CONSEIL DE L'EUROPE

COUNCIL OF EUROPE

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

FIRST SECTION

CASE OF BORSHCHEVSKIY v. RUSSIA

(Application no. 14853/03)

JUDGMENT

STRASBOURG

21 September 2006

FINAL

12/02/2007

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 Borshchevskiy 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 31 August 2006,

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

PROCEDURE

1. The case originated in an application (no. 14853/03) 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 Pavlovich Borshchevskiy, on 21 March 2003.

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

3. On 30 October 2003 the Court communicated the application to the respondent 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. On 13 December 2004 the Court put additional questions to the parties.

THE FACTS

I. THE CIRCUMSTANCES OF THE CASE

4. The applicant was born in 1941 and now lives in the Moscow Region.

A. Background information

5. In 1987 the applicant's employer, the State-owned construction and industrial holding "Mosenergostroy", seconded him for participation in the clean-up works at the site of the Chernobyl nuclear plant disaster. As a consequence of exposure to radioactive emissions, on 15 September 1989 the applicant was assigned to the second disability category.

6. Until March 1996 the applicant's former employer had paid him monthly compensation for health damage. In November 1994 the holding was privatised and re-organised into a public company OAO "SPK Mosenergostroy".

7. Between 2 March 1996 and 1 February 2002 the compensation was paid by the Stupino Department of the Pension Fund (now renamed as Department no. 25 of the Pension Fund, hereinafter "the Stupino Pensions Department").

8. Since 1 February 2002 the compensation has been paid by the Social Security Committee of the Stupino District Council in the Moscow Region.

B. Judicial proceedings

9. In 1997 the applicant brought a civil action against his former employer, "Mosenergostroy", claiming that the amount of the compensation paid had been incorrectly calculated in the period from 1989 to 2 March 1996.

10. On 15 April 1997 the Korenovskiy District Court of the Krasnodar Region granted his claim in part.

11. On 7 July 1997 the Krasnodar Regional Court quashed the judgment of 15 April 1997 and remitted the matter for a new examination on the ground that the obligation to pay compensation for health damage had been transferred to the social security authorities.

12. On 8 September 1997 the Korenovskiy District Court joined the Stupino Pensions Department as a co-defendant to the proceedings.

13. On 18 December 1997 the Korenovskiy District Court of the Krasnodar Region granted the applicant's claims against his former employer and established that the applicant had been entitled to monthly payments of RUR 15,035. No award against the Stupino Pensions Department was made because the applicant apparently objected to its being joined as a co-defendant. By interim decision (*opredelenie*) of 9 December 2000, an arithmetical error in the judgment was corrected.

14. In 2002 the applicant asked the Korenovskiy District Court to supplement the operative part of the judgment of 18 December 1997 with a reference to the fact that from 2 March 1996 the Stupino Pensions Department should have been the legal successor to his former employer in respect of payment of compensation for the health damage. The Stupino

Pensions Department objected to the applicant's request, claiming that it had been lodged outside the time-limit and that its granting would determine a matter that fell outside the scope of the judgment of 18 December 1997, namely the issue of its succession to the obligations of the applicant's former employer.

15. By judgment (*reshenie*) of 5 April 2002, the Korenovskiy District Court amended the judgment of 18 December 1997. It established that from 2 March 1996 the Stupino Pensions Department should have paid compensation to the applicant in lieu of his applicant's former employer, in the same amount (RUR 15,035), with subsequent adjustment for increases in the minimum monthly wage. The judgment of 5 April 2002 was not appealed against.

C. Enforcement proceedings

16. It appears that the Stupino Pensions Department continued to underpay the applicant. He asked the Korenovskiy District Court to clarify the procedure for enforcement of the judgment of 5 April 2002 and to issue him with a writ of execution.

17. On 14 October 2002 the Korenovskiy District Court, noting that the defendant had been duly notified of the hearing but failed to appear, found that the Stupino Pensions Department had not complied with the judgment of 5 April 2002 and continued to pay the applicant significantly smaller amounts. By decision (*opredelenie*) of that date, the court ordered that the Stupino Pensions Department pay the applicant, at the expense of the Treasury, the amounts outstanding for the period from 2 March 1996 to 1 July 2002 to the total of RUR 5,412,251.81 and issued him with a writ of execution. The decision of 14 October 2002 was not appealed against.

18. The applicant submitted the writ to the Ministry of Finance.

19. On 5 February 2003 the Ministry of Finance forwarded the writ to the Ministry of Labour and Social Development, which, in turn, forwarded it to the Moscow Regional Social Security Committee.

20. On 13 February 2003 the Moscow Regional Social Security Committee advised the applicant that his writ of execution had been accepted for enforcement. However, enforcement was only possible "within the funding limits and budgetary constraints" and "in the chronological order as [writs of execution] had been issued by courts".

21. On 9 June 2003 a court bailiff of the Moscow Regional bailiffs' service opened enforcement proceedings against the Stupino Pensions Department and invited it to execute the judicial decision within five days.

22. On 13 August 2003 the Korenovskiy District Court heard the application of the Stupino Pensions Department for an amendment of the procedure for enforcement of the judgment of 5 April 2002 and determined as follows:

> "Having regard to the difficult social situation in the Russian Federation in the current year... the court considers it necessary to recover 5,412,251.81 Russian roubles in [the applicant's] favour from the Russian Treasury in twenty monthly instalments... It has been established that the deferred instalments shall be guaranteed against inflation in accordance with the Russian laws..."

23. On 1 September 2003 the Korenovskiy District Court clarified its decision of 13 August 2003, indicating that the instalments should be equal and that the decision had immediate effect.

24. According to the Government, on 28 October 2003 the Krasnodar Regional Court quashed the decision of 13 August 2003 and remitted the matter for a new examination. On 10 December 2003 the Korenovskiy District Court refused the application by the Stupino Pensions Department for a change of the debtor and stay of enforcement. Copies of these decisions have not been made available to the Court and their precise contents are not known.

25. On 2 February 2004 the Stupino Pensions Department asked the Moscow Pensions Fund for the resources necessary to pay the debt to the applicant. On 5 February 2004, in response to an inquiry by a bailiff into the progress of the request, the Moscow Pensions Fund replied that they had asked the Ministry of Labour and Social Development to allocate the necessary amount (RUR 5,412,251.81).

26. On 6 February 2004 the Supreme Court of the Russian Federation examined "an application by Pensions Department no. 25 for supervisory review of the Korenovskiy District Court's judgment of 5 April 2002... which contained a request for a stay of enforcement". Pursuant to Article 381 §§ 2 (1) and 4 of the Code of Civil Procedure, it decided to obtain the case file and suspended enforcement proceedings.

27. On 20 February 2004 the bailiffs received the Supreme Court's decision and stayed the enforcement proceedings.

D. Quashing of the judgment by way of supervisory review

28. On 21 May 2004 the Supreme Court of the Russian Federation examined "an application by the Head of Pensions Department no. 25 Ms L[.] for supervisory review of the case". The Supreme Court accepted as meritorious Ms L.'s argument that that the Korenovskiy District Court had not been competent to issue the judgment of 5 April 2002. Pursuant to Article 384 of the Code of Civil Procedure, it remitted the supervisory-review application for examination on its merits by the Presidium of the Krasnodar Regional Court.

29. On 22 July 2004 the Presidium of the Krasnodar Regional Court quashed, by way of supervisory review, the judgment of 5 April 2002 and remitted the applicant's request for supplementing of the operative part of

the judgment of 18 December 1997 to the Korenovskiy District Court for a new examination.

30. On 13 September 2004 the Korenovskiy District Court determined that it had issued the judgment of 5 April 2002 in excess of jurisdiction because the Code of Civil Procedure had not provided for issuing of judgments in such situations.

II. RELEVANT DOMESTIC LAW AND PRACTICE

A. The RSFSR Code of Civil Procedure (in force until 1 February 2003)

31. A judicial decision became legally binding upon expiry of the time-limit for lodging an appeal if no such appeal had been lodged (Article 208). The time-limit for lodging an appeal was set at ten days (Article 284).

32. A judgment was to be enforced after it had become legally binding, unless it provided for immediate enforcement (Article 209).

B. Code of Civil Procedure of the Russian Federation

33. The Code of Civil Procedure of the Russian Federation ("the new Code") was enacted on 14 November 2002 and replaced the RSFSR Code of Civil Procedure ("the old Code") from 1 February 2003. It provides as follows:

Article 362. Grounds for quashing or altering judicial decisions by appeal courts

"1. The grounds for quashing or altering judicial decisions by appeal courts are:

...

(4) violation or incorrect application of substantive or procedural legal provisions."

Article 376. Right to apply to a court exercising supervisory review

"1. Judicial decisions that have become legally binding, with the exception for judicial decisions by the Presidium of the Supreme Court of the Russian Federation, may be appealed against... to a court exercising supervisory review, by parties to the case and by other persons whose rights or legal interests have been adversely affected by these judicial decisions.

2. Judicial decisions may be appealed against to a court exercising supervisory review within one year after they became legally binding..."

Article 381. Examination of an application for supervisory review

"2. Having examined an application for supervisory review, the judge issues a decision on –

(1) obtaining the case file if there exist doubts as to the lawfulness of the judicial decision...

4. If a decision to obtain the file has been made, the judge may suspend enforcement of the judicial decision until the supervisory-review proceedings have been completed..."

Article 384. Decision on remitting the case for examination on the merits by a supervisory-review court

"1. A judicial decision on remitting the case for examination on the merits by a supervisory-review court must contain:

(7) a reasoned description of the grounds for remitting the case for examination on the merits..."

Article 387. Grounds for quashing or altering judicial decisions by way of supervisory review

"Judicial decisions of lower courts may be quashed or altered by way of supervisory review on the grounds of substantial violations of substantive or procedural legal provisions."

Article 390. Competence of the supervisory-review court

"1. Having examined the case by way of supervisory review, the court may...

(2) quash the judicial decision issued by a court of first, second or supervisory-review instance in whole or in part and remit the matter for a fresh examination;...

(5) quash or alter the judicial decision issued by a court of first, second or supervisory-review instance and issue a new judicial decision, without remitting the matter for a fresh examination, if substantive legal provisions have been erroneously applied or interpreted."

C. Resolution of the Plenary Supreme Court of the Russian Federation

34. Resolution no. 2 of the Plenary Supreme Court of the Russian Federation of 20 January 2003, "On certain issues arising in connection with adoption and coming into force of the Code of Civil Procedure of the Russian Federation", provided that –

"22. ...The [one-year] time-limit for lodging an application for supervisory review of judicial decisions that became legally binding before 1 February 2003, shall run from 1 February 2003."

D. Case-law review of civil cases in the second quarter of 2004 by the Supreme Court (Resolution of 6 October 2004)

35. In response to question no. 4 concerning calculation of the time-limit for lodging an application for supervisory review of judicial decisions that became legally binding before 1 February 2003, the Presidium of the Supreme Court clarified that the final date for lodging such an application should be 2 February 2004.

E. Enforcement Proceedings Act (Law of 21 July 1997)

36. Once instituted, enforcement proceedings must be completed within two months upon receipt of the writ of execution by the bailiff (Section 13).

THE LAW

I. ALLEGED VIOLATION OF ARTICLE 6 § 1 OF THE CONVENTION AND ARTICLE 1 OF PROTOCOL NO. 1 ON ACCOUNT OF THE QUASHING OF THE JUDGMENTS

37. The Court will firstly examine the applicant's complaints concerning the quashing of the judgment of 5 April 2002 by way of supervisory-review proceedings. The applicant complained that the act of quashing had violated his "right to a court" under Article 6 § 1 of the Convention and his right to the peaceful enjoyment of possessions under Article 1 of Protocol No. 1. The relevant parts of these provisions read as follows:

Article 6 § 1

"In the determination of his civil rights and obligations ..., everyone is entitled to a fair ... hearing within a reasonable time... 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...”

A. Admissibility

38. The Court considers 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

1. Arguments by the parties

39. The Government submitted that the Presidium of the Krasnodar Regional Court quashed the judgment of 5 April 2002 with a view to correcting the “judicial error” committed by the District Court. It did not issue a new judgment but rather remitted the matter for a new examination. The Government lay special emphasis on the fact that, by contrast with the *Ryabykh* case (see *Ryabykh v. Russia*, no. 52854/99, § 54, ECHR 2003-IX), the supervisory-review proceedings had been initiated by a party to the case, Department no. 25 of the Pension Fund for Moscow and the Moscow Region (the former “Stupino Pensions Department”). They concluded that there had been no violation of the applicant’s rights under Article 6 § 1 of the Convention or Article 1 of Protocol No. 1.

40. The applicant replied that the judgment of 5 April 2002 had been quashed two years after it had become binding. Neither the Presidium’s decision nor other judicial act refer to any “judicial error” that had been allegedly committed by the District Court in the original judgment. The applicant considered that the quashing of that judgment had irremediably impaired the principle of legal certainty and violated his right to peaceful enjoyment of possessions.

2. The Court’s assessment

(a) Article 6 of the Convention

41. The Court reiterates that the right to a fair hearing before a tribunal as guaranteed by Article 6 § 1 of the Convention must be interpreted in the light of the Preamble to the Convention, which declares, in its relevant part, the rule of law to be part of the common heritage of the Contracting States. One of the fundamental aspects of the rule of law is the principle of legal certainty, which requires, among other things, that where the courts have

finally determined an issue, their ruling should not be called into question (see *Brumărescu v. Romania*, judgment of 28 October 1999, *Reports of Judgments and Decisions* 1999-VII, § 61).

42. This principle insists that no party is entitled to seek re-opening of the proceedings merely for the purpose of a rehearing and a fresh decision of the case. Higher courts' power to quash or alter binding and enforceable judicial decisions should be exercised for correction of fundamental defects. The mere possibility of two views on the subject is not a ground for re-examination. Departures from that principle are justified only when made necessary by circumstances of a substantial and compelling character (see, *mutatis mutandis*, *Ryabykh v. Russia*, no. 52854/99, § 52, ECHR 2003-X; and *Pravednaya v. Russia*, no. 69529/01, § 25, 18 November 2004).

43. 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 and binding judicial decision to be quashed by a higher court on an application made by a State official whose power to lodge such an application is not subject to any time-limit, with the result that the judgments were liable to challenge indefinitely (see *Ryabykh*, cited above, §§ 54-56).

44. The Court has found a violation of an applicant's "right to a court" guaranteed by Article 6 § 1 of the Convention in many cases in which a judicial decision that had become final and binding, was subsequently quashed by a higher court on an application by a State official whose power to intervene was not subject to any time-limit (see *Roseltrans v. Russia*, no. 60974/00, §§ 27-28, 21 July 2005; *Volkova v. Russia*, no. 48758/99, §§ 34-36, 5 April 2005; and *Ryabykh*, cited above, §§ 51-56).

45. In the present case the judgment of 5 April 2002 in the applicant's favour was set aside by the way of a supervisory review on the ground that the District Court had had no jurisdiction over the matter. The Court has to assess whether the power to conduct a supervisory review was exercised by the authorities so as to strike, to the maximum extent possible, a fair balance between the interests of the individual and the need to ensure the proper administration of justice (see, *mutatis mutandis*, *Nikitin v. Russia*, no. 50178/99, §§ 57 and 59, ECHR 2004-...).

46. The Government distinguished the present application from the above-mentioned cases on account of the fact that the supervisory-review procedure had been initiated by the Stupino Pensions Department, that is a party to the case, rather than a State official. The Court, however, is not persuaded that this distinction is of crucial importance for its analysis.

47. The Court notes, firstly, an exceptionally long period of time – more than two years and three months – that lapsed from the date the judgment in

the applicant's favour had become binding to the date the supervisory-review proceedings were instituted. It observes that the RSFSR Code of Civil Procedure set no time-limit for lodging an application for supervisory review thus permitting a final judgment to be challenged indefinitely (see *Ryabykh*, cited above). The supervisory-review proceedings in the present case were instituted under the new Code of Civil Procedure which limited the time-limit to one year (Article 376 § 2, cited in paragraph 33 above). However, the transitional provisions governing the entry into force of the new Code of Civil Procedure, as they were clarified by the Plenary Supreme Court of the Russian Federation, introduced the possibility for lodging an application for supervisory review of any judgment that had become legally binding before 1 February 2003 (see paragraphs 34 and 35 above). In the present case the Stupino Pensions Department availed itself of this opportunity to challenge the judgment in the applicant's favour that had become binding twenty-five months earlier.

48. The Court stresses that a binding and enforceable judgment should only be quashed in exceptional circumstances rather than for the sole purpose of obtaining a different decision in the case (see the case-law cited in paragraph 42 above). In the Russian legal system, the grounds for quashing or altering judgments by appeal courts largely overlap with those for quashing or altering judgments by way of supervisory review (compare Article 362 § 1 (4) and Article 387 of the Code of Civil Procedure). Thus, a situation where the binding judgments in the applicant's favour were called into question could have been avoided, had the Department lodged an ordinary appeal. It is noteworthy, however, that the Russian Codes of Civil Procedure, both that of RSFSR and that of the Russian Federation, permitted a party to apply for supervisory review even if it had not previously exhausted an ordinary appeal. In the present case the Department failed to exercise its right to lodge an ordinary appeal on at least two occasions and twice permitted the statutory ten-day time-limit to expire without challenging either the judgment of 5 April 2002 or the decision of 14 October 2002 which concerned the same matter. In fact, the Department's representative did not appear at the hearing on 14 October 2002, although – as the District Court noted – the Department had been duly notified thereof. The Government did not point to any exceptional circumstances that would have prevented the Department from exposing its arguments to the District Court or making use of an ordinary appeal in good time.

49. Finally, the Court notes that the Government did not produce a copy of the Department's application for supervisory review. It appears, however, that there were two distinct applications. The first one was filed by the Department and contained a request for suspension of enforcement proceedings (see paragraph 26 above), whereas the second application was introduced by its head and exposed certain arguments on the merits (see

paragraph 28 above). In any event, it does not appear that either application was communicated to the applicant with a view to obtaining his comments because the new Code of Civil Procedure did not make a provision for communicating these documents to him.

50. Having regard to the above considerations, the Court finds that, by granting the Department's request to set aside the judgment of 5 April 2002, the Presidium of the Krasnodar Regional Court infringed the principle of legal certainty and the applicant's "right to a court" under Article 6 § 1 of the Convention. There has accordingly been a violation of that Article.

(b) Article 1 of Protocol No. 1

51. The Court reiterates that the existence of a debt confirmed by a binding and enforceable judgment furnishes the judgment beneficiary with a "legitimate expectation" that the debt would be paid and constitutes the beneficiary's "possessions" within the meaning of Article 1 of Protocol No. 1. Quashing of such a judgment amounts to an interference with his or her right to peaceful enjoyment of possessions (see, among other authorities, *Brumărescu*, cited above, § 74; and *Androsov v. Russia*, no. 63973/00, § 69, 6 October 2005).

52. The Government denied that there had been a violation of Article 1 of Protocol No. 1 on account of quashing of an enforceable judgment in the applicant's favour. They pointed out that the applicant continued to receive monthly a certain amount in compensation for the damage to his health.

53. As it has not been alleged that the rules of civil procedure governing quashing of judicial decisions were breached, the Court assumes that the interference was lawful. It is not necessary to determine whether it pursued a legitimate aim because, in any event, it was disproportionate to whatever aim for the following reasons.

54. The Court observes that the proceedings concerned compensation for the damage to the applicant's health caused during his participation in the clean-up operation at the site of the Chernobyl nuclear plant. A substantial amount, representing the unpaid emoluments and interest thereon, was recovered by a domestic court from the State pensions authority. The quashing of the enforceable judgment frustrated the applicant's reliance on a binding judicial decision and deprived him of an opportunity to receive the money he had legitimately expected to receive (see paragraph 30 above). In these circumstances, the Court considers that the quashing of the judgment of 5 April 2002 by way of supervisory review placed an excessive burden on the applicant and was therefore incompatible with Article 1 of the Protocol No. 1. There has therefore been a violation of that Article.

II. ALLEGED VIOLATION OF ARTICLE 6 § 1 OF THE CONVENTION AND ARTICLE 1 OF PROTOCOL NO. 1 ON ACCOUNT OF LENGTHY NON-ENFORCEMENT OF THE JUDICIAL DECISIONS

55. The applicant further complained about the non-enforcement of the judicial decisions of 5 April and 14 October 2002. He relied on Article 6 of the Convention and Article 1 of Protocol No. 1, cited above.

A. Admissibility

56. Referring to the re-opening of the proceedings by way of supervisory review (see paragraph 26 et seq. above), the Government submitted that "it [did] not seem possible to conclude that the Convention provisions [had] been respected" because the applicant's complaints could only be examined by the Court after a final judicial decision would have been issued.

57. The Court observes that the issue to be examined is whether the judicial decisions in the applicant's favour were enforced within a "reasonable time". Accordingly, it is necessary to ascertain that the judicial decisions were "enforceable". In the instant case, as no appeal was lodged against the judicial decisions of 5 April and 14 October 2002, in accordance with the RSFSR Code of Civil Procedure then in force the judicial decisions became legally binding and enforceable ten days after their delivery (see paragraphs 31 and 32 above). From that moment on, it was incumbent on the debtor, a State agency, to comply with them. On 14 October 2002 the District Court issued the applicant with a writ of execution and thereafter a court bailiff opened enforcement proceedings. The Supreme Court's decision of 6 February 2004 had the effect of staying the enforcement proceedings but did not affect the validity of the underlying judicial decisions which remained unenforced on that date (see paragraph 26 above). The launching of the supervisory-review procedure could not, in itself, extinguish the debtor's obligation to comply with an enforceable judicial decision which obligation existed at least until 22 July 2004 when the Krasnodar Regional Court quashed the judgment of 5 April 2002.

58. It follows that at least between 5 April 2002 and 22 July 2004 the judicial decisions in the applicant's favour were "enforceable" and it was incumbent on the State agency to abide by their terms. In any event, the Court reiterates that the quashing of a judgment in a manner which has been been found to have been incompatible with the principle of legal certainty and the applicant's "right to a court" cannot be accepted as a justification for the failure to enforce that judgment (see *Sukhobokov v. Russia*, no. 75470/01, § 26, 13 April 2006). Accordingly, the Government's objection must be dismissed.

59. The Court notes that the 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

60. The Government challenged the legal grounds on which the judgment of 5 April 2002 had been premised. They made no comments on the merits of the non-enforcement complaint.

61. The applicant maintained his claims.

62. Turning to the instant case, the Court notes that the Government did not contest the State responsibility for the debts of the Stupino Pensions Department arising from the judicial decisions in the applicant's favour (see, by contrast, *Gerasimova v. Russia* (dec.), no. 24669/02, 16 September 2004). As noted above, the judgment of 5 April 2002 became enforceable ten days later, on 15 April 2002. From that day on and at least until 6 February 2004 when its execution was formally stayed by the Supreme Court's decision, it was incumbent on the State agency to comply with it. The Court observes, however, that the judgment of 5 April 2002 remained unenforced, even after the decision of 14 October 2002 was taken to make up for the debtor's failure to abide by the initial one.

63. 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, e.g., *Burdov v. Russia*, no. 59498/00, ECHR 2002-III; and, more recently, *Poznakhirina v. Russia*, no. 25964/02, 24 February 2005; *Wasserman v. Russia (no. 1)*, no. 15021/02, 18 November 2004; and *Sukhobokov*, cited above).

64. 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. They did not advance any justification for the delay in enforcement. 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 judicial decisions in the applicant's favour the domestic authorities violated his "right to a court" and prevented him from receiving the money which he was entitled to receive.

65. The Court finds accordingly that there was a violation of Article 6 § 1 of the Convention and Article 1 of Protocol No. 1 as regards non-enforcement of the judicial decisions in the applicant's favour.

III. APPLICATION OF ARTICLE 41 OF THE CONVENTION

66. 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

67. The applicant claimed 160,600 euros (EUR) in respect of pecuniary damage which represented the principal amount due to him under the judicial decisions of 5 April and 14 October 2002 and interest thereon. He also claimed EUR 3,000 in respect of non-pecuniary damage.

68. The Government considered that no pecuniary damage should be awarded because the judicial decisions had been quashed. As to the claim for non-pecuniary damage, the applicant did not produce evidence showing that he had suffered distress because of the actions of State authorities.

69. The Court recalls that in the instant case it found a violation of Article 6 § 1 of the Convention and Article 1 of Protocol No. 1, in that the judicial decisions in the applicant's favour had remained unenforced for a long period of time and had been subsequently quashed. The applicant was thereby prevented from receiving the money he had legitimately expected to receive. There has been therefore a causal link between the violations found and the applicant's claim for the pecuniary damage. At the time the judicial decisions in the applicant's favour were issued, the award was approximately equivalent to EUR 154,500 at the official exchange rate (see paragraph 17 above). Moreover, further pecuniary loss must have been occasioned on account of the period that elapsed from the time the judicial decisions had become enforceable until the Court's award (see *Grinberg v. Russia*, no. 23472/03, § 39, 21 July 2005). The applicant's assessment of that loss in the amount of EUR 6,100 does not appear excessive or unreasonable. In any event, the Government did not suggest a different method for calculation of interest. Accordingly, the Court awards the applicant EUR 160,600 in respect of the pecuniary damage, plus any tax that may be chargeable on that amount.

70. The Court further considers that the applicant suffered distress because of the State authorities' failure to enforce the judicial decisions in his favour and their subsequent decision to quash them. The Court takes into account the amount and nature of the award in the instant case, that is compensation for work-related disability, and the period of the authorities' inactivity. Making its assessment on an equitable basis, it awards the applicant the entire amount he claimed in respect of non-pecuniary damage, that is EUR 3,000, plus any tax that may be chargeable on it.

B. Costs and expenses

71. The applicant did not claim costs and expenses. Accordingly, there is no call to make an award under this head.

C. Default interest

72. 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 of the Convention and Article 1 of Protocol No. 1 on account of the quashing of the judgment of 5 April 2002 by way of supervisory review;

3. *Holds* that there has been a violation of Article 6 of the Convention and Article 1 of Protocol No. 1 on account of the prolonged non-enforcement of the judicial decisions of 5 April and 14 October 2002;

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, the following amounts, to be converted into Russian roubles at the rate applicable at the date of settlement:
      (i) EUR 160,600 (one hundred sixty thousand six hundred euros) in respect of pecuniary damage;
      (ii) EUR 3,000 (three thousand euros) in respect of non-pecuniary damage;
      (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.

Done in English, and notified in writing on 21 September 2006, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Søren NIELSEN Registrar	Christos ROZAKIS President