



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

FIRST SECTION

CASE OF KHRYKIN v. RUSSIA

(Application no. 33186/08)

JUDGMENT

STRASBOURG

19 April 2011

FINAL

19/07/2011

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

In the case of Khrykin v. Russia,

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

Nina Vajić, *President*,
Anatoly Kovler,
Elisabeth Steiner,
Khanlar Hajiyeu,
George Nicolaou,
Mirjana Lazarova Trajkovska,
Julia Laffranque, *judges*,

and André Wampach, *Deputy Section Registrar*,

Having deliberated in private on 29 March 2011,

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

PROCEDURE

1. The case originated in an application (no. 33186/08) 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 Ivan Stepanovich Khrykin (“the applicant”) on 2 April 2008.

2. The applicant was represented by Mr I.L. Fedotov, a lawyer practising in Moscow. The Russian Government (“the Government”) were represented by Mr G. Matyushkin, Representative of the Russian Federation at the European Court of Human Rights.

3. The applicant complained, in particular, that the first-instance court had lacked independence and had failed to observe the principles of the rule of law and legal certainty having quashed a final and binding decision in his favour.

4. On 18 December 2008 the President of the First Section decided to give notice of the application to the Government. It was also decided to rule on the admissibility and merits of the application at the same time (Article 29 § 1). The Government objected to the joint examination of the admissibility and merits of the application. Having examined the Government's objection, the Court dismissed it.

THE FACTS

I. THE CIRCUMSTANCES OF THE CASE

5. The applicant was born in 1934 and lives in Elektrostal, the Moscow Region.

6. He had been receiving a retirement pension since 1984. In November 2005 he asked a pension authority to up-rate his pension on the basis of the fact that he had worked in hazardous industries. The latter disagreed and the applicant appealed to the Elektrostal Town Court ("Town Court").

7. By judgment of 20 July 2006 the Town Court chaired by Judge T. ordered the pension authority to up-rate the applicant's pension starting from 1 December 2005. The court based its findings on the Law on Labour Pensions of 2001 ("Pension Law"). The judgment was not appealed against and on 5 August 2006 became final.

8. On 4 June 2007 the Chief Department of the Pension Fund no. 19 of Moscow and Moscow Region ("Pension Fund") lodged with the Moscow Regional Court ("Regional Court") an application for supervisory review of the judgment of 20 July 2006. This application was never examined. However, on 14 August 2007 the President of the Regional Court wrote a letter to the first-instance court which stated as follows:

"The Moscow Regional Court sends a statement of complaint by the GU UPF RF no. 19 of Moscow and Moscow Region against the judgment of the Elektrostal Town Court of 20 July 2006 in the case of *Khrykin I.S. v. GU GUPF RF no. 19 of Moscow and Moscow Region...*

[The Town] Court examined the scope of the pension rights of the plaintiff...

[The principles] of the examination of the scope of the pension rights ... have been set out in the Ruling of the Plenum of the Supreme Court of the Russian Federation no. 25 of 20 December 2005 ... and the Judgment of the Supreme Court of the Russian Federation of 2 March 2007 in the case of *Nitsievskaya v. State Agency - Chief Department of the Pension Fund no. 5 of Moscow and the Moscow Region*.

Delivering a judgment ... at variance with the Ruling of the Plenum of the Supreme Court of the Russian Federation no. 25 of 20 December 2005 and the Judgment of the Supreme Court of the Russian Federation of 2 March 2007 discloses a judicial error, such judgment cannot be regarded lawful. With the purpose of securing consistency in the case-law ... the statement of complaint by the GU UPF RF no. 19 of Moscow and Moscow Region ... against the above said judgment in the case of *Khrykin I.S. v. GU GUPF RF no. 19 of Moscow and Moscow Region* is being sent for reconsideration on the ground of newly discovered circumstances."

9. On 27 September 2007 the Pension Fund lodged with the Town Court an application for quashing of the judgment of 20 July 2006 and re-opening of the applicant's case on the ground of newly discovered circumstances.

It stated that the Supreme Court's judgment of 2 March 2007 in the *Nitsievskaya* case, which gave a different interpretation of the Pension Law, had been a circumstance warranting the re-opening of the *Khrykin* case. The applicant argued that the application had been introduced outside the three-month time-limit.

10. By decision (*onpredeleniye*) of 23 October 2007, the Town Court presided over by the same judge who examined the applicant's case in 2006 granted the application. It held as follows:

“[T]he method of the assessment of pension rights ... has been set out in paragraph 13 of the Ruling of the Plenum of the Supreme Court of the Russian Federation no. 25 of 20 December 2005... and in the Judgment of the Supreme Court of the Russian Federation of 2 March 2007 in the case of *Nitsievskaya v. State Agency - Chief Department of the Pension Fund no. 5 of Moscow and the Moscow Region*...

...

[T]he court finds that reconsideration of such a judgment [as in the applicant's case] can be done by way of additional proceedings on the ground of newly discovered circumstances... which allow to remedy a judicial error...that resulted in a violation of the rights of the defendant [the Pension Fund]...

[T]he arguments by the applicant and his representative that the reconsideration ... of the judgment of 20 July 2006 is impossible and that the time-limit for lodging such a request was missed are to be dismissed on the ground that the Judgment of the Supreme Court ..., which entails legal consequences, was rendered on 2 March 2007 and became known [to the Pension Fund] in April 2007. The defendant had applied, to the competent judicial authorities, for reconsideration of the judgment [of 20 June 2006] on 4 June 2007, that is to say before the three-month time-limit ... expired.

In the light of the foregoing ... the court

DECIDED:

The judgment of 20 July 2006 ... is to be quashed.

The re-examination of the merits of the dispute is to be scheduled on 23 October 2007 at 12.30 p.m.”

11. By judgment (*posueenie*) of the same day, the Town Court held that the applicant's claim for a higher pension was to be dismissed in full. Its findings were based on the Law on Labour Pensions and the Ruling of the Plenum of the Supreme Court no. 25 of 20 December 2005. On 6 December 2007, the Moscow Regional Court upheld the first-instance court's judgment on appeal.

II. RELEVANT DOMESTIC LAW

A. Law on provisions guarantying independence of judges

12. The Constitution of the Russian Federation provides:

Article 120

“1. In the administration of justice, judges shall be independent and subject only to the Constitution of the Russian Federation and the federal law...”

Article 121

“...2. A judge cannot be transferred, suspended or removed from office unless it is provided for by the federal law.”

13. The Code of Civil Procedure provides:

Article 8. Independence of judges

“...2. Judges shall examine civil disputes in the conditions that exclude outside influence. Any interference with the exercise of their judicial powers shall be forbidden and shall be punishable under the law...”

14. Law of 26 June 1992 “On the Status of Judges in the Russian Federation” provides that the independence of a judge is to be secured, in particular by the prohibition of interference with the administration of justice, the manner of their appointment and termination of their office, judges' inviolability and by the system of judicial self-government (Section 9). A judge is not obliged to give any comments on a decided, or a pending, case (Section 10).

B. Regulations on judicial ethics and disciplinary offences

15. Law “On the Status of Judges in the Russian Federation” provides:

Section 12.1 Judges' liability for disciplinary offences

“1. A judge who has committed a disciplinary offence (a breach of this Law and of the Code of Judicial Ethics to be adopted by the All-Russian Judicial Congress) may, with the exception of the judges of the Constitutional Court of the Russian Federation, receive a disciplinary penalty in the form of:

- a warning; [or]
- early termination of judicial office.

The decision to impose a disciplinary penalty must be taken by the judicial qualification board that has competence to examine the question of termination of office of a particular judge at the time of that decision...”

16. Law of 4 July 2003 “On Bodies of the Judicial Society” provides that a body which is empowered to impose a disciplinary penalty on judges (including presidents of district courts) are, in particular, regional judicial qualification boards (Section 19 § 2 (7)). An application for holding a judge liable for having committed a disciplinary offence can be lodged by the president of the relevant court or the president of a higher court (Section 22 § 1).

17. The Constitutional Court of the Russian Federation in its Ruling No.3-II of 28 February 2008 held that the power of the presidents of the relevant, or higher, courts to apply for holding a judge liable, as well as the powers of the presidents to examine complaints against judges and to participate in hearings of judicial qualification boards and to make their submissions, were not incompatible with the Constitution of the Russian Federation.

C. Law on provisions governing the supervisory review proceedings

18. The Code of Civil Procedure provides:

Article 376. Right to apply to a court exercising supervisory review

“1. Judicial decisions that have become legally binding, with the exception for judicial decisions by the Presidium of the Supreme Court of the Russian Federation, may be appealed against... to a court exercising supervisory review, by parties to the case and by other persons whose rights or legal interests have been adversely affected by these judicial decisions.

2. Judicial decisions may be appealed against to a court exercising supervisory review within one year after they became legally binding...”

Article 380-1. Actions of the supervisory review court after an application for supervisory review is submitted

“An application for supervisory review proceedings shall be examined:

(1) by the President of the Court, or [his/her] Deputy, or, at their request, by a judge of this court...”

Article 381. Examination of an application for supervisory review

“2. Having examined an application for supervisory review, the judge issues a decision on –

(1) refusal to remit the application for examination on merits by a supervisory court in a court hearing if the grounds for [quashing or altering judicial decisions] do not exist...

(2). remitting the application for examination on merits by a supervisory court in a court hearing...”

Article 387. Grounds for quashing or altering judicial decisions by way of supervisory review

“Judicial decisions [of lower courts] may be quashed or altered by way of supervisory review on the grounds of substantial violations of substantive or procedural legal provisions.”

Article 390. Competence of the supervisory-review court

“1. Having examined the case by way of supervisory review, the court may...

(2) quash the judicial decision issued by a court of first, second or supervisory-review instance in whole or in part and remit the matter for a fresh examination;...

(5) quash or alter the judicial decision issued by a court of first, second or supervisory-review instance and issue a new judicial decision, without remitting the matter for a fresh examination, if substantive legal provisions have been erroneously applied or interpreted.”

D. Law on provisions governing the reconsideration of final judgments on the ground of newly discovered circumstances

19. The Code of Civil Procedure provides:

Article 392. Reconsideration of judgments on the grounds of newly discovered circumstances

“1. [Judgments] which have become final may be re-considered on the basis of newly discovered circumstances.

2. The grounds for reconsideration ... shall be:

1) significant circumstances which were not and could not have been known to the party who applies for reconsideration; ...”

Article 394. Lodging of an application

“... [An application for reconsideration of a [judgment] due to the discovery of new circumstances] shall be lodged within three months after the discovery of the circumstances.”

Article 395. Calculation of the time-limit for lodging an application

“The time-limit for lodging an application for reconsideration of a [judgment] due to the discovery of new circumstances shall be calculated from the day of the discovery of such circumstances ...”

Article 397. Decision on reconsideration of the case on the grounds of newly discovered circumstances

“1. Following the examination of an application for reconsideration of a [judgment] due to the discovery of new circumstances, the court may either grant the application and quash the [judgment], or dismiss the application.

2. The court decision by which an application for reconsideration of a [judgment] due to the discovery of new circumstances is granted shall not be subject to appeal.

3. Provided that a [judgment] is quashed, the case shall be examined in accordance with the rules of this Code.”

E. Case law of the Supreme Court of the Russian Federation

20. By a judgment of 8 February 2006, the Supreme Court upheld the decision of the judicial qualification board of the Sverdlovsk Region to terminate office of judge V. for a breach of the procedural law. She argued that her actions had not constituted a disciplinary offence but to no avail.

Ms V. had been a president of a district court.

21. By a judgment of 14 May 2008, the Supreme Court upheld the decision of the judicial qualification board of the Rostov Region to terminate office of judge S. for a “blatantly erroneous breach of the procedural law”. The Judge S.'s arguments that it had been an erroneous interpretation of the legislation rather than “an intentional breach of law” were dismissed.

Ms S. had been Justice of the Peace of a Court Circuit. The proceedings before the judicial qualification board had been brought by the president of the town court.

22. By a judgment of 3 June 2009, the Supreme Court upheld the decision of a regional judicial qualification board to terminate office of judge Z. for “blatant and repeated breaches of the procedural law”. Judge S. 'unsuccessfully argued that she had misinterpreted the law and that she could not be held liable given that her judicial decisions had not been quashed by a higher court and had become final.

Ms Z. had been a judge of a district court. The proceedings before the judicial qualification board had been brought by the president of the town court.

THE LAW

I. ALLEGED VIOLATION OF ARTICLE 6 § 1 OF THE CONVENTION ON ACCOUNT OF A LACK OF INDEPENDENCE OF THE FIRST-INSTANCE COURT

23. The applicant complained under Article 6 §1 of the Convention that the first-instance court lacked independence because of the pressure put by the President of the Regional Court that resulted in the re-opening of his case and quashing of the final judgment in his favour. The relevant part of Article 6 § 1 provides:

“In the determination of his civil rights and obligations ... everyone is entitled to a fair and public hearing within a reasonable time by an independent and impartial tribunal established by law.”

A. Parties' submissions

24. In a general statement the respondent Government submitted that there had been no violation of Article 6 § 1 of the Convention as the instruction of the President of the Moscow Regional Court to quash the judicial decision at issue had not been set forth in a mandatory manner. They submitted no other comments as regards the issue.

25. The applicant maintained his complaint. In particular, he submitted that Judge T. who had decided the dispute between him and the pension authority in 2006 and 2007 had been in fact the President of the Town Court and had therefore been a subordinate of the President of the Regional Court. The Russian law had not provided sufficient safeguards securing the individual independence of presidents of first-instance courts against the pressure from presidents of regional courts. Therefore, Judge T. had had to follow the instructions of her judicial superior. He continued that it could be seen from the fact that in its decision of 23 October 2007 as regards the need to re-open the case the first-instance court had actually repeated the reasons for the quashing indicated by the President of the Regional Court in her letter. Another telltale sign had been that in the process of the examination of the case, the first-instance court committed a number of serious procedural violations. In particular, it had accepted the pension authority's application for the revision proceedings outside the established time-limit.

B. The Court's assessment

1. Admissibility

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

2. Merits

27. The Court reiterates that it is of fundamental importance in a democratic society that the courts inspire confidence in the public (see the *Padovani v. Italy* judgment of 26 February 1993, Series A no. 257-B, p. 20, § 27). To that end, Article 6 requires a tribunal falling within its scope to be independent.

28. Independence of the judiciary refers to the necessary individual and institutional independence that are required for impartial decision making. It thus characterises both a state of mind and a set of institutional and operational arrangements. The former is concerned with the judge's impartiality and the latter with defining relations with other bodies, in particular other state powers (see, for example, *Findlay v. the United Kingdom*, 25 February 1997, § 73, *Reports of Judgments and Decisions* 1997-I), and are, sometimes, indivisible (see, for example, *Bochan v. Ukraine*, no. 7577/02, § 68, 3 May 2007 and *Salov v. Ukraine*, no. 65518/01, § 82, ECHR 2005-VIII (extracts)).

29. The Court notes that judicial independence also demands that individual judges be free not only from undue influences outside the judiciary, but also from within. This internal judicial independence requires that they be free from instructions or pressures from the fellow judges and *vis-à-vis* their judicial superiors (see, *Parlov-Tkalčić v. Croatia*, no. 24810/06, § 86, 22 December 2009).

30. In order to establish whether a tribunal can be considered “independent” for the purposes of Article 6 § 1, regard must be had, *inter alia*, to the manner of appointment of its members and their term of office, the existence of safeguards against outside pressures and the question whether it presents an appearance of independence (see, among many other authorities, *Findlay*, cited above, § 73) and the objective realities of the situation (see *Parlov-Tkalčić*, cited above, § 83).

31. The applicant argued that the decision of Judge T. to re-open the final judgment in his case and that the adjudication and the outcome of the new proceedings had been influenced by the President of the higher court. Therefore, the question for the Court to examine in the present case is whether there was an unlawful incursion into the administration of justice.

32. The Court notes by way of preliminary observation that, according to Article 381 of the Russian Code of Civil Procedure, a judge of a

supervisory court, after having examined an application for supervisory review proceedings, may decide either to remit the application for the examination by the Chamber on the merits or to refuse to do so (see paragraph 18 above). However, in the present case the President of the Regional Court, instead of making any lawful decision, in accordance with the Code of Civil Procedure, wrote a letter to the first-instance court in which she explicitly instructed the lower court to re-examine the final binding decision in the applicant's case on the ground of newly discovered circumstances (see paragraph 8 above).

33. On 23 October 2007 the Town Court, having reiterated the grounds set forth in the letter of the President of the supervisory court of 14 August 2007, dismissed the applicant's objections and granted the pension authority's application for the re-opening of the case and the quashing of the judgment of 20 July 2006.

34. Leaving that aside, the Court notes that by the judgment of 20 July 2006 the Town Court decided the dispute between the applicant and the pension authority in favour of the former whilst in its new judgment of 23 October 2007 the court, having examined the same set of facts, came to a different conclusion.

35. The Government argued that the letter of the President of the Regional Court had not been written in a mandatory manner. They did not, however, elaborate this statement or submit any explanation or comments regarding the reasons for this inordinate decision. The Court observes that the view of the President of the higher court as regards the judgment of 20 July 2006 was articulated in such expressions as “a judicial error” and “cannot be regarded lawful” which implies that the first-instance court was criticised for its findings in the applicant's case and was called to reconsider its assessment (see paragraph 8 above).

36. It further notes that according to the domestic law, the president of a higher court is empowered to bring disciplinary proceedings against a judge for having committed a disciplinary offence (see paragraphs 16 and 18 above). The possible penalty is an early termination of office (see paragraph 15 above). The practise of the Supreme Court of Russia indicates that an erroneous application of the law can constitute a disciplinary offence (see paragraphs 20 to 22 above).

37. The circumstances of the case point to the fact that the first-instance court, after having been criticised by the higher judicial authority, followed the latter's instruction and re-examined the case and rendered a new judicial decision in favour of the pension authority and against the applicant. The Town Court's finding corresponded entirely the reasons stipulated by the President of the Regional Court in her letter of 14 August 2007.

38. Having regard to the foregoing considerations, it can be concluded that the applicant's doubts as to the independence of the Town Court may be said to have been objectively justified.

39. There has accordingly been a violation of Article 6 § 1 of the Convention as regards the requirement for an independent tribunal.

II. ALLEGED VIOLATION OF ARTICLE 6 § 1 OF THE CONVENTION ON ACCOUNT OF THE QUASHING OF THE FINAL JUDGMENT

40. The applicant further complained under Article 6 of the Convention that the quashing of the binding judgments was unjustified. Insofar as relevant, this Article reads as follows:

Article 6 § 1

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

A. Parties' submissions

41. The Government argued that the complaint was inadmissible. The Supreme Court's interpretations of the Law on Labour Pensions revealed a fundamental error in the town court's reasoning as regards the method of calculating the applicant's pension and hence this judgment had had to be quashed. The quashing had been legitimate, lawful and compliant with the principle of legal certainty.

42. The applicant maintained his complaint. The quashing had been unjustified because the Town Court based its decision on the relevant law, and because the interpretation of the law by the Supreme Court in 2007 had been given after the judgment.

B. The Court's assessment

1. Admissibility

43. The Court notes that the application 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.

2. Merits

44. The Court reiterates that for the sake of legal certainty implicitly required by Article 6, final judgments should generally be left intact. They may be disturbed only to correct fundamental defects (see *Ryabykh v. Russia*, no. 52854/99, §§ 51–52, ECHR 2003-IX). Quashing of judgments because of newly-discovered circumstances is not by itself incompatible

with this requirement, but the manner of its application may be (see *Pravednaya v. Russia*, no. 69529/01, §§ 27–34, 18 November 2004).

45. The Court has already examined a series of Russian cases where the domestic courts justified the quashing of the final judgment on the basis of the Supreme Court's two interpretations of the Law on Labour Pensions of 2005 and 2007 (see, for example *Goncharova and Others and 68 other "Privileged Pensioners" cases v. Russia*, nos. 23113/08 etc., 15 October 2009; *Ryabov and 151 other "Privileged pensioners" cases v. Russia*, nos. 4563/07 etc., 17 December 2009; *Koloskova v. Russia*, 53051/08, 21 October 2010).

46. As to the interpretation of 2005, the Court has held that differing judicial interpretations of the relevant law may be regarded as a ground for an ordinary appeal rather than a discovery warranting the quashing of a binding judgment (see *Yerogova v. Russia*, no. 77478/01, § 34, 19 June 2008). As to the interpretation of 2007, newly-discovered circumstances are circumstances that exist during the trial, remain hidden from the court, and become known after trial. Since the interpretation of 2007 post-dated the town court's judgment, it did not justify the quashing either (see *Yerogova*, cited above, § 33).

47. Having regard to the facts of the present case, the Court sees no reason to distinguish this from the previous cases in which it has found a violation on account of unjustified quashing of a final judgment.

48. It follows that by granting the pension authority's request to set aside the final judgment of 20 July 2006 the Town Court infringed the principle of legal certainty.

49. Accordingly, there has been a violation of Article 6 § 1 of the Convention as regards the applicant's "right to a court".

III. ALLEGED VIOLATION OF ARTICLE 1 OF PROTOCOL NO. 1

50. The applicant further complained under Article 1 of Protocol No. 1 that the quashing of the binding judgments was unjustified. Insofar as relevant, this Article reads as follows:

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."

A. The parties' submissions

51. The Government denied that the pension awarded to the applicant by virtue of the judgment of 20 July 2006 constituted his “possession” because it had been bigger than that to which he had been entitled. Accordingly, he could not have “legitimate expectations” to receive it.

52. The applicant maintained his complaint.

B. The Court's assessment

1. Admissibility

53. The Court notes that the application 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.

2. Merits

54. The Court reiterates that the existence of a debt confirmed by a binding and enforceable judgment furnishes the judgment beneficiary with a possession within the meaning of Article 1 of Protocol No. 1. Quashing of such a judgment amounts to an interference with his or her right to peaceful enjoyment of possessions (see, among other authorities, *Brumărescu*, cited above, § 74, and *Androsov v. Russia*, no. 63973/00, § 69, 6 October 2005).

55. The Government denied that there had been a violation of the applicant's property rights since the domestic law did not give the applicant a “legitimate expectation” to receive an increased pension.

56. The Court observes that by virtue of the judgment of 20 July 2006 the applicant's pension was up-rated. The quashing of the enforceable judgment frustrated his reliance on a binding judicial decision and deprived him of an opportunity to receive the money he had legitimately expected to receive. In these circumstances, the Court considers that the quashing of the judgment of 20 July 2006 on the ground of newly discovered circumstances placed an excessive burden on the applicant and was therefore incompatible with Article 1 of Protocol No. 1. Accordingly, there has been a violation of that Article.

IV. APPLICATION OF ARTICLE 41 OF THE CONVENTION

57. 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. Pecuniary Damage

58. The applicant claimed in respect of pecuniary damage 55,225.77 roubles (RUB), submitting that it was a sum that would represent the difference between the pension he had been receiving after the quashing and the pension he would have received if there had been no quashing plus inflation.

59. The Government considered the applicant's claims excessive and unreasonable. They further challenged the applicant's method of calculation noting that it had no basis in law.

60. The Court does not discern any causal link between the violation found and the pecuniary damage alleged. The applicant did not claim that the judgment in his favour was not being enforced until its quashing. As to the claim for restoration of the payments, no pecuniary awards can be made for the periods after the final judgment has been quashed (see *Tarnopolskaya and Others v. Russia*, nos. 11093/07 et seq., § 51, 7 July 2009).

B. Non-pecuniary damage

61. The applicant also claimed 10,000 euros (EUR) in respect of non-pecuniary damage.

62. The Government argued that this claim was excessive and unreasonable.

63. The Court considers that the applicant has suffered non-pecuniary damage as a result of the violations found. The damage cannot be sufficiently compensated by a finding of a violation. Making its assessment on an equitable basis, the Court awards the applicant EUR 7,000, plus any tax that may be chargeable on that amount.

C. Costs and expenses

64. The applicant also claimed RUB 307.5 for postal expenses together with RUB 130 that he had paid to obtain the information on rates of

inflation for the preparation of his claim in respect of pecuniary damage. He submitted three receipts.

65. The Government doubted the relevance of one of the receipts.

66. 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, regard being had to the documents in its possession and the above criteria, the Court considers it reasonable to award the sum of EUR 10 in respect of costs and expenses, plus any tax that may be chargeable to the applicant on that amount.

D. Default interest

67. 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 application admissible;
2. *Holds* that there has been a violation of Article 6 § 1 of the Convention on account of the lack of independence of the Town Court;
3. *Holds* that there has been a violation of Article 6 § 1 of the Convention on account of the quashing of the final judgment in the applicant's favour on the ground of newly discovered circumstances;
4. *Holds* that there has been a violation of and Article 1 of Protocol No. 1;
5. *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, to be converted into Russian roubles at the rate applicable at the date of settlement:
 - (i) EUR 7,000 (seven thousand euros), plus any tax that may be chargeable, in respect of non-pecuniary damage;
 - (ii) EUR 10 (ten euros), plus any tax that may be chargeable, in respect of costs and expenses;
 - (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;

6. *Dismisses* the remainder of the applicant's claim for just satisfaction.

Done in English, and notified in writing on 19 April 2011, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

André Wampach
Deputy Registrar

Nina Vajić
President