CONSEIL DE L'EUROPE

COUNCIL OF EUROPE

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

FIRST SECTION

CASE OF TUSASHVILI v. RUSSIA

(Application no. 20496/04)

JUDGMENT

STRASBOURG

15 December 2005

FINAL

15/03/2006

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 Tusashvili 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. NIELSEN, *Section Registrar*,

Having deliberated in private on 24 November 2005,

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

PROCEDURE

1. The case originated in an application (no. 20496/04) 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 Yegrezi Levanovich Tusashvili ("the applicant"), on 10 June 2000.

2. The applicant was represented by Mr V. N. Voblikov. 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 18 June 2004 the Court decided to communicate the application. Applying Article 29 § 3 of the Convention, it decided to rule on the admissibility and merits of the application at the same time.

THE FACTS

THE CIRCUMSTANCES OF THE CASE

4. The applicant was born in 1939 and lives in Bilibino, Chukotka Region.

5. The applicant submitted that on 30 December 1998 he had instituted proceedings against the district and regional pension authorities and the district social security authority (*Управление пенсионного фонда РФ по Билибинскому району Чукотского АО, Отделение Пенсионного фонда РФ по ЧАО и Отдел социальной защиты населения Администрации*

Билибинского района) for the recovery of arrears of his old-age pension which had accrued between 1993 and 1998 in the amount of 2,020.64 Russian roubles (RUR). He also claimed that the amount should be index-linked. The Government submitted that the claim had been received by the court on 10 February 1999. They enclosed no supporting documents.

6. On 1 June 1999 the Bilibino District Court stayed the proceedings on the grounds that the applicant had amended the claim. The Chukotka Regional Court quashed the ruling to stay the proceedings on 14 October 1999 and ordered the examination of the claim on the merits.

7. Between 14 October 1999 and 21 March 2001 the hearings were adjourned three times: on 11 April 2000 because the judge was on a mission, on 15 December 2000 on account of the parties' failure to appear at the hearing, and on 19 March 2001 on account of a failure to notify them about the next hearing. The applicant submitted that on 15 December 2000 his representative had arrived at the court by the scheduled time, but the judge had not opened the hearing. His representative's request for information about the reasons for the failure to hold a hearing had been refused.

8. On 21 March 2001 the Bilibino District Court partially granted the claim. On 2 April 2001 the Bilibino District Prosecutor lodged an appeal against the judgment on behalf of the applicant.

9. On 19 July 2001 the Chukotka Regional Court quashed the judgment and referred the case back for a fresh examination on the grounds, *inter alia*, that the applicant had not appeared at the hearing and there was no evidence that he had been duly notified about it.

10. The Government submitted that after the case file had been received on 9 August 2001 by the Bilibino District Court, on 17 August 2001 the judge had ordered that the case should be prepared for hearing and requested the parties to submit their pleadings. The applicant stated that the requested information had been submitted on 24 August 2001.

11. On 7 October 2002 the hearing was adjourned because the judge was on a mission. On 1 December 2002 the case was transferred to another judge.

12. According to the Government, the case was not examined in 2002 because the local pension authorities were in the process of reorganisation and the court had to establish the proper defendant.

13. On 10 July 2003 the Bilibino District Court granted the applicant's claim against the local pension authority (*Управление пенсионного фонда РФ по Билибинскому району Чукотского АО*) for recovery of the arrears of his old-age pension with index-linking and awarded him RUR 13,333.89 (approximately EUR 387). The court dismissed the claim against the other defendants. The Chukotka Regional Court upheld the judgment on 25 September 2003. The judgment was executed on 3 November 2003.

THE LAW

I. ALLEGED VIOLATION OF ARTICLE 6 § 1 OF THE CONVENTION

14. The applicant complained that the length of the proceedings had been incompatible with the "reasonable time" requirement, as provided in Article 6 § 1 of the Convention, in particular because the dispute concerned payment of an old-age pension, which constituted his sole source of income.

Article 6 § 1, in so far as relevant, reads as follows:

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

15. The Court is satisfied that the proceedings were instituted on 30 December 1998 since this date is confirmed by the reference in the appeal lodged by the Bilibino District Prosecutor on 2 April 2001. The period to be taken into consideration began on 30 December 1998 and ended on 25 September 2003. It thus lasted 4 years, 8 months and 26 days for two levels of jurisdiction.

A. Admissibility

16. The Government claimed that the application was submitted outside the six-month time-limit provided by Article 35 § 1 of the Convention, as it had been lodged on 2 April 2004, whereas the final domestic decision had been delivered on 25 September 2003.

17. The applicant contested the Government's assertion and indicated that in his letter of 10 June 2000 he had stated the subject matter of his complaint. He had filled in the application form as soon as he received it from the Registry of the Court.

18. The Court notes that in his introductory letter of 10 June 2000 the applicant stated the subject of the present complaint. However, the application form was sent to him by the Registry of the Court only on 22 October 2003. This distinguishes the present case from *Gaillard v. France* (dec.), no. 47337/99, 11 July 2000, where, because of a significant delay between the receipt of the introductory letter and the application form, the Court calculated the six-month period from the latter date. Therefore, although the formal application form was not submitted until 2 April 2004, the Court accepts 10 June 2000 as the date on which the present application was lodged with it. Accordingly, the Court finds that the applicant has complied with the six-month time-limit as required by Article 35 § 1 of the Convention.

19. 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

20. The Government submitted that the delays in the examination of the applicant's claims were partly attributable to the fact that the applicant had amended his claim a number of times. They were also attributable to the complexities faced by the courts in determining the proper defendant in the case because of the reorganisation of the local pension authorities at the relevant time. The courts had also encountered certain difficulties in deciding on the applicant's claim for index-linking, since the relevant calculations were not precisely defined in domestic legislation.

21. The applicant challenged the Government's submissions. He stated that he had only amended his claim once, in June 1999. He further contended that the courts had not had to make any special efforts either to establish who the proper defendant was or to deal with his claim for index-linking, because the issue was straightforward and that, furthermore, the Bilibino District Court had to date considered over two thousand similar claims and encountered no apparent difficulty with the matter. In sum, the proceedings had lasted an unreasonably long time.

22. The Court reiterates that the reasonableness of the length of proceedings must be assessed in the light of the circumstances of the case and with reference to the following criteria: the complexity of the case, the conduct of the applicant and the relevant authorities and what was at stake for the applicant in the dispute (see, among many other authorities, *Frydlender v. France* [GC], no. 30979/96, § 43, ECHR 2000-VII).

(a) Complexity of the case

23. The Court finds that the case, which concerned recovery of old-age pension arrears with index-linking, even though it involved a disagreement as to who was the proper defendant, was not particularly complex. Consequently, the Court takes the view that an overall period of 4 years, 8 months and 26 days could not, for this reason, be deemed to satisfy the "reasonable time" requirement in Article 6 § 1 of the Convention.

(b) Conduct of the applicant

24. The Court considers that the amendment by the applicant of his claim on 1 June 1999 did not contribute to any significant delays in the proceedings, in particular because the ruling of the Bilibino District Court to stay the proceedings on this ground was later quashed by the Chukotka Regional Court. As regards the applicant's alleged failure to appear at the hearing on 15 December 2000, the Court notes that the relevant facts are in dispute between the parties. However, even assuming that both the applicant

and his representative had failed to appear at the hearing on 15 December 2000, the case was adjourned until 19 March 2001 – that is, for no longer than approximately three months – which by no means justifies the total length of the proceedings in the present case. There is no evidence that the applicant otherwise contributed to the delays in the proceedings.

(c) Conduct of the domestic authorities

25. The Court notes that on 11 April 2000 a hearing was adjourned for over eight months because the judge was on a mission. In this connection, the Court reiterates that it is the States' duty to organise their judicial systems in such a way that their courts can meet the requirements of Article 6 § 1 (see *Muti v. Italy*, judgment of 23 March 1994, Series A no. 281-C, § 15). The Court further notes a period of approximately two years between August 2001 and July 2003 when no hearings on the merits were held, including another adjournment of the case on 7 October 2002 because the judge was on a mission. The Court reiterates that certain types of cases, for example those concerning civil status and capacity or employment disputes, generally require particular diligence on the part of the domestic courts (see *Bock v. Germany*, judgment of 29 March 1989, Series A no. 150, p. 23, § 49, and *Ruotolo v. Italy*, judgment of 27 February 1992, Series A no. 230-D, p. 39, § 17). The Court finds this principle to be equally applicable to the present dispute as it concerned the payment of arrears of an old-age pension, which constituted the principal source of income for the applicant. Accordingly, the Court finds the length of the civil proceedings in the present case excessive, and the delays which occurred are attributable to the State.

(d) Conclusion

26. The foregoing considerations are sufficient to enable the Court to conclude that the applicant's case was not heard within a reasonable time. There has accordingly been a violation of Article 6 § 1 of the Convention.

II. OTHER ALLEGED VIOLATIONS OF THE CONVENTION

A. Admissibility

27. The applicant complained under Article 1 of Protocol No. 1 that a certain amount of his pension had not been duly paid to him between 1993 and 1998.

Article 1 of Protocol No. 1 reads as follows:

> "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."

28. The Court notes, however, that the applicant's claim for recovery of the unpaid pension was granted by the final judgment of the Chukotka Regional Court on 25 September 2003. Accordingly, the applicant can no longer claim to be a "victim" of the alleged violation.

29. It follows that this part of the application must be rejected pursuant to Article 35 §§ 3 and 4 of the Convention.

III. APPLICATION OF ARTICLE 41 OF THE CONVENTION

30. 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

31. The applicant claimed 15,000 euros (EUR) in respect of non-pecuniary damage.

32. The Government considered this claim to be excessive and unreasonable.

33. The Court accepts that the applicant suffered distress, anxiety and frustration caused by the unreasonable length of the proceedings. Making its assessment on an equitable basis, the Court awards EUR 1,500 in respect of non-pecuniary damage, plus any tax that may be chargeable.

B. Costs and expenses

34. The applicant also claimed reimbursement of the costs and expenses incurred in the proceedings before the Court. In particular, he claimed EUR 1,230 as remuneration for his representative in accordance with the contract of 19 May 2000. He also claimed reimbursement of the expenses relating to his representation before the Court, such as payment for postal and computer services, printing and copying of documents, travel and

accommodation expenses. The applicant submitted, however, that at present he could not quantify such expenses.

35. The Government contested those claims. They submitted that the expenses claimed could not be considered "real" since the performance of the contract of 19 May 2000 between the applicant and his representative might only "happen in the future".

36. The Court has to establish, first, whether the costs and expenses indicated by the applicant were actually incurred and, second, whether they were necessary (see *McCann and Others v. the United Kingdom*, judgment of 27 September 1995, Series A no. 324, § 220).

37. The Court notes that under the contract of 19 May 2000 the applicant agreed to pay his representative a fee amounting to EUR 1,230 for his representation before the Court, provided the representative duly performed his contractual obligations until the delivery by the Court of the final judgment concerning the present application and subject to payment by the Russian Federation of the just satisfaction award, should it be granted by the Court. The contract thus clearly stipulated that the applicant was to pay his representative EUR 1,230. The Court is satisfied that from the standpoint of the Convention these costs are real. The fact that the applicant was not required to pay the fee in advance does not affect this conclusion.

38. Further, it has to be established whether the costs and expenses incurred by the applicant for legal representation were necessary. The Court notes that this case was not particularly complex. It therefore finds excessive the amount which the applicant claims in respect of his legal costs and expenses and considers that it has not been demonstrated that they were all necessarily and reasonably incurred. In particular, the Court finds excessive the amount which the applicant claims in respect of his representative's remuneration, taking into account the amount of legal work required in this case. As regards other expenses claimed by the applicant, the Court notes that he has neither quantified the amount nor submitted any receipts or other vouchers on the basis of which such amount could be substantiated.

39. In these circumstances, and having regard to the fact that part of the application is declared inadmissible, the Court is unable to award the totality of the amount claimed. Deciding on an equitable basis and having regard to the details of the claims submitted by the applicant, it awards him the sum of EUR 825, together with any value-added tax that may be chargeable.

C. Default interest

40. 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 complaint concerning the excessive length of the proceedings admissible and the remainder of the application inadmissible;

2. *Holds* that there has been a violation of Article 6 § 1 of the Convention;

3. *Holds*
   (a) that the respondent State is to pay the applicant, within three months from the date on which the judgment becomes final in accordance with Article 44 § 2 of the Convention, EUR 1,500 (one thousand five hundred euros) in respect of non-pecuniary damage and EUR 825 (eight hundred and twenty-five euros) in respect of costs and expenses, to be converted into Russian roubles at the rate applicable at the date of settlement, plus any tax that may be chargeable on these 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;

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

Done in English, and notified in writing on 15 December 2005, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Søren NIELSEN
Registrar

Christos ROZAKIS
President