CONSEIL DE L'EUROPE

COUNCIL OF EUROPE

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

FIRST SECTION

**CASE OF LEVIN v. RUSSIA**

*(Application no. 33264/02)*

JUDGMENT

STRASBOURG

2 February 2006

**FINAL**

*02/05/2006*

*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 Levin v. Russia,**

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

Mr C.L. ROZAKIS, *President*,
Mrs S. BOTOUCHAROVA,
Mr A. KOVLER,
Mrs E. STEINER,
Mr K. HAJIYEV,
Mr D. SPIELMANN,
Mr S.E. JEBENS, *judges*,
and Mr S. NIELSEN, *Section Registrar*,

Having deliberated in private on 12 January 2006,

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

## PROCEDURE

1. The case originated in an application (no. 33264/02) against the Russian Federation lodged with the Court under Article 34 of the Convention for the Protection of Human Rights and Fundamental Freedoms ("the Convention") by a Russian national, Mr Aleksandr Fedorovich Levin ("the applicant"), on 6 August 2002.

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

3. On 27 April 2004 the Court decided to communicate the application 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.

## THE FACTS

4. The applicant was born in 1955 and lives in Obninsk in the Kaluga Region.

5. In 1987 the applicant took part in emergency operations at the site of the Chernobyl nuclear plant disaster. Since 1994, when the link was established between his disability and his involvement in the Chernobyl events, the applicant has been in receipt of monthly health damage compensation. He brought proceedings against the Obninsk town pension authority to challenge the amount of the compensation.

6. On 20 January 2000 the Obninsk Town Court of the Kaluga Region ("the Town Court") granted the applicant's claim and ordered the pension

authority to make monthly compensation payments of 3,161.19 Russian roubles (RUR) and pay him the outstanding compensation in the amount of RUR 20,082.86.

7. The judgment was upheld by the Kaluga Regional Court ("the Regional Court") and came into force on 6 April 2000.

8. On 7 June 2000 the Town Court issued two writs of execution, for the monthly compensation and the arrears. On 8 June 2000 the bailiffs brought enforcement proceedings against the pension authority in this respect. By decisions of 25 July and 25 November 2000 the bailiffs forwarded the execution writs to the Obninsk Town Department of the Federal Treasury as an authority responsible for the enforcement and discontinued the enforcement proceedings.

9. Following the applicant's request, on 2 October 2000 the Town Court clarified that the enforcement of the judgment should be made at the expense of the federal budget.

10. On 4 April 2001 the Town Department of the Federal Treasury returned both writs to the applicant without enforcement. They stated, in particular, that under the legislation in force execution writs issued against the Federal Treasury should be submitted directly to the Ministry of Finance.

11. Following the applicant's request, on 1 June 2001 the Town Court clarified that the monthly compensation payments awarded by the judgment of 20 January 2000 should be paid with subsequent indexation based on the statutory minimum wage.

12. On 24 July 2001 the applicant applied to the Ministry of Finance for the enforcement of the judgment.

13. The outstanding compensation of RUR 20,082.86 was paid to the applicant on 22 April 2002, two years and sixteen days after the entry into force of the judgment. As regards the monthly compensation, in 2000 it was paid monthly in the amount of RUR 292.22; the arrears of RUR 31558.67 were paid by a single instalment on 30 October 2002. In 2001, 2002 and the first half of 2003 the amount of the monthly payments was RUR 350. The amount of RUR 33734.28 was transferred to the applicant's bank account on 16 December 2002 to pay off the arrears for 2001. The arrears for 2002 in the same amount were paid on 9 April 2003.

14. According to the Government's information, on 19 February 2003, following the prosecutor's application, the Presidium of the Kaluga Regional Court quashed the ruling of the Town Court of 1 June 2001 in which the latter clarified the judgment of 20 January 2000. Following a fresh action brought by the applicant, on 17 April 2003 the Town Court found that the amount of the compensation established in its judgment of 20 January 2001 should have been increased as the relevant legislation required that it was subject to indexation based on the statutory minimum wage in 2001 and on the statutory living wage in 2002. It ordered the

Obninsk Social Security Service to pay the applicant the health damage compensation monthly in the amount of RUR 6,574.41 with subsequent indexation in accordance with law. It also ordered the payment of arrears for 2001-2002 totalling RUR 48,466.63. The judgment was upheld by the Kaluga Regional Court and came into force on 29 May 2003.

# THE LAW

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

15. The applicant complained that the prolonged non-enforcement of the judgment of 20 January 2000 as upheld on 6 April 2000 in his favour violated his "right to a court" under Article 6 § 1 of the Convention and his right to the peaceful enjoyment of possessions as provided in Article 1 of Protocol No. 1. These Articles, in so far as relevant, read as follows:

**Article 6 § 1**

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

**Article 1 of Protocol No. 1**

> "Every natural or legal person is entitled to the peaceful enjoyment of his possessions. No one shall be deprived of his possessions except in the public interest and subject to the conditions provided for by law and by the general principles of international law.
>
> The preceding provisions shall not, however, in any way impair the right of a State to enforce such laws as it deems necessary to control the use of property in accordance with the general interest or to secure the payment of taxes or other contributions or penalties."

### A. Admissibility

16. In their letter of 26 July 2004 the Government stated that as a part of their friendly settlement efforts the applicant was offered compensation for the damage caused by the delay in the enforcement of the judgment. The applicant refused. The Government invited the Court to strike the case out of its list of cases. They also submitted that the ruling of the Obninsk Town Court of 1 June 2001, which clarified that the monthly compensation was subject to indexation based on the statutory minimum wage, did not provide

the applicant with "possessions" within the meaning of Article 1 of Protocol No. 1, unlike the judgment of 20 January 2000 as upheld on 6 April 2000.

17. The applicant disagreed with the Government's arguments and invited the Court to proceed with the examination of the case.

18. As regards the Government's argument concerning the ruling of the Obninsk Town Court of 1 June 2001, the Court notes that the ruling in question was quashed on 19 February 2003 and that the issues of index-linking the compensation was examined in the separate proceedings which ended with the decision of the Kaluga Regional Court of 29 May 2003, the latter not being within the scope of the present application (see *Vysotskiy v. Russia* (dec.), no. 64153/00, 20 November 2003).

19. As regards the applicant's refusal to accept the settlement of the case proposed by the Government, 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 the Government failed to submit with the Court any formal unilateral declaration capable of 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, *Aleksentseva and 28 Others v. Russia*, nos. 75025/01 *et seq.*, 4 September 2003). The Court therefore rejects the Government's request to strike the application out under Article 37 of the Convention.

20. The Court observes 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

21. The applicant maintained his complaint and submitted that the situation with the State's failure to pay the monthly compensation in time and in the proper amount, the latter being increased as confirmed by court judgments given in 2003 and 2004, persisted.

22. The Government submitted that the delay in the enforcement of the judgment of 20 January 2000 as upheld on 6 April 2000 was caused by the lack of funds in the federal budget. They informed the Court of their efforts in ensuring the proper payments being made to the applicant.

23. The Court notes that the amount of the health damage compensation payable to the applicant on a monthly basis, which was determined in the judgment of 20 January 2000 as upheld on 6 April 2000, was liable to change as a result of its indexation based on the relevant legislation. Thus, the amount of the compensation fixed in the judgment of 17 April 2003 as

upheld on 29 May 2003 and subsequent judgments given in 2003 and 2004 was different than that in the former judgment given in 2000. The Court notes that the scope of the present case is limited to the enforcement of the judgment of 20 January 2000 as upheld on 6 April 2000.

24. It observes that the judgment in question remained inoperative for two years and sixteen days, in so far as the lump sum of RUR 20,082.86 is concerned. The full payment of the monthly compensation awarded by the judgment was delayed for various periods up to more than two years.

25. The Court has frequently found violations of Article 6 § 1 of the Convention and Article 1 of Protocol No. 1 in cases raising issues similar to the ones in the present case (see, among other authorities, *Burdov v. Russia*, no. 59498/00, ECHR 2002-III and, more recently, *Gorokhov and Rusyayev v. Russia*, no. 38305/02, 17 March 2005).

26. Having examined the material submitted to it, the Court notes that the Government did not put forward any fact or argument capable of persuading it to reach a different conclusion in the present case. Having regard to its case-law on the subject, the Court finds that by failing for substantial periods of time to comply with the enforceable judgment in the applicant's favour the domestic authorities prevented him from receiving the money which he could reasonably have expected to receive.

27. There has accordingly been a violation of Article 6 § 1 of the Convention and Article 1 of Protocol No. 1.

## II. APPLICATION OF ARTICLE 41 OF THE CONVENTION

28. 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

29. The applicant claimed RUR 27,811.79 in respect of pecuniary damage relating to the loss of value of the judgment debt due to inflation following the lengthy non-enforcement of the judgment of 20 January 2000 as upheld on 6 April 2000. He also claimed RUR 4,522.23 on the same ground in respect of subsequent judgments concerning the amount of the health damage compensation given in his favour in 2003 and 2004.

30. The Government submitted that no just satisfaction should be awarded to the applicant whose rights had not been violated. They further submitted that, should the Court find a violation in the present case, that would be in itself sufficient just satisfaction. They argued that, in any event,

the claim in respect of pecuniary damage was unsubstantiated. The applicant had not actually lost the amounts claimed. They also asserted that the applicant did not exhaust domestic remedies in respect of his claim for pecuniary damage as he did not bring relevant proceedings in domestic courts.

31. The Court reiterates that Article 41 of the Convention does not require applicants to exhaust domestic remedies a second time in order to obtain just satisfaction if they have already done so in vain in respect of their substantive complaints (see *De Wilde, Ooms and Versyp v. Belgium* (Article 50), judgment of 10 March 1972, Series A no. 14, pp. 8-9, § 16; *Mancheva v. Bulgaria*, no. 39609/98, § 72, 30 September 2004). In the circumstances of the present case, the applicant was not required to exhaust domestic remedies in respect of his claims for just satisfaction.

32. The Court found that the authorities were responsible for the prolonged non-enforcement of the Obninsk Town Court's judgment of 20 January 2000 as upheld on 6 April 2000 in the applicant's favour. By the time the judgment debt was paid in full its value had diminished owning to the inflation in Russia at the time. The applicant thus suffered a pecuniary loss which would have been avoided had the authorities acted in compliance with their obligations under Article 6 § 1 of the Convention and Article 1 of Protocol No. 1 to comply with the judgment in issue (see *Mancheva v. Bulgaria*, cited above, § 73).

33. The applicant submitted certificate of the Kaluga Regional Department of the State Statistics no. 37-46 of 19 August 2004 showing the consumer price index in the reference period. Thus, according to the certificate, the inflation rate in 2000 was 118.55 %, in 2001 – 119.57 %, in 2002 – 117.49 % and in 2003 – 114.34 %.

34. The Court has had regard to the applicant's statement of claim, which contains detailed calculations not contested as such by the Government. The applicant's calculations appearing to possess a sufficient basis in precise macro-economic information, the Court is not disposed to dismiss them in the absence of any reasoned and reasonable alternative. It therefore allows the applicant's claim in respect of pecuniary damage, in so far as the judgment of 20 January 2000 as upheld on 6 April 2000 is concerned, and awards him the sum of RUR 27,811.79 under this head, plus any tax that may be chargeable on that amount.

### B. Non-pecuniary damage

35. The applicant claimed 3,000 euros (EUR) in respect of non-pecuniary damage.

36. In addition to their general submissions indicated in paragraph 30 above, the Government stated that in the light of *Burdov v. Russia* they considered the claim in respect of non-pecuniary damage reasonable.

37. The Court also accepts that the applicant must have suffered distress and frustration resulting from the State authorities' failure to enforce the judgment in his favour, which cannot sufficiently be compensated by the finding of a violation. The Court takes into account the award it made in the case of *Burdov v. Russia* (cited above, § 47), the nature of the award in the instant case, the delay before the enforcement and other relevant aspects. Making its assessment on an equitable basis, it awards the applicant EUR 2,500 in respect of non-pecuniary damage, plus any tax that may be chargeable on that amount.

### B. Costs and expenses

38. The applicant did not seek reimbursement of his costs and expenses incurred before the domestic authorities and the Court. Accordingly, the Court does not make any award under this head.

### C. Default interest

39. 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 and Article 1 of Protocol No. 1;

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, the following amounts:
      (i) RUR 27,811.79 (twenty seven thousand eight hundred and eleven roubles and seventy-nine kopecks) in respect of pecuniary damage;
      (ii) EUR 2,500 (two thousand five hundred euros) in respect of non-pecuniary damage, to be converted into the national currency of the respondent State at the rate applicable at the date of settlement;
      (iii) plus 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;

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

Done in English, and notified in writing on 2 February 2006, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Søren NIELSEN
Registrar

Christos ROZAKIS
President