



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

FIRST SECTION

**CASE OF BURDOV v. RUSSIA (No. 2)**

*(Application no. 33509/04)*

JUDGMENT

STRASBOURG

15 January 2009

**FINAL**

*04/05/2009*

*This judgment has become final under Article 44 § 2 of the Convention.*



**In the case of Burdov v. Russia (no. 2),**

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 André Wampach, *Deputy Section Registrar*,

Having deliberated in private on 16 December 2008,

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

## PROCEDURE

1. The case originated in an application (no. 33509/04) against the Russian Federation lodged with the Court under Article 34 of the Convention for the Protection of Human Rights and Fundamental Freedoms (“the Convention”) by a Russian national, Mr Anatoliy Tikhonovich Burdov (“the applicant”), on 15 July 2004.

2. The Russian Government (“the Government”) were represented by Ms V. Milinchuk, former Representative of the Russian Federation at the European Court of Human Rights, and by Mr G. Matyushkin, Representative of the Russian Federation at the European Court of Human Rights.

3. The applicant complained under Article 6 of the Convention and Article 1 of Protocol No. 1 about the authorities’ failure to comply with judgments delivered by domestic courts in his favour.

4. On 22 November 2007 the President of the First Section decided to communicate the applicant’s complaint to the Government. It was also decided to examine the merits of the application at the same time as its admissibility (Article 29 § 3 of the Convention).

5. On 3 July 2008 the Chamber decided, under Rule 54 § 2 (c) of the Rules of Court, to grant the case priority under Rule 41 and to invite the parties to submit written observations on the above application. The Chamber furthermore decided to inform the parties that it was considering the suitability of applying a pilot-judgment procedure in the case (see *Broniowski v. Poland* [GC], no. 31443/96, §§ 189-94 and the operative part, ECHR 2004-V, and *Hutten-Czapska v. Poland* [GC], no. 35014/97, §§ 231-39 and the operative part, ECHR 2006-VIII). The applicant

submitted further observations on 11 August 2008 and the Government on 26 September 2008.

## THE FACTS

### I. THE CIRCUMSTANCES OF THE CASE

6. The applicant, Mr Anatoliy Tikhonovich Burdov, is a Russian national who was born in 1952 and lives in Shakhty, in the Rostov region of the Russian Federation.

7. On 1 October 1986 the applicant was called up by the military authorities to take part in emergency operations at the site of the Chernobyl nuclear plant disaster. The applicant was engaged in the operations until 11 January 1987 and, as a result, suffered from extensive exposure to radioactive emissions. He is entitled to various social benefits in this connection.

8. Considering that the competent State authorities failed to pay these benefits in full and in due time, the applicant repeatedly sued them in domestic courts from 1997 onwards. The courts repeatedly granted the applicant's claims but a number of their judgments remained unenforced for various periods of time.

#### **A. The Court's judgment of 7 May 2002 in *Burdov v. Russia* and further developments**

##### *1. The Court's findings*

9. On 20 March 2000 the applicant first complained before the Court about non-enforcement of domestic judicial decisions (application no. 59498/00). In its judgment of 7 May 2002, the Court found that the Shakhty City Court's decisions of 3 March 1997, 21 May 1999 and 9 March 2000 had remained unenforced wholly or in part at least until 5 March 2001, when the Ministry of Finance took the decision to pay in full the debt owed to the applicant. The Court accordingly held that there had been violations of Article 6 of the Convention and of Article 1 of Protocol No. 1 on account of the authorities' failure for years to take the necessary measures to comply with these decisions (see *Burdov v. Russia*, no. 59498/00, §§ 37-38, ECHR 2002-III).

2. *Resolution ResDH(2004)85 of the Committee of Ministers concerning the Court's judgment of 7 May 2002*

10. Under the terms of Article 46 § 2 of the Convention, the Court's judgment of 7 May 2002 in *Burdov* was transmitted to the Committee of Ministers for the supervision of its execution. The Committee invited the Government to inform it of the measures which had been taken in consequence of the Court's judgment of 7 May 2002, having regard to the Russian Federation's obligation under Article 46 § 1 to abide by it. On 22 December 2004 the Committee adopted Resolution ResDH(2004)85 in this case. The measures taken by the Russian authorities were summarised by the Government in the Appendix to this Resolution:

"... With regard to individual measures, the amounts due under the domestic judicial decisions were paid to the applicant on 5 March 2001. ... Subsequently, a fresh indexation of the monthly allowance was ordered by the Shakhty City Court on 11 July 2003 (final on 1 October 2003). The social authorities continue to comply with the domestic judicial decisions by regularly paying the sums awarded.

In addition, the following general measures were adopted by the Russian authorities to comply with the European Court's judgment.

(a) *Resolving similar cases*

At the outset, the government paid the arrears accumulated as a result of the non-execution, as in the present case, of domestic judgments ordering the payment of compensation and allowances for the Chernobyl victims in the applicant's position (a total of 2,846 million Russian roubles were paid between January and October 2002).

5,128 other domestic judgments concerning the indexation of the allowances for the victims of Chernobyl were executed by the authorities.

The government has also improved its budgetary process to ensure that the necessary budgetary means are allocated to social security bodies (2,152,071,000 Russian roubles were allocated for 2003, 2,538,280,500 Russian roubles for 2004, and 2,622,335,000 for 2005) to allow them continuously to meet their financial obligations arising, *inter alia*, from similar judgments. ...

(b) *New indexation system introduced through legislation*

As regards the obligation of continuous indexation of the amounts awarded by domestic courts, the legislation in force at the relevant time provided for the cost of living as an index for the calculation of allowances. By a decision of 19 June 2002, the Constitutional Court declared the relevant legislative provisions unconstitutional, in so far as this system was found to lack clarity and predictability; in this decision, the Constitutional Court referred, *inter alia*, to the conclusions of the European Court in the *Burdov* judgment. Consequently, on 2 April 2004, the Russian Parliament amended the legislation governing the social insurance of Chernobyl victims. The new law, which has been in force since 29 April 2004, provides for a new system of indexation of allowances, which is based on the inflation rate used for the calculation of the federal budget for the next financial year.

*(c) Publication and dissemination of the judgment*

The European Court's judgment in [the] *Burdov* case has been published in *Rossijskaia Gazeta* (on 4 July 2002), the main official periodical publishing all laws and regulations of the Russian Federation and widely disseminated to all authorities. The judgment has also been published in a number of Russian legal journals and Internet databases, and is thus easily available to the authorities and the public.

*(d) Conclusion*

In view of the foregoing, the Russian government considers that the measures adopted following the present judgment will prevent new similar violations of the Convention in respect of the category of persons in the applicant's position and that the Russian Federation has thus fulfilled its obligations under Article 46 § 1 of the Convention in the present case.

The government also believes that the measures adopted constitute, moreover, a noticeable step towards resolving the more general problem of non-enforcement of domestic court decisions in various areas, as highlighted in particular by other cases brought before the European Court against the Russian Federation. The government continues to take measures to remedy this problem, not least in the context of the execution, under the Committee's supervision, of other judgments of the European Court."

11. The Committee of Ministers was satisfied that on 16 July 2002, within the time-limit set, the Government had paid the applicant the sum of just satisfaction provided for in the judgment of 7 May 2002. It further noted, in particular, the measures taken in respect of the category of persons in the applicant's position. Having regard to all the measures adopted, the Committee concluded that the Government had exercised its functions under Article 46 § 2 of the Convention in this case. The Committee noted at the same time that the more general problem of non-execution of domestic court decisions in the Russian Federation was being addressed by the authorities, under the Committee's supervision, in the context of other pending cases.

## **B. Enforcement of new domestic judgments in the applicant's favour**

### *1. Shakhty City Court's judgment of 17 April 2003*

12. On 17 April 2003 the Shakhty City Court ordered the Directorate of Labour and Social Development (*Управление труда и социального развития*) of Shakhty to pay the applicant 15,984.80 Russian roubles (RUB) as compensation for delays in payment of benefits in accordance with Article 208 of the Code of Civil Procedure. On 9 July 2003 the judgment was upheld by the Rostov Regional Court and became final.

13. During 2003-05 the applicant consecutively submitted the writ of execution to the defendant authority, to bailiffs, to the Federal Treasury and

then again to the defendant authority. On 19 August 2005 the authorities transferred the amount of the court's award to the applicant's account.

### *2. Shakhty City Court's judgment of 4 December 2003*

14. On 4 December 2003 the Shakhty City Court ordered the Directorate of Labour and Social Development to pay the applicant RUB 68,463.54 as default interest for delays in payments between 1999 and 2001, in accordance with the Compulsory Social Insurance Act 1998 (no.125-Φ3). The judgment was not appealed against and became final on 15 December 2003.

15. According to the applicant, he submitted the writ for execution to the respondent department on the same date. On an unspecified date the writ was submitted to the Shakhty Bailiffs' Department; the latter decided on 30 June 2004 that the judgment was impossible to enforce as the debtor's possessions could not be seized.

16. On 14 November 2005 the Shakhty City Court granted the defendant authority's request for correction of an arithmetic error and reduced the award to RUB 68,308.42. On 9 March 2006 the same court granted the applicant's request for correction of an arithmetic error and ordered the defendant authority to pay the applicant RUB 108,251.95. On 18 October 2006 the authorities paid the latter amount to the applicant.

### *3. Shakhty City Court's judgment of 24 March 2006*

17. On 24 March 2006 the Shakhty City Court ordered the Department of Labour and Social Development (*Департамент труда и социального развития*) of Shakhty to index-link the monthly food allowance due to the applicant as of 1 January 2006. The court set the amount of monthly payments at RUB 1,183.73 with subsequent indexation and ordered a one-off payment of RUB 36,877.06 for compensation for shortfalls in previous monthly payments. In addition, as of 1 January 2006 the Department was ordered to proceed with monthly payments of RUB 1,972.92 with subsequent indexation in respect of compensation for health damage. The court further ordered the defendant authority to pay the applicant RUB 4,980.24 and RUB 13,312.46 as compensation for shortfalls in monthly payments made between 2000 and 2005 for health damage and food allowance respectively and an additional indexation payment of RUB 1,652.35 for health damage. On 22 May 2006 the judgment was upheld by the Rostov Regional Court and became final.

18. On 20 July 2007 the Shakhty City Court corrected an arithmetic error in its judgment and changed the initially awarded amount of RUB 4,980.24 to RUB 5,222.78.

19. On 2 November 2006 the judgment of 24 March 2006 was executed in its major part: a total of RUB 67,940.56 was credited to the applicant's

account. At the same time, the Ministry of Finance did not upgrade the monthly payments as ordered by the court's judgment and the applicant continued to receive such payments at a lower level. On 1 July 2007 the Ministry decided to upgrade them. On 17 August 2007 the applicant received RUB 9,112.26 as compensation for shortfalls in monthly payments accumulated until that date.

*4. Shakhty City Court's judgments of 22 May 2007 and 21 August 2007*

20. On 22 May 2007 the Shakhty City Court decided that the Department of Labour and Social Development was to pay the applicant as of 1 June 2007 the amount of RUB 17,219.43 monthly, with subsequent indexation, in respect of compensation for health damage. In addition, the Department was to pay the applicant RUB 188,566 as compensation for shortfalls in previous monthly payments. The judgment was not appealed against and became final on 4 June 2007. It was enforced on 5 December 2007.

21. On 21 August 2007, the Shakhty City Court ordered the Federal Labour and Employment Agency to pay the applicant RUB 225,821.73 as compensation for certain delayed payments in respect of health damage between 2000 and 2007. The judgment was not appealed against and became final on 3 September 2007. It was enforced on 3 December 2007.

## II. RELEVANT DOMESTIC MATERIALS

### A. Execution of domestic judgments

*1. Law on Enforcement Proceedings*

22. Section 9 of the Federal Law on Enforcement Proceedings of 21 July 1997 (no. 119-Φ3), as in force at the material time, provided that a bailiff was to set a time-limit of up to five days for the defendant's voluntary compliance with a writ of execution. The bailiff was also to warn the defendant that coercive action would follow should the defendant fail to comply with the time-limit. Under section 13 of the Law, the enforcement proceedings had to be completed within two months of the receipt of the writ of execution by the bailiff.

*2. Special execution procedure for the judgments delivered against the State and its entities*

23. In 2001-05 the judgments delivered against the public authorities were executed in accordance with a special procedure established, *inter alia*, by the Government's Decree no. 143 of 22 February 2001 and,

subsequently, by Decree no. 666 of 22 September 2002, entrusting execution to the Ministry of Finance (see further details in *Pridatchenko and Others v. Russia*, nos. 2191/03, 3104/03, 16094/03 and 24486/03, §§ 33-39, 21 June 2007). By a judgment of 14 July 2005 (no. 8-II), the Constitutional Court considered certain provisions governing the special execution procedure to be incompatible with the Russian Constitution. Following the judgment, the Law of 27 December 2005 (no. 197- $\Phi$ 3) introduced a new Chapter in the Budget Code modifying this special procedure. The Law notably empowered the Federal Treasury to execute judgments against legal entities funded by the federal budget and the Ministry of Finance to execute judgments against the State. Under Article 242 § 2 (6) of the Budget Code, the judgments must be executed within three months after receipt of the necessary documents.

24. Further special procedures governing payment of social benefits to persons who suffered from exposure to radioactive emissions in the Chernobyl disaster were set by Law no. 1244-1 of 15 May 1991 with subsequent amendments and by the Government's Decrees no. 607 of 21 August 2001, no. 73 of 14 February 2005 and no. 872 of 30 December 2006. In 2002-04 compensation for health damage was ensured by the Ministry of Labour within the limits of the budgetary allocations provided for the relevant fiscal year. In 2005-06 such compensation was ensured by territorial departments of the Federal Labour and Employment Agency and in 2007-08 by the Agency itself on the basis of registers submitted by social welfare bodies and within the limits of the budgetary allocations provided to that effect.

### *3. Report of the Commissioner for Human Rights of the Russian Federation*

25. The 2007 Activities Report of the Commissioner for Human Rights of the Russian Federation pointed out that the perception of domestic judgments as what one might call “non-compulsory recommendations” was still a widespread phenomenon not only in society but also in State bodies. It noted that the non-enforcement problem had also arisen in respect of judgments of the Constitutional Court. According to the report, the problem had been discussed between December 2006 and March 2007 at special meetings in all federal circuits involving regional authorities and representatives of the President's Administration. An idea thus emerged of setting up a national filter mechanism that would allow for examination of Convention complaints at the domestic level. The Commissioner concluded that joint efforts should be deployed with a view to eliminating the roots of the problem rather than simply reducing the number of complaints.

## **B. Domestic remedies in respect of the non-execution or delayed execution of domestic judgments**

### *1. Legal provisions*

#### **(a) Civil law**

26. Chapter 25 of the Code of Civil Procedure provides a procedure for challenging State authorities' acts or inaction in courts. If a court finds that the complaint is well-founded, it orders the State authority concerned to remedy the breach or unlawfulness found (Article 258).

27. Article 208 of the Code of Civil Procedure provides for "indexation" of judicial awards: the court which made the award may upgrade it upon a party's request in line with the increase in the official retail price index until the date of effective payment. Default interest and other compensation for pecuniary damage may in addition be recovered from the debtor for non-compliance with a monetary obligation and use of another person's funds (Article 395 of the Civil Code).

28. Damage caused by unlawful action or inaction of State or local authorities or their officials is subject to compensation from the Federal Treasury or a federal entity's treasury (Article 1069). Compensation for damage caused to an individual by unlawful conviction, prosecution, detention on remand or prohibition on leaving his or her place of residence pending trial is granted in full regardless of the fault of the State officials concerned and following the procedure provided for by law (Article 1070 § 1). Damage caused by the administration of justice is compensated if the fault of the judge is established by a final judicial conviction (Article 1070 § 2).

29. A court may hold the tortfeasor liable for non-pecuniary damage caused to an individual by actions impairing his or her personal non-property rights or affecting other intangible assets belonging to him or her (Articles 151 and 1099 § 1). Compensation for non-pecuniary damage sustained through an impairment of an individual's property rights is recoverable only in cases provided for by law (Article 1099 § 2 of the Civil Code). Compensation for non-pecuniary damage is payable irrespective of the tortfeasor's fault if damage was caused to an individual's life or limb, sustained through unlawful criminal prosecution, dissemination of untrue information and in other cases provided for by law (Article 1100 of the Civil Code).

#### **(b) Criminal law**

30. Article 315 of the Criminal Code provides for sanctions for persistent failure by any State official or civil servant to comply with a judicial decision that has entered into legal force. The sanctions include a

fine, temporary suspension from service, community service (*обязательные работы*) for a maximum term of 240 hours or deprivation of liberty for a maximum term of two years.

### *2. Constitutional Court's judgment of 25 January 2001*

31. By Ruling no. 1-P of 25 January 2001, the Constitutional Court found that Article 1070 § 2 of the Civil Code was compatible with the Constitution in so far as it provided for special conditions on State liability for damage caused by the administration of justice. It clarified, nevertheless, that the term “administration of justice” did not cover judicial proceedings in their entirety but only judicial acts touching upon the merits of a case. Other judicial acts – mainly of a procedural nature – fell outside the scope of the notion “administration of justice”.

32. State liability for the damage caused by such procedural acts or failures to act, such as a breach of the reasonable time for court proceedings, could arise even in the absence of a final criminal conviction of a judge if the fault of the judge had been established in civil proceedings. The Constitutional Court emphasised, however, that the constitutional right to compensation by the State for the damage should not be tied in with the individual fault of a judge. An individual should be able to obtain compensation for any damage incurred through a violation by a court of his or her right to a fair trial within the meaning of Article 6 of the Convention.

33. The Constitutional Court held that Parliament should legislate on the grounds and procedure for compensation by the State for the damage caused by unlawful acts or failures to act of a court or a judge and determine territorial and subject matter jurisdiction over such claims.

### *3. Supreme Court's decision of 26 September 2008 and the new Compensation Bill*

34. On 26 September 2008 the Plenum of the Supreme Court adopted a decision (no. 16) to submit to the State Duma of the Russian Federation a draft constitutional law on compensation by the State of damage caused by violations of the right to judicial proceedings within a reasonable time and of the right to the execution within a reasonable time of judicial decisions that have entered into legal force (hereinafter “the Compensation Bill”). The Supreme Court also decided to submit to the State Duma a second draft law introducing changes in certain legal acts in connection with the adoption of the Compensation Bill. Both drafts were formally tabled in the State Duma on 30 September 2008.

35. The purpose of the Compensation Bill is to set up in Russia a domestic legal remedy in respect of violations of the rights to judicial proceedings within a reasonable time and to the execution of an enforceable judicial decision within a reasonable time (section 1(1)). It is also provided

that the applicants in cases which have not yet been declared admissible by the Court may apply for compensation of damage under the Bill within six months after its entry into force planned for 1 January 2010 (section 19). The Bill empowers courts of general jurisdiction to consider cases brought against the State on alleged violations of the above-mentioned rights (section 3(1)) and provides for specific rules to govern the proceedings in such cases. The State is represented in the proceedings by the Ministry of Finance (section 3(3)). The latter has to prove that there was no violation of the reasonable-time requirement, while the plaintiff has to prove the existence of pecuniary damage (section 11(1)). To decide a case, the court assesses its complexity, the behaviour of the parties and other actors in the proceedings, and the acts or inaction of judicial or prosecution authorities, the parties to enforcement proceedings or the enforcement authorities. The court also assesses the duration of the violation and the importance of its consequences for the person affected (section 12). If the court finds a violation, it makes a monetary award for damage to be determined taking account of the specific circumstances of the case, of the requirements of equity and of the Convention standards (section 14). The court may take a separate decision finding a breach of law by a court or State official and order specific procedural actions to be taken, with a request to report back within a month (section 15).

36. The Supreme Court's explanatory memorandum sets out the needs for additional budgetary allocations to ensure the implementation of the Compensation Bill. The average compensation per case is estimated at 3,050 euros (EUR) having regard to the fact that the just satisfaction amounts awarded by the European Court of Human Rights in non-enforcement cases have usually ranged between EUR 1,200 and EUR 4,900.

37. The second draft law introduces amendments to other legal acts. Under new Article 1070 § 1 of the Civil Code, damage caused by violations of the reasonable-time requirement by State authorities in judicial proceedings or in the execution of judgments is compensated from the Federal Treasury. Under new Article 242 § 2 of the Budget Code, judicial decisions granting such compensation must be enforced within two months.

#### *4. The Address by the President of the Russian Federation to the Federal Assembly*

38. In his Address to the Federal Assembly delivered on 5 November 2008, the President of the Russian Federation stated in particular that it was necessary to establish a mechanism for compensation of damage caused by violations of citizens' rights to trial within a reasonable time and to the full and timely implementation of court decisions. The President stressed that the execution of court decisions was still a huge problem, which concerned all courts, including the Constitutional Court. He further stated that the problem was notably due to the lack of real accountability of officials and

citizens who fail to execute court decisions and that this accountability was to be established.

### III. RELEVANT INTERNATIONAL MATERIALS

#### A. Council of Europe

##### 1. Committee of Ministers

39. On 3-5 December 2007 the Committee of Ministers resumed consideration under Article 46 § 2 of the Convention of the group of the Court's judgments against Russia concerning failure to enforce or delays in the enforcement of domestic judgments (*Timofeyev and Others*, CM/Del/OJ/DH(2007)1013). The following decision was adopted by the Committee on 19 December 2007 (CM/Del/Dec(2007)1013 FINAL):

“The Deputies, ...

1. recalled that these judgments reveal various structural problems in the Russian legal system which, by their nature and scale, severely affect its effectiveness and cause very numerous violations of the Convention an increasing number of which are complained of before the Court;

2. took note, with interest, of various measures adopted or being taken by certain competent authorities to prevent new similar violations and to remedy those that have already occurred by setting up or improving appropriate domestic procedures, measures which remain to be taken;

3. emphasised anew that the problems revealed by the judgments require urgent solutions in order to ensure that the relevant Convention rights are adequately protected at the domestic level, thus preventing an exceedingly high number of similar applications to the Court;

4. invited the competent authorities to continue bilateral consultations with the Secretariat with a view to establishing a proper strategy for adoption of the necessary measures, including the setting up of effective domestic remedies;

...”

40. The problems underlying the non-enforcement of domestic judgments in Russia and various measures taken or considered by the authorities in the context of the implementation of the Court's judgments were addressed in detail in the Committee of Ministers' documents CM/Inf/DH(2006)45 of 1 December 2006 and CM/Inf/DH(2006)19 rev3 of 4 June 2007. The latter document presented the progress so far achieved by the Russian authorities, pointed at a number of outstanding questions and proposed further measures, with a view to a comprehensive solution of the

problem. The main avenues of action proposed were summarised as follows (see CM/Inf/DH(2006)19 rev3, cited above, p. 1):

“– Improvement of budgetary procedures and of practical implementation of the budget decisions;

– Identifying a specific State authority as a defendant;

– Ensuring effective compensation for delays (indexation, default interest, specific damages, penalties for delays);

– Increasing the effectiveness of domestic remedies for proper enforcement of judicial decisions;

– Improvement of the legal framework governing compulsory execution against the public authorities;

– Ensuring effective liability of civil servants for non-enforcement;

Special consideration is given to possible ways of ensuring coherence of the present execution mechanisms by allowing the Treasury and the bailiffs to act in a complementary manner in their respective fields of competence and under appropriate judicial review. A strong emphasis is also put on possible ways of preventing litigation against the State through improved budgetary proceedings, which would allow the State to timely comply with its pecuniary obligations.”

41. In Recommendation Rec(2004)6 to member States on the improvement of domestic remedies adopted on 12 May 2004, the Committee of Ministers recommended, *inter alia*:

“... that member States ... review, following Court judgments which point to structural or general deficiencies in national law or practice, the effectiveness of the existing domestic remedies and, where necessary, set up effective remedies, in order to avoid repetitive cases being brought before the Court ...”

42. The Appendix to the Recommendation further stated, *inter alia*:

“Remedies following a ‘pilot’ judgment

13. When a judgment which points to structural or general deficiencies in national law or practice (‘pilot case’) has been delivered and a large number of applications to the Court concerning the same problem (‘repetitive cases’) are pending or likely to be lodged, the respondent State should ensure that potential applicants have, where appropriate, an effective remedy allowing them to apply to a competent national authority, which may also apply to current applicants. Such a rapid and effective remedy would enable them to obtain redress at national level, in line with the principle of subsidiarity of the Convention system.

14. The introduction of such a domestic remedy could also significantly reduce the Court’s workload. While prompt execution of the pilot judgment remains essential for solving the structural problem and thus for preventing future applications on the same matter, there may exist a category of people who have already been affected by this problem prior to its resolution. ...

...

16. In particular, further to a pilot judgment in which a specific structural problem has been found, one alternative might be to adopt an *ad hoc* approach, whereby the State concerned would assess the appropriateness of introducing a specific remedy or widening an existing remedy by legislation or by judicial interpretation.

...

18. When specific remedies are set up following a pilot case, governments should speedily inform the Court so that it can take them into account in its treatment of subsequent repetitive cases.”

## 2. *Parliamentary Assembly*

43. In Resolution 1516 (2006) on implementation of judgments of the European Court, adopted on 2 October 2006, the Parliamentary Assembly noted with grave concern the continuing existence in several States of major structural deficiencies which cause large numbers of repetitive findings of violations of the Convention and represent a serious danger to the rule of law in the States concerned. The Assembly listed among those deficiencies some major shortcomings in the judicial organisation and procedures in the Russian Federation, including chronic non-enforcement of domestic judicial decisions delivered against the State (see paragraph 10.2 of the Resolution). The Assembly urged the authorities of the States concerned, including the Russian Federation, to resolve the issues of particular importance mentioned in the Resolution and to give this action top political priority.

44. In the report of the Committee on Legal Affairs and Human Rights, the rapporteur, Mr Erik Jurgens, called for an urgent solution to the above-mentioned problems as they affect a very large number of people in Russia. He also warned that the influx of numerous clone cases in the Court was likely to undermine the effectiveness of the Convention mechanism (Doc. 11020). He further stated:

“ 58. The rapporteur welcomes the frank and open position of most of the Russian officials and institutions he met in Moscow as well as their clear understanding that the above problems put at stake the effectiveness of the Russian judicial system, and indeed, of the State as a whole. It is perhaps indicative that especially the presidents of the Constitutional Court and of the Supreme Court showed a very constructive attitude, as both of them recognised the problems and encouraged the rapporteur in his endeavours to help find a solution for them.

59. The authorities provided assurances that the most important problems would be addressed as a matter of priority and that appropriate steps would be taken to ensure rapid adoption of reforms required by the European Court’s judgments.

60. The Russian officials’ clear willingness to come to grips with the above-mentioned important problems is most welcome. The rapporteur stresses that the

complexity of these issues is such as to require enhanced and concerted efforts of all actors within the Russian legal system.

61. Thorough reform strategies in this respect, however, still remain to be established. In view of the present problems raised in the judgments and others still to come, the rapporteur has strongly recommended to the authorities to set up a special mechanism of interagency cooperation in the implementation of Strasbourg Court judgments. Constant involvement of Parliament and the Russian delegation to the Assembly in the implementation process is also necessary. The rapporteur is convinced that his Russian parliamentary colleagues will seriously consider his recommendation to set up a specific mechanism and procedure for parliamentary oversight to implement Strasbourg Court judgments, as well as other relevant proposals made in the draft resolution. The rapporteur also trusts that the members of the Russian delegation to the Assembly will promote and follow up the adoption of the specific measures required by certain judgments (for details, see Appendix III, Part III)."

## **B. United Nations**

45. In the preliminary observations following a visit to Russia from 19 to 29 May 2008, the United Nations special rapporteur on the independence of judges and lawyers, Mr Leandro Despouy, voiced "important concerns at the fact that an important percentage of judicial decisions, including those against State officials, were not implemented". He added that "problems with the implementation of judicial decisions in Russia had contributed to the poor image of the judiciary in the eyes of the population".

## **THE LAW**

### **I. ALLEGED VIOLATION OF ARTICLE 6 OF THE CONVENTION AND OF ARTICLE 1 OF PROTOCOL No. 1**

46. The applicant complained that the authorities' prolonged failure to comply with the binding and enforceable judgments in his favour violated his right to a court under Article 6 of the Convention and his right to the peaceful enjoyment of his possessions under Article 1 of Protocol No. 1, which, in so far as relevant, read as follows:

#### **Article 6 § 1**

"In the determination of his civil rights and obligations ... everyone is entitled to a fair and public hearing within a reasonable time by [a] ... tribunal ..."

**Article 1 of Protocol No. 1**

“Every natural or legal person is entitled to the peaceful enjoyment of his possessions. No one shall be deprived of his possessions except in the public interest and subject to the conditions provided for by law and by the general principles of international law. ...”

**A. The parties’ submissions***1. The Government*

47. The Government initially argued in their observations that the applicant had not exhausted domestic remedies. However, in their further observations in response to those of the applicant, the Government did not maintain their objection as to non-exhaustion of domestic remedies.

48. The Government also submitted that the applicant could no longer claim to be a victim of the alleged violations: the damage caused by enforcement delays had been compensated by additional indexation awards granted by courts under Article 208 of the Code of Civil Procedure. The Government supported their submission by reference to certain decisions of the Court (notably *Nemakina v. Russia* (dec.), no. 14217/04, 10 July 2007, and *Derkach v. Russia* (dec.), no. 3352/05, 3 May 2007).

49. The Government further argued that the complaints were manifestly ill-founded: in their view, the periods of time from receipt of the necessary documents by the competent authorities to the effective payment of judicial awards had ranged between thirteen days and nine months and were thus reasonable in the light of the Court’s case-law. The Government blamed the applicant for having repeatedly withdrawn the writ of execution concerning the judgment of 17 April 2003 and consecutively sent it to different authorities. The judgment of 4 December 2003 was enforced only six months after its rectification on 9 March 2006. Finally, the judgment of 24 March 2006 was enforced in two steps: on 2 November 2006 in its major part and on 17 August 2007 for the remainder, namely only nine months after the partial execution.

50. The Government lastly referred to the complexity of the enforcement proceedings in this case given that several judgments were involved. They also emphasised objective circumstances, such as the complexity of the federal multilevel budgetary system and legislative changes, which had led to delays in enforcement for which the Government were not responsible.

*2. The applicant*

51. The applicant submitted that he had complained before different State authorities including the Ministry of Finance, the Federal Treasury, the prosecutor’s office and bailiffs about insufficient regular payments

and/or delays in enforcement of judgments in his favour. In his view, the State authorities should also have displayed diligence in this respect, but had failed to take the necessary action. He considered that the surprisingly short delays in the execution of the judgments of 22 May 2007 and 21 August 2007 were presumably a result of the Court's decision to communicate his application to the Government.

52. As regards the other three judgments, the applicant disagreed with the Government's calculation of the delays. He argued that an overall thirty-one month delay in the execution of the judgment of 17 April 2003 was imputable to various authorities; the writ of execution concerning the judgment of 4 December 2003 had remained for twenty-one months with the Shakhty Directorate of Labour and Social Development without any action being taken, before it applied to the court for correction of an arithmetic error; the judgment of 24 March 2006 remained unenforced, albeit in part, until August 2007. The applicant concluded that he was still a victim of violations of Article 6 of the Convention and of Article 1 of Protocol No. 1.

## **B. The Court's assessment**

### *1. Admissibility*

53. The Court notes that the Government have explicitly dropped their objection as to non-exhaustion of domestic remedies by the applicant and will not examine this question.

54. As regards the applicant's victim status, the Court notes that under Article 34 of the Convention, "[t]he Court may receive applications from any person ... claiming to be the victim of a violation by one of the High Contracting Parties of the rights set forth in the Convention or the Protocols thereto ...".

55. It falls first to the national authorities to redress any alleged violation of the Convention. In this regard, the question whether or not the applicant can claim to be a victim of the violation alleged is relevant at all stages of the proceedings under the Convention (see *Burdov v. Russia*, no. 59498/00, § 30, ECHR 2002-II).

56. The Court reiterates that a decision or measure favourable to the applicant, such as the enforcement of a judgment after substantial delay, is not in principle sufficient to deprive him of his status as a "victim", unless the national authorities have acknowledged, either expressly or in substance, and then afforded redress for, the breach of the Convention (see *Petrushko v. Russia*, no. 36494/02, §§ 14-16, 24 February 2005, with further references). Redress so afforded must be appropriate and sufficient, failing which a party can continue to claim to be a victim of the violation (see

*Scordino v. Italy (no. 1)* [GC], no. 36813/97, § 181, ECHR 2006-V, and *Cocchiarella v. Italy* [GC], no. 64886/01, § 72, ECHR 2006-V).

57. The Government argued that domestic courts granted the applicant compensation for delays in enforcement of the judgments in his favour by way of indexation of the initial awards under Article 208 of the Code of Civil Procedure. The applicant did not contest this fact, but argued that he retained the status of a victim. The Court has thus to consider whether the indexation awards amount to an acknowledgement of the violations of the Convention and constitute appropriate and sufficient redress in this respect.

58. The Court notes on the first point that the decisions referred to by the Government did not explicitly acknowledge violations of the Convention. They awarded compensation on the basis of an objective fact that a certain time had elapsed between the moment when the sums were due and the moment when they were paid. The question would thus arise of whether these decisions acknowledged the alleged violations in substance. However, the Court does not consider it necessary to rule on this issue, given its conclusion below as to whether the redress granted was adequate and sufficient.

59. On the latter point, the Court observes that Article 208 of the Code of Civil Procedure only allows the courts to upgrade the amounts awarded in line with an official price index, thus compensating for depreciation of the national currency. The compensation so awarded thus covered only inflation-related losses but not any further damage sustained by the applicant, either pecuniary or non-pecuniary. The Government did not provide any argument to the contrary. The Court has already considered the issue in other cases concerning Russia and concluded that compensation for inflation losses alone, however accessible and effective in law and practice, does not constitute the adequate and sufficient redress required by the Convention (see *Moroko v. Russia*, no. 20937/07, § 27, 12 June 2008). As to the earlier decisions quoted by the Government (see paragraph 48 above), the Court reaffirms that they were taken in the specific circumstances of these individual cases (*ibid.*, § 26) and must not be interpreted as establishing any general principle that would contradict the Court's present conclusion.

60. The Court accordingly concludes that the applicant was not granted adequate and sufficient redress in respect of the alleged violations and can thus still claim to be a victim under Article 34 of the Convention. The Government's objection must therefore be dismissed.

61. As regards other arguments submitted by the parties, the Court notes that they raise serious questions that require consideration on the merits. The Court accordingly considers that the 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

62. It is not disputed by the parties that the five judgments concerned by the present case were fully enforced but with certain delays. The only issue to be decided by the Court is whether these delays violated the Convention.

63. The parties disagreed on this point, at least with regard to three of the five judgments: the Government considered that the delays were up to ten months and were in conformity with the Convention; the applicant considered the delays to be much longer and, therefore, in breach of the Convention.

64. Given these diverging positions, the Court considers it appropriate to reiterate and clarify the main principles established by its case-law that must guide the determination of the relevant issues under the Convention.

### (a) General principles

65. The right to a court protected by Article 6 would be illusory if a Contracting State's domestic legal system allowed a final, binding judicial decision to remain inoperative to the detriment of one party. Execution of a judgment given by any court must therefore be regarded as an integral part of the "trial" for the purposes of Article 6 (see *Hornsby v. Greece*, 19 March 1997, § 40, *Reports of Judgments and Decisions* 1997-II).

66. An unreasonably long delay in enforcement of a binding judgment may therefore breach the Convention (see *Burdov*, cited above). The reasonableness of such delay is to be determined having regard in particular to the complexity of the enforcement proceedings, the applicant's own behaviour and that of the competent authorities, and the amount and nature of the court award (see *Raylyan v. Russia*, no. 22000/03, § 31, 15 February 2007).

67. While the Court has due regard to the domestic statutory time-limits set for enforcement proceedings, their non-respect does not automatically amount to a breach of the Convention. Some delay may be justified in particular circumstances but it may not, in any event, be such as to impair the essence of the right protected under Article 6 § 1 (see *Burdov*, cited above, § 35). Thus, the Court considered, for example, in a recent case concerning Russia, that an overall delay of nine months taken by the authorities to enforce a judgment was not *prima facie* unreasonable under the Convention (see *Moroko*, cited above, § 43). Such an assumption does not, however, obviate the need for an assessment in the light of the above-

mentioned criteria (see paragraph 66 above) and having regard to other relevant circumstances (*ibid.*, §§ 44-45).

68. A person who has obtained a judgment against the State may not be expected to bring separate enforcement proceedings (see *Metaxas v. Greece*, no. 8415/02, § 19, 27 May 2004). In such cases, the defendant State authority must be duly notified of the judgment and is thus well placed to take all necessary initiatives to comply with it or to transmit it to another competent State authority responsible for execution. This is particularly relevant in a situation where, in view of the complexities and possible overlapping of the execution and enforcement procedures, an applicant may have reasonable doubts about which authority is responsible for the execution or enforcement of the judgment (see *Akashev v. Russia*, no. 30616/05, § 21, 12 June 2008).

69. A successful litigant may be required to undertake certain procedural steps in order to recover the judgment debt, be it during a voluntary execution of a judgment by the State or during its enforcement by compulsory means (see *Shvedov v. Russia*, no. 69306/01, §§ 29-37, 20 October 2005). Accordingly, it is not unreasonable that the authorities request the applicant to produce additional documents, such as bank details, to allow or speed up the execution of a judgment (see, *mutatis mutandis*, *Kosmidis and Kosmidou v. Greece*, no. 32141/04, § 24, 8 November 2007). The requirement of the creditor's cooperation must not, however, go beyond what is strictly necessary and, in any event, does not relieve the authorities of their obligation under the Convention to take timely action of their own motion, on the basis of the information available to them, with a view to honouring the judgment against the State (see *Akashev*, cited above, § 22). The Court thus considers that the burden to ensure compliance with a judgment against the State lies primarily with the State authorities starting from the date on which the judgment becomes binding and enforceable.

70. The complexity of the domestic enforcement procedure or of the State budgetary system cannot relieve the State of its obligation under the Convention to guarantee to everyone the right to have a binding and enforceable judicial decision enforced within a reasonable time. Nor is it open to a State authority to cite the lack of funds or other resources (such as housing) as an excuse for not honouring a judgment debt (see *Burdov*, cited above, § 35, and *Kukalo v. Russia*, no. 63995/00, § 49, 3 November 2005). It is for the Contracting States to organise their legal systems in such a way that the competent authorities can meet their obligation in this regard (see, *mutatis mutandis*, *Comingersoll S.A. v. Portugal* [GC], no. 35382/97, § 24, ECHR 2000-IV, and *Frydlender v. France* [GC], no. 30979/96, § 45, ECHR 2000-VII).

**(b) Application of these principles to the present case**

71. The Court will consider the delays in the execution of the five judgments concerned in this case on the basis of the above principles.

*(i) Shakhty City Court's judgment of 17 April 2003*

72. The Shakhty City Court's judgment of 17 April 2003 became binding and enforceable on 9 July 2003 and the defendant authority was or should have been aware of its obligation to pay the applicant the sum awarded as of that date. That the applicant submitted a writ of execution only a month later does not affect the starting point of the authority's obligation to comply with the judgment. Indeed, he could not be expected to bring any enforcement or other similar proceedings (see paragraph 68 above). Starting from that date, the defendant authority had thus an obligation to take all necessary measures, either on its own or in cooperation with other responsible federal and/or local authorities, to ensure that the necessary funds were made available so as to honour the State's debt. It appears indeed that the defendant authority had at its disposal all the necessary elements, such as the applicant's address and bank details, to proceed with the payment at any moment.

73. The time taken by the authorities to comply with a judgment should accordingly be calculated from the moment on which it became final and enforceable, that is, on 9 July 2003, until the moment when the judicial award was paid to the applicant, that is, on 19 August 2005. The time taken to comply with the judgment of 17 April 2003 was thus two years and one month.

74. Such a long delay in payment of a judicial award is on its face incompatible with the Convention requirements stated above and the Court finds no circumstance to justify it.

75. It is noted, in particular, that the enforcement was not of any complexity: the judgment required payment of a sum of money. The applicant made no obstacle to the enforcement. Nor can he be blamed for his attempt to seek relief with the bailiffs and the Federal Treasury after having waited in vain for more than nine months for the defendant's voluntary compliance with the judgment. On the other hand, the Court notes that the writ of execution fruitlessly stayed with various authorities for lengthy periods, notably nine months with the defendant Department, four months with the bailiffs and eleven months with the Federal Treasury. The Court finds no justification for this inaction. The complexity of the multilevel budgetary system referred to by the Government cannot justify the lack of appropriate coordination between the authorities and their inaction during the above periods.

76. The above elements are sufficient for the Court to conclude that the State failed to enforce the judgment of 17 April 2003 within a reasonable time.

(ii) *Shakhty City Court's judgment of 4 December 2003*

77. The judgment of 4 December 2003 became final on 15 December 2003 and was enforced on 18 October 2006. The time taken by the authorities to comply with the judgment was two years and ten months. It is true, as pointed out by the Government, that the court modified this judgment twice. The first rectification was made on 14 November 2005 upon the defendant authority's request to reduce the initial award by RUB 155 (EUR 4). However, the need for such a rectification may explain only a tiny fraction of the overall delay, if any. Yet the Government offered no explanation for the almost two years which elapsed between 15 December 2003 and 14 November 2005. Nor did it inform the Court of any measure taken by the defendant authority to enforce the judgment during that period. Even assuming that the authority acted with more diligence at a later stage, such a long delay suffices for the Court to find a violation of the right to have this judgment enforced within a reasonable time.

(iii) *Shakhty City Court's judgment of 24 March 2006*

78. The Court finds it beyond any dispute that the judgment of 24 March 2006, which became binding on 22 May 2006, was executed on 2 November 2006, but only in part. The parties also agreed that the full execution of the judgment had only been effected on 17 August 2007.

79. While noting that the authorities acted with relative diligence by paying the awards in their major part within six months, the Court considers that Article 6 imposes an obligation to comply with a binding and enforceable judgment in full. The Court will thus assess the reasonableness of the whole period until full compliance. The time taken by the authorities to comply with the judgment in its entirety was thus one year and almost three months.

80. As it transpires notably from the Government's submissions and the Shakhty Deputy Prosecutor's letter of 29 April 2007 submitted by the applicant, the full enforcement of the judgment had not been possible given the absence of appropriate regulations or procedures at the federal level. Indeed, the upgrades decided by the Shakhty City Court had not been paid to the applicant until the adoption of a specific procedure in that connection by the Ministry of Finance (see paragraph 19 above).

81. However, the Court has not found in the Government's submissions any reason justifying more than one year's delay in the adoption by the Ministry of Finance of the new procedure. Nor can the Court attribute the delay to objective difficulties referred to by the Government: the matter appeared to be under the sole control of the Government. In any event, the lack of general regulations or procedures at a federal level cannot *per se* justify such a long delay in compliance with a binding and enforceable judgment. In the Court's view, the right to a court would not be effective if

the execution of a binding and enforceable judgment in a particular case were made conditional on the adoption by the administration of general procedures or regulations in the area concerned.

82. Finally, as regards the nature of the award, the Government argued that the benefits in question were not the applicant's only income and were thus of less importance. The Court cannot agree with this argument given that at least some of these awards concerned substantial amounts of compensation for health damage sustained by the applicant at the site of the Chernobyl nuclear disaster and leading to his lifelong disability. In the Court's view, such awards can by no means be qualified as being marginal or insignificant in nature.

83. In view of these circumstances, the Court concludes that the authorities' failure for one year and almost three months to fully comply with the judgment of 24 March 2006 also violated the applicant's right to a court.

*(iv) Shakhty City Court's judgments of 22 May 2007 and 21 August 2007*

84. The Court notes that the Shakhty City Court's judgments of 22 May 2007 and 21 August 2007 became final on 4 June 2007 and 3 September 2007 respectively; they were enforced on 5 December 2007 and 3 December 2007 respectively. The time taken by the authorities to enforce the judgments was six months and three months respectively.

85. The applicant referred to certain initial difficulties in obtaining enforcement of the former judgment which were swiftly resolved following the communication of his application by the Court to the Government. Be that as it may, the Court is satisfied that the periods of six and three months respectively taken by the authorities to enforce these judgments do not in themselves appear unreasonable; furthermore, the Court finds no particular circumstance showing that these delays impaired the essence of the applicant's right to a court.

*(v) Conclusions*

86. In view of the foregoing, the Court concludes that by delaying the execution of the Shakhty City Court's judgments of 17 April 2003, 4 December 2003 and 24 March 2006 the authorities failed to respect the applicant's right to a court. There is accordingly a violation of Article 6 of the Convention.

87. Given that the binding and enforceable judgments created an established right to payment in the applicant's favour, which should be considered as a "possession" within the meaning of Article 1 of Protocol No. 1 (see *Vasilopoulou v. Greece*, no. 47541/99, § 22, 21 March 2002), the authorities' prolonged failure to comply with these judgments also violated the applicant's right to peaceful enjoyment of his possessions (see *Burdov*,

cited above, § 41). There is accordingly also a violation of Article 1 of Protocol No. 1.

88. In view of its findings in paragraphs 84-85 above, the Court concludes that there is no violation of Article 6 and of Article 1 of Protocol No. 1 in respect of the enforcement of the judgments of 22 May 2007 and 21 August 2007.

## II. EXISTENCE OF EFFECTIVE DOMESTIC REMEDIES AS REQUIRED BY ARTICLE 13 OF THE CONVENTION

89. The applicant did not allege the lack of effective domestic remedies in respect of his complaint about prolonged non-enforcement by the authorities of domestic judgments in his favour. The Court observed nonetheless that alleged ineffectiveness of domestic remedies was being increasingly complained of before the Court in cases concerning non-enforcement or delayed enforcement of domestic judgments. It therefore decided of its own motion to examine this question under Article 13 in the present case and requested the parties to submit observations. Article 13 provides as follows:

“Everyone whose rights and freedoms as set forth in [the] Convention are violated shall have an effective remedy before a national authority notwithstanding that the violation has been committed by persons acting in an official capacity.”

### A. The parties' submissions

90. The applicant did not submit any specific argument on the existence of domestic remedies and their effectiveness. In his earlier observations, he mentioned that he had unsuccessfully submitted his grievances to various authorities, including the Ministry of Finance, the Federal Treasury, the prosecutor's office and bailiffs.

91. The Government argued that there were several effective domestic remedies against non-enforcement that had not been tested by the applicant in the present case. Firstly, the Constitution guarantees to everyone judicial protection and the right to challenge State authorities' acts or inaction in courts. Law no. 4866-1 of 27 April 1993 and Chapter 25 of the Code of Civil Procedure allow such actions or inaction to be condemned by courts, thus opening a way for claiming damages and bringing criminal proceedings under Article 315 of the Criminal Code against those responsible for enforcement delays. An example of case-law was provided: by a decision of 13 July 2007 the Leninskiy District Court of Cheboksary, Republic of Chuvashiya, found inaction by the regional treasury department to be unlawful and ordered payment of the judicial award within one working day.

92. Secondly, the Government submitted that Chapter 59 of the Civil Code provided grounds for claiming both pecuniary and non-pecuniary damage for enforcement delays and that this remedy had proven its effectiveness in practice. Four examples of case-law awarding compensation for non-pecuniary damage were provided or quoted (decision of 23 October 2006 in the case of *Khakimovy* by the Novo-Savinovskiy District Court of Kazan, Republic of Tatarstan; decisions delivered on unspecified dates in the case of *Akuginova and others* by the Elista City Court, Republic of Kalmykiya; decision of 3 August 2004 in the case of *Butko* by the Kirovskiy District Court of Astrakhan; and decision of 28 March 2008 in the case of *Shubin* by the Beloretsk City Court, Republic of Bashkortostan).

93. Thirdly, the Government referred to Article 208 of the Code of Civil Procedure and Article 395 of the Civil Code as providing grounds for compensation of pecuniary damage. The former allows index-linking of judicial awards and its application is not conditional on the establishment of fault for delays; several examples of its successful application were provided. The latter allows the claiming of default interest and further compensation for additional pecuniary damage arising from delayed enforcement; two Supreme Court decisions applying this provision in non-enforcement cases in 2002 and 2006 were provided.

94. Lastly, the Government submitted that the Supreme Court had prepared a draft constitutional law introducing a domestic remedy against excessive length of judicial proceedings and delayed enforcement of judgments and that it would shortly be considered by the Government.

95. The Government concluded that Russian law provided for an aggregate of various remedies which should be considered as a whole; they were formulated with clarity and applied in practice as required by Article 13 of the Convention.

## **B. The Court's assessment**

### *1. General principles*

96. The Court notes that Article 13 gives direct expression to the States' obligation, enshrined in Article 1 of the Convention, to protect human rights first and foremost within their own legal system. It therefore requires that the States provide a domestic remedy to deal with the substance of an "arguable complaint" under the Convention and to grant appropriate relief (see *Kudła v. Poland* [GC], no. 30210/96, § 152, ECHR 2000-XI).

97. The scope of the Contracting States' obligations under Article 13 varies depending on the nature of the applicant's complaint; the "effectiveness" of a "remedy" within the meaning of Article 13 does not depend on the certainty of a favourable outcome for the applicant. At the

same time, the remedy required by Article 13 must be “effective” in practice as well as in law in the sense either of preventing the alleged violation or its continuation, or of providing adequate redress for any violation that has already occurred. Even if a single remedy does not by itself entirely satisfy the requirements of Article 13, the aggregate of remedies provided for under domestic law may do so (*ibid.*, §§ 157-58, and *Wasserman v. Russia (no. 2)*, no. 21071/05, § 45, 10 April 2008).

98. As regards more particularly length-of-proceedings cases, a remedy designed to expedite the proceedings in order to prevent them from becoming excessively lengthy is the most effective solution (see *Scordino*, cited above, § 183). Likewise, in cases concerning non-enforcement of judicial decisions, any domestic means to prevent a violation by ensuring timely enforcement is, in principle, of greatest value. However, where a judgment is delivered in favour of an individual against the State, the former should not, in principle, be compelled to use such means (see, *mutatis mutandis*, *Metaxas*, cited above, § 19): the burden to comply with such a judgment lies primarily with the State authorities, which should use all means available in the domestic legal system in order to speed up the enforcement, thus preventing violations of the Convention (see, *mutatis mutandis*, *Akashev*, cited above, §§ 21-22).

99. States can also choose to introduce only a compensatory remedy, without that remedy being regarded as ineffective. Where such a compensatory remedy is available in the domestic legal system, the Court must leave a wider margin of appreciation to the State to allow it to organise the remedy in a manner consistent with its own legal system and traditions and consonant with the standard of living in the country concerned. The Court is nonetheless required to verify whether the way in which the domestic law is interpreted and applied produces consequences that are consistent with the Convention principles, as interpreted in the light of the Court’s case-law (see *Scordino*, cited above, §§ 187-91). The Court has set key criteria for verification of the effectiveness of a compensatory remedy in respect of the excessive length of judicial proceedings. These criteria, which also apply to non-enforcement cases (see *Wasserman*, cited above, §§ 49 and 51), are as follows:

- an action for compensation must be heard within a reasonable time (see *Scordino*, cited above, § 195 *in fine*);
- the compensation must be paid promptly and generally no later than six months from the date on which the decision awarding compensation becomes enforceable (*ibid.*, § 198);
- the procedural rules governing an action for compensation must conform to the principle of fairness guaranteed by Article 6 of the Convention (*ibid.*, § 200);
- the rules regarding legal costs must not place an excessive burden on litigants where their action is justified (*ibid.*, § 201);

– the level of compensation must not be unreasonable in comparison with the awards made by the Court in similar cases (ibid., §§ 202-06 and 213).

100. On this last criterion, the Court indicated that, with regard to pecuniary damage, the domestic courts are clearly in a better position to determine the existence and quantum. The situation is, however, different with regard to non-pecuniary damage. There exists a strong but rebuttable presumption that excessively long proceedings will occasion non-pecuniary damage (see *Scordino*, cited above, §§ 203-04, and *Wasserman*, cited above, § 50). The Court considers this presumption to be particularly strong in the event of excessive delay in enforcement by the State of a judgment delivered against it, given the inevitable frustration arising from the State's disregard for its obligation to honour its debt and the fact that the applicant has already gone through judicial proceedings and obtained success.

## 2. *Application of the principles to the present case*

### (a) Preventive remedies

101. The Court notes that it has already found in several cases that there was no preventive remedy in the Russian legal system which could have expedited the enforcement of a judgment against a State authority (see *Lositskiy v. Russia*, no. 24395/02, §§ 29-31, 14 December 2006, and *Isakov v. Russia*, no. 20745/04, §§ 21-22, 19 June 2008). It found in particular that the bailiffs did not have power to compel the State to pay the judgment debt.

102. The bailiffs' incapacity to influence in any way the enforcement of the judgments in the applicant's favour, let alone to bring him relief, was also demonstrated in the present case. In April and June 2004 enforcement proceedings were instituted by bailiffs in respect of the judgments of 14 April and 4 December 2003. In July 2004 they were discontinued without bringing any result. The Rostov Regional Directorate of the Ministry of Justice informed the applicant by a letter of 12 July 2004 that the bailiffs did not have power to seize funds from the debtor authority's main bank account (*лицевой счет*), while its settlements account (*расчетный счет*), on which bailiffs could seize funds, contained none.

103. The Government further considered that another remedy provided for by Chapter 25 of the Code of Civil Procedure was capable of producing a preventive effect. Yet the Court has already assessed its effectiveness and concluded that a judicial appeal against the debtor authority's inaction would yield a declaratory judgment reiterating what was in any event evident from the original judgment, namely that the State was to honour its debt (see *Moroko*, cited above, § 25). As to courts' capacity to order remedial action under Article 258 of the Code of Civil Procedure, this new judgment would not bring the applicant closer to his desired goal, that is the actual payment of the judicial award (see *Jasiūnienė v. Lithuania* (dec.), no. 41510/98, 24 October 2000, and *Plotnikov v. Russia*, no. 43883/02,

§ 16, 24 February 2005). It is indicative that, in the only example of application of this provision submitted to the Court (see paragraph 91 above), the Government did not specify if the defendant authority had effectively complied with the domestic court's order to pay the judicial award within one working day. The Court therefore considers that this remedy does not allow effective prevention of a violation on account of non-enforcement of a judgment against the State.

104. As to Article 315 of the Criminal Code mentioned by the Government and the wide array of sanctions it provides for, the Court does not exclude that such coercive action may contribute to change the attitude of those who unacceptably delay the execution of judgments. The Court has, however, seen no evidence of its effectiveness in practice. On the contrary, no use of this provision was made despite the applicant's repeated complaints to the competent authorities, including prosecutors (see paragraph 80 above). In these circumstances, the Court cannot consider this provision to be effective both in theory and in practice as required by Article 13 of the Convention.

**(b) Compensatory remedies**

*(i) Pecuniary damage*

105. The Court has also considered on several occasions the question of the effectiveness of certain compensatory remedies relied on by the Government.

106. As regards the compensation of pecuniary damage for delays in enforcement, the Government referred to the possibilities offered by Article 395 of the Civil Code and by Article 208 of the Code of Civil Procedure. As regards the former, the Court has been provided with little evidence demonstrating the effectiveness of this remedy. The two judgments quoted by the Government are far from showing the existence of a widespread and consistent case-law in this regard. On the contrary, in one of the two cases mentioned, lower courts thrice rejected the claim for compensation lodged under Article 395 on the ground that the creditor had not proved that the debtor institution had used the unpaid sum for itself and was thus responsible under that provision. In this connection, the Court refers to its finding that a remedy the use of which is conditional on the debtor's fault is impracticable in cases of non-enforcement of judgments by the State (see *Moroko*, cited above, § 29, and paragraphs 111-13 below).

107. The situation is different as regards the remedy provided for by Article 208 of the Code of Civil Procedure allowing index-linking of monetary awards. The Court notes that individuals, like the applicant, were frequently awarded compensation for inflation losses on the basis of Article 208 of the Code of Civil Procedure. Of particular importance is the fact emphasised by the Government and illustrated by specific examples

that this compensation was calculated and awarded in a straightforward procedure without requiring the authorities' fault or unlawful action to be evidenced by the plaintiff. The Court further notes that this compensation is calculated on the basis of an objective official index of retail prices, which actually reflects the depreciation of the national currency (compare *Akkuş v. Turkey*, 9 July 1997, §§ 30-31, *Reports* 1997-IV, and *Aka v. Turkey*, 23 September 1998, §§ 48-51, *Reports* 1998-VI). This remedy is thus capable of adequately compensating inflation losses. That the applicant was awarded such compensation on numerous occasions also tends to confirm that the provision is applicable by courts in non-enforcement cases.

108. On the other hand, the payment of such compensation awards was delayed in the present case, thus severely undermining the effectiveness of this remedy in practice. The Court accepts that the authorities need time in which to make payment. It notes, however, that the period should not generally exceed six months from the date on which the decision awarding compensation becomes enforceable (see *Scordino*, cited above, § 198). Having regard to all the material at its disposal, the Court is not convinced that this requirement is systematically satisfied in respect of payment of compensation awarded by domestic courts under Article 208 of the Code of Civil Procedure. However, even assuming that the requirement of speedy payment of such compensation is met, this remedy alone would not provide sufficient redress as it can only compensate damage resulting from monetary depreciation (see paragraph 59 above).

*(ii) Non-pecuniary damage*

109. The Court has next to consider whether Chapter 59 of the Civil Code referred to by the Government constitutes an effective remedy for compensation of non-pecuniary damage in the event of non-enforcement of a judicial decision. The Court notes that it has already assessed the effectiveness of this remedy in several recent cases in the context of both Article 35 § 1 and Article 13 of the Convention.

110. The Court found that, while the possibility of such compensation was not totally excluded, this remedy did not offer reasonable prospects of success, being notably conditional on the establishment of the authorities' fault (see *Moroko*, cited above, §§ 28-29). The Government did not contest in the present case that compensation under Chapter 59 was subject to this condition, unlike the indexation under Article 208 of the Code of Civil Procedure (see paragraph 107 above).

111. The Court refers in this respect to a very strong, albeit rebuttable, presumption that an excessive delay in execution of a binding and enforceable judgment will occasion non-pecuniary damage (see paragraph 100 above). That compensation of non-pecuniary damage in non-enforcement cases is conditional on the respondent authority's fault is difficult to reconcile with this presumption. Indeed, enforcement delays

found by the Court are not necessarily due to failings of the respondent authority in a given case but may be attributable to deficient mechanisms at the federal and/or local level, not least to excessive complexities and formalism of the budgetary and financial procedures which considerably delay transfers of funds between responsible authorities and their subsequent payment to final beneficiaries.

112. The Court notes that the Civil Code lists a very limited number of situations in which compensation for non-pecuniary damage is recoverable irrespective of the respondent's fault (notably Articles 1070 § 1 and 1100). Neither excessively lengthy proceedings nor delays in enforcement of judicial decisions appear in this list. The Code provides, in addition, for damage caused by the administration of justice to be compensated if the fault of the judge is established by a final judicial conviction (Article 1070 § 2).

113. Against this background, the Constitutional Court held in 2001 that the constitutional right to compensation by the State for the damage caused by procedural acts, including excessively lengthy proceedings, should not be tied in with the individual fault of a judge. Referring, *inter alia*, to Article 6 of the Convention, the Constitutional Court held that Parliament should legislate on the grounds and procedure for such compensation. The Court notes, however, that no legislation has yet been enacted to that effect.

114. The Government argued nonetheless that Chapter 59 of the Civil Code had been successfully applied in practice, quoting four specific examples of domestic case-law. The Court notes that the same examples have been quoted by the Government in other similar cases and confirms its view that they appear as exceptional and isolated instances rather than evidence of established and consistent case-law. They cannot, therefore, alter the Court's earlier conclusion that the remedy in issue is not effective in both theory and practice.

115. Moreover, the Court notes that even in such exceptional cases of application of Chapter 59, the level of the compensation awarded for non-pecuniary damage was at times unreasonably low in comparison with the awards made by the Court in similar non-enforcement cases. For instance, in the case of *Butko* quoted by the Government, the plaintiff received RUB 2,000 (EUR 55) in respect of non-pecuniary damage (decision of 3 August 2004). The same amount was awarded under this head to V. Mukhlynova in the case of *Akuginova and others* also mentioned by the Government (decision of 22 January 2006). The Court further notes that it has already found in two other cases that the amounts awarded to the applicants in respect of non-pecuniary damage incurred through belated enforcement of judgments were manifestly unreasonable in the light of the Court's case-law (see *Wasserman*, cited above, § 56, and *Gayvoronskiy v. Russia*, no. 13519/02, § 39, 25 March 2008). The compensation was, in

addition, awarded in excessively lengthy proceedings in the former case and was itself paid with considerable delay in the latter.

116. Having regard to the above-mentioned shortcomings, the Court considers that the remedy provided for by Chapter 59 of the Civil Code cannot be considered as effective both in theory and in practice as required by Article 13 of the Convention.

**(c) Conclusion**

117. The Court concludes that there was no effective domestic remedy, either preventive or compensatory, that allows for adequate and sufficient redress in the event of violations of the Convention on account of prolonged non-enforcement of judicial decisions delivered against the State or its entities. There is accordingly a violation of Article 13 of the Convention.

**III. ALLEGED VIOLATION OF ARTICLE 14 OF THE CONVENTION**

118. Relying on Article 14 of the Convention, the applicant complained of discrimination on account on the authorities' alleged failure to apply the Compulsory Social Insurance Act 1998 (No.125-Ø3) to the liquidators of the Chernobyl disaster on the same terms as to other professional groups. He submitted, in particular, that he had not received default interest as provided for by this Act. The Government argued that this question concerned the application of domestic law and was solely within the competence of the domestic courts.

119. The Court notes that the Shakhty City Court's judgment of 4 December 2003 granted the applicant's claim under the above-mentioned Act (see paragraph 14 above). In any event, the applicant's complaint about alleged discrimination should first have been submitted to the domestic courts under Article 35 § 1 of the Convention. The applicant failed to demonstrate that he had exhausted domestic remedies in this regard. Nor did he substantiate his allegation before the Court. The Court therefore finds no appearance of a violation of Article 14 of the Convention and rejects this complaint.

**IV. ALLEGED SHORTFALL IN PAYMENT OF JUST SATISFATION  
DUE UNDER THE COURT'S JUDGMENT OF 7 MAY 2002**

120. The applicant also complained of the authorities' failure to pay him the full amount of just satisfaction awarded by the Court's judgment of 7 May 2002. According to his calculation, the sum of EUR 3,000 awarded was equivalent at the date of payment to RUB 94,981.50, while he only received RUB 92,724.60. He accordingly claimed a shortfall of RUB 2,256.90.

121. The Court reiterates that under Article 46 § 2 of the Convention, the supervision of the execution of its judgments is entrusted to the Committee of Ministers (see paragraphs 10-11 above). The Court has no competence to examine this complaint, which should have been submitted to the Committee of Ministers (see *Haase and Others v. Germany* (dec.), no. 34499/04, 12 February 2008).

## V. APPLICATION OF ARTICLE 46 OF THE CONVENTION

122. The Court notes at the outset that non-enforcement or delayed enforcement of domestic judgments constitutes a recurrent problem in Russia that has led to numerous violations of the Convention. The Court has already found such violations in more than two hundred judgments since the first such finding in the *Burdov* case in 2002. The Court therefore finds it timely and appropriate to consider this second case brought by the same applicant under Article 46 of the Convention, the relevant parts of which read as follows:

### **Article 46 Binding force and execution of judgments**

“1. The High Contracting Parties undertake to abide by the final judgment of the Court in any case to which they are parties.

2. The final judgment of the Court shall be transmitted to the Committee of Ministers, which shall supervise its execution.”

#### **A. The parties' submissions**

123. The applicant submitted that the Russian authorities' recurrent failure to enforce domestic judicial decisions delivered against them constituted a systemic problem as demonstrated by repeated non-enforcement of such decisions in his case.

124. The Government argued that no such problem existed in respect of either enforcement of judgments or domestic remedies. They argued that the Constitutional Court had not contested the existence of a special procedure for the execution of judicial decisions against the State (judgment of 14 July 2005). There were further specific regulations governing payment of benefits to Chernobyl victims. In 2007 considerable budgetary allocations were additionally made to pay outstanding debts under domestic judgments and the actual needs in such funds were reflected in the 2007 budget. The Government concluded that there were clear mechanisms for enforcement of such decisions, notably in respect of Chernobyl victims. The complexity of these mechanisms was attributable to the multilevel structure of the budgetary system and to the need for coordination between federal and local

authorities. The Government submitted, in addition, some statistical information about enforcement of judgments provided by federal ministries and bailiffs.

## **B. The Court's assessment**

### *1. General principles*

125. The Court notes that Article 46 of the Convention, as interpreted in the light of Article 1, imposes on the respondent State a legal obligation to implement, under the supervision of the Committee of Ministers, appropriate general and/or individual measures to secure the right of the applicant which the Court found to be violated. Such measures must also be taken in respect of other persons in the applicant's position, notably by solving the problems that have led to the Court's findings (see *Scozzari and Giunta v. Italy* [GC], nos. 39221/98 and 41963/98, § 249, ECHR 2000-VIII; *Christine Goodwin v. the United Kingdom* [GC], no. 28957/95, § 120, ECHR 2002-V; *Lukenda v. Slovenia*, no. 23032/02, § 94, ECHR 2005-X; and *S. and Marper v. the United Kingdom* [GC], nos. 30562/04 and 30566/04, § 134, ECHR 2008). This obligation was consistently emphasised by the Committee of Ministers in the supervision of the execution of the Court's judgments (see, among many authorities, Interim Resolutions ResDH(97)336 in cases concerning the length of proceedings in Italy; ResDH(99)434 in cases concerning the action of the security forces in Turkey; ResDH(2001)65 in the case of *Scozzari and Giunta* (cited above); and ResDH(2006)1 in the cases of *Ryabykh v. Russia*, no. 52854/99, ECHR 2003-IX, and *Volkova v. Russia*, no. 48758/99, 5 April 2005).

126. In order to facilitate effective implementation of its judgments along these lines, the Court may adopt a pilot-judgment procedure allowing it to clearly identify in a judgment the existence of structural problems underlying the violations and to indicate specific measures or actions to be taken by the respondent State to remedy them (see *Broniowski v. Poland* [GC], no. 31443/96, §§ 189-94 and the operative part, ECHR 2004-V, and *Hutten-Czapska v. Poland* [GC], no. 35014/97, §§ 231-39 and the operative part, ECHR 2006-VIII). This adjudicative approach is, however, pursued with due respect for the Convention organs' respective functions: it falls to the Committee of Ministers to evaluate the implementation of individual and general measures under Article 46 § 2 of the Convention (see, *mutatis mutandis*, *Broniowski v. Poland* (friendly settlement) [GC], no. 31443/96, § 42, ECHR 2005-IX, and *Hutten-Czapska v. Poland* (friendly settlement) [GC], no. 35014/97, § 42, 28 April 2008).

127. Another important aim of the pilot-judgment procedure is to induce the respondent State to resolve large numbers of individual cases arising from the same structural problem at the domestic level, thus implementing

the principle of subsidiarity which underpins the Convention system. Indeed, the Court's task, as defined by Article 19, that is to "ensure the observance of the engagements undertaken by the High Contracting Parties in the Convention and the Protocols thereto", is not necessarily best achieved by repeating the same findings in large series of cases (see, *mutatis mutandis*, *E.G. v. Poland* (dec.), no. 50425/99, § 27, ECHR 2008). The object of the pilot-judgment procedure is to facilitate the speediest and most effective resolution of a dysfunction affecting the protection of the Convention rights in question in the national legal order (see *Wolkenberg and Others v. Poland* (dec.), no. 50003/99, § 34, 4 December 2007). While the respondent State's action should primarily aim at the resolution of such a dysfunction and at the introduction, where appropriate, of effective domestic remedies in respect of the violations in question, it may also include *ad hoc* solutions such as friendly settlements with the applicants or unilateral remedial offers in line with the Convention requirements. The Court may decide to adjourn examination of all similar cases, thus giving the respondent State an opportunity to settle them in such various ways (see, *mutatis mutandis*, *Broniowski* [GC], cited above, § 198, and *Xenides-Arestis v. Turkey*, no. 46347/99, § 50, 22 December 2005).

128. If, however, the respondent State fails to adopt such measures following a pilot judgment and continues to violate the Convention, the Court will have no choice but to resume examination of all similar applications pending before it and to take them to judgment so as to ensure effective observance of the Convention (see, *mutatis mutandis*, *E.G. v. Poland*, cited above, § 28).

## 2. Application of the principles to the present case

### (a) Application of the pilot-judgment procedure

129. The Court notes that the present case can be distinguished in some respects from certain previous "pilot cases", such as *Broniowski* and *Hutten-Czapska*, for example. In fact, persons in the same position as the applicant do not necessarily belong to "an identifiable class of citizens" (compare *Broniowski* [GC], cited above, § 189, and *Hutten-Czapska* [GC], cited above, § 229). Furthermore, the two above-mentioned judgments were the first to identify new structural problems at the root of numerous similar follow-up cases, while the present case comes to be considered after some two hundred judgments have amply highlighted the non-enforcement problem in Russia.

130. Notwithstanding these differences, the Court considers it appropriate to apply the pilot-judgment procedure in this case, given notably the recurrent and persistent nature of the underlying problems, a large number of people affected by them in Russia and the urgent need to grant them speedy and appropriate redress at the domestic level.

**(b) Existence of a practice incompatible with the Convention**

131. The Court finds, at the outset, that the violations found in the present judgment were neither prompted by an isolated incident, nor attributable to a particular turn of events in this case, but were rather the consequence of regulatory shortcomings and/or administrative conduct of the authorities in the execution of binding and enforceable judgments ordering monetary payments by State authorities (compare *Broniowski* [GC], cited above, § 189, and *Hutten-Czapska* [GC], cited above, § 229).

132. Although the Government denied such a situation in their additional observations, their submissions in the present case appear to run against an almost undisputed recognition at both the domestic and the international level of the existence of structural problems in this field (see paragraphs 25 and 38-45 above). The problems appear, in addition, to have been acknowledged by the Russian competent authorities (see notably CM/Inf/DH(2006)45, cited above) and are being repeatedly emphasised by the Committee of Ministers. The Committee's recent decisions noted, in particular, that the structural problems in question in the Russian legal system severely affected, by their nature and scale, its effectiveness and caused very numerous violations of the Convention (see paragraph 39 above).

133. The important concerns voiced and the findings made by various authorities and institutions are consonant with some two hundred judgments of the Court which highlighted the multiple aspects of the underlying structural problems, which do not affect only Chernobyl victims, as in the present case, but also other large groups of the Russian population, including in particular some vulnerable groups. The State has thus been very frequently found to considerably delay the execution of judicial decisions ordering payment of social benefits such as pensions or child allowances, of compensation for damage sustained during military service or of compensation for wrongful prosecution. The Court cannot ignore the fact that approximately seven hundred cases concerning similar facts are currently pending before it against Russia and that some of the cases, like the present one, lead the Court to find a second set of violations of the Convention in respect of the same applicants (see *Wasserman*, cited above, and *Kukalo v. Russia (no. 2)*, no. 11319/04, 24 July 2008). Moreover, the victims of non-enforcement or delayed enforcement dispose of no effective remedy, either preventive or compensatory, that allows for adequate and sufficient redress at the domestic level (see paragraphs 101-17 above).

134. The Court's findings, taken in conjunction with the other material in its possession, thus clearly indicate that such breaches reflect a persistent structural dysfunction. The Court notes with grave concern that the violations found in the present judgment occurred several years after its first judgment of 7 May 2002, notwithstanding Russia's obligation under Article 46 to adopt, under the supervision of the Committee of Ministers,

the necessary remedial and preventive measures, both at individual and general levels. The Court notes, in particular, that non-compliance with one of the judgments in the applicant's favour lasted until August 2007, not least because of the competent authorities' failure to adopt the necessary procedures (see paragraphs 80-81 above).

135. In view of the foregoing, the Court concludes that the present situation must be qualified as a practice incompatible with the Convention (see *Bottazzi v. Italy* [GC], no. 34884/97, § 22, ECHR 1999-V).

**(c) General measures**

136. The Court notes that the problems at the basis of the violations of Article 6 and of Article 1 of Protocol No. 1 found in this case are large-scale and complex in nature. Indeed, they do not stem from a specific legal or regulatory provision or a particular lacuna in Russian law. Accordingly, they require the implementation of comprehensive and complex measures, possibly of a legislative and administrative character, involving various authorities at both federal and local level. Subject to monitoring by the Committee of Ministers, the respondent State remains free to choose the means by which it will discharge its legal obligation under Article 46 of the Convention, provided that such means are compatible with the conclusions set out in the Court's judgment (see *Scozzari and Giunta*, cited above, § 249).

137. The Court notes that the adoption of such measures has been thoroughly considered by the Committee of Ministers in cooperation with the Russian competent authorities (see decisions and documents cited in paragraphs 39-40 above). The Committee's decisions and documents show that although the implementation of the necessary measures is far from being completed, further actions are being considered or taken in this respect (see the main avenues outlined in paragraph 40 above). The Court notes that this process raises a number of complex legal and practical issues which go, in principle, beyond the Court's judicial function. It will thus abstain in these circumstances from indicating any specific general measure to be taken. The Committee of Ministers is better placed and equipped to monitor the necessary reforms to be adopted by Russia in this respect. The Court therefore leaves it to the Committee of Ministers to ensure that the Russian Federation, in accordance with its obligations under the Convention, adopts the necessary measures consistent with the Court's conclusions in the present judgment.

138. The Court observes, however, that the situation is different as regards the violation of Article 13 on account of the lack of effective domestic remedies. In accordance with Article 46 of the Convention, the Court's findings in paragraphs 101-17 above clearly require the setting up of an effective domestic remedy or a combination of remedies allowing adequate and sufficient redress to be granted to large numbers of people

affected by the violations in question. It appears highly unlikely in the light of the Court's conclusions that such an effective remedy can be set up without changing the domestic legislation on certain specific points.

139. In this respect, the Court attaches considerable importance to the findings of the Russian Constitutional Court, which has invited Parliament since January 2001 to set up a procedure for compensation of damage arising, *inter alia*, from excessively lengthy proceedings. Of particular importance is the finding made by reference notably to Article 6 of the Convention that such compensation should not be conditional on the establishment of fault (see paragraphs 32-33 above). The Court also welcomes the legislative initiative recently taken by the Supreme Court in this area and notes the bills tabled in Parliament on 30 September 2008 with a view to introducing remedies in respect on the violations in question (see paragraphs 34-36 above). The Court notes with interest the reference to the Convention standards as a basis for determining compensation for damage, and that the average amounts of compensation for delayed enforcement were calculated by reference to the Court's case-law (see paragraphs 35 and 36 above).

140. It is not, however, for the Court to assess the overall adequacy of the ongoing reform, nor to specify what would be the most appropriate way to set up the necessary domestic remedies (see the Grand Chamber judgment in *Hutten-Czapska*, cited above, § 239). The State may either amend the existing range of legal remedies or add new remedies to secure genuinely effective redress for the violation of the Convention rights concerned (see *Lukenda*, cited above, § 98, and *Xenides-Arestis*, cited above, § 40). It is also for the State to ensure, under the supervision of the Committee of Ministers, that a new remedy or a combination of remedies respects both in theory and in practice the requirements of the Convention as set out in the present judgment (see, notably, paragraphs 96-100 above). In so doing, the authorities may also have due regard to the Committee of Ministers' Recommendation Rec(2004)6 to member States on the improvement of domestic remedies.

141. The Court accordingly concludes that the respondent State must introduce a remedy which secures genuinely effective redress for the violations of the Convention on account of the State authorities' prolonged failure to comply with judicial decisions delivered against the State or its entities. Such a remedy must conform to the Convention principles as laid down notably in the present judgment and be available within six months from the date on which the present judgment becomes final (compare *Xenides-Arestis*, cited above, § 40 and point 5 of the operative part).

**(d) Redress to be granted in similar cases**

142. The Court notes that one of the aims of the pilot-judgment procedure is to allow the speediest possible redress to be granted at the

domestic level to the large numbers of people suffering from the structural problem identified in the pilot judgment (see paragraph 127 above). It may thus be decided in the pilot judgment that the proceedings in all cases stemming from the same structural problem be adjourned pending the implementation of the relevant measures by the respondent State. The Court considers it appropriate to adopt a similar approach following the present judgment, while differentiating between the cases already pending before the Court and those that could be brought in the future.

*(i) Applications lodged after the delivery of the present judgment*

143. The Court will adjourn the proceedings on all new applications lodged with the Court after the delivery of the present judgment, in which the applicants complain solely of non-enforcement and/or delayed enforcement of domestic judgments ordering monetary payments by State authorities. The adjournment will be effective for a period of one year after the present judgment will become final. The applicants in these cases would be informed accordingly.

*(ii) Applications lodged before the delivery of the present judgment*

144. The Court decides, however, to follow a different course of action in respect of the applications lodged before the delivery of the judgment. In the Court's view, it would be unfair if the applicants in such cases, who have allegedly been suffering for years of continuing violations of their right to a court and sought relief in this Court, were compelled yet again to resubmit their grievances with the domestic authorities, be it on the grounds of a new remedy or otherwise.

145. The Court therefore considers that the respondent State must grant adequate and sufficient redress, within one year from the date on which the judgment becomes final, to all victims of non-payment or unreasonably delayed payment by State authorities of a domestic judgment debt in their favour who lodged their applications with the Court before the delivery of the present judgment and whose applications were communicated to the Government under Rule 54 § 2 (b) of the Rules of the Court. It is recalled that delays in the enforcement of judgments should be calculated and assessed by reference to the Convention requirements and, notably, in accordance with the criteria as defined in the present judgment (see, in particular, paragraphs 66-67 and 73 above). In the Court's view, such redress may be achieved through implementation *proprio motu* by the authorities of an effective domestic remedy in these cases or through *ad hoc* solutions such as friendly settlements with the applicants or unilateral remedial offers in line with the Convention requirements (see paragraph 127 above).

146. Pending the adoption of domestic remedial measures by the Russian authorities, the Court decides to adjourn adversarial proceedings in

all these cases for one year from the date on which the judgment becomes final. This decision is without prejudice to the Court's power at any moment to declare inadmissible any such case or to strike it out of its list following a friendly settlement between the parties or the resolution of the matter by other means in accordance with Articles 37 or 39 of the Convention.

## VI. APPLICATION OF ARTICLE 41 OF THE CONVENTION

147. 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

148. The applicant claimed a global sum of 40,000 euros (EUR) in respect of pecuniary and non-pecuniary damage. He referred to sufferings caused by the State's repeated and persistent failure to comply with the domestic judgments, notwithstanding his first successful application to the Court. He supported his claim for pecuniary damage by the authorities' alleged failure to pay him default interest under the Compulsory Social Insurance Act 1998 (see paragraph 118 above).

149. The Government submitted that the applicant had suffered no pecuniary damage and that a finding of a violation would provide adequate just satisfaction for any damage sustained. They referred to certain non-enforcement cases in which the Court had either awarded modest amounts (see *Plotnikovy v. Russia*, no. 43883/02, § 34, 24 February 2005) in respect of non-pecuniary damage or decided that the finding of a violation was sufficient (see *Poznakhirina v. Russia*, no. 25964/02, 24 February 2005; *Shapovalova v. Russia*, no. 2047/03, 5 October 2006; *Shestopalova and Others v. Russia*, no. 39866/02, 17 November 2005; and *Bobrova v. Russia*, no. 24654/03, 17 November 2005).

150. The Court notes that it has rejected the applicant's complaint about non-payment of default interest under the Compulsory Social Insurance Act 1998 (see paragraph 119 above); it therefore also rejects the applicant's claim for pecuniary damage in this regard.

151. As regards non-pecuniary damage, the Court accepts that the applicant suffered mental distress and frustration on account of the violations found. The Court furthermore considers that the question is ready for decision and may be considered in the present judgment without waiting for the adoption of general measures as decided above (see paragraph 141 above).

152. The Court cannot agree with the Government that a finding of a violation would provide adequate just satisfaction. The Court refers in this respect to a very strong presumption that the authorities' non-compliance or delayed compliance with a binding and enforceable judgment will occasion non-pecuniary damage (see paragraphs 100 and 111 above). It transpires clearly from the great majority of its judgments that such violations of the Convention give rise, in principle, to frustration and distress that cannot be compensated by the mere finding of a violation.

153. Against this background, the cases referred to by the Government appear rather exceptional. Indeed, the Court's position in these cases may be explained by their very specific circumstances, not least by the small size of domestic court awards (less than EUR 100 in most of the cases) and the marginal significance of the awards in relation to the applicants' incomes (see *Poznakhirina*, cited above, § 35).

154. The Court notes that it determines the size of awards for non-pecuniary damage taking into account such factors as the applicant's age, personal income, the nature of the domestic court awards, the length of the enforcement proceedings and other relevant aspects (see *Plotnikov*, cited above, § 34). The applicant's health is also taken into account, as well as the number of the judgments that failed to be properly and/or timeously enforced. All these factors may affect in various degrees the Court's award in respect of non-pecuniary damage and even lead, exceptionally, to no award at all. At the same time, it is demonstrated rather clearly by the Court's case-law that such awards are, in principle, directly proportionate to the period during which a binding and enforceable judgment remained unenforced.

155. Turning to the circumstances of the present case, the Court notes that by the judgment of 7 May 2002 it awarded the same applicant EUR 3,000 in respect of non-pecuniary damage sustained on account of enforcement delays ranging between almost one and three years within the Court's jurisdiction and concerning three domestic judgments (see *Burdov v. Russia*, no. 59498/00, §§ 36 and 47, ECHR 2002-III).

156. In the instant case the same applicant suffered from comparable enforcement delays in respect of similar judicial awards under three other domestic judgments. Accordingly, the violations found by the Court would, in principle, call for a just satisfaction award equal or very close to the one decided by the judgment of 7 May 2002. The Court will, in addition, bear in mind that distress and frustration arising from non-enforcement of domestic judgments may be heightened by the existence of a practice incompatible with the Convention since it seriously undermines, as a matter of principle, the citizens' confidence in the judicial system. This factor has, however, to be carefully balanced against the respondent State's attitude and efforts to combat such a practice with a view to meeting its obligations under the Convention (see paragraph 137 above). The Court must also take account of

additional special circumstances in the present case. Indeed, it must be accepted that the applicant's distress and frustration were exacerbated by the authorities' persistent failure to honour their debts under the domestic judgments, notwithstanding the first finding of violations by the Court in his case. As a result, the applicant had no choice but again to seek relief through time-consuming international litigation before the Court. In view of this important element, the Court considers that an increased award would be appropriate in respect of non-pecuniary damage in the present case.

157. Having regard to the foregoing and making its assessment on an equitable basis, as required by Article 41 of the Convention, the Court awards the applicant EUR 6,000 in respect of non-pecuniary damage.

### **B. Costs and expenses**

158. The applicant did not claim any compensation for costs and expenses. The Court therefore makes no award under this head.

### **C. Default interest**

159. The Court considers it appropriate that the default interest rate 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* admissible the complaint concerning the authorities' prolonged failure to comply with binding and enforceable judgments in the applicant's favour and the remainder of the applicant's complaints inadmissible;
2. *Holds* that there has been a violation of Article 6 of the Convention and of Article 1 of Protocol No. 1 on account of the State's prolonged failure to enforce three domestic judgments ordering monetary payments by the authorities to the applicant;
3. *Holds* that there has been no violation of Article 6 of the Convention and of Article 1 of Protocol No. 1 on account of the enforcement of the judgments of 22 May 2007 and 21 August 2007;
4. *Holds* that there has been a violation of Article 13 of the Convention on account of the lack of effective domestic remedies in respect of non-

enforcement or delayed enforcement of judgments in the applicant's favour;

5. *Holds* that the above violations originated in a practice incompatible with the Convention which consists in the State's recurrent failure to honour judgment debts and in respect of which aggrieved parties have no effective domestic remedy;
6. *Holds* that the respondent State must set up, within six months from the date on which the judgment becomes final in accordance with Article 44 § 2 of the Convention, an effective domestic remedy or combination of such remedies which secures adequate and sufficient redress for non-enforcement or delayed enforcement of domestic judgments in line with the Convention principles as established in the Court's case-law;
7. *Holds* that the respondent State must grant such redress, within one year from the date on which the judgment becomes final, to all victims of non-payment or unreasonably delayed payment by State authorities of a judgment debt in their favour who lodged their applications with the Court before the delivery of the present judgment and whose applications were communicated to the Government under Rule 54 § 2 (b) of the Rules of the Court;
8. *Holds* that pending the adoption of the above measures, the Court will adjourn, for one year from the date on which the judgment becomes final, the proceedings in all cases concerning solely the non-enforcement and/or delayed enforcement of domestic judgments ordering monetary payments by the State authorities, without prejudice to the Court's power at any moment to declare inadmissible any such case or to strike it out of its list following a friendly settlement between the parties or the resolution of the matter by other means in accordance with Articles 37 or 39 of the Convention;
9. *Holds*
  - (a) that the respondent State is to pay the applicant, within three months from the date on which the judgment becomes final, EUR 6,000 (six thousand euros), plus any tax that may be chargeable, in respect of non-pecuniary damage, to be converted into Russian roubles at the rate applicable at the date of settlement;
  - (b) that from the expiry of the above-mentioned three months until settlement simple interest shall be payable on the above amount at a rate equal to the marginal lending rate of the European Central Bank during the default period plus three percentage points;

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

Done in English, and notified in writing on 15 January 2009, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

André Wampach  
Deputy Registrar

Christos Rozakis  
President