



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

FIRST SECTION

CASE OF SOBELIN AND OTHERS v. RUSSIA

*(Applications nos. 30672/03, 30673/03, 30678/03, 30682/03,
30692/03, 30707/03, 30713/03, 30734/03, 30736/03, 30779/03,
32080/03 and 34952/03)*

JUDGMENT

STRASBOURG

3 May 2007

FINAL

03/08/2007

*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 Sobelin and Others v. Russia,

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

Mr C.L. ROZAKIS, *President*,

Mr L. LOUCAIDES,

Mr A. KOVLER,

Mrs E. STEINER,

Mr K. HAJIYEV,

Mr D. SPIELMANN,

Mr G. MALINVERNI, *judges*,

and Mr S. NIELSEN, *Section Registrar*

Having deliberated in private on 5 April 2007,

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

PROCEDURE

1. The case originated in twelve applications (nos. 30672/03, 30673/03, 30678/03, 30682/03, 30692/03, 30707/03, 30713/03, 30734/03, 30736/03, 30779/03, 32080/03 and 34952/03) 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 group of Russian nationals listed in the attached table (“the applicants”).

2. The applicants were represented by Mrs O. Suprunova, a lawyer practising in Bataysk. The Russian Government (“the Government”) were represented by Mr P. Laptev, Representative of the Russian Federation at the European Court of Human Rights.

3. The applicants alleged, in particular, that the quashing of the final judgments of 21 and 22 January 2003 in their favour violated Article 6 of the Convention and Article 1 of Protocol No. 1 to the Convention. They also complained about the non-enforcement of those judgments.

4. On 19 May 2005 Mr Stepanenko, one of the applicants (application no. 34952/03), died.

5. On 11 April 2006 the Court, acting pursuant to Article 29 § 3 of the Convention, taken in conjunction with Article 54A § 3 of the Rules of Court, decided that the merits of the applications should be considered at the same time as their admissibility.

6. On 27 May 2006 Ms Stepanenko informed the Court about the death of her husband, Mr Stepanenko. She expressed the wish to pursue the application in the capacity of the applicant's heir.

7. On 5 April 2007 the Chamber decided to join the proceedings in the above twelve applications (Rule 42 § 1).

THE FACTS

I. THE CIRCUMSTANCES OF THE CASE

A. Background

8. The applicants live in the town of Bataysk of the Rostov Region.

9. In 1986 the applicants took part in the emergency operation at the Chernobyl nuclear plant. As a result they suffered from extensive exposure to radioactive emissions. The applicants underwent medical examinations which established the link between their poor health and their involvement in the Chernobyl events. Each applicant was consequently granted status of a disabled person and awarded a monthly pension and a special “food allowance” from the State, to be adjusted once a year in line with the minimum subsistence amount (*величина прожиточного минимума*).

10. At a certain moment in 2001 the social security authorities ceased to increase regularly the amounts of the pensions and “food allowances” due to the applicants in connection with their disabilities. Instead, they started to receive their pensions in a fixed amount (2,800 Russian roubles (RUR) per person), which was less than they expected. Presuming that that practice was illegal, the applicants brought proceedings against the regional social security office (“the defendant”) claiming the increase of the pensions and the “food allowances” in line with the increase of the minimum subsistence amount during the relevant period.

B. First set of court proceedings

11. On 21 January 2003 the Bataysk Town Court of the Rostov Region (“the Town Court”) rendered a judgment ordering the increase of the pension and the “food allowance” due to Mr Vasilenko, one of the applicants. In re-calculating the amounts to be paid the court applied the multiplier of 1.92 reflecting the increase of the minimal subsistence amount in the Rostov Region and based on the data provided by the regional committee on statistics. As a result, the amounts to be received by Mr Vasilenko on the monthly basis from the social security office increased to RUR 5,376: RUR 4,800 on account of the disability pension plus RUR 576 on account of the “food allowance”. The court ordered the defendant to pay the applicant the recalculated amounts as from 1 January 2002, less the sums already paid.

12. On 22 January 2003 the Town Court rendered a similar judgment ordering the increase of the pensions and “food allowances” in respect of other applicants.

13. The defendant appealed against the judgments of 21 and 22 January 2003 challenging, among other things, the multiplier of 1.92 applied by the first-instance court. They also claimed that the law only provided for the increase of the disability pension in line with the cost of living, but not the “food allowance”.

14. On 16 April 2003 the Rostov Regional Court (“the Regional Court”) upheld the judgments of 21 and 22 January 2003 in full, dismissing the arguments of the defendant. The enforcement proceedings were opened.

15. On 23 April 2003 the President of the Bataysk Town Court wrote a letter to the Ministry of Labour and Social Development of the Rostov Region requesting statistical information about the cost of living index in the Rostov Region at the relevant period of time.

16. On 21 July 2003, upon the request of the defendant, the Bataysk Town Court rectified its own judgment of 22 January 2003 as regards Mr Velichko, one of the applicants. The court held that since Mr Velichko belonged to the “third category of disability” (the mildest form of disability, according to the Russian classification), the amount of his monthly pensions for 2002 should be RUR 2,112. The court held that in 2003 the applicant's pension should amount to RUR 2,661.12 per month.

C. First supervisory review complaint

17. On 13 May 2003 the defendant appealed to the Regional Court by way of supervisory review seeking to quash the judgments of 21 and 22 January 2003, as upheld on 16 April 2003.

18. On 14 May 2003 the Ministry of Labour and Social Development of the Rostov Region replied to the letter of the President of the Bataysk Town Court of 23 April 2003. According to the Ministry, the cost of living index in the Rostov Region was 1.25 for 2002 and 1.26 for 2003.

19. On 30 June 2003 the judge rapporteur refused to initiate the supervisory review proceedings and to remit the case for examination on the merits to the Presidium of the Rostov Regional Court (“the Presidium”).

D. Second supervisory review complaint

20. On 14 July 2003 the defendant complained to the President of the Regional Court about the judgments of 21 and 22 January 2003, as upheld on appeal, and the judge rapporteur's decision of 30 June 2003 rejecting their previous application for supervisory review. They also requested that the enforcement proceedings be suspended pending the examination of the new supervisory review appeal.

21. The defendant argued, in particular, that the multiplier 1.92 applied by the courts at two instances was inappropriate, since it only reflected the growth of the cost of living in one of the towns of the Rostov Region. The defendant insisted that the right multiplier, reflecting situation in the whole Rostov Region, was 1.25. Furthermore, the statistical information referred to by the courts had not been properly examined at the hearing. They also indicated that the law did not provide for a recalculation of the amount of the “food allowance”.

22. On 6 August 2003 the judge rapporteur of the Regional Court requested two case files (concerning the judgments of 21 and 22 January 2003) from the Bataysk Town Court.

23. On 19 September 2003 Judge Tkachev, the President of the Regional Court, initiated the review of the judgment of 22 January 2003, as upheld on 16 April 2003. The President's decision of 19 September 2003 referred to the arguments adduced by the defendant but offered no explanation as to the grounds for overruling the judge rapporteur's decision of 30 June 2003. The President only indicated that the multiplier 1.92 applied by the courts at two instances had not been supported by references to the appropriate legislation. As a result, the case was transferred to the Presidium for an examination on the merits.

24. On 24 October 2003 the judge of the Regional Court initiated the review of the judgment of 21 January 2003, as upheld on 16 April 2003. The decision of the judge was almost identical to the decision of the President of the Regional Court of 19 September 2003.

E. The reopening of the case

25. On 4 November 2003 the applicants were informed about the date and venue of the hearing of their cases by the Presidium.

26. On 13 November 2003 the Presidium quashed the judgment of 22 January 2003, as upheld on appeal, stating that the first and second instance courts' calculation of the minimum subsistence amount based on the multiplier 1.92 had been insufficiently supported by evidence. The Presidium noted that in support of its findings the lower courts referred to a letter of the Deputy Minister of Labour; however, the original of that letter was missing and the court had only a photocopy of it. The Presidium further noted that the lower courts had not verified the authenticity of that letter, and, therefore, their findings had been based on inadmissible evidence. The Presidium also held that the law entitled Chernobyl pensioners to the increase of their pensions, but not the “food allowance”. The case was remitted to the first instance court for a fresh examination.

27. On 4 December 2003 the Presidium, headed by the Judge Tkachev, quashed the judgment of 21 January 2003, as upheld on appeal, remitting

the case to the first instance court for a fresh examination. The grounds for quashing were the same as in the decision of 13 November 2003.

F. Second round of court proceedings

28. On 25 December 2003 the Bataysk Town Court examined the cases of all the applicants, except for Mr Nuzhdov. In the course of the proceedings the court established that the disability pension should have been multiplied by 1.25 in 2002 and by 1.26 for 2003. The applicants maintained that they had to accept that multiplier.

29. As a result, the court held that the amount due to the applicants for 2002 was RUR 3,125 per month and per person. Starting from March 2003 the pension should have amounted to RUR 3,937.50 per month, except for Mr Velichko, whose pension was RUR 1,732.50. The court ordered the social security authorities to compensate the applicants for previous underpayments and, starting from 2004, pay them RUR 3,937.50 (RUR 1,732.50 as regards Mr Velichko) monthly, with subsequent indexation.

30. On 14 January 2004 the Bataysk Town Court examined the case of Mr Nuzhdov. The judgment in his case was identical to the judgment in the case of other applicants of 25 December 2003. On the same day the Bataysk Regional Court rectified its judgment on 25 December 2003 correcting an arithmetic error in the calculation of the outstanding amounts awarded to the applicants.

31. The judgments of 25 December 2003 and 14 February 2004 were not appealed against and became final. On 28 January 2004 the social security authorities transferred to the applicants' accounts the amounts awarded by the town court for previous underpayments.

32. It appears that in the following years some of the applicants were involved in other civil proceedings concerning the recalculation of their pensions and benefits in line with the cost of living.

II. RELEVANT DOMESTIC LAW AND PRACTICE

A. Domestic law as it stood at the material time

33. On 1 February 2003 the Code of Civil Procedure of the Russian Federation ("the CCivP") entered into force introducing, in particular, an amended system of supervisory review.

34. CCivP, in the relevant parts, provides as follows:

Article 362. Grounds for quashing or modifying the judgment by the court of appeal

1. The judgment can be quashed by the court of appeal (*v kassatsionnom poryadke*) on the following grounds:

- 1) Incorrect establishment of facts relevant for the case;
- 2) Lack of evidentiary support for the facts, established by the first instance court and relevant for the case;
- 3) Inconsistency between the facts, relied by the court, and its conclusions;
- 4) Breach or incorrect application of the material or procedural law. ...

Article 363. Breach or incorrect application of material law

The material law was breached if:

The court did not apply the law which had to be applied;

The court applied the law which had not to be applied;

The court misinterpreted the law.

Article 364. Breach or incorrect application of procedural law

1. Breach or incorrect application of procedural law may lead to the quashing of the judgment if that breach or misapplication led or could have led to incorrect determination of the case.

2. The judgment should be quashed irrespective of the arguments [of the appellant] in the following instances:

- 1) Unlawful composition of the court which determined the case;
- 2) The case was examined in absence of a party to the proceedings, which had not been informed about the venue and the time of the hearing;
- 3) The rules concerning the language of the proceedings were breached;
- 4) The court determined rights and obligations of persons which had not been invited to take part in the proceedings;
- 5) The judgment was not signed by the judge ...
- 6) The judgment was rendered by judges other than those who had heard the case;
- 7) The hearing record was missing;
- 8) The secrecy of judge's deliberations was breached.

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

“1. Judicial decisions that have become legally binding ... may be appealed against... to a court exercising supervisory review by parties to the case and by other persons whose rights and legal interests had 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 379. Proceedings in a supervisory review court after an application for supervisory review was lodged

“A President or Deputy President of the respective court transfers the application for supervisory review ... to a judge of this court for examination.”

Article 381. Examination of an application for supervisory review

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

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

(2) refusing to obtain the case file if the arguments in the application for supervisory review may not, in accordance with the federal law, result in quashing of the judicial decision.

...

6. The President of the...regional...court... may disagree with the judge's decision refusing to obtain the case file. In such case the President issues his own decision on obtaining the case file.”

Article 382. Examination of case files obtained by the supervisory review court

“2. Having examined the case file obtained by the supervisory review court, the judge issues an interim decision on –

– refusing to remit the case for examination on the merits by the supervisory review court;

– remitting the case for examination of the application for supervisory review on the merits by the supervisory review court.”

Article 383. Interim decision refusing to remit the case for examination on the merits by the supervisory review court

“2. The President of the ... regional ... court ... may disagree with the judge's decision refusing to remit the case for examination on the merits by the supervisory-

review court. In such case the President issues his own decision on remitting the case for examination on the merits by the supervisory review court.”

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

“The grounds for quashing or varying the judicial decisions of the lower courts by way of supervisory review are serious violations of the substantive and procedural laws.”

B. Recent developments in the domestic law and practice

35. On 5 February 2007 the Constitutional Court of the Russian Federation adopted Ruling no. 2-II, giving constitutional interpretation of the relevant provisions of the CCivP. The position of the Constitutional Court, in so far as relevant in the context of the facts of the present case, may be summarised as follows.

36. Supervisory review of a judicial decision which entered in force is permitted only “in exceptional circumstances, when, as a result of a judicial error, committed at an earlier stage of the proceedings, which was decisive for the outcome of the case, the rights and judicially protected lawful interests of the participants of the proceedings were significantly affected, and they cannot be restored without quashing the judicial decision”.

37. It is primarily for the courts of appeal to oversee the lawfulness and reasonableness of the lower courts' decisions. The supervisory review may be used only if all “normal” legal avenues have been exhausted by the initiator of the review. The Constitutional Court referred in this respect to the case of *Nelyubin v. Russia*, decided by this Court (no. 14502/04, 2 November 2006).

38. Under Article 387 of the CCivP supervisory review is possible when there are “serious violations of the substantive and procedural laws” by the lower courts. The wording used by the CCivP is not very precise, but the notion of “serious violation” is not susceptible to any clear definition and cannot be reduced to a limited number of instances where the review is possible. The courts should have a certain margin of appreciation in interpreting that provision, to the extent that their case-law is uniform.

39. Articles 363 and 364 of the CCivP (see above) give certain guidelines for defining what kind of judicial errors may trigger the supervisory review. However, given the role of the supervisory review instance, it should not substitute the review by the court of appeal. Referring to the case-law of the European Court, the Constitutional Court noted that the supervisory review should not be an appeal in disguise and that the mere existence of two opposite views on the subject of a civil dispute was not a good reason for reviewing the final judgment.

40. The power of the judge to initiate the review without hearing the parties is not contrary to the Constitution. However, the decision not to proceed with the case may be challenged in an appeal to the President of the court, who can reverse it. The Constitutional Court held that such a complaint may be lodged with the President only within the one-year time-limits provided by Article 376 of the CCivP.

41. In addition, the supervisory review complaint can be brought before a higher instance. In paragraph 9.1 of the Ruling the Constitutional Court noted that the existing provisions of the CCivP allowed bringing three consecutive supervisory review complaints. Furthermore, the time spent by the supervisory review instances on examining these complaints is not included in the one-year time-limit provided by Article 376. As a result, the overall duration of the proceedings may be indefinitely long, up to several years.

42. The Constitutional Court recognised that in certain circumstances the current system of supervisory review could be in breach of the legal certainty principle. However, the Constitutional Court explicitly refrained from declaring the provisions of the CCivP unconstitutional. Instead, the Constitutional Court recommended the legislator to amend the relevant provision so to exclude possible breaches of the legal certainty principle.

THE LAW

I. *LOCUS STANDI* (APPLICATION No. 34952/03)

43. The Court notes firstly the fact of the death of Mr Stepanenko, one of the applicants, and the wish of Ms Stepanenko, his widow, to pursue the proceedings he initiated.

44. The Court reiterates that where an applicant dies during the examination of a case his or her heirs of next kin may in principle pursue the application on his or her behalf (see *Ječius v. Lithuania*, no. 34578/97, § 41, ECHR 2000-IX). Furthermore, in two Russian cases concerning non-enforcement of court judgments in the applicant's favour, the Court recognised the right of the relatives of the deceased applicant to pursue the application (see *Shiryayeva v. Russia*, no. 21417/04, § 8, 13 July 2006; see also *Shvedov v. Russia*, no. 69306/01, 20 October 2005, where the Court implicitly recognised *locus standi* of the applicant's son).

45. The Court notes that the rights at stake in the present case are very similar to those at the heart of the cases referred to above. Nothing suggests that the rights the applicant sought to protect through the Convention mechanism were eminently personal and non-transferable (see, as regards

Article 6, *Malhous v. the Czech Republic* [GC], no. 33071/96, § 1, 12 July 2001). The Government did not contend that Ms Stepanenko had no standing to pursue the case. Thus, the Court considers that the applicant's widow has a legitimate interest in pursuing the application.

II. ALLEGED VIOLATION OF ARTICLE 6 OF THE CONVENTION AND ARTICLE 1 OF PROTOCOL No. 1 ON ACCOUNT OF THE QUASHING OF THE JUDGMENT IN THE APPLICANTS' FAVOUR

46. The applicants complained that the quashing of the judgments of 21 and 22 January 2003 in their favour, as upheld on appeal, violated their rights under Article 6 § 1 of the Convention and Article 1 of Protocol No. 1, which, 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 ... 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.

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

47. The Government argued that the new system of supervisory review, introduced by the CCivP of 2003, differed from the old one. In particular, CCivP introduced a one-year time-limit to complain to a supervisory review instance; it was a judge who decided whether to obtain the case file following a supervisory review complaint and to remit the case to the supervisory review court. The time-limit for examination of applications for supervisory review represented an additional safeguard of the applicant's rights.

48. The Government further submitted that supervisory review of the judgments in the applicants' favour had been initiated and carried out in full compliance with the applicable procedure. The applicants were perfectly

aware that the judgments in their favour were subject to a supervisory review appeal within a one-year time-limit.

49. The Government emphasised that the Presidium had reversed the judgments of 21 and 22 January 2003 because of serious violations of substantive and procedural laws. In particular, the case files contained no evidence to support the first instance court findings about the multiplier 1.92 which was, moreover, never provided for by either local or regional legislation. The multiplier referred to by the courts in the judgments of 22 and 21 January 2003 was overestimated and did not correspond to the actual cost of living. According to the Government, the Town Court in its judgment of 25 December 2003 referred to correct multipliers of 1.25 and 1.26 for the years 2001 and 2002 respectively, and reached lawful, just and reasoned conclusions. Accordingly, the Government submitted that a balance between the State interests and the legal requirements, on the one hand, and the applicants' interests, on the other, had been preserved.

50. The Government finally argued that the applicants' failure to appeal against the Town Court judgment of 25 December 2003 and 14 January 2004 showed that they themselves considered the initial multiplier incorrect.

51. The applicants maintained their complaints. They also argued that the Town Court in its judgments of 25 December 2003 and 14 January 2004 had applied understated multipliers which they had to accept in order to obtain at least some increase in their pensions.

B. Admissibility

52. The Court considers, in the light of the parties' submissions, that the complaint raises serious issues of fact and law under the Convention, the determination of which requires an examination of the merits. The Court concludes therefore that the applicants' complaints about the quashing of the judgments of 21 and 22 January 2003 are not manifestly ill-founded within the meaning of Article 35 § 3 of the Convention. No other ground for declaring it inadmissible has been established.

C. Merits

1. Alleged violation of Article 6 § 1 of the Convention

(a) Supervisory review under the "old" CCivP

53. 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* [GC], no. 28342/95, § 61, ECHR 1999-VII).

54. In a number of previous cases the Court examined the Russian system of supervisory review under the “old” CCivP. That 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 was not subject to any time-limit, with the result that the judgments were liable to challenge indefinitely (see, among other authorities, *Ryabykh v. Russia*, no. 52854/99, § 52, §§ 54-56, ECHR 2003-X; see also *Roseltrans v. Russia*, no. 60974/00, §§ 27-28, 21 July 2005, and *Volkova v. Russia*, no. 48758/99, §§ 34-36, 5 April 2005). In the opinion of the Court, such system was incompatible with the “legal certainty” principle and the applicant's “right to a court” enshrined in Article 6 § 1.

55. The Court also stressed in the above cases that the “old” supervisory review mechanism was used for the purpose of obtaining a rehearing of a settled judicial dispute (see *Ryabykh*, cited above; see also, *mutatis mutandis*, *Pravednaya v. Russia*, no. 69529/01, § 25, 18 November 2004). However, the mere possibility of two views on the subject is not a ground for re-examination. Higher courts' power to quash or alter binding and enforceable judicial decisions should be exercised only for correction of fundamental defects.

(b) Supervisory review under the “new” CCivP

56. In 2003 the “old” system of supervisory review was replaced with the “new” one (see the “Relevant domestic law” part above). In the opinion of the Government, the new system guarantees better stability of court judgments. The Court observes that supervisory review of the judgment in the applicant's favour was made under the new rules, so the Court has now to determine on the facts of the case whether or not the review was compatible with Article 6 § 1.

57. The Court does not find sustainable the Government's argument that the applicants' rights had been adequately secured by the time-limits set in the new CCivP. It is true that the new CCivP established a one-year time-limit for introducing a supervisory review appeal. However, under the new CCivP the President's power to overrule decisions of other judges refusing to initiate supervisory-review proceedings is not subject to any time-limits (see *Denisov v. Russia* (dec.), no. 33408/03, 6 May 2004). The Court notes that the Constitutional Court, in its Ruling 2-II of 5 February 2007 held that the President's power to overrule the decision of the judge not to proceed with the case should be also limited in time (see the “Relevant domestic law” part above). However, it appears that at the

relevant time the judicial practice regarded the powers of the President, conferred with him by virtue of Articles 381-6 and 383 of CCivP, as unlimited in time (see *Prisyazhnikova and Dolgopolov v. Russia*, no. 24247/04, §§ 7-11, 28 December 2006), which created uncertainty for the party who won the case.

58. Furthermore, it is unclear on what grounds the President may decide to overrule the decision of the judge rapporteur (see the “Relevant domestic law” part above). In *Prisyazhnikova and Dolgopolov*, cited above, the Court already noted, in the context of the new CCivP, that “the President's power to overrule decisions of other judges is not circumscribed in any way. The President has an unfettered discretion to initiate supervisory-review proceedings, a mere 'disagreement' with the ordinary judge's decision being a sufficient ground for doing so” (§ 27). Again, Ruling 2-II addressed that issue, stressing that the supervisory review proceedings should not be “an appeal in disguise”. However, the Ruling was adopted only in February 2007, that is almost four years after the judgments of 21 and 22 January 2003 had been quashed.

(c) Supervisory review proceedings in the present case

59. Turning to the present case, the Court notes that on 30 June 2003 the judge rapporteur of the Regional Court examined the defendant's first application for supervisory review of the final judgment in the applicants' favour and refused to initiate the supervisory-review proceedings. Dissatisfied with the refusal, the defendant lodged a repeated supervisory review complaint, now with the President of the Regional Court, challenging the judgments of 21 and 22 January 2003, as upheld on appeal, and the judge rapporteur's decision of 30 June 2003. That second supervisory review appeal was successful: on 19 September the President of the Regional Court overruled the decision of 30 June 2003 and the judgment of 22 January 2003 remitting the case to the Presidium for examination on the merits. The President, having disagreed with the judge rapporteur's previous decision of 30 June 2003, did not give any reasons for his disagreement. Several weeks later, a judge of the Regional Court, apparently acting within the President's powers provided by Article 383 of the CCivP, initiated the review of the judgment of 21 January 2003. As a result, both judgments in the applicants' favour were quashed.

60. The Court further notes that the judgments of 21 and 22 January 2003 in the applicants' favour, as upheld on 16 April 2003, were challenged and set aside because the President, and then the Presidium of the Regional Court disagreed with the way in which the lower courts had assessed the evidence before them and had applied the domestic law. In particular, the central argument for quashing was the fact that the lower courts, while recalculating the amount of the applicants' pensions, applied an incorrect multiplier. Examining the Government's argument that the mentioned

shortcomings constituted serious violations of substantive and procedural laws, the Court is not satisfied that those violations amounted to “fundamental defects or circumstances of a substantial and compelling character” (see, *mutatis mutandis*, *Ryabykh* and *Pravednaya*, both cited above). The Court notes in this respect that on 30 June 2003 the judge rapporteur of the Regional Court had not detected any such fundamental defects or special circumstances.

61. Thus, the Court considers that the quashing of the judgments of 21 and 22 January 2003 in the applicants' favour, as upheld on appeal on 16 April 2003, by way of supervisory review proceedings infringed the principle of legal certainty and the applicants' “right to a court”. There has been, accordingly, a violation of Article 6 § 1 of the Convention.

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

62. 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).

63. In so far as the Government submitted that the applicants had failed to appeal against the Town Court judgment of 25 December 2003 and 14 January 2004, the Court observes that the core issue before it is the quashing of the final and binding judgments given in the applicants' favour. Such a quashing is regarded in the case-law as an instantaneous act (see *Sitokhova v. Russia* (dec.), no. 55609/00, 2 September 2004). Thus, the eventual outcome of the post-quashing proceedings is not directly relevant for the Court's analysis of the complaint about the annulment of the judgment in the applicant's favour (see *Ivanova v. Ukraine*, no. 74104/01, §§ 35-38, 13 September 2005), unless, as a result of the subsequent proceedings, the applicant obtained more than he had had before the supervisory review which is clearly not the case.

64. Having regard to its case-law (see *Brumărescu*, cited above, §§ 78-80) and the conclusions under Article 6 above, the Court considers that the quashing of the judgments by way of supervisory review imposed an excessive and disproportionate burden on the applicants and was therefore incompatible with Article 1 of Protocol No. 1 to the Convention.

65. There has accordingly been a violation of that Article.

III. ALLEGED VIOLATION OF ARTICLE 6 § 1 AND ARTICLE 1 OF PROTOCOL No. 1 ON ACCOUNT OF THE NON-ENFORCEMENT

66. The applicants also complained about the non-enforcement of the judgments of 22 and 21 January 2003, as upheld on 16 April 2003. They relied on Article 6 § 1 of the Convention and Article 1 of Protocol No. 1, both cited above.

67. The Court observes that the principles insisting that a final judicial decision must not be called into question and should be enforced represent two aspects of the same general concept, namely the “right to a court” (see *Ryabykh*, cited above, §§ 55-57, and *Burdov v. Russia*, no. 59498/00, § 34, ECHR 2002-III).

68. In the present case the non-enforcement was due, to a large extent, to the fact that the judgments to be enforced were twice challenged by the defendant by way of supervisory review and then quashed by the Presidium in the course of the supervisory review proceedings. Having regard to this consideration and the findings above concerning the violation of the applicants' rights on account of the quashing of the judgments in their favour, the Court does not consider it necessary, in the circumstances, to examine the applicants' complaints concerning the non-enforcement of those judgment separately and therefore rejects this part of their applications under Article 35 § 4 of the Convention.

IV. APPLICATION OF ARTICLE 41 OF THE CONVENTION

69. 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.”

70. The Court points out that under Rule 60 of the Rules of Court any claim for just satisfaction must be itemised and submitted in writing together with the relevant supporting documents or vouchers “failing which the Chamber may reject the claim in whole or in part”.

71. In the instant case, on 11 April 2006 the Court, acting pursuant to Article 29 § 3 of the Convention, taken in conjunction with Article 54A § 3 of the Rules of Court, decided that the merits of the applications should be considered at the same time as their admissibility. In the letter of 13 April 2006 the Court informed the applicants about the decision taken and invited them to submit their claims for just satisfaction, together with any additional observations on the merits.

72. However, the applicants failed to submit any such claims within the required time-limit, individually or through their representative. In these

circumstances, the Court makes no award under Article 41 of the Convention.

FOR THESE REASONS, THE COURT UNANIMOUSLY

1. *Holds* that Ms Stepanenko has a standing to continue the proceedings in application no. 34952/03 in Mr Stepanenko's stead;
2. *Declares* the complaint concerning the quashing of the judgments of 21 and 22 January 2003, as upheld on appeal on 16 April 2003, by way of supervisory review, admissible, and the remainder of the application inadmissible;
3. *Holds* that there has been a violation of Article 6 § 1 of the Convention and Article 1 of Protocol No. 1 to the Convention on account of the quashing of the judgments in the applicants' favour;
4. *Decides* to make no award under Article 41.

Done in English, and notified in writing on 3 May 2007, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Søren NIELSEN
Registrar

Christos ROZAKIS
President

Joint applications

NO	NAME	APPL. NO.	DATE OF INTRODUCTION	BIRTHDATE
1.	Sobelin	30672/03	2 September 2003	1961
2.	Mokrenko	30673/03	2 September 2003	1943
3.	Antonyan	30678/03	27 August 2003	1938
4.	Nuzhdov	30682/03	27 August 2003	1951
5.	Voronov	30692/03	27 August 2003	1947
6.	Chusov	30707/03	27 August 2003	1952
7.	Klimenko	30713/03	27 August 2003	1945
8.	Vasilenko	30734/03	26 August 2003	1950
9.	Velichko	30736/03	27 August 2003	1951
10.	Toropov	30779/03	27 August 2003	1953
11.	Gorbatko	32080/03	3 September 2003	1946
12.	Stepanenko	34952/03	9 September 2003	1951