses incurred by him. He submitted copies of the travel documents related to a trip to Strasbourg in 2002. The applicant also submitted in broad terms that he had to travel to Strasbourg in order to obtain information about his other application to the Court no.68362/01, declared inadmissible by the Committee of three judges on 28 March 2002.

100. The Government contested that claim as not related to the present application.

101. According to the Court's case-law, an applicant is entitled to the reimbursement of costs and expenses only in so far as it has been shown that these have been actually and necessarily incurred and were reasonable as to quantum. In the present case, it is observed, first, that no oral hearing in his case has been held by the Court. Secondly, it was not demonstrated that the impugned expenses had been actually incurred in the context of the proceedings concerning the present application.

102. Regard being had to the documents in its possession and the above criteria, the Court rejects the applicant's claim for costs and expenses.

C. Default interest

103. 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

1. *Declares* the complaints under Article 6 of the Convention and Article 1 of Protocol No. 1 concerning non-enforcement of the judgments of 27 October 2000, 7 December 2000, 14 May 2001, 3 April 2003 and 21 July 2003 and the quashing of the judgment of 7 December 2000 by way of supervisory review admissible and the remainder of the application inadmissible;
2. *Holds* that there has been a violation of Article 6 of the Convention and Article 1 of Protocol No. 1 on account of the quashing of the judgment of 7 December 2000 on supervisory review;
3. *Holds* that there has been a violation of Article 6 of the Convention and Article 1 of Protocol No. 1 on account of non-enforcement of the judgments of 27 October 2000, 7 December 2000, 14 May 2001, 3 April 2003 and 21 July 2003;
4. *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, the following amounts in euros, to be converted into Russian roubles at the rate applicable at the date of settlement:
 - i) EUR 225 (two hundred and twenty-five euros), plus any tax that may be chargeable, in respect of pecuniary damage, and
 - ii) EUR 3,000 (three thousand euros), plus any tax that may be chargeable, in respect of non-pecuniary damage;
 - (b) that from the expiry of the above-mentioned three months until settlement simple interest shall be payable on the above amounts at a rate equal to the marginal lending rate of the European Central Bank during the default period plus three percentage points;
5. *Dismisses* the remainder of the applicant's claim for just satisfaction.

Done in English, and notified in writing on 13 January 2011, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Søren Nielsen
Registrar

Christos Rozakis
President