



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

FIRST SECTION

CASE OF KONOVALOV v. RUSSIA

(Application no. 63501/00)

JUDGMENT

STRASBOURG

23 March 2006

FINAL

13/09/2006

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 Konovalov 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,

Mr K. HAJIYEV,

Mr S.E. JEBENS, *judges*,

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

Having deliberated in private on 2 March 2006,

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

PROCEDURE

1. The case originated in an application (no. 63501/00) 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, Vladimir Nikolayevich Konovalov (“the applicant”), on 12 September 2000.

2. The applicant was represented by Mrs L. F. Konovalova. 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. The applicant alleged that the failure to enforce final judgments in his favour was incompatible with the Convention.

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 27 May 2004 the Court declared the application partly admissible.

6. The applicant and the Government each filed observations on the merits (Rule 59 § 1). 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.

7. On 1 November 2004 the Court changed the composition of its Sections (Rule 25 § 1). This case was assigned to the newly composed First Section (Rule 52 § 1).

THE FACTS

I. THE CIRCUMSTANCES OF THE CASE

8. The applicant was born in 1953 and lives in Slavyansk-na-Kubani in the Krasnodar Region.

9. The applicant is a former member of the armed forces. In 1993, after serving on the island of Sakhalin, he retired and moved to Slavyansk-na-Kubani in the Krasnodar Region. He applied to the Slavyansk Town Council for State housing aid. He was put on a waiting list but, since that had no effect, he brought proceedings against the Town Council in the Slavyansk Town Court.

10. On 31 March 1998 the Slavyansk Town Court received a letter from the President of the Krasnodar Regional Court (no. 03-06, dated 11 March 1998). The letter, which was distributed to the presidents of all the town and district courts in the region, recommended that, in order to allow the local authorities to function properly, the courts refrain from seizing their bank accounts when giving judgments in cases brought against them by individuals for recovery of pensions and social benefits including State housing aid, and that they provide, in the operative provisions of judgments in such cases, that payments be made as soon as funds were received from an appropriate State budget (district, town, regional or federal) and in the order set out on a waiting list drawn up by the defendant authority.

11. On 6 April 1998 the Town Court examined the case. The Town Council submitted at the hearing that the applicant was entitled by law to State housing aid for retired military personnel. However, for the past few years it had not received any funds from the federal budget for that purpose. The court found that the applicant, as a retired serviceman, met the statutory requirements for entitlement to State housing aid financed by the federal budget. In the operative provisions of its judgment of 6 April 1998 the court ordered:

“that the sum of 113,040 roubles be recovered from the Slavyansk-na-Kubani Town Council in the Krasnodar Region in favour of Vladimir Nikolayevich Konovalov, as a person discharged from military service and transferred to the reserve, as a grant for the purchase of housing;

that payment be made from the federal budget of the Russian Federation, upon receipt of funds from the budget and subject to the waiting list.

The judgment may be appealed against to the Krasnodar Regional Court through the Slavyansk Town Court within a ten-day term.”

The authority did not appeal and the judgment of 6 April 1998 became final on 17 April 1998. On 19 May 1998 the court issued a writ of

execution. According to the applicant, enforcement proceedings were initiated on the same day.

12. On 4 and 17 December 1998 the Ministry of Finance and the local authority responded to an enquiry from the applicant, informing him about the lack of federal funds for the payment of State housing aid to him.

13. As the judgment had not been executed, the applicant brought an application for index-linking of the award in line with an increase in the market prices of immovable property. At a hearing before the Town Court the defendant town council did not object to the applicant's claim. In a judgment of 19 April 2000 the Town Court increased the amount awarded to the applicant in the judgment of 6 April 1998 for the purchase of housing to 377,020 Russian roubles ("RUR"). In the operative provisions of the judgment the court ordered:

"that the sum of 377,020 roubles be recovered from the Slavyansk-na-Kubani Town Council in the Krasnodar Region in favour of Vladimir Nikolayevich Konovalov as a grant for the purchase of housing;

that the payment be made from the federal budget of the Russian Federation, upon receipt of funds from the budget and subject to the waiting list.

The judgment may be appealed against to the Krasnodar Regional Court through the Slavyansk Town Court within ten days."

14. In a letter of 28 April 2000 the Krasnodar regional prosecutor's office informed the applicant that the local authority had not received funds from the federal budget for the payment of State housing aid to retired servicemen.

15. According to the applicant, enforcement proceedings in respect of the judgment of 19 April 2000 were initiated on 11 May 2000. According to the Government, the applicant lodged a writ of execution to that end with the court bailiffs on 30 October 2000. Neither party submitted a copy of the relevant documents to the Court.

16. The judgments of 6 April 1998 and 19 April 2000 were not executed.

17. On 13 October 2000 the Krasnodar regional prosecutor's office lodged two applications for supervisory review of the judgments. It requested that the judgments be quashed and a fresh examination of the applicant's case be ordered.

18. In a decision of 2 November 2000 the Presidium of the Krasnodar Regional Court granted the application concerning the judgment of 6 April 1998, quashed that judgment on the ground that it conflicted with substantive and procedural laws and ordered a fresh examination of the case.

19. On 20 December 2000 the Town Court discontinued proceedings in the case relating to the judgment of 19 April 2000.

20. Applications by the applicant for the decision of 2 November 2000 to be quashed by way of supervisory review were rejected by the Supreme Court, as follows from its letters of 17 January and 19 March 2001.

21. On 22 March 2001 the applicant informed the Town Court that he wished to withdraw his action and requested that the proceedings for a fresh examination of his case, as ordered by the supervisory court's decision of 2 November 2000, be discontinued. The applicant explained that he had done so because he had been assured by the head of the Town Council that he would be given a certificate to receive free housing. In a decision of 22 March 2001 the Town Court granted his request and discontinued the proceedings. The applicant did not appeal against that decision. On 3 April 2001 the enforcement proceedings were discontinued.

22. In August 2001 the applicant learned that the Town Council had refused to give him the housing certificate.

II. RELEVANT DOMESTIC LAW AND PRACTICE

A. Enforcement proceedings

23. Section 9 of the Enforcement Proceedings Act (Law no. 119-FZ 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. Pursuant to section 13, the enforcement proceedings must be completed within two months of the receipt of the writ of execution by the bailiff.

B. Court judgment

24. Article 197 ("The contents of a judgment") of the Code of Civil Procedure of 1964, in force at the material time, provided as follows with regard to the operative provisions of judgments:

"The operative provisions of a judgment should contain the conclusion of the court as to whether to allow or reject a suit fully or partly, an instruction on the distribution of costs and directions concerning the term and the procedure for appealing against the judgment."

Article 209 of the Code ("The enforcement of a judgment") read:

"A judgment shall be enforced after its entry into force except in cases of immediate enforcement."

25. Paragraph 10 of Resolution no. 7 of the Plenary Session of the Supreme Court of the USSR of 9 July 1982 ("On court judgments"), in

force at the material time, provided that courts should set forth the operative provisions of judgments particularly precisely in order to avoid ambiguity in their enforcement. The delivery of judgments whose enforcement was subject to the fulfilment or non-fulfilment of a certain condition was not allowed.

26. Paragraph 7 of Resolution no. 9 of the Plenary Session of the Supreme Court of the RSFSR of 26 September 1973 (“On court judgments”), in force at the material time, provided that courts should bear in mind that a judgment was an instrument for the administration of justice by which a case was finally determined, and that its operative provisions should contain exhaustive conclusions derived from established factual circumstances. Judgments should therefore contain clear and precise formulations as to, *inter alia*, who should do what, so that there would not be any controversy in the course of their enforcement.

27. The review of the Russian Federation Supreme Court’s case-law for the first quarter of 1998, approved by a resolution of the Presidium of the Supreme Court of 6 May 1998, contains a summary of the following case which applied the principle that court judgments whose enforcement is subject to fulfilment or non-fulfilment of a certain condition are not allowed. A number of servicemen brought proceedings against their military unit’s administration, which had not paid them part of their remuneration owing to a lack of funds. A court gave judgment in their favour and, at the same time, ordered that the payment be made as soon as the money was received by the military unit from the relevant State budget. The case-law review noted that in this case the court, in essence, had postponed the enforcement of its judgment for an indefinite period, which had contravened the requirements of the Code of Civil Procedure by which a time-limit for the enforcement of judgments was set by law or, in some cases, by a court. In decision no. 2n-31497 of the Military Section of the Supreme Court the direction that payment should be made upon receipt of the relevant funds was removed from the judgment. The review underlined that the time-limit fixed for the enforcement of a judgment had to be specific.

28. In decision no. 111pv-01pr of 25 July 2001 the Presidium of the Supreme Court upheld a decision delivered by the Civil Section of the Supreme Court on 14 November 2000 in the following case.

After the completion of his military service Mr R. moved to Moscow as his place of permanent residence. He brought proceedings against the local housing authority, which had refused to provide him with a flat to which, he claimed, he was entitled under the law as a former serviceman. In a final judgment in the case the Civil Section of the Supreme Court ordered the local housing authority to place him on the waiting list and to provide him with a flat. The defendant authority placed the applicant on the waiting list and stated that it was impossible to enforce the remaining part of the judgment since it had not received funds from the federal budget for that

purpose. The applicant requested the Supreme Court to define the procedure for the further enforcement of the judgment. The Civil Section of the Supreme Court ruled in its decision of 14 November 2000 that the housing authority should provide the applicant with a flat regardless of federal financing. The deputy prosecutor general lodged an application for that decision to be quashed in supervisory-review proceedings. It was examined by the Presidium of the Supreme Court, which held that the decision had lawfully clarified that the provision of a flat to the applicant, in compliance with the judgment, should not be subject to federal financing.

THE LAW

I. SCOPE OF THE CASE

29. Following the Court's admissibility decision, the applicant made submissions on the merits in which he complained, *inter alia*, that he had not been informed that the Presidium of the Krasnodar Regional Court had on 2 November 2000 examined the prosecutor's application for supervisory review of the judgment of 6 April 1998 in his favour, in breach of Article 6 § 1 and Article 13 of the Convention and Article 1 of Protocol No. 1, and that the failure to enforce a judgment given in his favour by the Pervomayskiy District Court of Krasnodar on 25 June 1999 had also violated the above provisions of the Convention.

30. The Court notes that the applicant introduced new complaints about the supervisory-review proceedings resulting in the decision of 2 November 2000, which in any event were submitted outside the six-month period provided for in Article 35 § 1 of the Convention. It observes that, in its decision on admissibility of 27 May 2004, it declared admissible the applicant's complaints under Article 6 § 1 of the Convention and Article 1 of Protocol No. 1 about the non-enforcement of the judgment of 6 April 1998 as amended by the judgment of 19 April 2000. At the same time, the applicant's complaints under Article 6 § 1 and Article 13 of the Convention and Article 1 of Protocol No. 1 concerning the non-enforcement of the judgment delivered by the Pervomayskiy District Court of Krasnodar on 25 June 1999 were declared inadmissible. Thus, the scope of the case now before the Court is limited to the complaints which have been declared admissible.

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

31. The applicant complained that the failure on the part of the domestic authorities to enforce the final judgment given by the Slavyansk Town Court on 6 April 1998, as amended by the final judgment delivered by the same court on 19 April 2000, had violated his right to a fair trial as guaranteed by Article 6 § 1 of the Convention and his right to the peaceful enjoyment of his possessions under Article 1 of Protocol No. 1. Those 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

32. In a letter of 20 September 2004 the Government informed the Court that the Office of the Prosecutor General had carried out an examination of the applicant’s case and found that there had been no legal basis for his entitlement to State housing aid for military personnel and that a certificate (no. 155 of 8 August 1993) had been issued to him unlawfully by the military authorities. The Government requested the Court to abstain from taking any procedural decisions in the applicant’s case since, in view of newly discovered circumstances, the situation could change substantially and the claims brought by the applicant before the domestic courts could be found to have been unlawful *ab initio*.

33. In their observations of 3 December 2004 the Government informed the Court about further developments in the proceedings initiated by the Office of the Prosecutor General. Thus, it had been found that on the basis of certificate no. 155 of 8 August 1993 the Slavyansk Town Council, in a decision of 5 November 1993, had put the applicant on a preferential waiting list of persons entitled to free housing, in particular those who had

completed the maximum period of military service. In a decision of 21 June 2002 the Town Council excluded the applicant from that list because it considered that he did not meet the relevant statutory requirements since he had retired after the expiry of the term of his military service, five years short of the maximum period. In a decision of 25 October 2004 an investigator of the Office of the Public Prosecutor for the Slavyansk District refused to open criminal proceedings against the applicant on the ground that the limitation period for prosecution had expired. The Government submitted that by asserting a right which had arisen as a result of his unfair behaviour and the forgery of documents, the applicant had misled the domestic courts and abused his right of petition to the Court.

34. The applicant replied that certificate no. 155 of 8 August 1993, which had been issued to him by the military authorities after his retirement, concerned his entitlement to receive a free flat from the State and not financial aid for the purchase of housing, which was a different privilege offered to retired military servicemen. He further stated that the certificate had been issued to him in accordance with the legislation then in force, in particular the Government's decision no. 937 of 3 August 1996.

35. The applicant submitted that the authorities' failure to enforce the judgment of 6 April 1998 for a period of two years and seven months at a time of rapid inflation following the economic crisis in August 1998, and their failure to enforce the judgment of 19 April 2000 for seven months, had been unlawful and unjustified. The alleged lack of financial resources could not serve as an excuse. He claimed that the judgments, in so far as they had made the payment conditional on the receipt of funds from the federal budget, had been given on the instructions of the authorities, whose persistent interference with the courts' activity had ultimately resulted in the quashing of the judgments in supervisory-review proceedings.

B. The Court's assessment

1. Article 6 § 1 of the Convention

36. 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 of Judgments and Decisions* 1997-II, p. 510, § 40).

37. 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*, cited above, § 35).

38. Turning to the instant case, the Court notes that the judgment of 6 April 1998 remained inoperative between the date of entry into force of the Convention in respect of Russia on 5 May 1998 and the date of its quashing by the supervisory-review court on 2 November 2000, a total of about two and a half years.

39. As regards the Government’s submissions concerning the applicant’s alleged lack of entitlement to State housing aid, the Court finds them all irrelevant to the present case because the final judgment delivered in the case, which was due for enforcement during the above period, found that the applicant was entitled to such aid. The Court does not see any indication of an abuse of the right of application by the applicant, as claimed by the Government on account of the alleged forgery of certificate no. 155 of 8 August 1993. Such a statement is striking because the applicant has not been proved guilty according to the law. The Government’s objection is therefore dismissed.

40. The Court observes that the present case is similar to many other cases which have been determined or are still pending before it, concerning prolonged non-enforcement of final judgments against the State by which applicants were awarded various social benefits guaranteed by the domestic law. However, the distinctive feature of the present case is that the Slavyansk Town Court, as well as recognising the applicant’s entitlement to State housing aid and ordering the Town Council to pay a certain amount of money, ordered that the payment should be made when the money was available and when the applicant’s turn came on the waiting list, which never occurred. The present case should be distinguished from the cases of *Fadeyeva* and *Ledyayeva and Others*, in which the operative provisions of judgments were limited to the requirement of placing the applicants on a waiting list (see *Fadeyeva v. Russia* (dec.), no. 55723/00, 16 October 2003, and *Ledyayeva and Others v. Russia* (dec), nos. 53157/99, 53695/00, 53247/99 and 56850/00, 16 September 2004). It can be noted that in the case of *Malinovskiy* a judgment originally ordered a local authority to

provide the applicant with a flat “in accordance with the order of precedence on the waiting list”. That condition was removed from the judgment by a higher court in supervisory-review proceedings (see *Malinovskiy v. Russia*, no. 41302/02, §§ 8 and 12, 7 July 2005). In that case the Court accepted that the judgment, as it had been worded prior to the decision of the supervisory review court, “did not require an immediate grant of a flat because its implementation was conditional on prior allocation of flats to the persons placed on the waiting list before the applicant” (ibid., § 36). The prolonged non-enforcement of the judgment after its amendment by the supervisory-review court was sufficient for the Court to find a violation of Article 6 § 1 of the Convention and Article 1 of Protocol No. 1 in that case.

41. In the present case the judgments of 6 April 1998 and 19 April 2000, on the one hand, ordered the Town Council to pay the applicant a specified amount of State housing aid for the purchase of housing, having found that the applicant met the statutory requirements for that entitlement. On the other hand, they provided for two conditions for the payment – the availability of State funds and the payment of State housing aid to individuals placed on the waiting list before the applicant. The judgments remained in their original form during the whole period in which they were not enforced. It is true that if the Court’s task in such situations were to ensure the State’s compliance with a judgment against it as it was worded, the Court would be able to conclude that the non-enforcement of the judgments in the applicant’s case did not pose any problem under the Convention since those two conditions were never fulfilled, the more so because the Convention does not, as such, impose on the State an obligation to provide housing. However, the Court considers that this would be too restrictive an interpretation of Article 6 and would not correspond to the object and purpose of the Convention.

42. The Court notes that before the judgment of 6 April 1998 was delivered, the Slavyansk Town Court had received letter no. 03-06 of 11 March 1998, addressed to its President, in which the President of the Krasnodar Regional Court recommended that the operative provisions of judgments in cases brought against the local authorities for, *inter alia*, the payment of State housing aid, specify that payments were to be made as soon as funds were received from the appropriate State budget and in the order set out on the waiting list drawn up by the defendant authority. The conditions were repeated in the judgments of 6 April 1998 and 19 April 2000. It should also be noted that it does not appear that by providing for conditions for the payment, such as those specified above, in the operative provisions of the judgments, the Slavyansk Town Court complied with domestic law (see paragraphs 24-28 above).

43. The Court reiterates that when a pecuniary claim has been found justified by a final judgment, it is not open to a State authority to cite lack of funds as an excuse for not honouring a judgment debt (see *Burdov*, cited

above, § 35). Nor should it in such a case be possible to avoid execution of the claim by providing without any statutory basis in a judgment that the payment of an award is conditional on the availability of money from the State treasury and the prior payment to those before the claimant on a waiting list. In the present case there was no legal basis for such conditions according to domestic case-law (cf. §§ 24-28 above), and the Government have not advanced any justification for them. The Court therefore considers that the conditions for payment laid down in the judgments in the applicant's case did not relieve the State of its obligation to pay the sums awarded by those final judgments within reasonable time. The Government have not given any plausible explanation for the failure to enforce the judgment of 6 April 1998 during about two and a half years. The Court finds that by failing for such a substantial period of time to take the necessary measures to comply with the final judgment of 6 April 1998 in the present case, the Russian authorities deprived the provisions of Article 6 § 1 of their useful effect. It notes that the amount awarded by the judgment of 6 April 1998 was increased by way of index-linking in line with increased market prices by the judgment of 19 April 2000, which equally remained unenforced. However, since the above considerations concerning the judgment of 6 April 1998 are sufficient to find a violation of Article 6 § 1 in the applicant's case and since the judgment of 19 April 2000 was closely linked to the judgment of 6 April 1998, the Court does not consider it necessary to examine separately the delay in enforcing the judgment of 19 April 2000.

44. The Court therefore finds that there has been a violation of Article 6 § 1 of the Convention.

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

45. 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*, 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 6 January 1998, which ordered a monetary award to the applicant, provided him 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 lodged against it, and enforcement proceedings had been instituted. It follows that the applicant's inability to obtain the enforcement of this judgment for a substantial period of time constituted an interference with his right to the peaceful enjoyment of his possessions, in breach of the first sentence of the first paragraph of Article 1 of Protocol No. 1. As with its considerations with regard to Article 6, the Court does not consider it necessary to examine separately the delay in enforcing the judgment of 19 April 2000 (see paragraph 43 above).

46. Having found no justification for such an interference (see paragraph 43 above), the Court concludes that there has been a violation of Article 1 of Protocol No. 1 to the Convention.

III. APPLICATION OF ARTICLE 41 OF THE CONVENTION

47. 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

48. The applicant claimed RUR 273,116 and 140,160 euros (EUR) in respect of pecuniary damage, covering, respectively, expenses for renting a flat and the potential purchase of housing, and travel expenses in the event of a hearing before the Court in Strasbourg, and EUR 300,000 in respect of non-pecuniary damage. The Government contested these claims.

49. The Court notes, firstly, that the scope of the present case was limited to the failure to enforce the final judgment in the applicant's favour over a certain period of time and that violations of Article 6 § 1 and Article 1 of Protocol No. 1 were found on that account. The compatibility with the Convention of the quashing of those judgments in supervisory-review proceedings did not fall within the scope of the present case (see paragraph 30 above). The Court does not discern any causal link between the violations found and the extensive pecuniary damage alleged. As regards non-pecuniary damage, the Court finds that the applicant must have suffered some non-pecuniary damage as a result of the violations found which cannot be made good by the finding of a violation. Nevertheless, the amount claimed is excessive.

50. Making its assessment on an equitable basis, as required by Article 41 of the Convention, the Court awards the applicant the sum of EUR 5,000 in respect of non-pecuniary damage, plus any tax that may be chargeable on this amount.

B. Costs and expenses

51. The applicant claimed RUR 10,000 for his legal representation before the domestic courts and the Court and RUR 703.24 in respect of postal expenses. The Government contested those claims.

52. The Court reiterates that, in order for costs and expenses to be awarded under Article 41, it must be established that they were actually

and necessarily incurred in order to prevent or obtain redress for the matter found to constitute a violation of the Convention and were reasonable as to quantum (see *Nilsen and Johnsen v. Norway* [GC], no. 23118/93, § 43, ECHR 1999-VIII). Having regard to all materials in its possession, the Court awards the applicant EUR 20 under this head in respect of his postal expenses, plus any tax that may be chargeable on this amount.

C. Default interest

53. 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. *Holds* that there has been a violation of Article 6 § 1 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;
2. *Holds*
 - (a) that the respondent State is to pay the applicant, within three months from the date on which the judgment becomes final in accordance with Article 44 § 2 of the Convention, the following amounts, to be converted into Russian roubles at the rate applicable at the date of settlement:
 - (i) EUR 5,000 (five thousand euros) in respect of non-pecuniary damage;
 - (ii) EUR 20 (twenty euros) in respect of costs and expenses;
 - (iii) 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;
3. *Dismisses* the remainder of the applicant's claim for just satisfaction.

Done in English, and notified in writing on 23 March 2006, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Santiago QUESADA
Deputy Registrar

Christos ROZAKIS
President