



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

FIRST SECTION

CASE OF SMIRNITSKAYA AND OTHERS v. RUSSIA

(Application no. 852/02)

JUDGMENT

STRASBOURG

5 July 2007

FINAL

31/03/2008

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 Smirnitskaya 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,

Mrs N. VAJIĆ,

Mr A. KOVLER,

Mr K. HAJIYEV,

Mr D. SPIELMANN,

Mr S.E. JEBENS, *judges*,

and Mr S. NIELSEN, *Section Registrar*,

Having deliberated in private on 14 June 2007,

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

PROCEDURE

1. The case originated in an application (no. 852/02) 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 three Russian nationals, Mrs Zoya Valeriyannovna Smirnitskaya, Mrs Yelena Fedorovna Stolyarova and Mr Albert Semenovich Stolyarov (“the applicants”), on 6 July 2001.

2. The applicants were represented by Mr I.V. Novikov, a lawyer practising in Novosibirsk. 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 domestic judicial authorities had reconsidered a judgment given in their favour having improperly used the procedure for reconsidering judgments on the basis of newly discovered circumstances.

4. By a decision of 17 November 2005 the Court declared the application partly admissible.

5. The Government, but not the applicants, filed further written observations (Rule 59 § 1). The Chamber having decided, after consulting the parties, that no hearing on the merits was required (Rule 59 § 3 *in fine*), the applicants replied in writing to the Government's observations.

THE FACTS

I. THE CIRCUMSTANCES OF THE CASE

6. The first applicant was born in 1925, the second applicant was born in 1933 and the third applicant was born in 1928. They live in Novosibirsk.

7. The applicants receive old-age pensions. The Law of 21 July 1997 on the Calculation and Upgrading of State Pensions (“the Pensions Act”) introduced, from 1 February 1998 onwards, a new method for calculating pensions. The idea behind this method, based on what is known as an “individual pensioner coefficient”, was to link the pension to the pensioner's previous earnings.

8. The authority in charge of the applicants' pension, the Pension Fund Agency of the Zheleznodorozhniy District of Novosibirsk (“the Agency”), fixed the applicants' coefficient at 0.525. The applicants challenged the Agency's decision in the Zheleznodorozhniy District Court of Novosibirsk. They argued that their coefficient should be 0.7.

9. On 13 August 1999 the District Court found for the applicants, considering that the Agency had misinterpreted the Pensions Act. In particular, it held as follows:

“The opinion of [the Agency] ... is unfounded because Article 4 [of the 1997 Pensions Act] specifically indicates that the individual pensioner coefficient ... is fixed at the rate of 0.7. [The Agency] has no grounds to interpret this provision of the law arbitrarily or not to enforce it.”

The District Court decided that the Agency was to recalculate the applicants' pensions using a coefficient of 0.7 from 1 February 1998.

10. The Agency appealed against the judgment. On 19 October 1999 the Novosibirsk Regional Court upheld the judgment, which became enforceable on the same day. The judgment was never executed.

11. On 29 December 1999 the Ministry of Labour and Social Development (“the Ministry”) issued an Instruction on the “Application of Limitations” established by the Pensions Act (“the Instruction”). The Instruction clarified how to apply the Pensions Act.

12. Some time thereafter a group of individuals challenged the Instruction before the Supreme Court of the Russian Federation. On 24 April 2000 the Supreme Court dismissed the complaint. It found that, contrary to what the complainants had suggested, the Ministry of Labour had not acted *ultra vires* in issuing the Instruction, and that the Ministry's interpretation of the Pensions Act had been correct. On 25 May 2000 the Cassation Division of the Supreme Court upheld this judgment on appeal.

13. From 1 August 2000, following changes to the pension regulations, the first applicant's pension was calculated based on a coefficient of 0.7125.

14. On 30 August 2000 the Agency lodged an application with the District Court for the reconsideration of the applicants' case owing to newly discovered circumstances.

15. On 7 February 2001 the District Court examined the Agency's request. It noted that the Instruction had been upheld by the Supreme Court and held as follows:

“As it can be seen from [the Instruction], the decision of the RF Supreme Court of 24 April 2000 and the decision of the Cassation Division of the RF Supreme Court of 25 May 2000, the limiting coefficient of 0.7, which was established by [the Pensions Act], ... does not apply to [an 'individual pensioner coefficient'].

The existence of the interpretation [of the Pensions Act] by the Ministry of Labour constitutes a significant circumstance.

In accordance with ... Article 333 of [the CCivP] the ground for reconsideration of judgments ... on the basis of newly discovered circumstances shall be a significant circumstance which was not and could not have been known to a complainant. ...

Therefore there are grounds for reconsideration of the judgment of the district court of 13 August 1999 owing to newly discovered circumstances.”

The court noted that the Agency's application was not time barred.

16. In a decision of 7 February 2001 the District Court granted the Agency's application, under Article 337 of the Code of Civil Procedure, and quashed the judgment of 13 August 1999, as upheld on 19 October 1999.

17. As a result of the fresh examination of the case the District Court delivered a judgment of 27 February 2001 in which it relied on the Instruction and rejected the applicants' claims in full. The applicants appealed against the judgment.

18. From 1 May 2001, following further changes to the pension regulations, the applicants' coefficients were fixed at 0.9, 0.786 and 0.852 respectively.

19. On 21 June 2001 the Novosibirsk Regional Court dismissed the applicants' appeal and upheld the judgment of 27 February 2001.

II. RELEVANT DOMESTIC LAW AND PRACTICE

20. The Code of Civil Procedure of 1964 (“CCivP”), in force at the material time, provided as follows:

Article 333. Grounds for reconsideration

“[Judgments] which have come into force may be reconsidered on the basis of newly discovered circumstances. The grounds for reconsideration ... shall be as follows:

1. significant circumstances which were not and could not have been known to the party who applies for reconsideration; ...

4. cancellation of a court [judgment] or of another authority's decision which served as legal basis for the [judgment] in question.”

Article 334. Lodging of application

“... [An application for reconsideration of a [judgment] owing to newly discovered circumstances] shall be lodged within three months after the discovery of the circumstances.”

Article 337. Court decision on reconsideration of a case

“After examination of an application for reconsideration of a [judgment] owing to newly discovered circumstances, the court may either grant the application and quash the [judgment], or dismiss the application.

The court decision by which an application for reconsideration of a [judgment] owing to newly discovered circumstances is granted shall not be subject to appeal. ...”

21. On 2 February 1996 the Constitutional Court of the Russian Federation adopted a ruling concerning certain provisions of the Code of Criminal Procedure (“CCrP”). In that ruling the Constitutional Court decided that Article 384 of the CCrP (“Grounds for reconsideration of a [criminal] case on the basis of newly discovered circumstances”, which was in many respects similar to Article 333 of the CCivP) was unconstitutional in that it limited the grounds for the reopening of a criminal case to situations of “newly discovered circumstances”. In that ruling the Constitutional Court suggested that this provision of the CCrP prevented rectification of judicial errors and miscarriages of justice. In its ruling of 3 February 1998 the Constitutional Court came to the conclusion that Article 192 § 2 of the Code of Commercial Procedure was unconstitutional in so far as it had served as a basis for the dismissal of applications for reconsideration of judgments of the Presidium of the Supreme Commercial Court, where the judgment had been delivered as a result of a judicial error which had not been and could not have been established earlier.

22. The Instruction of the Ministry of Labour and Social Development of 29 December 1999 on the “Application of Limitations” established by the Pensions Act was registered by the Ministry of Justice on 31 December 1999 and became binding in February 2000, ten days after its official publication.

THE LAW

I. ALLEGED VIOLATION OF ARTICLE 6 § 1 AND ARTICLE 1 OF PROTOCOL No. 1

23. The applicants complained that the State had reconsidered a final judgment in their favour. The Court will examine this complaint under Article 6 § 1 of the Convention and Article 1 of Protocol No. 1.

Article 6 § 1 of the Convention, as far as relevant, reads as follows:

“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 reads as follows:

“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. The parties' submissions

1. The Government

24. The Government submitted that the complaint was incompatible with the Convention *ratione materiae*, as it did not concern “civil rights and obligations” or “property” or, alternatively, that there had been no breach of Article 6 § 1 or Article 1 of Protocol No. 1 on account of the reconsideration of the case concerning the applicants' pension.

(a) Applicability of Article 6 § 1

25. The Government stressed that the judgment of 13 August 1999 had not determined any definite amount due to the applicants, but had rather established how the pensions should be calculated. In their words, “the subject-matter of the dispute was not the applicants' claim to award [them] monetary sums, but the matter of lawfulness ... of application of the Instruction”. According to the Government, the dispute at issue was not a civil one because “the determination of the order of calculation of pensions belongs to the realm of public law”. They referred to *Schouten and Meldrum v. the Netherlands* (judgment of 9 December 1994, Series A

no. 304, § 50), *Pančenko v. Latvia*, ((dec.), no. 40772/98, 28 October 1999) and *Kiryanov v. Russia* ((dec.), no. 42212/02, 9 December 2004).

(b) Applicability of Article 1 of Protocol No. 1

26. The Government contested that the pension awarded to the applicants by virtue of the judgment of 13 August 1999 constituted their “possession”. They noted that in the case of *Pravednaya v. Russia* (no. 69529/01, 18 November 2004) the Court had regarded a judicial award of that type as the applicant’s “possession”. In that case the Court had ordered the restoration of the initial judgment in the applicant’s favour and the payment of the pension in the amount established by that judgment. However, in the Government’s view, such an approach created confusion. If the sum awarded by a court was a pensioner’s “possession”, it should not be affected by any subsequent increase in pension rates. Therefore, in *Pravednaya* the applicant would have had to return the money “excessively” paid to her by virtue of the later changes in the legislation on State pensions. They concluded that in order to avoid such situations the Court should not regard the pension amounts awarded by the domestic courts as the claimants’ “possessions” within the meaning of Article 1 of Protocol No. 1.

(c) Merits of the complaint

27. The Government submitted that it was the Supreme Court’s decision upholding the Instruction which had constituted a newly discovered circumstance and warranted the reopening of the case within the meaning of Article 333 of the CCivP. This was a major difference with the *Pravednaya* case (cited above). The Government explained that to consider the Supreme Court’s decision as a newly discovered circumstance was in line with the position of the Constitutional Court set out in its decisions of 2 February 1996 and 3 February 1998. In another decision of 14 January 1999 the Constitutional Court had held that court judgments might be reconsidered if relevant provisions of law had been found unconstitutional.

28. The Government further submitted that the Instruction had been issued after the initial judgment had become final, so the Agency could not have relied on it in the appeal proceedings. This was another difference with the *Pravednaya* case, where the Instruction had been adopted while the proceedings were still pending. Therefore, the Agency’s request to reopen the case had not been an “appeal in disguise” but a conscientious effort to make good a miscarriage of justice.

29. The Government observed that the reopening of the case had been lawful and complied with the procedure prescribed by law, the request having been lodged within the statutory three-month time-limit.

30. The Government concluded that the reopening of the case had not infringed the principle of legal certainty as guaranteed by Article 6 § 1 nor

had it interfered with the applicants' property rights as guaranteed by Article 1 of Protocol No. 1.

2. The applicants

31. The applicants disagreed with the Government's arguments. They pointed out that the Instruction had not existed at the time when their case had been examined in court and when the judgment of 13 August 1999 had been delivered. Therefore, neither the Instruction nor the subsequent Supreme Court decision, which addressed the lawfulness of the Instruction, could be considered a newly discovered circumstance within the meaning of Article 333 of the CCivP. The Instruction had had no retrospective effect and could not have applied to situations which had arisen before its adoption. Furthermore, the Agency had missed the time-limit for reopening a case: it had applied to the court eight months after the Instruction had been issued, instead of three months as required by the civil procedure. Therefore, the applicants' case had been reopened in breach of the domestic law. The Government's reference to the Constitutional Court's decision of 14 January 1999 was irrelevant because the Pensions Act had never been declared unconstitutional.

32. The applicants further noted that it was clearly established by the European Court that Article 6 applied to court proceedings concerning the right to a State pension. They referred to a number of judgments and decisions including *Francesco Lombardo v. Italy* (judgment of 26 November 1992, Series A no. 249-B), *Androsov v. Russia* (no. 63973/00, 6 October 2005), *Vasilyev v. Russia* ((dec.), no. 66543/01, 1 April 2004), and *Pravednaya v. Russia* ((dec.), no. 69529/01, 25 September 2003). They pointed out that in *Pravednaya* the dispute had concerned the application of a specific pension law to the applicant's case, and not the general system of pension calculation.

B. The Court's assessment

1. Applicability of Article 6 § 1 of the Convention and Article 1 of Protocol No. 1

33. The Court notes that the dispute as to the increase of the applicants' old-age pension entitlement was one of a pecuniary nature and undeniably concerned a civil right within the meaning of Article 6 § 1 of the Convention (see *Schuler-Zgraggen v. Switzerland*, judgment of 24 June 1993, Series A no. 263, p. 17, § 46; *Massa v. Italy*, judgment of 24 August 1993, Series A no. 265-B, p. 20, § 26; *Süßmann v. Germany*, judgment of 16 September 1996, *Reports of Judgments and*

Decisions 1996-IV, p. 1170, § 42; and, as a recent authority, *Tričković v. Slovenia*, no. 39914/98, § 40, 12 June 2001).

34. It reiterates that Article 1 of Protocol No. 1 does not guarantee, as such, the right to an old-age pension or to any social benefit in a particular amount (see, for example, *Aunola v. Finland* (dec.), no. 30517/96, 15 March 2001). However a “claim” – even concerning a pension – can constitute a “possession” within the meaning of Article 1 of Protocol No. 1 if it is sufficiently established to be enforceable (see *Stran Greek Refineries v. Greece*, judgment of 9 December 1994, Series A no. 301, § 59). The judgment of the Zheleznodorozhniy District Court of 13 August 1999, which became final after it had been upheld on appeal by the Novosibirsk Regional Court on 19 October 1999, provided the applicants with an enforceable claim to receive an increased pension based on a coefficient of 0.7.

35. The Court notes that the objections and arguments put forward by the Government were rejected in the earlier similar case of *Bulgakova v. Russia* (no. 69524/01, §§ 27-32, 18 January 2007) and sees no reason to reach a different conclusion in the present case.

36. Accordingly, the Court considers that in the present case the applicants' dispute concerned a civil right within the meaning of Article 6, and that the applicants had a “possession” within the meaning of Article 1 of Protocol No. 1.

2. Alleged violation of Article 6 § 1

37. 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, in its relevant part, declares 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* 1999-VII, § 61). This principle underlines that no party is entitled to seek a review of a final and binding judgment merely for the purpose of obtaining a rehearing and a fresh determination of the case. Review by higher courts should not be treated as an appeal in disguise, and the mere possibility of there being two views on the subject is not a ground for re-examination. A departure from that principle is justified only when made necessary by circumstances of a substantial and compelling character (see *Ryabykh v. Russia*, no. 52854/99, § 52, ECHR 2003-IX).

38. The Court examined the quashing of a final judgment on the ground of newly discovered circumstances in *Pravednaya* (cited above), a case with a similar set of facts, where it held:

“27. The procedure for quashing of a final judgment presupposes that there is evidence not previously available through the exercise of due diligence that would lead to a different outcome of the proceedings. The person applying for rescission should show that there was no opportunity to present the item of evidence at the final hearing and that the evidence is decisive. Such a procedure is defined in Article 333 of the CCivP and is common to the legal systems of many member States.

28. This procedure does not by itself contradict the principle of legal certainty in so far as it is used to correct miscarriages of justice. ...”

39. In the case of *Pravednaya* the Instruction of the Ministry of Labour had been issued between the first-instance and appeal judgments. The relevant pension agency had not relied on the Instruction in the appeal proceedings but had only done so later, in their request for the judgment, then final, to be set aside owing to “newly discovered circumstances”. The Court considered that the agency's request had been an “appeal in disguise” and found that by granting it the court had infringed the principle of legal certainty and the applicant's “right to a court” under Article 6 § 1 of the Convention (see *Pravednaya*, cited above, §§ 29-34).

40. The present case differs from *Pravednaya* in that the Instruction of the Ministry of Labour was issued after the first-instance judgment had been upheld on appeal. The Court's task is to determine whether, on the facts of the present case, the quashing of the judgment was exercised in a manner compatible with Article 6. To do so it will examine the reasons adduced by the Zheleznodorozhniy District Court for the quashing of the judgment (see paragraph 15 above).

41. The Zheleznodorozhniy District Court held that the interpretation of the Pensions Act by the Ministry of Labour, which had been upheld by the Supreme Court, was a “newly discovered circumstance”. Therefore, the District Court decided that the Agency's request should be granted and the judgment be quashed.

42. The Court first notes that the Instruction and the Supreme Court's decision upholding it did not exist during the examination of the applicants' case. They were adopted after the judgment had been upheld on appeal. In the Court's view, the above-mentioned Instruction and decision were new legal acts and did not constitute newly discovered circumstances as considered by the District Court (see Article 333 of CCivP, paragraph 20 above).

43. Further, the judgment of 13 August 1999 was a result of the District Court's interpretation and application of the Pensions Act to the applicants' case. As it transpires from the decision of 7 February 2001, the fact that the Ministry's interpretation of that Act in an Instruction, a subordinate legal instrument, differed from the court's findings, with the effect that it would have led to a different outcome of the proceedings, was considered by the District Court a sufficient reason to quash the judgment and reconsider the

case. The Court finds that this reason as such could not justify the reopening of the case after a final and binding judgment.

44. The Court notes the Government's argument that the reopening was necessary to make good a miscarriage of justice. However, other than referring to the Ministry's interpretation of the law as a reason for the reopening, the District Court said nothing in its decision to explain why its original findings were to be considered a "miscarriage of justice" such as to justify the reopening.

45. The Court finds that by granting the Agency's request to reconsider the applicants' case and setting aside the final judgment of 13 August 1999, as upheld on 19 October 1999, the domestic authorities infringed the principle of legal certainty and the applicants' "right to a court" under Article 6 § 1 of the Convention.

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

3. Alleged violation of Article 1 of Protocol No. 1

47. The Court notes that the "possession" in this case was the applicants' claim to a pension based on a coefficient of 0.7 from 1 February 1998, in accordance with the judgment of the Zheleznodorozhniy District Court of 13 August 1999, upheld on 19 October 1999.

48. The District Court did not determine the date until which this method of calculation should have been maintained. When delivering its judgment it applied the statutory pension regulations which were in force at the time. Those regulations, however, "are liable to change and a judicial decision cannot be relied on as a guarantee against such changes in the future" (see *Sukhobokov v. Russia*, no. 75470/01, § 26, 13 April 2006). Thus the Court observes that, as a result of such changes, the coefficient for the calculation of the first applicant's pension changed to 0.7125 from 1 August 2000 and again to 0.9 from 1 May 2001. The coefficient of the other two applicants changed to 0.786 and 0.852 respectively from 1 May 2001.

49. The Court notes that the applicants' concern under Article 1 of Protocol No. 1 was the loss of their entitlement to a pension based on a coefficient of 0.7 for the period between 1 February 1998 and 1 August 2000 for the first applicant and for the period between 1 February 1998 and 1 May 2001 for the other two applicants, as opposed to the pension calculated and actually paid. However, the Court further notes that before those periods ended on 1 August 2000 or 1 May 2001, the Instruction had removed the ambiguity of the Pensions Act with the effect that the applicants' dispute over the coefficient had been resolved, at the level of the statutory regulations, in favour of the Agency. The Court considers that it was until the moment when the Instruction became binding in February 2000, and apparently changed the legislative framework relevant to the applicants' dispute, that the applicants' claim – and

“possession” under Article 1 of Protocol No. 1 – had been secured by the judgment.

50. The effect produced by the decision of the Zheleznodorozhniy District Court of 7 February 2001, by which the application for reconsideration was granted, was that the applicants became deprived, retrospectively in respect of the above-mentioned period from February 1998 to February 2000, of the right to receive the pension in the amount initially determined by the court or, in other words, deprived of their possessions within the meaning of the second sentence of the first paragraph of Article 1 of Protocol No. 1. The taking of property, in the light of this rule, can only be justified if it is shown, *inter alia*, to be “in the public interest” and “subject to the conditions provided for by law” (see *Pravednaya*, cited above, §§ 39-40).

51. While assuming that it was in the public interest to ensure a uniform application of the Pensions Act, the compliance of the reconsideration of the applicants' case with the “lawfulness” requirement is questionable (see paragraph 42 above). Even assuming that the court's interpretation of the domestic procedural law was not arbitrary (see the Government's argument concerning the Constitutional Court's decisions and the relevant domestic law in paragraphs 27 and 21 above), it still remains to be established whether the interference was proportionate to the legitimate aim pursued.

52. In this connection the Court reiterates its finding in *Pravednaya* that “the State's possible interest in ensuring a uniform application of the Pensions Law should not have brought about the retrospective recalculation of the judicial award already made” (*Pravednaya*, cited above, § 41). Having regard to the fact that the reconsideration of the case resulted in the full dismissal of the applicants' claim that had been granted in the initial judgment, the Court finds no reason to depart from that conclusion in the present case.

53. Based on the above considerations, the Court finds that by depriving the applicants of the right to benefit from the pension in the amount secured in a final judgment, the State upset the fair balance between the interests at stake.

54. There has, accordingly, been a violation of Article 1 of Protocol No. 1.

II. APPLICATION OF ARTICLE 41 OF THE CONVENTION

55. 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

1. Pecuniary damage

56. As regards pecuniary damage, Mrs Smirnitskaya claimed 610 euros (EUR), Mrs Stolyarova claimed EUR 724.12 and Mr Stolyarov claimed EUR 532.59. These amounts represented the underpayment of their pensions between 1 February 1998 and 1 August 2000 in Mrs Smirnitskaya's case and between 1 February 1998 and 1 May 2001 in Mrs Stolyarova's and Mr Stolyarov's case, and the relevant inflation-related losses. The difference in pension was based on an "individual pensioner coefficient" of 0.7 and a coefficient linked to the region of the applicants' residence.

57. The Government submitted that no just satisfaction should be awarded to the applicants because there had been no violation of their rights under the Convention. Alternatively, the finding of a violation in itself would constitute sufficient just satisfaction. As regards the claim in respect of pecuniary damage, it should be rejected because it was open to the applicants to request a re-trial, which would be the most appropriate form of redress in this case. The Government further asserted that, as regards the period from February 1998 to December 2001, the difference between the pensions calculated with a coefficient of 0.7 and the pensions actually paid would be 942.27 roubles (RUR) in respect of Mrs Smirnitskaya, RUR 1,219.66 in respect of Mrs Stolyarova and RUR 1,152.28 in respect of Mr Stolyarov.

58. The Court considers it appropriate to award the applicants, in respect of the violation of Article 1 of Protocol No. 1, the sums they would have received had the reduction of the pensions as a result of the reconsideration of the case not been backdated (see, *mutatis mutandis*, *Vasilyev v. Russia*, no. 66543/01, § 47, 13 October 2005). The Court notes that the sums calculated by the applicants were based on official certificates which confirm the amounts of the pensions actually paid and the rates of inflation. However, the sums to be awarded by the Court should not take account of the coefficient linked to the region of the applicants' residence, as that claim was not secured by the judgment of 13 August 1999, upheld on 19 October 1999, having been rejected by the second-instance court (see the facts in the *Smirnitskaya and Others v. Russia* admissibility decision of 17 November 2005). Nor should it cover the whole periods taken by the applicants. The period relevant to the violation of Article 1 of Protocol No. 1 is indicated in paragraph 49 above. Those adjustments being made, the Court awards EUR 199 to Mrs Smirnitskaya, EUR 247 to Mrs Stolyarova and EUR 78 to Mr Stolyarov in respect of pecuniary damage.

2. Non-pecuniary damage

59. Each applicant further claimed EUR 5,000 in respect of non-pecuniary damage. They submitted that the pension was their only means of subsistence. Because of the underpayment of her pension, according to Mrs Smirnitskaya, she could not afford to buy basic foodstuffs or clothing or to repair her flat. The applicants further submitted that the violation of their rights by the domestic judicial authorities had caused them psychological suffering and deterioration of their health.

60. The Government submitted that the claim was “wholly ill-founded, unsubstantiated and unreasonable”.

61. The Court considers that the applicants have sustained non-pecuniary damage as a result of the violations found and that this cannot be made good merely by the Court's finding of a violation. Making its assessment on an equitable basis, as required by Article 41 of the Convention, the Court awards each applicant EUR 2,000.

B. Costs and expenses

62. The applicants did not make any claims for the costs and expenses incurred before the domestic courts and the Court.

63. Accordingly, the Court does not award anything under this head.

C. Default interest

64. The Court considers it appropriate that the default interest should be based on the marginal lending rate of the European Central Bank, to which should be added three percentage points.

FOR THESE REASONS, THE COURT UNANIMOUSLY

1. *Holds* that there has been a violation of Article 6 § 1 of the Convention;
2. *Holds* that there has been a violation of Article 1 of Protocol No. 1 to the Convention;
3. *Holds*
 - (a) that the respondent State is to pay the applicants, 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 199 (one hundred and ninety-nine euros) to Mrs Smirnitskaya, EUR 247 (two hundred and forty-seven euros) to Mrs Stolyarova and EUR 78 (seventy-eight euros) to Mr Stolyarov in respect of pecuniary damage;
- (ii) EUR 2,000 (two thousand euros) to each applicant 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;

4. *Dismisses* the remainder of the applicants' claim for just satisfaction.

Done in English, and notified in writing on 5 July 2007, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Søren NIELSEN
Registrar

Christos ROZAKIS
President