CONSEIL DE L'EUROPE

COUNCIL OF EUROPE

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

SECOND SECTION

CASE OF BLAGOVESTNYY v. RUSSIA

(Application no. 72558/01)

JUDGMENT

STRASBOURG

4 July 2006

FINAL

04/10/2006

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 Blagovestnyy 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 A. KOVLER,
Mrs A. MULARONI,
Mrs E. FURA-SANDSTRÖM,
Ms D. JOČIENĖ, *judges*,

and Mrs S. DOLLÉ, *Section Registrar*,

Having deliberated in private on 13 June 2006,

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

PROCEDURE

1. The case originated in an application (no. 72558/01) 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 Pavel Dmitriyevich Blagovestnyy ("the applicant"), on 5 January 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 28 February 2005 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

THE CIRCUMSTANCES OF THE CASE

4. The applicant was born in 1950 and lives in Elista, the Kalmyk Republic.

5. In the 1980s he took part in a rescue operation on the site of the Chernobyl nuclear disaster.

6. As of late 1996 the applicant has been in receipt of social benefits in this connection.

7. In June 1999 he brought a civil action against the Pension Fund of Elista because it had wrongly calculated his pension.

8. On 26 August 1999 the Elista Town Court dismissed the action.

9. On 25 November 1999 the Supreme Court of the Kalmyk Republic examined the applicant's appeal, quashed the judgment of 26 August 1999 and ordered the pension authority to:

> "calculate the [applicant's] pension based on the salary which he [had] received during his work in [Chernobyl], in the new circumstances, with regard to the salary which he [had] received on his main job, under conversion rates of 6.7 and 6 for the period established in Article 208 of the Civil Code."

10. On 27 January 2000, the Supreme Court supplemented its judgment of 25 November 1999 with an order to:

> "recalculate the [applicant's] pension for the period from 11 November 1997 to 25 November 1999, to pay the [applicant] the difference between the recalculated pension and the pension actually paid, and to increase the average salary, on the basis of which the pension [was] to be calculated, not only by the conversion rates of 6.7 and 6, but also by the minimum pension increments in accordance with section 11-3 of the Rules on Compensation."

11. Both decisions came into force immediately.

12. According to the applicant, the judgment translated into a monthly payment of 8,137.91 roubles ("RUR", approximately 284 euros, "EUR").

13. The authorities failed to execute the judgment.

14. Between July 2000 and April 2001 the applicant complained about the non-execution to a number of authorities.

15. The authorities replied that the pension had been recalculated, but it could not actually be paid because the Ministry of Finance had allocated no money for this purpose.

16. The arrears of RUR 513,407.62 (approximately EUR 15,126) due to the applicant were transferred to him by two instalments on 29 January and 25 April 2002 respectively.

THE LAW

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

17. The applicant complained that the non-enforcement of the judgment of 25 November 1999, as supplemented on 27 January 2000, violated his "right to court" under Article 6 § 1 of the Convention and his right to the peaceful enjoyment of his possessions as guaranteed in Article 1 of Protocol No. 1. These 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. Admissibility

18. The Government submitted that the judgment in question had been enforced. They asserted that the applicant was no longer a victim of the violations alleged as he had been afforded redress at the national level and that his application should be declared inadmissible. Furthermore, the Government informed the Court of the applicant's refusal to accept the settlement of the case on the terms proposed by the Government. By reference to this refusal and the admissibility decision in the case of *Aleksentseva and Others v. Russia* ((dec.), no. 75025/01 *et seq.*, 4 September 2003), the Government argued that the applicant was no longer a victim and had abused his right of individual petition. Therefore, they invited the Court to declare the application inadmissible.

19. The applicant disagreed with the Government's arguments and maintained his complaints.

20. As to the applicant's alleged loss of victim status, the Court reiterates that "a decision or measure favourable to the applicant is not in principle sufficient to deprive him of his status as a 'victim' unless the national authorities have acknowledged, either expressly or in substance, and then afforded redress for, the breach of the Convention" (see *Amuur v. France*, judgment of 25 June 1996, *Reports of Judgments and Decisions* 1996-III, p. 846, § 36, *Dalban v. Romania* [GC], no. 28114/95, § 44, ECHR 1999-VI, and *Rotaru v. Romania* [GC], no. 28341/95, § 35, ECHR 2000-V). Only when these conditions are satisfied does the subsidiary nature of the protective mechanism of the Convention preclude examination of an application (see, for example, *Jensen and Rasmussen v. Denmark* (dec.), no. 52620/99, 20 March 2003).

21. In the present case, the Court observes that the mere fact that the authorities complied with the judgment after a substantial delay cannot be

viewed as automatically depriving the applicant of his victim status under the Convention. The domestic authorities have not acknowledged that the applicant's Convention rights were unjustifiably restricted by the non-enforcement of the judgment and no adequate redress has been offered to the applicant for the delays, as required by the Court's case-law (see, e.g., *Petrushko v. Russia*, no. 36494/02, § 16, 24 February 2005).

22. Accordingly, the Court rejects the Government's objection as to the loss of victim status.

23. As regards the Government's other arguments, the Court observes that the parties' disagreement over the terms of a settlement is not a ground for declaring an application inadmissible. Whilst 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-...), this procedure is an exceptional one and is not, as such, intended to circumvent the applicant's opposition to a friendly settlement.

24. Furthermore, the Court observes that a distinction must be drawn between, on the one hand, declarations made in the context of strictly confidential friendly-settlement proceedings (Article 38 § 2 of the Convention and Rule 62 § 2 of the Rules of Court) and, on the other hand, unilateral declarations made by a respondent Government in public and adversarial proceedings before the Court.

25. The Court observes that the Government have failed to submit any formal statement capable of falling within the latter category and offering a sufficient basis for finding that the 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 Others v. Russia* (cited above), and *Akman v. Turkey* (striking out), no. 37453/97, §§ 23-24, ECHR 2001-VI).

26. The Court notes that the applicant's complaints are not manifestly ill-founded within the meaning of Article 35 § 3 of the Convention. Nor are they inadmissible on any other grounds. It must therefore be declared admissible.

B. Merits

27. The Court first notes that the judgment of 25 November 1999, as supplemented on 27 January 2000, remained without enforcement at least until 29 January 2002, i.e. for two years.

28. The Court has found violations of Article 6 § 1 of the Convention and Article 1 of Protocol No. 1 in many cases raising issues similar to the ones in the present application (see, among other authorities, *Burdov v. Russia*, no. 59498/00, ECHR 2002-III, and, more recently, *Petrushko*, cited above, or *Poznakhirina v. Russia*, no. 25964/02, 24 February 2005).

29. Having examined the material submitted to it, the Court notes that the Government did not put forward any fact or convincing 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 such a substantial period to comply with the enforceable judgment in the applicant's favour, the domestic authorities prevented him from receiving the money which he was entitled to receive under the final and binding judgment.

30. 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

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."

A. Damage

32. The applicant claimed a one-time payment of RUR 3,692,000 and the application of a coefficient of 1.581 to his present social payments in respect of pecuniary damage, and EUR 100,000 for non-pecuniary damage.

33. The Government submitted that the applicant's claims were excessive and that no award should be made as the judgments in the applicant's favour had in any event been enforced.

34. The Court does not discern any causal link between the violation found and the extensive pecuniary damage alleged; it therefore rejects this claim. However, it accepts that the applicant suffered some distress as a result of the violations found and therefore awards the applicant EUR 1,250 in respect of non-pecuniary damage, plus any tax that may be chargeable on that amount.

B. Costs and expenses

35. The applicant did not submit any claims under this head and the Court accordingly makes no award in respect of costs and expenses.

C. Default interest

36. 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, EUR 1,250 (one thousand two hundred and fifty euros) in respect of non-pecuniary damage, to be converted into Russian roubles at the rate applicable on the date of settlement, plus any tax that may be chargeable;
   (b) that from the expiry of the above-mentioned three months until settlement simple interest shall be payable on the above amount 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 4 July 2006, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

S. DOLLÉ	J.-P. COSTA
Registrar	President