CONSEIL DE L'EUROPE

COUNCIL OF EUROPE

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

FIRST SECTION

CASE OF CHEBOTAREV v. RUSSIA

(Application no. 23795/02)

JUDGMENT

STRASBOURG

22 June 2006

FINAL

22/09/2006

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 Chebotarev v. Russia,

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

Mr C.L. ROZAKIS, *President*,
Mr L. LOUCAIDES,
Mrs F. TULKENS,
Mrs N. VAJIĆ,
Mr A. KOVLER,
Mrs E. STEINER,
Mr K. HAJIYEV, *judges*,
and Mr S. NIELSEN, *Section Registrar*,

Having deliberated in private on 1 June 2006,

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

PROCEDURE

1. The case originated in an application (no. 23795/02) 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 Anatoliy Tikhonovich Chebotarev ("the applicant"), on 28 May 2002.

2. The applicant complained of non-enforcement of several judgments in his favour concerning the amount of his disability pension. He also complained of the quashing of one judgment in his favour by way of supervisory review.

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

4. On 21 January 2004 the Court decided to communicate the application. 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

I. THE CIRCUMSTANCES OF THE CASE

5. The applicant was born in 1938 and lives in the town of Novovoronezh.

1. Non-enforcement of court judgments in the applicant's favour

6. The applicant took part in the liquidation of the consequences of the nuclear accident at the Chernobyl nuclear plant. He was recognised as handicapped, and therefore entitled to a special social benefit. In 1999-2002 the applicant brought a number of actions against the social security authorities, claiming that the amount of the special benefit had not been properly calculated. The Voronezh Region Novovoronezhskiy District Court decided six cases in favour of the applicant, awarding him compensation for the wrongly calculated amount of the social benefit:

a) by judgment of 30 August 2000 - 10,195 Russian roubles (RUR);

b) by judgment of 26 February 2001 - 19,066 RUR;

c) by judgment of 21 May 2001 - 7,524 RUR;

d) by judgment of 14 December 2001 - 10,032 RUR;

e) by judgment of 17 June 2002 - 21,227 RUR;

f) by judgment of 10 October 2002 - 2,508 RUR.

7. These judgments were not appealed against and became effective ten days after their pronouncement. However, for a certain period of time they remained unenforced.

8. According to the applicant's submissions of 28 April 2004, the judgment of 30 August 2000 was executed in part. Thus, on 30 October 2003 he received 8,760 RUR. The rest of the amount awarded (1,434 RUR) has not been paid.

9. Further, the judgment of 26 February 2001 was executed on 22 September 2003, i.e. with a delay of two years, six months and fifteen days. The judgment of 21 May 2001 was executed 25 September 2003, i.e. with a delay of two years, three months and 25 days. The judgment of 14 December 2001 was executed on 25 September 2003, i.e. with a delay of one year, nine months, and one day. The judgment of 17 June 2002 was executed by two instalments, on 25 September and on 18 November 2003 the delays were therefore fifteen months and sixteen months and 22 days accordingly. The judgment of 10 October 2002 was executed on 18 November 2003, the delay was thus eleven months and 28 days.

10. In their letter of 28 June 2004 the Government contended that by 4 June 2004 all judgments had been executed in full. In support they produced a payment order, dated 4 June 2004, by which the Treasury Department of the Voronezh Region transferred 110,053 RUR to an unidentified bank account at the Voronezh branch of Sberbank. That payment order did not refer to any particular recipient. However, it indicated that the above amount was transferred in relation to the execution of judgments in favour of Chernobyl victims "in accordance with lists nos. 432-433". Further, the Government produced a copy of three documents entitled "List no. 431", "List no. 432" and "List no. 433". It appears that those documents were issued by the social security office of the local administration. They indicated that certain amounts were due to the

applicant under a "court judgment". The document entitled "List no. 431" referred to the amount of 1,434 RUR.

2. Supervisory review of a judgment in the applicant's favour

11. In 2000 the applicant brought an action against the social security authorities, claiming interests for the delays in the payment of the social benefits. On 25 December 2000 the Novovoronezhskiy District Court allowed his claim, awarding him 10,806 RUR as interests for the delay. The judgment was not appealed against and became final on 5 January 2001.

12. On 7 October 2002 the President of the Voronezh Regional Court lodged an extraordinary appeal (*npomecm*) against this judgment. On 14 October 2002 the Voronezh Regional Court quashed the judgment of 25 December 2000 by way of extraordinary review and remitted the case for a fresh examination. On 18 November 2002 the Novovoronezhskiy District Court rejected the applicant's claims on the ground that the law did not provide for the payment of interests claimed by the applicant. On 3 December 2002 this decision was upheld by the Voronezh Regional Court.

13. In May 2004 the local authorities contacted the applicant with a view of reaching an agreement in the matter. However, the applicant refused to accept the terms of the agreement.

II. RELEVANT DOMESTIC LAW

14. For relevant provisions of Russian law on enforcement of court judgments against budget-funded organisations see *Burdov v. Russia* (no. 59498/00, ECHR 2002-III) and *Wasserman v. Russia* (dec., no. 15021/02, 25 March 2004).

15. For relevant provisions of Russian law on the supervisory review proceedings see *Ryabykh v. Russia* (no. 52854/99, §§31-42, ECHR 2003-IX).

THE LAW

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

16. The applicant complained about the lengthy non-enforcement of the above court judgments in his favour. He also complains about the quashing of the decision of 25 December 2000. The Court will examine these

complaints under Article 6 § 1 and Article 1 of Protocol no. 1 to the Convention. These articles, in so far as relevant, read as follows:

Article 6

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

Article 1 of the 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."

17. The Government did not contest that the final judgments in the applicant's favour were executed with a certain delay. However, they insisted that, since the applicant had refused to accept the proposal of the authorities within the friendly settlement negotiations, he had lost his victim status and, moreover, was abusing his right of individual petition.

18. As regards the supervisory review, the Government noted that by virtue of the judgment of 30 August 2000, the arrears due to the applicant had been readjusted to the current level of prices. Therefore, the applicant had been sufficiently compensated for the delayed payment of his pension. Consequently, the decision of 25 December 2000, awarding him the interests, was erroneous. This error was corrected by the supervisory review court.

19. The applicant maintained his initial complaints.

A. Admissibility

20. As regards the applicant's victim status (see above § 17), the Court recalls the following. The applicant may be deprived of his status as a "victim" if the national authorities have acknowledged, either expressly or in substance, and then afforded redress for, the breach of the Convention (see, for example, *Amuur v. France*, judgment of 25 June 1996, *Reports of Judgments and Decisions* 1996-III, p. 846, § 36, and *Dalban v. Romania* [GC], no. 28114/95, § 44, ECHR 1999-VI). In the present case the Court notes that, even assuming that the agreement proposed by the local authorities contained an implicit recognition of a breach of the applicant's Convention rights, the applicant refused the terms of the proposed settlement, for which reason the declaration did not give rise to any binding

undertakings on the part of the Government. Therefore, the applicant retained his victim status.

21. Further, the Court cannot accept the Government's argument that the refusal to sign the agreement might, in the context of the present case, amount to an abuse of the right of individual petition. The Court reiterates that "an applicant's refusal either to enter into or continue negotiations with the authorities of a respondent State on the terms of a friendly settlement over an alleged breach of a right guaranteed under the Convention cannot be construed as an abuse of the right of individual petition under Article 27 § 2 of the Convention [new Article 35 § 3]" (*Andronicou and Constantinou v. Cyprus*, judgment of 9 October 1997, *Reports of Judgments and Decisions* 1997-VI, § 165). In the circumstances of the present case it was up to the applicant to decide what was in his best interest – to continue the proceedings before the Court or to accept the proposal of the local authorities. Accordingly, this submission by the Government fails.

22. The Court notes that the application 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

1. As to the delayed enforcement of the court judgments

23. The Court observes that the above judgments of the Novovoronezh District Court remained inoperative for a considerable periods of time, varying from one year to two years and a half. This fact is not contested by the Government.

24. As regards the judgment of 30 August 2000, it is unclear whether it has ever been fully executed. The Government asserted that on 4 July 2004 the outstanding amount of 1,434 RUR had been transferred to the applicant. The Court notes that there are certain discrepancies in the documents produced by the Government in support of this assertion. Further, it is impossible to identify to what court judgments those payments related (see § 10 above). However, since the applicant did not refute the fact that all amounts due to him had been paid by 4 July 2004, the Court accepts the Government's assertion. However, even assuming that the judgment of 30 August 200 has been finally executed, the Court notes that it happened three years, ten months and 24 days after it had entered into force.

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, Petrushko v. Russia,

no. 36494/02, 24 February 2005, or Poznakhirina v. Russia, no. 25964/02, 24 February 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 years to comply with the enforceable judgments in the applicant's favour the domestic authorities prevented him from effectively enjoying his right to a court and receiving the money 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 thereof on that account.

2. As to the quashing of the judgment of 25 December 2000

28. The Court finds that this case is similar to the case of *Ryabykh v. Russia* (no. 52854/99, ECHR 2003-IX), where a final and binding judgment in the applicant's favour was set aside by a higher court in supervisory review proceedings following an application by a State official, whose power to make such applications was not subject to any time-limit (§§ 51-58 of the *Ryabykh* judgment). In that case the Court found that the applicant's "right to a court" guaranteed by Article 6 § 1 had been breached by the quashing of the final judgment in his favour.

29. Moreover, in a number of cases the Court found that the "judgment debt" may be regarded as the applicant's "possessions" within the meaning of Article 1 of Protocol No. 1. The Court repeatedly found violation of this provision in that the quashing by way of supervisory review constituted a disproportionate interference with the applicant's right to the peaceful enjoyment of his possessions. The Court dismissed the Government's argument that the quashing was justified by the need to correct a judicial error committed by a lower court (see, for example, *Tregubenko v. Ukraine*, no. 61333/00, § 54-55, 2 November 2004).

30. In the present case the Government adduced the same argument, namely that the decision of 25 December 2000 had been quashed in order to correct a judicial error. In these circumstances the Court does not find any reason for departing from its aforementioned judgments and considers that there has been a violation of Article 6 § 1 and Article 1 of Protocol No. 1 in respect of the quashing of the final and binding judgment given in the applicant's case and entitling the applicant to a certain amount of money.

III. APPLICATION OF ARTICLE 41 OF THE CONVENTION

31. 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."

32. In respect of pecuniary damage the applicant claimed 1,434 RUR, awarded to him by virtue of the judgment of 30 August 2000. He also claimed 10,806 RUR due to him under the judgment of 25 December 2000, quashed by way of supervisory review. The applicant further claimed that the above amounts should be adjusted in line with the increase of the cost of living in the Voronezh region. Finally, he contended that the Government should pay him a default interests for the delay in honouring the judgment debt in the amount of 0.5 per cent of the sum due to him for each day of the delay. In total he claimed 37,640 RUR in respect of pecuniary damage.

33. As regards non-pecuniary damage, the applicant claimed 15,000 euro (EUR), referring to the feeling of uncertainty and anxiety he had had to endure because of his involvement in the proceedings.

34. Finally, the applicant claimed RUR 344 for postal expenses incurred before the Court.

35. The Government did not present their comments on the amount of pecuniary damages and costs and expenses claimed by the applicant. They contended that all outstanding amounts had been finally paid to him. As regards non-pecuniary damage, they maintained that 3,000 EUR would be an appropriate compensation.

A. Damage

36. The Court notes that the amount of 1,434 RUR was received by the applicant on 4 July 2004 (see above § 10). Therefore, his claim in this part should be rejected.

37. As regards the amount of 10,806 RUR due to him under the judgment of 25 December 2000, the Court notes that, in the circumstances of the present case, it constituted his "possessions", of which he has been deprived as a result of the supervisory review proceedings (see above §§ 29 - 30). Therefore, the amount of 10,806 Russian roubles should be awarded to the applicant, plus any tax that may be chargeable on that amount.

38. As regards the losses allegedly sustained by the applicant in connection with the prolonged non-enforcement of the judgments, his calculations in this respect are not convincing. The increase in the cost of living, on which the applicant based his calculations, was not substantiated by appropriate evidence. Further, the applicant did not provide any

explanation as to the default interest rate, which he proposed to apply. The Court concludes that the applicant's claims in this part should be rejected.

39. In connection with the applicant's claims for non-pecuniary damage, the Court accepts that the applicants have suffered certain distress because of the State authorities' failure to enforce the judgments in his favour within a reasonable time. Further, the Court is prepared to accept that the quashing of a final judgment of 25 December 2000 in the applicant's favour created a feeling of insecurity in him. Taking into account all relevant aspects of the present case (such as, in particular, the number of court awards which were not executed in time or quashed, the amounts of those awards, the nature of the proceedings at issue, the applicant's circumstances, etc.) the Court on equitable basis awards the applicant 4,500 EUR in respect of non-pecuniary damage, plus any tax that may be chargeable on that amount.

B. Costs and expenses

40. According to the Court's case-law, an applicant is entitled to reimbursement of his costs and expenses only in so far as it has been shown that these have been actually and necessarily incurred and was reasonable as to quantum. In the present case, regard being had to the information in its possession and the above criteria, the Court considers it reasonable to award the sum claimed by the applicant for the proceedings before the Court, namely 344 RUR, plus any tax that may be chargeable on that amount.

C. Default interest

41. 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 and Article 1 of Protocol No. 1 on account of the delayed enforcement of the judgments of 30 August 2000, 26 February 2001, 21 May 2001, 14 December 2001, 17 June 2002 and 10 October 2002 rendered by the Novovoronezh District Court in the applicant's favour;

3. *Holds* that there has been a violation of Article 6 § 1 and Article 1 of Protocol No. 1 on account of the quashing, by way of supervisory review, of the judgment of 25 December 2000, rendered by the Novovoronezh District Court in the applicant's favour;

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, RUR 10,806 RUR (ten thousand eight hundred six Russian roubles) in respect of pecuniary damage, 4,500 EUR (four thousand five hundred euros) in respect of non-pecuniary damage, to be converted into Russian roubles a the rate applicable at the date of settlement, and 344 RUR (three hundred fourty four roubles) in respect of costs and expenses, 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;

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

Done in English, and notified in writing on 22 June 2006, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Søren NIELSEN
Registrar

Christos ROZAKIS
President