



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

FIRST SECTION

CASE OF YEROGOVA v. RUSSIA

(Application no. 77478/01)

JUDGMENT

STRASBOURG

19 June 2008

FINAL

19/09/2008

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 Yerogova v. Russia,

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

Christos Rozakis, *President*,

Anatoly Kovler,

Elisabeth Steiner,

Dean Spielmann,

Sverre Erik Jebens,

Giorgio Malinverni,

George Nicolaou, *judges*,

and Søren Nielsen, *Section Registrar*,

Having deliberated in private on 29 May 2008,

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

PROCEDURE

1. The case originated in an application (no. 77478/01) against the Russian Federation lodged with the Court under Article 34 of the Convention for the Protection of Human Rights and Fundamental Freedoms (“the Convention”) by a Russian national, Mrs Lidiya Ivanovna Yerogova (“the applicant”), on 7 December 2000.

2. The applicant was represented by Mr I. Novikov, a lawyer practising in Novosibirsk. The Russian Government (“the Government”) were represented by Mr P. Laptev and subsequently by Mrs V. Milinchuk, the Representatives of the Russian Federation at the European Court of Human Rights.

3. The applicant complained, in particular, of the quashing of a final judgment in her favour on account of newly discovered circumstances and the non-enforcement of that final judgment as a consequence of the quashing.

4. On 30 August 2005 the Court decided to give notice of the application to the Government. Under the provisions of Article 29 § 3 of the Convention, it decided to examine the merits of the application at the same time as its admissibility. On 7 November 2006 the Court put additional questions to the parties.

5. The applicant and the Government each filed written observations.

THE FACTS

6. The applicant was born in 1946 and lives in Novosibirsk. She receives an old-age pension.

7. On 1 February 1998 the Law on Calculation and Adjustment of State Pensions (hereafter “the Pensions Act”) introduced a new method of calculation of retirement benefits based on what is known as the “individual pensioner coefficient” (“the IPC”). The IPC was the ratio between an individual’s wages at the time of retirement and the national average wage. The IPC was meant to maintain a link between pensions and previous earnings.

8. The applicant considered that the Zheleznodorozhniy District Division of the Pension Fund (hereafter “the Fund”) had calculated her pension incorrectly and in August 1999 she sued the Fund for an increase of her pension in accordance with the Pensions Act.

9. On 8 December 1999 the Zheleznodorozhniy District Court of Novosibirsk found in the applicant’s favour. The District Court held that the Fund had misconstrued the law and that the applicant’s pension should be recalculated and increased in line with an IPC of 0.7 starting from 1 December 1999. On 23 December 1999 the Novosibirsk Regional Court upheld that judgment.

10. According to the Government, on 15 June 2000 the Fund recalculated the applicant’s pension in compliance with the judgment of 8 December 1999.

11. On 7 August 2000 the Fund requested the Zheleznodorozhniy District Court to reopen the case owing to a newly discovered circumstance. The Fund claimed that on 29 December 1999 the Ministry of Labour and Social Development had issued an Instruction on the Application of Limitations established by the Pensions Act. The Instruction clarified how the Pensions Act should be applied. The Fund further indicated that on 24 April 2000 the Supreme Court of the Russian Federation had dismissed a complaint by a group of individuals challenging the Instruction. The Supreme Court found that the Ministry of Labour had acted within its competence when it had issued the Instruction, and that the Ministry’s interpretation of the Pensions Act had been correct. The Fund contended that since it had been unaware of the Instruction and the Supreme Court’s decision of 24 April 2000 at the time of the judgment of 8 December 1999, the judgment would have to be reconsidered.

12. On 15 August 2000 the Zheleznodorozhniy District Court granted the Fund’s request, quashed the judgment of 8 December 1999 and reopened the proceedings. The District Court applied Article 333 of the RSFSR Code of Civil Procedure according to which judgments could be reconsidered in the event of discovery of significant circumstances which were not, and could not have been, known to the party concerned. The District Court found that the Supreme Court’s judgment of 24 April 2000 could serve as such a circumstance. The decision of 15 August 2000 was final and not amenable to appeal.

13. On the same day the Zheleznodorozhniy District Court, after a fresh examination of the case, dismissed the applicant's action in full. On 7 December 2000 the Novosibirsk Regional Court upheld the judgment.

14. On 1 July 2004 the applicant received a letter from the Fund. The letter read as follows:

"In response to your inquiry on 21 June 2004 [we] inform you that by its judgment of 8 December 1999 the Zheleznodorozhniy District Court ordered that the Zheleznodorozhniy District Division of the Pension Fund in Novosibirsk should recalculate your pension starting from 1 December 1999.

On 8 December 1999 a writ of execution was issued on the basis of that judgment.

The enforcement of that court judgment on the basis of the above-mentioned writ of execution had not been carried out because there were no funds".

II. RELEVANT DOMESTIC LAW

15. Article 333 of the RSFSR Code of Civil Procedure of 1964 (in force at the material time) provided for grounds for reconsideration of final judgments on the basis of "newly discovered circumstances". Such grounds included, *inter alia*, significant circumstances which were not and could not have been known to the party which applied for reconsideration, and invalidation of a court ruling or another authority's decision which had served as a legal basis for the judgment in question.

Article 334 required that an application for reconsideration of a judgment owing to the discovery of new circumstances should be lodged within three months of the discovery of the circumstances.

Pursuant to Article 337 a court, after having examined an application for reconsideration of a final judgment on the basis of newly discovered circumstances, should either grant such an application and quash the final judgment or dismiss the application. Such a decision was not amenable to appeal.

16. 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 Code of Civil Procedure) 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.

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 JUDGMENT OF 8 DECEMBER 1999

17. The applicant complained that the decision of the Zheleznodorozhniy District Court of 15 August 2000 to quash the judgment of 8 December 1999 and reconsider the case had infringed her “right to a court” and deprived her of the fruits of the litigation. The Court considers that this complaint falls to be examined under Article 6 § 1 of the Convention and Article 1 of Protocol No. 1 (see *Pravednaya v. Russia*, no. 69529/01, §§ 19-42, 18 November 2004). The relevant parts of these provisions provide as follows:

Article 6 § 1

“In the determination of his civil rights and obligations... everyone is entitled to a fair... hearing ... by [a]... tribunal established by law...”

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. The parties’ submissions

18. The Government submitted that the judgment of 8 December 1999 had not determined any definite amount, but had rather established how the pension should be calculated. In this connection they reiterated the Court’s findings in the case of *Kiryanov v. Russia* ((dec.), no. 42212/02, 9 December 2004) and maintained that the dispute in the present case concerned legislation on pensions which fell outside the area of “civil rights and obligations”. In support of this assertion the Government also referred to *Schouten and Meldrum v. the Netherlands* (judgment of 9 December 1994, Series A no. 304) and *Pančenko v. Latvia*, ((dec.), no. 40772/98, 28 October 1999), alleging that “the determination of the order of calculation of pensions belongs to the realm of public law”.

19. The Government further contested that the pensions awarded to the applicant by virtue of the judgment of 8 December 1999 constituted her “possession” within the meaning of Article 1 of Protocol No. 1. 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". However, in the Government's view, such an approach created confusion. If a 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 she had already received from the Pension Fund by virtue of the more recent changes in the legislation on State pensions. They concluded that in order to avoid such situations the Court should not regard pension amounts awarded by the domestic courts as the claimant's "possessions" within the meaning of Article 1 of Protocol No. 1.

20. The Government also claimed that the District Court had not reopened the case capriciously, but because of the decision of the Supreme Court which had confirmed the lawfulness of the Instruction. The case had been reopened with a view to correcting a judicial error. In their request for reopening, the Fund referred to the decision of the Supreme Court of 24 April 2000. This was a major difference in relation to the *Pravednaya* case, where the request for reopening had been made without reference to that decision of the Supreme Court.

21. The Government invited the Court to conclude that the complaint was incompatible with the Convention *ratione materiae*, or, alternatively, that there had been no breach of Article 6 § 1 or Article 1 of Protocol No. 1 on account of the reopening of the case concerning the applicant's pension.

22. The applicant maintained her complaints.

B. The Court's assessment

1. Admissibility

23. As regards the Government's objection that the applicant's complaint under Article 6 § 1 of the Convention and Article 1 of Protocol No. 1 is incompatible *ratione materiae*, the Court notes that the Russian Government have raised an identical objection in many cases concerning the reopening of proceedings in pension disputes owing to so-called "newly discovered circumstances". The Court has examined that objection in detail and dismissed it.

24. In particular, in the case of *Bulgakova v. Russia* (no. 69524/01, 18 January 2007) the Court held that Article 6 § 1 of the Convention was applicable to proceedings concerning the calculation of the applicant's pension on the basis of the IPC because "even if the indication of the precise amount was missing from the judgment, the proceedings at issue established a particular pecuniary obligation of the State *vis-à-vis* the applicant" and because "beyond doubt the pension and the related benefits, which are purely economic in nature, are 'civil' rights within the meaning of

Article 6 § 1” (see *Bulgakova*, cited above, §§ 28-30, and *Vedernikova v. Russia*, no. 25580/02, § 20, 12 July 2007).

25. Furthermore, the Court also found that a “legitimate” expectation to receive a pension by virtue of a final court judgment, as in the present case, attracted the protection of Article 1 of Protocol No. 1, and that the annulment of a sufficiently clear and specific judgment constituted an interference with the applicant’s peaceful enjoyment of “possessions” within the meaning of Article 1 of Protocol No. 1 (see *Bulgakova v. Russia*, no. 69524/01, § 31, 18 January 2007, and *Kumkin and Others v. Russia*, no. 73294/01, § 22, 5 July 2007).

26. The Court sees no reason to depart from those findings in the present case and dismisses the Government’s objection that the applicant’s complaint is incompatible *ratione materiae* with the Convention provisions.

27. The Court further notes that the present complaint is not manifestly ill-founded within the meaning of Article 35 § 3 of the Convention and is not inadmissible on any other grounds. It must therefore be declared admissible.

2. Merits

(a) Article 6 § 1 of the Convention

(i) General principles

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

29. The Court reiterates its findings in the *Pravednaya* case, cited above, where it held (§§ 28 et seq.) as follows:

“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.”

However, this procedure may be misused, as in the *Pravednaya* case. In that case the relevant pension agency, referring to the same Instruction as in

the present case, had obtained the reopening of the proceedings and the quashing of the initial judgment with retroactive effect. The Court concluded that this had constituted a breach of Article 6 § 1 and Article 1 of Protocol No. 1.

(ii) *Application to the present case*

30. The Government argued that the present case should be distinguished from the case of *Pravednaya* (cited above) because in the instant case the District Court's decision to reopen the proceedings had been based on the "newly discovered circumstance" constituted by the Supreme Court's judgment of 24 April 2000, whilst in the *Pravednaya* case it had been the Instruction which served as the ground for the reopening. The Court agrees that the main difference between the two cases lies in the legal instruments on which the domestic courts relied to justify the quashing of the final judgments and the reopening of the proceedings. However, the Court is not convinced that this difference warrants a departure from the conclusion reached in the case of *Pravednaya*.

31. The Court observes that on 8 December 1999 the applicant obtained a judgment by which the Fund, a State body, was to recalculate and increase her pension in compliance with the requirements of the new Pensions Act. The District Court's interpretation and application of the new Pensions Act led to the judgment in favour of the applicant. That judgment was upheld on appeal on 23 December 1999. On 24 April 2000, i.e. after the judgment of 8 December 1999 had been upheld on appeal and had become final and enforceable, the Supreme Court adopted a judgment supporting the Fund's reading of the Pensions Act. In August 2000 the Fund applied for a reopening of the proceedings, referring to the Supreme Court's judgment. On 15 August 2000 the District Court accepted the request, reopened the proceedings and dismissed the applicant's claims.

32. In this connection, the Court has to ascertain whether the Supreme Court's judgment of 24 April 2000 may count as a "newly discovered circumstance", as it was found to be by the District Court, and whether the quashing of the final judgment of 8 December 1999, as upheld on 23 December 1999, was justified in the circumstances of the case.

33. The Court reiterates that circumstances which concern a case and which already existed during the trial, but remained hidden from the judge and became known only after the trial, are "newly discovered". Circumstances which concern the case but arise only after the trial are "new" (see *Bulgakova*, cited above, § 39). Having regard to the fact that the Supreme Court's judgment of 24 April 2000 was adopted after the judgment of 8 December 1999 had been upheld on appeal and had become final on 23 December 1999, the Court cannot accept that the Supreme Court's judgment of 24 April 2000 could be construed as a "newly discovered circumstance" (ibid. § 39).

34. The Court further observes that the Supreme Court's ruling of 24 April 2000 supported the Fund's reading of the new Pensions Act. However, the same Pensions Act was at the heart of the examination carried out by District and Regional courts in 1999. The interpretation of the Pensions Act given by the District and Regional courts led to the judgments of 8 and 23 December 1999 in the applicant's favour. In this connection, the Court reiterates that the fact that a higher-instance court disagreed with the interpretation of the domestic law given by the courts below, cannot, in itself, serve as an exceptional circumstance warranting the quashing of a binding and enforceable judgment and reopening of the proceedings on the applicant's claim (see *Kot v. Russia*, no. 20887/03, § 29, 18 January 2007).

35. The Court finds it difficult to accept the Government's argument that the applicant's case was reopened with a view to correcting a judicial error in the application of the substantive law. It notes in this respect that the only reason for the review of the settled dispute was the adoption, in an unrelated set of proceedings, of the decision of the Supreme Court, which confirmed the Fund's interpretation of the law applied in the applicant's case. In the Court's view, being dissatisfied with the outcome of the civil dispute with the applicant, the Fund attempted in essence to re-argue the case with the result that the "wrong" judicial interpretation of the law applied in the applicant's case was replaced with the "correct" interpretation, favourable to the Fund.

36. The Court considers that the decision to reopen the applicant's case was not aimed at correcting a judicial error or a miscarriage of justice but rather was an abuse of procedure used merely for the purpose of obtaining a rehearing and fresh determination of the case. This, in the Court's view, infringed the principle of legal certainty and the applicant's "right to a court" under Article 6 § 1 of the Convention (see *Kuznetsova v. Russia*, no. 67579/01, § 44, 7 June 2007).

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

(b) Article 1 of Protocol No. 1

38. The Court reiterates that the existence of a debt confirmed by a binding and enforceable judgment constitutes the judgment beneficiary's "possession" 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, *Androsov v. Russia*, no. 63973/00, § 69, 6 October 2005).

39. The Court observes that the final and enforceable judgment of 8 December 1999, as upheld on 23 December 1999, by which the applicant had been awarded an increased pension in accordance with the provisions of the new Pensions Act, was quashed on 15 August 2000. The District Court re-examined the matter and dismissed the applicant's claims. Thus, the

applicant, through no fault of her own, was prevented from receiving the initial judgment award.

40. To justify that interference the Government claimed that it had been lawful and pursued a legitimate aim, namely to correct a judicial error. The Court accepts that this measure pursued the public interest; however, its compliance with the “lawfulness” requirement of Article 1 of Protocol No. 1 is questionable. Whilst the case was reopened because the domestic court viewed the Supreme Court’s judgment of 24 April 2000 as a “newly discovered circumstance”, such a reading of Article 333 of the RSFSR Code of Civil Procedure is more than liberal (see paragraph 33 above). Even assuming that the District Court’s reading of the domestic law was not arbitrary, it still remains to be established whether the interference was proportionate to the legitimate aim pursued.

41. In this connection the Court has already examined a similar argument in the *Pravednaya* case, where it held 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). The backdating of the recalculation, with the effect that the sums due were reduced, frustrated the applicant’s reliance on the binding judicial decision and deprived her of an opportunity to receive the money she had legitimately expected to receive (see *Bulgakova*, cited above, § 47). In these circumstances, the Court considers that the quashing of the enforceable judgment of 8 December 1999, as upheld on 23 December 1999, placed an excessive burden on the applicant and was incompatible with Article 1 of Protocol No. 1.

42. There has therefore been a violation of that Convention provision.

II. ALLEGED VIOLATION OF ARTICLE 6 OF THE CONVENTION AND ARTICLE 1 OF PROTOCOL NO. 1 ON ACCOUNT OF THE NON-ENFORCEMENT OF THE JUDGMENT OF 8 DECEMBER 1999

43. The applicant complained about the non-enforcement of the judgment of 8 December 1999, as upheld on 23 December 1999. The Court considers that this complaint falls to be examined under Article 6 § 1 of the Convention and Article 1 of Protocol No. 1. The relevant parts of these provisions are cited above.

A. Submissions by the parties

44. The Government argued that on 15 June 2000 the Fund had recalculated the applicant’s pension complying with the judgment of 8 December 1999 and the enforcement proceedings had been closed. On

15 August 2000 the judgment of 8 December 1999 had been quashed and its further enforcement became impossible.

45. The applicant, relying on the Fund's letter of 1 July 2004, averred that the judgment of 8 December 1999 had not been enforced. The Fund had not started paying her the increased pension and she had never been paid the difference between the pension to which she had been entitled under the judgment of 8 December 1999 and the pension she had been paid.

B. The Court's assessment

1. Admissibility

46. 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.

2. Merits

47. Turning to the facts of the present case, the Court observes that on 8 December 1999 the applicant obtained a judgment by which the Fund was to pay her an increased monthly pension. The judgment of 8 December 1999 was upheld on appeal on 23 December 1999 and became enforceable. From that moment on, it was incumbent on the Fund, a State body, to comply with it. On 15 August 2000 the Zheleznodorozhniy District Court quashed the judgment of 8 December 1999.

48. It follows that at least from 23 December 1999 to 15 August 2000 the judgment of 8 December 1999 was enforceable and it was incumbent on the State to abide by its terms (see *Velskaya v. Russia*, no. 21769/03, § 18, 5 October 2006).

49. The Government claimed that the judgment of 8 December 1999 had been enforced on 15 June 2000, when the Fund had recalculated the applicant's pension. However, the Court observes that the Government did not present any evidence showing that the pension, in fact, had been paid to the applicant in the amount awarded by the judgment of 8 December 1999 or that the applicant had received the outstanding difference between the increased pension to which she had been entitled from 1 December 1999 and the pension which the Fund had allegedly started paying her on 15 June 2000. Furthermore, the Court observes that, despite the Government's submissions to the contrary, the Fund in its letter of 1 July 2004 had confirmed that the judgment of 8 December 1999 had not been enforced due to lack of financial resources. The Court is, therefore, convinced that the

judgment of 8 December 1999 remained unenforced until 15 August 2000 when it was quashed.

50. The Government further cited the quashing of the judgment of 8 December 1999 as the reason for its non-enforcement after 15 August 2000. In this respect, the Court reiterates that it has recently addressed and dismissed the same argument by the Government in the case of *Sukhobokov v. Russia* (no. 75470/01, 13 April 2006). In particular, the Court held that “the quashing of the judgment, which did not respect the principle of legal certainty and the applicant’s “right to a court”, cannot be accepted as a reason to justify the non-enforcement of the judgment” (see *Sukhobokov*, cited above, § 26, and *Velskaya*, cited above, §§ 19-21).

51. Having examined the material submitted to it and taking into account its findings in paragraphs 36 and 41 above, the Court notes that the Government did not put forward any fact or argument capable of persuading the Court to reach a different conclusion in the present case. The Government did not advance any other justification for the failure to enforce the judgment of 8 December 1999. Having regard to its case-law on the subject (see *Burdov v. Russia*, no. 59498/00, ECHR 2002-III; and, more recently, *Poznakhirina v. Russia*, no. 25964/02, 24 February 2005; and *Wasserman v. Russia*, no. 15021/02, 18 November 2004), the Court finds that by failing to comply with the judgment of 8 December 1999 in the applicant’s favour the domestic authorities infringed her right to a court and prevented her from receiving the money which she was entitled to receive.

52. The Court finds accordingly that there was a violation of Article 6 § 1 of the Convention and Article 1 of Protocol No. 1.

III. OTHER ALLEGED VIOLATIONS OF THE CONVENTION

53. Lastly, the applicant complained that following the quashing of the judgment of 8 December 1999 the domestic courts had incorrectly interpreted and applied the domestic law and that they had committed various procedural violations.

54. Having regard to all the material in its possession, the Court finds that the evidence discloses no appearance of a violation of the rights and freedoms set out in the Convention or its Protocols. It follows that this part of the application must be rejected as being manifestly ill-founded, pursuant to Article 35 §§ 3 and 4 of the Convention.

IV. 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

56. The applicant claimed 13,192.06 Russian roubles (RUB) in respect of pecuniary damage, representing the difference between the pension to which she was allegedly entitled in accordance with the judgment of 8 December 1999 and the pension actually paid. She further claimed 15,000 euros (EUR) in respect of non-pecuniary damage.

57. The Government, using the method of calculation for the applicant's pension based on the IPC of 0.7 as established in the judgment of 8 December 1999, argued that the applicant was to be paid RUB 1,622.64, representing the difference between the pension to which she had been entitled under that judgment and the pension actually paid to her. As regards the claims in respect of non-pecuniary damage, the Government submitted that they were excessive and unreasonable.

58. The Court observes that in the present case it has found a violation of Article 6 § 1 of the Convention and Article 1 of Protocol No. 1 in that the applicant had been unable to receive an increased pension as a result of the reopening of the proceedings and the quashing of the final judgment in her favour. The Court notes that the most appropriate form of redress in respect of a violation of Article 6 is to ensure that the applicant as far as possible is put in the position he would have been in had the requirements of Article 6 not been disregarded (see *Piersack v. Belgium* (Article 50), judgment of 26 October 1984, Series A no. 85, p. 16, § 12, and, *mutatis mutandis*, *Gençel v. Turkey*, no. 53431/99, § 27, 23 October 2003). The Court finds that this principle also applies in the present case, having regard to the violations found (see *Poznakhirina v. Russia*, no. 25964/02, § 33, 24 February 2005). The applicant was prevented from receiving money she had legitimately expected to receive under the judgment of 8 December 1999. In this connection, the Court notes that in accordance with the judgment of 8 December 1999, as upheld on 23 December 1999, the applicant was entitled to a pension calculated with an IPC of 0.7 until an increased IPC was introduced under the Russian pension legislation. The applicant did not provide any explanation as to her method of the calculation of the pecuniary damage. The Court therefore accepts the Government's calculation of the pension to which the applicant was entitled

in accordance with the judgment of 8 December 1999 and awards the applicant EUR 70 in respect of pecuniary damage.

59. The Court further considers that the applicant suffered distress and frustration resulting from the non-enforcement and the subsequent quashing of the judgment of 8 December 1999, as upheld on 23 December 1999. Making its assessment on an equitable basis, the Court awards the applicant EUR 2,000 in respect of non-pecuniary damage, plus any tax that may be chargeable on that amount.

B. Costs and expenses

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

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

C. Default interest

62. 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 complaint concerning the non-enforcement of the judgment of 8 December 1999, as upheld on 23 December 1999, and its subsequent quashing admissible and the remainder of the application inadmissible;
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 8 December 1999, as upheld on 23 December 1999;
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 non-enforcement of the judgment of 8 December 1999, as upheld on 23 December 1999;
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 the settlement:
 - (i) EUR 70 (seventy euros) in respect of pecuniary damage;

- (ii) EUR 2,000 (two thousand euros) in respect of non-pecuniary damage, plus any tax that may be chargeable on that amount;
- (b) that from the expiry of the above-mentioned three months until settlement simple interest shall be payable on the above amounts at a rate equal to the marginal lending rate of the European Central Bank during the default period plus three percentage points;

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

Done in English, and notified in writing on 19 June 2008, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Søren Nielsen
Registrar

Christos Rozakis
President