



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

FIRST SECTION

**CASE OF KRAVCHENKO v. RUSSIA**

*(Application no. 34615/02)*

JUDGMENT

STRASBOURG

2 April 2009

**FINAL**

***02/07/2009***

*This judgment may be subject to editorial revision.*



**In the case of Kravchenko v. Russia,**

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

Christos Rozakis, *President*,

Nina Vajić,

Anatoly Kovler,

Khanlar Hajiyeu,

Dean Spielmann,

Giorgio Malinverni,

George Nicolaou, *judges*,

and Søren Nielsen, *Section Registrar*,

Having deliberated in private on 12 March 2009,

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

## PROCEDURE

1. The case originated in an application (no. 34615/02) against the Russian Federation lodged with the Court under Article 34 of the Convention for the Protection of Human Rights and Fundamental Freedoms (“the Convention”) by a Russian national, Mr Vladimir Vladimirovich Kravchenko (“the applicant”), on 9 September 2002.

2. The applicant was represented by Mr S. Ronshin and Mr V. Shakhlarov, lawyers practising in the Voronezh Region. The Russian Government (“the Government”) were represented by Mr P. Laptev, former Representative of the Russian Federation at the European Court of Human Rights.

3. The applicant alleged, in particular, that the quashing of a final judgment in his favour had violated his “right to a court” and his right to peaceful enjoyment of possessions.

4. On 29 April 2005 the President of the First Section decided to give notice of the application to the Government. It was also decided to examine the merits of the application at the same time as its admissibility (Article 29 § 3).

## THE FACTS

### I. THE CIRCUMSTANCES OF THE CASE

5. The applicant was born in 1960 and lives in Voronezh.

### **A. Proceedings against the SBS-AGRO Bank**

6. In August 1998 the applicant deposited 40,000 US dollars (USD) for three months with a private bank “SBS-AGRO” (hereafter – “the Bank”). Following the Bank’s refusal to return the deposit, the applicant sued the Bank for the deposit, interest and compensation for non-pecuniary damage. According to the Government, the Bank’s refusal to return the deposit was caused by a major financial crisis which had occurred in the Russian Federation in the summer of 1998 and which had led to the Bank’s inability to return money to its more than 1.2 million creditors.

7. In September 1998 the Central Bank of Russia adopted a programme aimed at the protection of deposits made by private individuals with private banks. In line with measures adopted, the Bank signed an agreement with the Russian Savings Bank. Under the terms of the agreement, the Bank transferred its liabilities to the Russian Savings Bank which, in its turn, undertook to repay deposits made in US dollars at the exchange rate of 9.33 Russian roubles for 1 US dollar. On 28 December 1998 the Bank, through a division of the Russian Savings Bank, paid the applicant 373,204 Russian roubles (RUB).

8. On 10 March 1999 the Zheleznodorozhniy District Court of Voronezh found that the applicant had not consented to the liability transfer. However, taking into account that he had already been repaid a part of the deposit, the District Court ordered that the Bank should repay the applicant USD 30,919.40 and that it should also pay him annual interest starting from the date of the pronouncement of the judgment. The District Court dismissed the claim for compensation for non-pecuniary damage. The judgment was not appealed against and became final on 22 March 1999. A month later the Moscow bailiffs’ office instituted enforcement proceedings.

9. On an unspecified date the Presidium of the Voronezh Regional Court, acting on an application for a supervisory review, quashed the judgment of 10 March 1999 and sent the case for a fresh examination.

10. On 29 February 2000, following the re-examination of the applicant’s action, the Zheleznodorozhniy District Court awarded him USD 20,841.68 in main debt, interest thereon and USD 2,853.73 in compensation for damage. That judgment was not appealed against and became final.

### **B. General developments in the course of the enforcement proceedings instituted against the SBS-AGRO Bank**

11. By the end of March 1999 over 2,000 enforcement claims were pending against the Bank, with an additional 70-80 claims added every week.

12. On 16 August and 15 September 1999 the Central Bank of Russia declared a moratorium until 17 November 1999 on the execution of all

creditors' demands against the Bank. On 16 November 1999 the management of the Bank was taken over temporarily by the "Agency on Restructuring of Lending Agencies" (hereafter – "the ARKO"), set up by the State in accordance with the Law on Restructuring of Lending Agencies (hereafter - "the Law"). On 16 November 1999, in accordance with the Law, a moratorium was set for enforcement of all creditors' demands against the Bank for a year. This period was prolonged by the ARKO on 17 November 2000 for another six months, until 17 May 2001.

13. On 8 May 2001 the Moscow Commercial Court had approved the text of a tripartite friendly settlement involving the Association of the Bank's Creditors, the Bank and the ARKO. The text of the friendly settlement was adopted at the general meeting of the Association of Creditors on 9 February 2001 by a majority of votes. The friendly settlement substantially limited the Bank's liability to its creditors.

14. On 3 July 2001 the Constitutional Court found unconstitutional the legislative provision that allowed the ARKO unilaterally to extend the moratorium for another six months, and ruled that such decisions should be subject to judicial control.

15. Seven days later the Basmanniy District Court of Moscow ordered that the bailiffs should discontinue the consolidated enforcement proceedings against the Bank in respect of liabilities which had arisen before 16 November 1999.

16. On 23 July 2001 the Moscow bailiffs' office discontinued the consolidated enforcement proceeding against the Bank and returned writs of execution to the courts which had issued them. On 29 September 2001 the bailiffs informed the applicant that the enforcement proceedings against the Bank had been discontinued.

### **C. Proceedings against the ARKO**

17. The applicant asked the ARKO to confirm that he had been recognised as a creditor of the Bank and to inform him about future meetings of the Bank's creditors. On 11 September 2001 the ARKO notified the applicant that he had not been registered as a creditor of the Bank. The ARKO requested the applicant to send the documents showing the Bank's liability to him. The applicant fulfilled the ARKO's request.

18. On an unspecified date the applicant sued the ARKO and the Central Bank of Russia for damages. He claimed that the ARKO had not recognised him as a creditor of the Bank, that he had not participated in the friendly-settlement negotiations and that he had not been able to recover his money from the Bank. The applicant insisted that the respondents should repay him the Bank's debt.

19. On 17 December 2001 the Zheleznodorozhniy District Court held that the Central Bank and ARKO were responsible for the applicant's

inability to obtain payment of the judgment debt and that the refusal to recognise the applicant as a Bank's creditor was unlawful. The District Court ordered that the ARKO should repay the applicant USD 30,919.40 of the Bank's debt.

20. On 9 January 2002 the ARKO informed the applicant that he had been registered as the creditor of the Bank and the terms of the friendly settlement of 8 May 2001 were applicable to him although he had not been able to negotiate them. The applicant was also informed that according to the terms of the friendly settlement he would not be paid the judgment debt.

21. On 19 February 2002 the Voronezh Regional Court upheld the judgment of 17 December 2001. The Regional Court again confirmed that the terms of the friendly settlement could not be applied to the applicant and the fact that the draft of the settlement had been published in the press did not imply that the applicant had agreed to the terms of that document.

22. According to the Government, the applicant applied for a supervisory review of the judgments of 17 December 2001 and 19 February 2002. It appears from the case file that the Voronezh Regional Prosecutor lodged an application for a supervisory review, arguing that the judgment of 17 December 2001, upheld on appeal on 19 February 2002, was erroneous in that the applicant's claims had been accepted. The prosecutor submitted that the terms of the friendly settlement should have been applied to the applicant's claims against the Bank and thus his action against the ARKO should have been dismissed.

23. On 15 May 2002 the Presidium of the Voronezh Regional Court, by way of supervisory-review proceedings, quashed the judgments of 17 December 2001 and 19 February 2002 and remitted the case for a fresh examination. The Presidium noted that the District and Regional courts erred in assessing the facts of the case and that the terms of the friendly settlement should be applicable to the applicant because the information about the general assembly of the Bank's creditors and the draft of the friendly settlement had been published in the press.

24. On 2 July 2003 the Zheleznodorozhniy District Court made a new judgment in the applicant's favour and awarded him USD 30,919.40, relying on the same line of arguments as in its previous judgment of 17 December 2001 and citing the case-law of the European Court of Human Rights. That judgment was also quashed on appeal by the Voronezh Regional Court. The case was again sent for re-examination on 13 November 2003.

25. On 20 December 2004 the Zheleznodorozhniy District Court of Voronezh again issued the judgment in the applicant's favour, although reducing the amount of the award to USD 20,841.68. The judgment was quashed by the Voronezh Regional Court and the proceedings were discontinued because the ARKO had ceased to exist as a legal entity.

## THE LAW

### I. PRELIMINARY CONSIDERATIONS

26. The Court observes at the outset that in his application lodged with the Court on 9 September 2002 the applicant complained about the authorities' failure to enforce the judgment of 10 March 1999 and about the quashing, by way of a supervisory review, of the judgment of 17 December 2001, as upheld on appeal on 19 February 2002. In his observations, lodged with the Court in March 2006, the applicant informed the Court that the judgment of 10 March 1999 had been quashed on a supervisory review, following which a new judgment in the case was adopted on 29 February 2000. He put forward an additional complaint arguing that the authorities had failed to enforce the new judgment issued in his favour on 29 February 2000.

27. In this connection the Court reiterates that it has jurisdiction to review, in the light of the entirety of the Convention's requirements, the circumstances complained of by an applicant. In the performance of its task, the Court is free to attribute to the facts of the case, as established on the evidence before them, a characterisation in law different from that given by the applicant or, if need be, to view the facts in a different manner. Furthermore, they have to take into account not only the original application but also the additional documents intended to complete the latter by eliminating initial omissions or obscurities (see *Ringeisen v. Austria*, judgment of 16 July 1971, Series A no. 13, pp. 40-41, § 98, as compared with p. 34, § 79, and pp. 39-40, §§ 96-97).

28. Turning to the present case, the Court observes that the new complaint pertaining to the non-enforcement of the judgment of 29 February 2000 was submitted after the notice of the initial application had been given to the Government on 29 April 2005. In the Court's view, the new non-enforcement complaint is not an elaboration of his original complaints lodged to the Court more than three years earlier, on which the parties have already commented. The Court therefore decides not to examine the new complaint within the framework of the present proceedings (see *Nuray Şen v. Turkey (no. 2)* judgment of 30 March 2004, no. 25354/94, § 200, and *Melnik v. Ukraine*, no. 72286/01, §§ 61-63, 28 March 2006).

### II. ALLEGED VIOLATION OF ARTICLE 6 OF THE CONVENTION AND ARTICLE 1 OF PROTOCOL No. 1 ON ACCOUNT OF THE NON-ENFORCEMENT OF THE JUDGMENT OF 10 MARCH 1999

29. The applicant complained that the judgment of 10 March 1999 had not been enforced. The Court considers that this complaint falls to be

examined under Article 6 § 1 of the Convention and Article 1 of Protocol No. 1 (see *Burdov v. Russia*, no. 59498/00, § 26, ECHR 2002-III). The relevant parts of these provisions read as follows:

**Article 6 § 1**

“In the determination of his civil rights and obligations ..., everyone is entitled to a fair ... hearing ... 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. Submissions by the parties**

30. The Government submitted that the applicant had failed to challenge the application of the moratorium on the execution of the Bank’s creditors’ demands. In particular, he could have lodged a complaint before the Constitutional Court of the Russian Federation or the Moscow City Commercial Court, but he failed to make use of either of the avenues. In the Government’s view the complaint should therefore be dismissed for a failure to exhaust domestic remedies. In the alternative, relying on the case of *Shestakov v. Russia* ((dec.), no. 48757/99, 18 June 2002), they argued that the State could not guarantee the repayment of the financial liabilities of a private bank, particularly in a situation of major financial crisis. The enforcement proceedings against the private bank SBS-AGRO were discontinued in July 2001 due to the Bank’s insolvency and the applicant was notified of the discontinuation in September 2001. The State’s responsibility for the enforcement of a judgment against a private entity ended on the date the enforcement proceedings were discontinued.

31. The applicant averred that the judgment of 10 March 1999 had been unlawfully quashed by way of a supervisory review and that it had not been enforced.

**B. The Court’s assessment**

32. The Court reiterates that on 10 March 1999 the applicant obtained a judgment against the Bank by which he was to be paid a certain sum of money. The judgment was not appealed against and became binding and enforceable. On an unspecified date the Presidium of the Voronezh Regional Court quashed the judgment by way of a supervisory review and



sent the case for fresh examination, as a result of which, on 29 February 2000, the District Court issued a new judgment in the applicant's favour.

33. The Court reiterates that, in accordance with Article 35 § 1 of the Convention, it may only examine complaints in respect of which domestic remedies have been exhausted and which have been submitted within six months from the date of the "final" domestic decision. If there is no adequate remedy against a particular act, which is alleged to be in breach of the Convention, the date when that act takes place is taken to be "final" for the purposes of the six-month rule (see, e.g., *Valašinas v. Lithuania* (dec.), no. 44558/98, 14 March 2000).

34. It was uncontested by the parties that at the material time the Russian law of civil procedure did not provide for any ordinary appeal against a decision in which the final judgement had been quashed by way of a supervisory review. In the absence of an effective remedy the Court concludes that it was the very act of quashing the final judgment of 10 March 1999 that triggered the start of the six-month time-limit for lodging this part of the application to the Court (see, *mutatis mutandis*, *Sardin v. Russia* (dec.), no. 69582/01, ECHR 2004-II). The Court further notes that the quashing of a final judgment is an instantaneous act, which does not create a continuing situation, even if it entails a re-opening of the proceedings as in the instant case (see *Sitokhova v. Russia* (dec.), no. 55609/00, 2 September 2004). In the present case the final judgment of 10 March 1999 was quashed by the Presidium of the Voronezh Regional Court sometime before 29 February 2000. The Court therefore finds it established that on that date the judgment of 10 March 1999 ceased to be binding and enforceable. There is no indication in the file that the applicant was not promptly notified of the Presidium's decision to quash the judgment of 10 March 1999. However, it was not until 9 September 2002, more than six months after the decision had been quashed, that the applicant complained to the Court that the authorities had failed to enforce the judgment of 10 March 1999.

35. It follows that this part of the application has been introduced out of time and must be rejected in accordance with Article 35 §§ 1 and 4 of the Convention.

### III. ALLEGED VIOLATION OF ARTICLE 6 OF THE CONVENTION AND ARTICLE 1 OF PROTOCOL No. 1 ON ACCOUNT OF THE QUASHING OF THE JUDGMENT OF 17 DECEMBER 2001, AS UPHELD ON APPEAL ON 19 FEBRUARY 2002

36. The applicant complained that the quashing of the final judgment of 17 December 2001, as upheld on appeal on 19 February 2002, made in his favour violated his "right to a court" and his right to peaceful enjoyment of possessions. The Court considers that this complaint falls to be examined

under Article 6 § 1 of the Convention and Article 1 of Protocol No. 1. The relevant parts of these provisions are cited above.

### **A. Submissions by the parties**

37. The Government argued that Article 6 of the Convention was inapplicable to the proceedings against the Central Bank and the ARKO as the proceedings did not concern the applicant's civil rights or obligations. In the Government's view, the proceedings merely pertained to the enforcement of the judgment issued in the applicant's favour. They insisted that the complaint should be dismissed as incompatible *ratione materiae*. In alternative, the Government argued that the Presidium of the Voronezh Regional Court had quashed the judgments in the applicant's favour with a view to correcting the judicial error committed by the lower courts.

38. The applicant averred that the quashing of the final judgments had irretrievably impaired the principle of legal certainty and had deprived him of the right to receive money he had been entitled to receive.

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

#### *1. Article 6 § 1 of the Convention*

##### **(a) Admissibility**

39. As to the Government's objection to the applicability of Article 6, the Court reiterates that under its case-law, for Article 6 § 1 in its "civil" limb to be applicable, there must be a dispute ("*contestation*" in the French text) over a "right" which can be said, at least on arguable grounds, to be recognised under domestic law. The dispute must be genuine and serious; it may relate not only to the actual existence of a right but also to its scope and the manner of its exercise. The outcome of the proceedings must be directly decisive for the right in question. As the Court has consistently held, mere tenuous connections or remote consequences are not sufficient to bring Article 6 § 1 into play (see *Le Compte, Van Leuven and De Meyere v. Belgium*, 23 June 1981, § 47, Series A no. 43; *Fayed v. the United Kingdom*, 21 September 1994, § 56, Series A no. 294-B; and *Masson and Van Zon v. the Netherlands*, 28 September 1995, § 44, Series A no. 327-A). Furthermore, Article 6 § 1 of the Convention is applicable where an action is "pecuniary" in nature and is founded on an alleged infringement of rights which are likewise pecuniary rights, notwithstanding the origin of the dispute (see, for example, *Beaumartin v. France*, judgment of 24 November 1994, Series A no. 296-B, p. 60-61, § 28).

40. Turning to the facts of the present case, the Court observes that as a consequence of making a deposit with the Bank the applicant received certain depository rights during the Bank's existence and on winding up of the Bank's business. Furthermore, the applicant's right to obtain repayment of the deposit, certain interest and compensation was confirmed by the final judgment. Decisions affecting the Bank's fate, such as a decision to rehabilitate the Bank and relieve it from payment of liabilities to its creditors in full, without any doubt, affected the applicant's rights as a creditor of the Bank, including his right to demand repayment of the judgment debt in full.

41. On 8 March 2001, under the terms of the friendly settlement agreement involving, *inter alia*, the Central Bank and the ARKO, the Bank was discharged from the obligation to repay its debts in full to its creditors, including those which were owed to the applicant. The Court notes in the first place that in his action against the Central Bank and the ARKO the applicant opposed the application of the terms of the friendly-settlement agreement to the Bank's liabilities as set before him, maintaining that he had not taken part in the friendly-settlement negotiations and that the agreement therefore violated his right to recover the judgment debt. He further claimed to have suffered economic loss as a result of the respondents' actions, for which he intended to seek compensation (see paragraph 18 above). In the opinion of the Court this clearly defined the proceedings, having regard to the context in which they were instituted and to the pecuniary nature of the applicant's claims, as a dispute over a "civil right" within the meaning of Article 6 § 1 of the Convention (see *Tinnelly & Sons Ltd and Others and McElduff and Others v. the United Kingdom*, 10 July 1998, § 61, *Reports of Judgments and Decisions* 1998-IV).

42. Furthermore, the Court observes that the Government's objection to the applicability of Article 6 concerned a more peculiar aspect. They insisted that the proceedings at issue constituted a part of the enforcement proceedings pertaining to the judgment debt awarded to the applicant against the Bank and, thus, in the Government's opinion, Article 6 was inapplicable. Bearing in mind the finding in the previous paragraph and without accepting the Government's argument as to the essence of the proceedings at issue, the Court considers it worth reiterating its case-law to the effect that Article 6 applies to enforcement proceedings because, in the absence of the necessary measures to comply with a final, enforceable judicial decision, Article 6 § 1 can be deprived of all useful effect (see *Hornsby v. Greece*, judgment of 19 March 1997, *Reports of Judgments and Decisions* 1997-II, §§ 41, 45; *Silva Pontes v. Portugal*, 23 March 1994, § 36, Series A no. 286-A and *Lopatyyuk and Others v. Ukraine*, no. 903/05, § 14, 17 January 2008). The Court therefore dismisses the Government's objection as to the applicability of Article 6 of the Convention to the proceedings under consideration.

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

**(b) Merits**

44. The Court reiterates that the right to a fair hearing before a tribunal as guaranteed by Article 6 § 1 of the Convention must be interpreted in the light of the Preamble to the Convention, which declares, in its relevant part, the rule of law to be part of the common heritage of the Contracting States. One of the fundamental aspects of the rule of law is the principle of legal certainty, which requires, among other things, that where the courts have finally determined an issue, their ruling should not be called into question (see *Brumărescu v. Romania*, judgment of 28 October 1999, *Reports of Judgments and Decisions* 1999-VII, § 61).

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

46. The Court reiterates that Article 6 § 1 secures to everyone the right to have any claim relating to his civil rights and obligations brought before a court or tribunal. In this way it embodies the "right to a court", of which the right of access, that is the right to institute proceedings before courts in civil matters, constitutes one aspect. However, that right would be illusory if a Contracting State's domestic legal system allowed a final and binding judicial decision to be quashed by a higher court on an application made by a State official whose power to lodge such an application is not subject to any time-limit, with the result that the judgments were liable to challenge indefinitely (see *Ryabykh*, cited above, §§ 54-56).

47. The Court observes that on 17 December 2001 the Zheleznodorozniy District Court granted the applicant's application and awarded him USD 30,919.40 representing the judgment debt owed to him by the Bank. The judgment became binding and enforceable on 19 February 2002, when the Voronezh Regional Court upheld it on appeal. On 15 May 2002 that judgment was quashed by way of supervisory review initiated by the Voronezh Regional Prosecutor who was a State official but not a party to the proceedings (see paragraph 22 above).

48. The Court has found a violation of an applicant's "right to a court" guaranteed by Article 6 § 1 of the Convention in many cases in which a

judicial decision that had become final and binding, was subsequently quashed by a higher court on an application by a State official whose power to intervene was not subject to any time-limit (see *Roseltrans v. Russia*, no. 60974/00, §§ 27-28, 21 July 2005; *Volkova v. Russia*, no. 48758/99, §§ 34-36, 5 April 2005; and *Ryabykh*, cited above, §§ 51-56).

49. Having examined the materials submitted to it, the Court observes that the Government have not put forward any fact or argument capable of persuading it to reach a different conclusion in the present case. Accordingly, the Court finds that there has been a violation of Article 6 § 1 of the Convention on account of the quashing of the judgment given in the applicant's case by way of supervisory-review proceedings.

## *2. Article 1 of Protocol No. 1*

### **(a) Admissibility**

50. The Court observes that the applicant's complaint under Article 1 of Protocol No. 1 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.

### **(b) Merits**

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

52. The Court observes that the final and enforceable judgment by which the applicant had been awarded a sum of money was quashed by way of a supervisory review on 15 May 2002. The applicant's claim was sent for reconsideration, following which the Voronezh Regional Court, in the final instance, discontinued the proceedings because the ARKO had ceased to exist. Thus, the applicant was prevented from receiving the initial award through no fault of his own. The quashing of the enforceable judgment frustrated the applicant's reliance on the binding judicial decision and deprived him of an opportunity to receive the money he had legitimately expected to receive. In these circumstances, the Court considers that the quashing of the enforceable judgment of 17 December 2001, as upheld on appeal on 19 February 2002, by way of supervisory review placed an excessive burden on the applicant and was incompatible with Article 1 of Protocol No. 1. There has therefore been a violation of that Article.

#### IV. APPLICATION OF ARTICLE 41 OF THE CONVENTION

53. 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

54. The applicant claimed the repayment of the judgment debt owed to him by the ARKO. He further claimed 348,665.19 Russian roubles (RUB) representing interest on the judgment debt and 10,000 US dollars (USD) in respect of non-pecuniary damage.

55. The Government submitted that the judgment debt was to be paid by a private bank and not by State bodies. They further submitted that the applicant did not claim any compensation for alleged violations of his rights pertaining to the quashing of the judgment of 17 December 2001. As to the applicant's claims in respect of non-pecuniary damage, in the Government's opinion they were excessive and manifestly ill-founded.

56. The Court observes that in the present case it has found a violation of Article 6 § 1 of the Convention and Article 1 of Protocol No. 1 in that the final judgment in the applicant's favour had been quashed by way of a supervisory review and that the applicant had not been able to receive the judgment award as a result of the quashing of a decision in his favour. The Court notes that the most appropriate form of redress in respect of a violation of Article 6 is to ensure that the applicant is put, as far as possible, in the position he would have been had the requirements of Article 6 not been disregarded (see *Piersack v. Belgium* (Article 50), judgment of 26 October 1984, Series A no. 85, p. 16, § 12, and, *mutatis mutandis*, *Gençel v. Turkey*, no. 53431/99, § 27, 23 October 2003). The Court finds that in the present case this principle applies as well, having regard to the nature of the violations found (cf. *Stetsenko v. Russia*, no. 878/03, § 69, 5 October 2006 and *Stanislav Volkov v. Russia*, no. 8564/02, § 40, 15 March 2007). The Court therefore considers it appropriate to award the applicant the sum which he would have received had the judgment of 17 December 2001, as upheld on appeal on 19 February 2002, not been quashed.

57. As to the claim in respect of interest on the judgment debt, the Court notes that the applicant has not submitted any document to substantiate his method of calculation of the sum of the interest. The Court therefore dismisses the claim.

58. The Court further considers that the applicant must have suffered distress and frustration resulting from the quashing of the final judicial decision by way of the supervisory review proceedings. Making its

assessment on an equitable basis, as required by Article 41 of the Convention, the Court awards the applicant EUR 2,000 in respect of non-pecuniary damage, plus any tax chargeable on the above amount.

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

59. The applicant did not seek reimbursement of costs and expenses relating to the proceedings before the domestic courts or the Court and this is not a matter which the Court has to examine on its own motion (see *Motière v. France*, no. 39615/98, § 26, 5 December 2000).

### **C. Default interest**

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

## **FOR THESE REASONS, THE COURT UNANIMOUSLY**

1. *Declares* the complaint concerning the quashing of the final judgment of 17 December 2001, as upheld on appeal on 19 February 2002, admissible and the remainder of the application inadmissible;
2. *Holds* that there has been a violation of Article 6 of the Convention and Article 1 of Protocol No. 1;
3. *Holds*
  - (a) that the respondent State is to pay the applicant, within three months from the date on which the judgment becomes final in accordance with Article 44 § 2 of the Convention, the award made by the domestic courts in the applicant's favour under the judgment of 17 December 2001, as upheld on appeal on 19 February 2002;
  - (b) that the respondent State is to pay the applicant, within three months from the date on which the judgment becomes final in accordance with Article 44 § 2 of the Convention, EUR 2,000 (two thousand euros), in respect of non-pecuniary damage, to be converted into Russian roubles at the rate applicable at the date of the settlement, plus any tax that may be chargeable on that amount;
  - (c) that from the expiry of the above-mentioned three months until settlement simple interest shall be payable on the above amounts at a rate equal to the marginal lending rate of the European Central Bank during the default period plus three percentage points;

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

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

Søren Nielsen  
Registrar

Christos Rozakis  
President