



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

FIRST SECTION

CASE OF ANDROSOV v. RUSSIA

(Application no. 63973/00)

JUDGMENT

STRASBOURG

6 October 2005

FINAL

15/02/2006

This judgment will become final in the circumstances set out in Article 44 § 2 of the Convention. It may be subject to editorial revision.

In the case of Androsov v. Russia,

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

Mr C.L. ROZAKIS, *President*,

Mr P. LORENZEN,

Mrs N. VAJIĆ,

Mrs S. BOTOUCHAROVA,

Mr A. KOVLER,

Mrs E. STEINER,

Mr K. HAJIYEV, *judges*,

and Mr S. QUESADA, *Deputy Section Registrar*,

Having deliberated in private on 15 September 2005,

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

PROCEDURE

1. The case originated in an application (no. 63973/00) 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 Nikolay Fedorovich Androsov (“the applicant”), on 1 August 2000.

2. The Russian Government (“the Government”) were represented by Mr P. Laptev, Representative of the Russian Federation at the European Court of Human Rights.

3. The applicant alleged that non-enforcement of a court judgment in his favour against the State and its subsequent quashing by way of supervisory review were incompatible with Article 6 of the Convention and Article 1 of Protocol No. 1. The applicant also complained that the proceedings in his case lasted too long.

4. The application was allocated to the First Section of the Court (Rule 52 § 1 of the Rules of Court). Within that Section, the Chamber that would consider the case (Article 27 § 1 of the Convention) was constituted as provided in Rule 26 § 1.

5. By a decision of 16 December 2003 the Court declared the application admissible.

6. The Chamber having decided, after consulting the parties, that no hearing on the merits was required (Rule 59 § 3 *in fine*), the parties replied in writing to each other’s observations.

THE FACTS

I. THE CIRCUMSTANCES OF THE CASE

7. The applicant was born in 1948 and lives in Zenzeli village, the Limanskiy District of the Astrakhan Region.

8. In 1986 the applicant took part in the emergency operations at the site of the Chernobyl nuclear plant disaster. As a result the applicant suffered from extensive exposure to radioactive emissions. In 1996 and 1997 the applicant underwent medical examinations which established the link between the applicant's poor health and his involvement in the Chernobyl events. The applicant was awarded compensation, to be paid monthly.

1. Initial proceedings

9. In 1999 the applicant brought proceedings against the Welfare Office of the Limanskiy District of the Astrakhan Region (*Отдел социальной защиты населения Лиманского района Астраханской области* - "the defendant") for an increase in the compensation, for backdating the increase and recovering of the unpaid amount. The applicant considered that the amount of compensation had been determined incorrectly.

10. On 3 November 1999 the Limanskiy District Court of the Astrakhan Region established, upholding the applicant's claim, that the applicant was entitled to a monthly compensation of 5,045.73 roubles (RUR). The court established that the debt accrued as a result of previous underpayment was RUR 108,892.07. It also awarded the applicant RUR 60,000.00 as a penalty payment.

11. By a decision of 14 December 1999 the Astrakhan Regional Court, acting on appeal, upheld the judgment as to the amount of the monthly payment and the principal debt, but reversed the penalty award. The judgment entered into force and enforcement proceedings were instituted. Both parties lodged requests for supervisory review of the courts' decisions.

2. Enforcement proceedings and the parties' attempts to re-open the case by way of supervisory review

12. On 17 March 2000 the Astrakhan Regional Court stayed the enforcement proceedings, pending the consideration of the defendant's request for supervisory review.

13. The defendant's request for supervisory review was refused by the Supreme Court of the Russian Federation on 13 April 2000.

14. On 22 May 2000 the Limanskiy District Court of the Astrakhan Region resumed the enforcement proceedings.

15. By a decision of 15 August 2000 the President of the Astrakhan Regional Court refused the applicant's request for supervisory review.

16. On 15 September 2000 the Limanskiy District Court of the Astrakhan Region granted a request by the Astrakhan Regional Office for Welfare Payments (*Астраханский областной центр по начислению и выплате пенсий и пособий*) to suspend the enforcement proceedings. The enforcement was stayed until 1 December 2000 to allow the authorities to "decide how to finance the court awards involving the recalculation of compensation to the victims of the Chernobyl catastrophe".

17. On 17 October 2000 the Supreme Court of the Russian Federation refused the applicant's request for supervisory review of the suspension order.

3. Supervisory review proceedings

18. On an unspecified date, following a request made by the Astrakhan Regional Office for Welfare Payments, the President of the Astrakhan Regional Court brought an extraordinary appeal against the judgments of 3 November 1999 and 14 December 1999.

19. On 27 December 2000 the Presidium of the Astrakhan Regional Court examined the appeal and quashed both the judgment of the Limanskiy District Court of the Astrakhan Region dated 3 November 1999 and the judgment of the Astrakhan Regional Court dated 14 December 1999. The Presidium decided that the subordinate courts had wrongly determined the amount of monthly compensation. In particular, they had based all the calculations on the applicant's salary as of October 1986. The Presidium held that the calculations should have been based on the applicant's average earnings over the 12 months prior to the date on which the medical examination had established his disability. The case was remitted to the same District Court for a fresh examination.

20. On 27 February 2001 the Supreme Court of the Russian Federation, in response to the applicant's complaint, refused to conduct a supervisory review of the decision of 27 December 2000.

4. Post-supervisory review proceedings and a fresh determination of the applicant's case

21. By a judgment of 23 April 2001 the Limanskiy District Court of the Astrakhan Region, acting as a first instance court, awarded the applicant the monthly payment of RUR 3,336.99 and established that the debt accrued was RUR 114,466.01. No penalty was awarded.

22. On 24 July 2001 the Astrakhan Regional Court acting as an appeal instance reversed the judgment of the Limanskiy District Court of the

Astrakhan Region of 23 April 2001. It pointed out that the District Court had applied the calculation mode incorrectly and that the amounts due had to be recalculated. The case was remitted to the same District Court for a new decision.

23. On 23 September 2002 the applicant filed a complaint with the Astrakhan Regional Court concerning the length of proceedings. He complained in particular that no decision had been taken in his case since 24 July 2001.

24. In reply dated 27 September 2002, the applicant was informed that on 22 November 2001, on his request, the proceedings had been stayed pending the Constitutional Court's decision in a similar case. He was informed that the proceedings had been resumed after the Constitutional Court's ruling of 19 June 2002, and that a hearing had been fixed for 7 October 2002. He was also informed that the hearings had not been fixed until 2 September 2002 on the applicant's request due to his counsel's absence.

25. On 4 November 2002 the Limanskiy District Court of the Astrakhan Region decided that the compensation payable to the applicant by the welfare authorities was RUR 45,640.94. The applicant was also awarded legal costs of RUR 1,300 and non-pecuniary damages of RUR 5,000.

26. The applicant appealed against this decision. He challenged the principal amount, the amount of non-pecuniary damages and the refusal of the penalty.

27. By an appeal decision of 14 January 2003 the Astrakhan Regional Court reversed the first instance judgment and remitted the case for fresh examination by the same court.

28. On 3 March 2003 the Limanskiy District Court of the Astrakhan Region awarded the applicant RUR 235,210.32 of the principal debt, future monthly payments of RUR 4,727.96 and the legal costs of RUR 500.

29. Both parties appealed against this judgment.

30. On 29 April 2003 the Astrakhan Regional Court upheld the first instance judgment.

31. On 5 August 2003 the awarded sums were transferred to the applicant's bank account.

II. RELEVANT DOMESTIC LAW

1. Execution of a judgment

32. Section 9 of the Federal Law on Enforcement Proceedings of 21 July 1997 provides that a bailiff's order on the institution of enforcement proceedings must fix a time-limit for the defendant's voluntary compliance with a writ of execution. The time-limit may not exceed five days. The

bailiff must also warn the defendant that coercive action will follow, should the defendant fail to comply with the time-limit.

33. Under Section 13 of the Law, the enforcement proceedings should be completed within two months of the receipt of the writ of enforcement by the bailiff.

2. Supervisory review (Пересмотр в порядке судебного надзора)

34. Under the Code of Civil Procedure of 1964, which was in force at the material time, judgments became final as follows:

Article 208. Coming into force of judgments

“Court judgments shall become legally binding on the expiration of the time-limit for lodging a cassation appeal if no such appeal has been lodged. If the judgment is not quashed following a cassation appeal, it shall become legally binding when the higher court delivers its decision...”

35. The only further means of recourse was the special supervisory-review procedure that enabled courts to reopen final judgments:

Article 319. Judgments, decisions and rulings amenable to supervisory review

“Final judgments, decisions and rulings of all Russian courts shall be amenable to supervisory review on an application lodged by the officials listed in Article 320 of the Code.”

36. The power of officials to lodge an application (*protest*) depended on their rank and territorial jurisdiction:

Article 320. Officials who may initiate supervisory review

“Applications may be lodged by:

1. The Prosecutor General – against judgments, decisions and rulings of any court;
2. The President of the Supreme Court – against rulings of the Presidium of the Supreme Court and judgments and decisions of the Civil Chamber of the Supreme Court acting as a court of first instance;
3. Deputy Prosecutors General – against judgments, decisions and rulings of any court other than rulings of the Presidium of the Supreme Court;
4. Vice-Presidents of the Supreme Court – against judgments and decisions of the Civil Chamber of the Supreme Court acting as a court of first instance;
5. The Prosecutor General, Deputy Prosecutor General, the President and Vice-Presidents of the Supreme Court – against judgments, decisions and rulings of any court other than rulings of the Presidium of the Supreme Court;

6. The President of the Supreme Court of an autonomous republic, regional court, city court, court of an autonomous region or court of an autonomous district, the Public Prosecutor of an autonomous republic, region, city, autonomous region or an autonomous district – against judgments and decisions of district (city) people’s courts and against decisions of civil chambers of, respectively, the Supreme Court of an autonomous republic, regional court, city court, court of an autonomous region or court of an autonomous district that examined the case on appeal.”

37. The power to lodge such applications was discretionary, that is to say it was solely for the official concerned to decide whether or not a particular case warranted supervisory review.

38. Under Article 322 officials listed in Article 320 who considered that a case deserved closer examination could, in certain circumstances, obtain the case file in order to establish whether good grounds for lodging an application existed.

39. Article 323 of the Code empowered the relevant officials to stay the execution of the judgment, decision or ruling in question until the supervisory review proceedings had been completed.

40. Courts hearing applications for supervisory review had extensive jurisdiction in respect of final judgments:

Article 329. Powers of supervisory-review court

“The court that examines an application for supervisory review may:

1. Uphold the judgment, decision or ruling and dismiss the application;
2. Quash all or part of the judgment, decision or ruling and order a fresh examination of the case at first or cassation instance;
3. Quash all or part of the judgment, decision or ruling and terminate the proceedings or leave the claim undecided;
4. Uphold any of the previous judgments, decisions or rulings in the case;
5. Quash or vary the judgment of the court of first or cassation instance or of a court that has carried out supervisory review and deliver a new judgment without remitting the case for re-examination if substantive laws have been erroneously construed and applied.”

41. The grounds for setting aside final judgments were as follows:

Article 330. Grounds for setting aside judgments on supervisory review

“...

1. wrongful application or interpretation of substantive laws;
2. significant breach of procedural rules which led to delivery of unlawful judgment, decision or ruling...”

41. There was no time-limit for lodging an application for supervisory review, and, in principle, such applications could be lodged at any time after a judgment had become final.

THE LAW

I. THE GOVERNMENT'S REQUEST TO STRIKE OUT THE APPLICATION UNDER ARTICLE 37 OF THE CONVENTION

42. The Government, in their additional observations of 17 February 2004 following the Court's decision as to the admissibility of the application on 16 December 2003, informed the Court of the applicant's refusal to accept the settlement of the case on the terms proposed by the Government. By reference to this refusal, the Government invited the Court to strike out the application, in accordance with Article 37 of the Convention.

43. The applicant, in his written reply of 24 March 2004, asked the Court to reject the Government's motion. In particular, he disagreed with the calculations presented and used by the Government and also noted that in any event the respective offer did not cover all his complaints.

44. The Court observes at the outset that the parties were unable to agree on the terms of a friendly settlement of the case. The Court recalls that under certain circumstances an application may indeed be struck out under Article 37 § 1 (c) of the Convention on the basis of a unilateral declaration by the respondent Government even if the applicant wishes the examination of the case to be continued (see *Tahsin Acar v. Turkey* [GC], no. 26307/95, § 76, ECHR 2003-...). It notes, however, that this procedure is an exceptional one and is not, as such, intended to circumvent the applicant's opposition to a friendly settlement.

45. Furthermore, the Court observes that a distinction must be drawn between, on the one hand, declarations made in the context of strictly confidential friendly-settlement proceedings (Article 38 § 2 of the Convention and Rule 62 § 2 of the Rules of Court) and, on the other hand, unilateral declarations made by a respondent Government in public and adversarial proceedings before the Court.

46. On the facts, the Court observes that the Government failed to submit with the Court any formal statement capable of falling into the latter category and offering a sufficient basis for finding that respect for human rights as defined in the Convention does not require the Court to continue its examination of the case (see, by contrast, to *Akman v. Turkey* (striking out), no. 37453/97, §§ 23-24, ECHR 2001-VI).

47. This being so, the Court rejects the Government's request to strike the application out under Article 37 of the Convention and will accordingly pursue its examination of the merits of the case.

II. ALLEGED VIOLATION OF ARTICLE 6 OF THE CONVENTION AND ARTICLE 1 OF PROTOCOL NO. 1 IN RESPECT OF NON-EXECUTION OF THE FINAL JUDGMENT IN THE APPLICANT'S FAVOUR

48. The applicant complained that the failure on the part of domestic authorities to enforce the final judgment taken by the Astrakhan Regional Court on 14 December 1999 violated his right to a fair trial guaranteed by Article 6 § 1 of the Convention and his right to a peaceful enjoyment of possessions under Article 1 of Protocol No. 1. These Articles, in so far as relevant, provide 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."

A. Arguments of the parties

49. The Government stated that the enforcement proceedings could not be pursued in the absence of a final judgment. They made no comments as to the non-execution of the judgment which entered into force on 14 December 1999.

50. The applicant contended that there had been a final and enforceable judgment in his case between 14 December 1999 and 27 December 2000 when this judgment was quashed.

B. The Court's assessment

1. Article 6 § 1 of the Convention

51. The Court reiterates that Article 6 § 1 secures to everyone the right to have any claim relating to his civil rights and obligations brought before a court or tribunal; in this way it embodies the “right to a court”, of which the right of access, that is the right to institute proceedings before courts in civil matters, constitutes one aspect. However, that right would be illusory if a Contracting State's domestic legal system allowed a final, binding judicial decision to remain inoperative to the detriment of one party. It would be inconceivable that Article 6 § 1 should describe in detail the procedural guarantees afforded to litigants – proceedings that are fair, public and expeditious – without protecting the implementation of judicial decisions; to construe Article 6 as being concerned exclusively with access to a court and the conduct of proceedings would be likely to lead to situations incompatible with the principle of the rule of law which the Contracting States undertook to respect when they ratified the Convention. Execution of a judgment given by any court must therefore be regarded as an integral part of the “trial” for the purposes of Article 6 (see *Burdov v. Russia*, no. 59498/00, § 34, ECHR 2002-III, and *Hornsby v. Greece*, judgment of 19 March 1997, *Reports* 1997-II, p. 510, § 40).

52. The Court further observes that a delay in the execution of a judgment may be justified in particular circumstances, but the delay may not be such as to impair the essence of the right protected under Article 6 § 1. The applicant should not be prevented from benefiting from the success of the litigation on the ground of alleged financial difficulties experienced by the State (see *Burdov v. Russia*, cited above, § 35).

53. Turning to the instant case, the Court notes that the judgment of 3 November 1999 remained inoperative, that is between the date of its entry into force on 14 December 1999 and the supervisory review decision of 27 December 2000, in total a year and twelve days. No justification was advanced by the Government for this delay. Taking into account what was at stake for the applicant, the Court considers that by failing for such a substantial period of time to take the necessary measures to comply with the final judicial decisions in the present case, the Russian authorities deprived the provisions of Article 6 § 1 of their useful effect.

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

2. *Article 1 of Protocol No. 1 to the Convention*

55. The Court reiterates that a “claim” can constitute a “possession” within the meaning of Article 1 of Protocol No. 1 if it is sufficiently established to be enforceable (see *Burdov v. Russia*, cited above, § 40, and *Stran Greek Refineries and Stratis Andreadis v. Greece*, judgment of 9 December 1994, Series A no. 301-B, p. 84, § 59). The judgment of 3 November 1999, as upheld on 14 December 1999, provided the applicant with an enforceable claim and not simply a general right to receive support from the State. The judgment had become final as no ordinary appeal was made against it, and enforcement proceedings had been instituted. It follows that the impossibility for the applicant to have this judgment enforced for a substantial period of time constituted an interference with his right to peaceful enjoyment of his possessions, as set forth in the first sentence of the first paragraph of Article 1 of Protocol No. 1.

56. Not having found any justification for such an interference (see paragraph 53 above), the Court concludes that there has been a violation of Article 1 of Protocol No. 1 to the Convention.

III. ALLEGED VIOLATION OF ARTICLE 6 OF THE CONVENTION AND ARTICLE 1 OF PROTOCOL NO. 1 IN RESPECT OF THE SUPERVISORY REVIEW CONDUCTED IN THE APPLICANT’S CASE

57. The applicant also complained that the quashing of the final judgment in his favour by the Presidium of the Astrakhan Regional Court on 27 December 2000 violated his right to a fair trial guaranteed by Article 6 § 1 of the Convention and his right to the peaceful enjoyment of his possessions guaranteed by Article 1 of Protocol No. 1 to the Convention.

A. Arguments of the parties

58. The Government alleged that the judgment was quashed by the Presidium of the Astrakhan Regional Court for the applicant’s benefit. They contended that the judgment of 14 December 1999 was reversed with a view to correct a judicial error which had “influenced the extent of the compensation to be awarded to [the applicant] and, as a consequence, violated his right to a fair trial”. The Government argued, in addition, that the applicant’s right to compensation had never been contested. The remittance of the case for a new examination was aimed at ensuring the applicant’s right to fair trial and his right to peaceful enjoyment of his possessions.

59. The Government also referred to the fact that the applicant’s dispute about his allowance increase was a part of a complex general problem

caused by the vagueness of the Law “On Social Protection of Citizens Exposed to Radiation as a Result of the Chernobyl Nuclear Power Station Explosion”. The ambiguity had to be eliminated by reference to the Constitutional Court, which clarified the matter by its ruling of 19 June 2002. All similar disputes were resolved in accordance with this ruling thereafter.

60. The applicant contested the Government’s allegation that the quashing had been for his benefit. He claimed that the principal debt and the monthly payments payable under the 14 December 1999 decision satisfied him, and he only had sought supervisory review to claim penalty. He recalled that his petition had been refused, before the opposite request solicited by the State authorities had been granted. He also insisted that the calculation method used in the second set of proceedings had been incorrect and less advantageous to him, while the one used before quashing had yielded the right result.

B. The Court’s assessment

1. Article 6 of the Convention

61. The Court first notes that the dispute as to the increase of the applicant’s social payments in connection with his disability and participation in the emergency operations at the site of the Chernobyl nuclear plant disaster was of a pecuniary nature and indisputably concerned a civil right within the meaning of Article 6 § 1 of the Convention (see *Schuler-Zgraggen v. Switzerland*, judgment of 24 June 1993, Series A no. 263, p. 17, § 46; *Massa v. Italy*, judgment of 24 August 1993, Series A no. 265-B, p. 20, § 26; *Süßmann v. Germany*, judgment of 16 September 1996, *Reports of Judgments and Decisions* 1996-IV, p. 1170, § 42 and, as a recent authority, *Tričković v. Slovenia*, no. 39914/98, § 40, 12 June 2001).

62. The Court observes that the issue of the present case is whether the supervisory review procedure permitting a final judgment to be quashed can be considered compatible with Article 6 and, more specifically, whether on the facts of the present case the principle of legal certainty was respected.

63. The Court finds that this case is similar to the case of *Ryabykh v. Russia* (no. 52854/99, ECHR 2003-IX), where it was said, in so far as relevant to the instant case:

“51. ... the Court reiterates that the right to a fair hearing before a tribunal as guaranteed by Article 6 § 1 of the Convention must be interpreted in the light of the Preamble to the Convention, which declares, in its relevant part, the rule of law to be part of the common heritage of the Contracting States. One of the fundamental aspects of the rule of law is the principle of legal certainty, which requires, among other things, that where the courts have finally determined an issue, their ruling should not be called into question...”

54. The Court notes that the supervisory review of the judgment ... was set in motion by the President of the Belgorod Regional Court – who was not party to the proceedings ... As with the situation under Romanian law examined in *Brumărescu*, the exercise of this power by the President was not subject to any time-limit, so that judgments were liable to challenge indefinitely.

55. The Court reiterates that Article 6 § 1 secures to everyone the right to have any claim relating to his civil rights and obligations brought before a court or tribunal. In this way it embodies the “right to a court”, of which the right of access, that is the right to institute proceedings before courts in civil matters, constitutes one aspect. However, that right would be illusory if a Contracting State’s domestic legal system allowed a final, binding judicial decision to remain inoperative to the detriment of one party. It would be inconceivable that Article 6 § 1 should describe in detail procedural guarantees afforded to litigants – proceedings that are fair, public and expeditious – without protecting the implementation of judicial decisions; to construe Article 6 as being concerned exclusively with access to a court and the conduct of proceedings would be likely to lead to situations incompatible with the principle of the rule of law which the Contracting States undertook to respect when they ratified the Convention (see *Hornsby v. Greece*, judgment of 19 March 1997, *Reports of Judgments and Decisions* 1997-II, p. 510, § 40).

56. The Court considers that the right of a litigant to a court would be equally illusory if a Contracting State’s legal system allowed a judicial decision which had become final and binding to be quashed by a higher court on an application made by a State official.”

64. Furthermore, the Court has found in this respect in its above-mentioned judgment *Sovtransavto Holding v. Ukraine*, § 77:

“...judicial systems characterised by the objection (protest) procedure and, therefore, by the risk of final judgments being set aside repeatedly, as occurred in the instant case, are, as such, incompatible with the principle of legal certainty that is one of the fundamental aspects of the rule of law for the purposes of Article 6 § 1 of the Convention, read in the light of *Brumărescu* ...”

65. Turning to the facts of the present case, the Court notes that on an unspecified date in 2000 the President of the Astrakhan Regional Court lodged a protest against the judgments of 3 November and 14 December 1999 in the applicant’s favour that had become final and binding, and in respect of which enforcement proceedings had been commenced. On 27 December 2000 the Presidium of the Astrakhan Regional Court quashed the judgment of 3 November 1999 and the decision of 14 December 1999 as erroneous and remitted the case for a fresh consideration at first instance.

66. The Court does not find any reason for departing from its aforementioned judgments and considers that there has been a violation of Article 6 § 1 in respect of the quashing of the final and binding judgment given in the applicant’s case.

2. Article 1 of Protocol No. 1 to the Convention

67. The Court reiterates first that the Convention does not guarantee, as such, the right to an old-age pension or any social benefit in a particular amount (see, for example, *Aunola v. Finland* (dec.), no. 30517/96, 15 March 2001). However a “claim” - even concerning a pension or a social benefit - can constitute a “possession” within the meaning of Article 1 of Protocol No. 1 if it is sufficiently established to be enforceable (see *Stran Greek Refineries v. Greece*, judgment of 9 December 1994, Series A no. 301, § 59).

68. The judgment of the Limanskiy District Court of 3 November 1999 as upheld by the Astrakhan Regional Court on 14 December 1999 provided the applicant with an enforceable claim to receive an increased monthly compensation of RUR 5,045.73 and the arrears of RUR 108,892.07. This judgment became final after it had been upheld on appeal.

69. The Court finds that as a result of the decision of the Astrakhan Regional Court of 27 December 2000 and subsequent proceedings reducing the amount of the applicant’s initial award constituted an interference with the applicant’s right to the peaceful enjoyment of possessions guaranteed by Article 1 of Protocol No. 1 (see *Brumărescu v. Romania* [GC], no. 28342/95, § 77, ECHR 1999-VII and *Pravednaya v. Russia*, no. 69529/01, §§ 38-39, 18 November 2004).

70. While the Court accepts that this measure was lawful and pursued the public interest (such as, for example, a harmonisation of the Chernobyl welfare payments), its compliance with the requirement of proportionality is questionable.

71. In particular, while it is true that recalculation of one’s social benefit and its decrease do not, as such, violate Article 1 of Protocol No. 1 (*Skorkiewicz v Poland* (dec.), no. 39860/98, 1 June 1998), backdating the recalculation with the effect that the awarded sums already transferred (or overdue) are reduced involves an individual and excessive burden for the applicant and is thus incompatible with Article 1 of the Protocol. In this respect, the Court recalls the aforementioned *Pravednaya* judgment, where, in respect of a somewhat similar set of facts, it was said:

“40. ... The “public interest” may admittedly include an efficient and harmonised State pension scheme, for the sake of which the State may adjust its legislation.

41. However, the State’s possible interest in ensuring a uniform application of the Pensions Law should not have brought about the retrospective recalculation of the judicial award already made. The Court considers that by depriving the applicant of the right to benefit from the pension in the amount secured in a final judgment, the State upset a fair balance between the interests at stake (see, *mutatis mutandis Pressos Compania Naviera S.A. and Others v. Belgium*, judgment of 20 November 1995, Series A no. 332, § 43).”

72. The Court does not find any reason to depart from its conclusions in that judgment and finds that there has been a violation of Article 1 of Protocol No. 1 in the present case too.

IV. ALLEGED VIOLATION OF ARTICLE 6 IN RESPECT OF THE OVERALL LENGTH OF PROCEEDINGS

73. The applicant further complained that the overall length of civil proceedings in his case exceeded the reasonable time in breach of Article 6 § 1 of the Convention.

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

A. Arguments of the parties

74. The Government submitted that the overall length of proceedings in the present case had not been excessively long given the complexity of the case. In support of their statement they referred to the proceedings before the Constitutional Court the opinion of which had to be sought to resolve ambiguity of the interpretation of the legislation applicable in the dispute. They acknowledged no periods of inactivity attributable in the authorities dealing with the applicant's case. They stated that on 22 November 2002, following the applicant's request, the proceedings were stayed pending the Constitutional Court's ruling relevant to his dispute. After it was pronounced on 19 June 2002 the proceedings were resumed. No hearing was scheduled before 2 September 2002, as the applicant notified the court of his counsel's absence. Thereafter the hearings were conducted without undue intervals, and the case was finally resolved on 29 April 2003. The Government also contended that the applicant had contributed to the length of proceedings by repeatedly changing his claim and putting forward claims “which in the set contradict the legislation”.

75. The applicant maintained that the proceedings had not been expeditious enough. He contested the statement that he had been repeatedly changing his claim and explained that he only had updated the calculations to add up the arrears accruing during the proceedings. He also alleged that the Government's reference to the complexity of the case was unsubstantiated.

B. The Court's assessment

76. Having regard to the conclusions reached in paragraphs 54 and 56 above, the Court does not consider it necessary to examine the complaint about the overall length of proceedings separately.

V. APPLICATION OF ARTICLE 41 OF THE CONVENTION

77. 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

78. The applicant claimed RUR 732,697.03 as a principal debt (the sum representing an underpayment for the period between 1 August 1996 and 1 February 2004), RUR 25,605.37 as the amount of underpayment in respect of monthly payments starting from 1 February 2004, RUR 3,736,931.57 as penalty payments and RUR 2,000,000 in respect of non-pecuniary damage.

79. The Government considered this claim to be excessive, unreasonable and unsubstantiated.

80. The Court does not discern any causal link between the violations found and the extensive pecuniary damage alleged. However, in respect of the violation of Article 1 of Protocol No. 1 by the supervisory review procedure conducted in the applicant's case, the Court considers it appropriate to award the applicant EUR 853 representing the sum the applicant would have received, had the reduction of the award ordered by the judgment of 3 March 2003, as upheld by the decision of 29 April 2003, not been backdated, plus any tax that may be chargeable on that amount.

81. As regards the non-pecuniary damage, the Court finds that the applicant has suffered some non-pecuniary damage as a result of the violations found which cannot be made good by the Court's mere finding of a violation. Nevertheless, the amount claimed is excessive.

82. Making its assessment on an equitable basis, as required by Article 41 of the Convention, the Court awards the applicant the sum of EUR 1,500 in respect of non-pecuniary damage, plus any tax that may be chargeable on the above amount.

B. Costs and expenses

83. The applicant claimed RUR 1,339.50 in respect of postal expenses, RUR 541.18 in respect paid fax services, RUR 500 in respect of legal costs and RUR 2,000 in respect of translation services.

84. The Government did not submit any comments on the applicant's claims.

85. According to the Court's case-law, an applicant is entitled to reimbursement of the 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. Regard being had to the information in its possession and the above criteria, the Court finds it appropriate to grant the applicant EUR 50 in respect of costs and expenses, plus any tax that may be chargeable on the above amount.

C. Default interest

86. 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. *Rejects* the Government's request to strike the application out under Article 37 of the Convention;
2. *Holds* that there has been a violation of Article 6 of the Convention and Article 1 of Protocol No. 1 in respect of the delay in enforcement of the final judgment in the applicant's favour;
3. *Holds* that there has been a violation of Article 6 of the Convention and Article 1 of Protocol No. 1 in respect of the supervisory review of the final judgment in the applicant's favour;
4. *Holds* that there is no need to examine the complaint about the overall length of proceedings under Article 6 of the Convention;
5. *Holds*
 - (a) that the respondent State is to pay the applicant, within three months from the date on which the judgment becomes final according to 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 853 (eight hundred fifty-three euros) in respect of pecuniary damage;
 - (ii) EUR 1,500 (one thousand five hundred euros) in respect of non-pecuniary damage;
 - (iii) EUR 50 (fifty euros) in respect of costs and expenses;
 - (iv) any tax that may be chargeable on the above amounts;
 - (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 6 October 2005, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Santiago QUESADA
Deputy Registrar

Christos ROZAKIS
President