CONSEIL DE L'EUROPE

COUNCIL OF EUROPE

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

SECOND SECTION

CASE OF YURIY ROMANOV v. RUSSIA

(Application no. 69341/01)

JUDGMENT

STRASBOURG

25 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 Romanov v. Russia,

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

Mr J.-P. COSTA, *President*,
Mr A.B. BAKA,
Mr I. CABRAL BARRETO,
Mr R. TÜRMEN,
Mr V. BUTKEVYCH,
Mr A. KOVLER,
Ms D. JOČIENĖ, *judges*,
and Mrs S. DOLLÉ, *Section Registrar*,

Having deliberated in private on 4 October 2005,

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

PROCEDURE

1. The case originated in an application (no. 69341/01) 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 Yuriy Petrovich Romanov, on 30 March 2001.

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. On 31 August 2004 the Court decided to communicate the complaint about the quashing of the final judgment in the applicant's favour in the supervisory review proceedings to the Government. Under the provisions of Article 29 § 3 of the Convention, it decided to examine the merits of the application at the same time as its admissibility.

4. On 4 October 2005 the Court decided that a hearing in the case was unnecessary (Rule 59 § 3 of the Rules of Court).

THE FACTS

I. THE CIRCUMSTANCES OF THE CASE

5. The applicant was born in 1932 and lives in Moscow.

6. On 1 April 1996 the applicant retired from the position as a consultant at the Ministry of Finance of Russia.

7. In 1996 – 1997 he repeatedly applied to the Ministry of Labour for additional retirement benefits due to former State employees. By decision of 3 October 1997 a deputy Minister granted the applicant's request and increased his pension as of 9 September 1997.

8. Thereafter the applicant sued the Ministry of Labour seeking arrears for the period between 1 April 1996 and 8 September 1997.

9. On 19 December 1997 the Basmanny District Court of Moscow dismissed his claims, stating that the applicant had only become eligible for a higher pension as of 9 September 1997 and therefore he had no right to arrears.

10. On 14 April 1998 the Moscow City Court set aside the first instance judgment and remitted the case for a fresh examination.

11. On 15 September 1999 the Basmanny District Court ruled in the applicant's favour confirming his entitlement to additional retirement benefits as of 1 April 1996 and ordered the Ministry of Labour to re-calculate his pension.

12. No appeal was lodged, and on an unspecified date the judgment of 15 September 1999 became final.

13. On 25 November 1999 enforcement proceedings commenced.

14. On 26 October 2000 a deputy Prosecutor General lodged an extraordinary appeal against the judgment of 15 September 1999.

15. On 16 November 2000 the Presidium of the Moscow City Court examined and rejected the extraordinary appeal in supervisory review proceedings, thus upholding the judgment of 15 September 1999.

16. On 2 February 2001 a deputy Prosecutor General filed another extraordinary appeal against the judgment of 15 September 1999 and the decision of 16 November 2000.

17. On 23 February 2001 the Civil Section of the Supreme Court of Russia, by way of supervisory review, quashed the judgment of 15 September 1999 and the decision of 16 November 2000, and remitted the case to the first instance court. It is not clear whether the applicant has pursued the proceedings.

18. In 2001 – 2003 the applicant unsuccessfully applied for supervisory review of the decision of 23 February 2001.

19. During the fresh examination, on 27 February 2003, the Basmanny District Court dismissed the applicant's claims.

20. On 30 July 2003 the applicant appealed against the above judgment.

21. By decision of 29 August 2003 the Basmanny District Court refused to examine the applicant's appeal brief as having been lodged outside the statutory time-limit of ten days.

II. RELEVANT DOMESTIC LAW

22. 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..."

23. 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."

24. 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."

25. 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.

26. 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.

27. 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.

28. 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..."

29. 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. ALLEGED VIOLATION OF ARTICLE 6 OF THE CONVENTION AND ARTICLE 1 OF PROTOCOL NO. 1 TO THE CONVENTION

30. The applicant complained about the quashing of a final judgment in his favour and various procedural irregularities in the proceedings before the Supreme Court. The Court will examine these complaints under Article 6 of the Convention and Article 1 of Protocol No. 1. These provisions 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."

A. Admissibility

31. The Government contested the admissibility of the application as being incompatible *ratione materiae* with the provisions of the Convention by reference to the case of *Pellegrin v. France*.

32. The applicant disagreed with the Government and maintained his complaints.

33. The Court recalls that the pension disputes of former State employees come within the ambit of Article 6 of the Convention because on retirement employees break the special bond between themselves and the authorities. They then find themselves in a situation exactly comparable to that of employees under private law in that the special relationship of trust and loyalty binding them to the State has ceased to exist and the employee can no longer wield a portion of the State's sovereign power (see *Pellegrin v. France* [GC], no. 28541/95, § 67, ECHR 1999-VIII). This being so, the Court considers that the dispute in the present case was of a pecuniary

nature and undeniably concerned the applicant's civil rights within the meaning of Article 6 § 1. The Court also finds that the applicant's "possessions", within the meaning of Article 1 of Protocol No. 1, were engaged. Accordingly, the Government's objection must be dismissed.

34. 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

Article 6 § 1 of the Convention

(a) Supervisory-review procedure: substantive issues

35. The Government submitted that the judgment of 15 September 1999 had been erroneous in that, under national law, the applicant had not been eligible for a higher pension since, at the moment of his retirement, his post had not pertained to a certain category of State employees, and therefore the quashing of the said judgment by way of supervisory review could not be said to have violated the applicant's rights under Article 6 § 1.

36. The applicant contested the Government's allegations and maintained his complaint.

37. 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 § 1 and, in particular, whether on the facts of the present case the principle of legal certainty was respected.

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

> "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."

39. Furthermore, the Court has found in this respect in the *Sovtransavto Holding v. Ukraine* case (judgment of 25 July 2002, *Reports of Judgments and Decisions* 2002-VII, § 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* ..."

40. The Court notes that in the present case in February 2001 a deputy Prosecutor General lodged an extraordinary appeal against the judgment of 15 September 1999 which had become final. On 23 February 2001 the Supreme Court of Russia quashed that judgment as erroneous and during a fresh examination in 2003 the applicant's claim was rejected.

41. The Court does not find any reason for departing from its aforementioned case-law. It 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.

(b) Supervisory review procedure: procedural issues

42. With regard to the complaint about the procedural defects of the hearing before the Supreme Court, the Court finds that, having concluded that there has been an infringement of the applicant's "right to court" by the very use of the supervisory review procedure, it is not necessary to consider whether the procedural guarantees of Article 6 of the Convention were available in those proceedings (see *Ryabykh*, cited above, § 59).

Article 1 of Protocol No. 1 to the Convention

43. The Government contended that the applicant had not acquired property since the judgment which conferred a title on him had been

unlawful. They concluded that Article 1 of Protocol No. 1 had not been violated by the quashing of the judgment of 15 September 1999.

44. The applicant disagreed with the Government's arguments and maintained his complaint.

45. The Court reiterates that the Convention does not guarantee, as such, the right to an old-age pension or any social benefit of a particular amount (see, for example, *Aunola v. Finland* (dec.), no. 30517/96, 15 March 2001). However a "claim" – even concerning a pension – can constitute a "possession" within the meaning of Article 1 of Protocol No. 1 where it has a sufficient basis in national law, for example where it is confirmed by a final court judgment (see *Pravednaya v. Russia*, no. 69529/01, § 38, 18 November 2004, and *Kopecký v. Slovakia* judgment, [GC], no. 44912/98, § 35, ECHR 2004-..).

46. The judgment of the Basmanny District Court of 15 September 1999 provided the applicant with an enforceable claim to receive an increased pension, it became final and binding, as no further ordinary appeal was lodged against it, and enforcement proceedings were instituted. In the Court's view, the applicant therefore had a "possession" for the purposes of Article 1 of Protocol No. 1.

47. The Court finds that the quashing on 23 February 2001 of the judgment of 15 September 1999 deprived the applicant of his entitlement to the increased pension, and therefore 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, § 74, ECHR 1999-VII, and *Pravednaya*, cited above, § 39).

48. While the Court accepts that this measure was lawful and pursued the public interest (such as, for example, the correction of a judicial error), its compliance with the requirement of proportionality is open to question.

49. It is true that recalculation of a pension and its subsequent reduction does not, as such, violate Article 1 of Protocol No. 1 (*Skorkiewicz v Poland* (dec.), no. 39860/98, 1 June 1998). However, backdating the recalculation with the effect that the sums due were reduced involved an individual and excessive burden for the applicant and was incompatible with Article 1 of the Protocol. In this respect, the Court recalls the aforementioned *Pravednaya* judgment where 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)."

50. The Court does not find it necessary to depart from its conclusions in that judgment and concludes that there has been a violation of Article 1 of Protocol No. 1 in the present case.

II. OTHER ALLEGED VIOLATIONS OF THE CONVENTION

51. The applicant further complained that, as a result of the repeated refusal by the Ministry of Labour of his requests for retirement benefits in 1996 – 1997, the ensuing civil proceedings and the quashing of the judgment in his favour, he suffered severe anguish and distress which amounted to inhuman and degrading treatment, contrary to Article 3 of the Convention.

52. The Court considers that while the applicant's situation may be a source of considerable distress, no material has been submitted which would indicate that the applicant suffered damage capable of attaining the minimum level of severity falling within the ambit of Article 3 of the Convention (see *Larioshina v. Russia* (dec.), no. 56869/00, 23 April 2002 or *Volkova v. Russia* (dec.), no. 48758/99, 18 November 2003).

53. It follows that the applicant's complaint under Article 3 of the Convention is manifestly ill-founded and must be rejected in accordance with Article 35 §§ 3 and 4 of the Convention.

54. Lastly, the applicant complained under Article 13 of the Convention that he had no effective remedies in respect of the decision of the Supreme Court of Russia dated 23 February 2001 to quash, on supervisory review, the final judgment of 15 September 1999.

55. The Court notes that Article 13 of the Convention does not, as such, guarantee the right to appellate remedies in respect of a decision taken by way of supervisory review, and the mere fact that the judgment of the highest judicial body is not subject to further judicial review does not infringe in itself the said provision (see *Tregubenko v. Ukraine* (dec.), no. 61333/00, 21 October 2003, and *Sitkov v. Russia* (dec.), no. 55531/00, 9 November 2004).

56. It follows that the applicant's complaint under Article 13 of the Convention is incompatible *ratione materiae* with the provisions of the Convention within the meaning of Article 35 § 3 and must be rejected in accordance with Article 35 § 4 thereof.

III. 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. Damage

58. The applicant claimed 980,000 euros (EUR) in respect of pecuniary and non-pecuniary damage.

59. The Government contested these claims as unsubstantiated and excessive. They considered that a token amount would constitute equitable compensation for the non-pecuniary damage suffered by the applicant.

60. The Court does not discern any causal link between the violation of Article 6 and the pecuniary damage alleged. However, in respect of the violation of Article 1 of Protocol No. 1 and having regard to the nature of the violation found, the Court considers it appropriate to award the applicant EUR 160 representing the sum the applicant would have received had the judgment of 15 September 1999 not been quashed.

61. As to non-pecuniary damage, the Court considers that the applicant must have suffered distress and frustration resulting from the State authorities' failure to enforce a judgment in his favour, which cannot sufficiently be compensated by the finding of a violation. Making its assessment on an equitable basis, it awards the applicant EUR 500 in respect of non-pecuniary damage.

B. Costs and expenses

62. The applicant did not make any claims for the costs and expenses incurred before the domestic courts or the Court. Accordingly, the Court does not make any award under this head.

C. Default interest

63. 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 concerning the quashing of a final judgment in the applicant's favour admissible and the remainder of the application inadmissible;

2. *Holds* that there has been a violation of Article 6 of the Convention;

3. *Holds* that there has been a violation of Article 1 of Protocol No. 1 to the Convention;

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:
      (i) EUR 160 (one hundred and sixty euros) in respect of pecuniary damage;
      (ii) EUR 500 (five hundred euros) in respect of non-pecuniary damage;
      (iii) any tax that may be chargeable on the above amounts;
      (iv) these amounts are to be converted into the national currency of the respondent State at the rate applicable at the date of settlement;
   (b) that from the expiry of the above-mentioned three months until settlement simple interest shall be payable on the above 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 25 October 2005, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

S. DOLLÉ
Registrar

J.-P. COSTA
President