CONSEIL DE L'EUROPE

COUNCIL OF EUROPE

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

FIRST SECTION

CASE OF KOT v. RUSSIA

(Application no. 20887/03)

JUDGMENT

STRASBOURG

18 January 2007

FINAL

18/04/2007

This judgment will become final in the circumstances set out in Article 44 § 2 of the Convention. It may be subject to editorial revision.

In the case of Kot v. Russia,

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

Mr C.L. ROZAKIS, *President*,
Mrs N. VAJIĆ,
Mr A. KOVLER,
Mrs E. STEINER,
Mr K. HAJIYEV,
Mr D. SPIELMANN,
Mr S.E. JEBENS, *judges*,
and Mr S. NIELSEN, *Section Registrar*,

Having deliberated in private on 12 December 2006,

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

PROCEDURE

1. The case originated in an application (no. 20887/03) against the Russian Federation lodged with the Court under Article 34 of the Convention for the Protection of Human Rights and Fundamental Freedoms ("the Convention") by a Russian national, Mr Anatoliy Yefimovich Kot ("the applicant"), on 23 June 2003.

2. The applicant was represented by Mr N. Smirnov, a lawyer practising in Tambov. The Russian Government ("the Government") were represented by Mr P. Laptev, Representative of the Russian Federation at the European Court of Human Rights.

3. The applicant complained about the quashing of the judgment in his favour by way of supervisory review and alleged a violation of his property rights.

4. On 2 December 2005 the Court communicated the application to the respondent Government. Under the provisions of Article 29 § 3 of the Convention, it decided to examine the merits of the application at the same time as its admissibility.

THE FACTS

I. THE CIRCUMSTANCES OF THE CASE

5. The applicant, Mr Anatoliy Yefimovich Kot was born in 1937 and lives in Tambov. In 1987 he took part in the emergency operations at the site of the Chernobyl nuclear plant accident. On 3 November 2000 he was

diagnosed with after-effects of radioactive emissions and granted monthly compensation for the damage to his health.

6. On 30 November 2000 the applicant sued the Military Service Commission of the Tambov Region (*Военный комиссариат Тамбовской области*, hereinafter the "Commission") for an increase of the compensation to take account of the inflation.

7. On 21 February 2001 and 5 March 2001 the Oktyabrskiy District Court of Tambov granted his claim and ordered the Commission to increase the future monthly payments to 12,051.48 Russian roubles ("RUR") and also to pay him RUR 31,579.74 in respect of the previous period.

8. On 4 June 2001 the Tambov Regional Court quashed those judgments on appeal, finding that the first-instance court had not taken account of the changes introduced into the Chernobyl Victims Act by the Federal Law № 5 of 12 February 2001. The claim was remitted for a fresh examination.

9. The Oktyabrskiy District Court pronounced a new judgment on 13 August 2001. It assessed future monthly payments at RUR 10,000 and the lump sum in respect of the previous period at RUR 60,365.

10. On 10 September 2001 the Tambov Regional Court quashed that judgment on appeal on the ground that the first-instance court had incorrectly applied the substantive law and remitted the case for a fresh examination.

11. By judgment of 27 November 2002, the Oktyabrskiy District Court awarded the applicant RUR 18,077.21 in monthly payments as from 1 December 2002 and RUR 281,437.32 in respect of the previous period.

12. On 20 January 2003 the Tambov Regional Court upheld that judgment on appeal, and the judgment became enforceable.

13. On 23 January 2003 the Commission filed an application for supervisory review. It claimed that the first-instance and appeal courts had erroneously applied civil-law provisions relating to calculation of the minimal wages for the purposes of adjusting the applicant's compensation in line with inflation.

14. On 28 January 2003 the President of the Tambov Regional Court stayed the execution of the judgment of 27 November 2002.

15. On 26 June 2003 the Presidium of the Tambov Regional Court held a supervisory-review hearing. It determined that the lower courts had erred in applying the substantive law by not having taken into account the amendments introduced into the Chernobyl Victims Act by the Federal Law № 5 of 12 February 2001. On that ground it quashed the judgment of 27 November 2002, as upheld on 20 January 2003, and remitted the matter for a fresh examination.

16. On 7 August 2003 the Oktyabrskiy District Court issued a new judgment, by which the applicant was awarded RUR 6,327.35 in future monthly payments and RUR 18,578.34 in respect of the preceding period. The judgment was not appealed against and became final on 18 August 2003.

II. RELEVANT DOMESTIC LAW

17. The Code of Civil Procedure of the Russian Federation was enacted on 14 November 2002 and replaced the RSFSR Code of Civil Procedure from 1 February 2003. It provides as follows:

Article 362. Grounds for quashing or altering judicial decisions by appeal courts

"1. The grounds for quashing or altering judicial decisions by appeal courts are:

...

(4) a violation or incorrect application of substantive or procedural law."

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

"1. Judicial decisions that have become legally binding, with the exception for judicial decisions by the Presidium of the Supreme Court of the Russian Federation, may be appealed against... to a court exercising supervisory review, by parties to the case and by other persons whose rights or legal interests have been adversely affected by these judicial decisions.

2. Judicial decisions may be appealed against to a court exercising supervisory review within one year after they became legally binding..."

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

"Judicial decisions of lower courts may be quashed or altered by way of supervisory review on the grounds of substantial violations of substantive or procedural legal provisions."

Article 390. Competence of the supervisory-review court

"1. Having examined the case by way of supervisory review, the court may...

(2) quash the judicial decision issued by a court of first, second or supervisory-review instance in whole or in part and remit the matter for a fresh examination...

(5) quash or alter the judicial decision issued by a court of first, second or supervisory-review instance and issue a new judicial decision, without remitting the

matter for a fresh examination, if the substantive law has been erroneously applied or interpreted."

III. RELEVANT COUNCIL OF EUROPE DOCUMENTS

18. Interim Resolution ResDH (2006) concerning the violations of the principle of legal certainty through the supervisory review procedure ("*nadzor*") in civil proceedings in the Russian Federation, adopted by the Committee of Ministers on 8 February 2006, reads, in its relevant parts, as follows:

"The Committee of Ministers, under the terms of Article 46, paragraph 2, of the Convention...

Welcoming the reforms of the supervisory review ("*nadzor*") procedure introduced by the new Code of Civil Procedure entered into force on 1 February 2003;

Noting with satisfaction, in particular, that some of the problems at the basis of the violations found in these cases have thus been remedied...

Expressing, however, particular concern at the fact that at the regional level it is often the same court which acts consecutively as a cassation and "*nadzor*" instance in the same case and stressing that the court should be enabled to rectify all shortcomings of lower courts' judgments in a single set of proceedings so that subsequent recourse to "*nadzor*" becomes truly exceptional, if necessary at all;

Stressing that a binding and enforceable judgment should be only altered in exceptional circumstances, while under the current "*nadzor*" procedure such a judgment may be quashed for any material or procedural violation;

Emphasising that in an efficient judicial system, errors and shortcomings in court decisions should primarily be addressed through ordinary appeal and/or cassation proceedings before the judgment becomes binding and enforceable, thus avoiding the subsequent risk of frustrating parties' right to rely on binding judicial decisions;

Considering therefore that restricting the supervisory review of binding and enforceable judgments to exceptional circumstances must go hand-in-hand with improvement of the court structure and of the quality of justice, so as to limit the need for correcting judicial errors currently achieved through the "*nadzor*" procedure...

CALLS UPON the Russian authorities to give priority to the reform of civil procedure with a view to ensuring full respect for the principle of legal certainty established in the Convention, as interpreted by the Court's judgments;

ENCOURAGES the authorities to ensure through this reform that judicial errors are corrected in the course of the ordinary appeal and/or cassation proceedings before judgments become final...

ENCOURAGES the authorities, pending the adoption of this comprehensive reform, to consider adoption of interim measures limiting as far as possible the risk of new violations of the Convention of the same kind, and in particular:

- continue to restrict progressively the use of the "*nadzor*" procedure, in particular through stricter time-limits for *nadzor* applications and limitation of permissible grounds for this procedure so as to encompass only the most serious violations of the law...

- to limit as much as possible the number of successive applications for supervisory review that may be lodged in the same case;

- to discourage frivolous and abusive applications for supervisory review which amount to a further disguised appeal motivated by a disagreement with the assessment made by the lower courts within their competences and in accordance with the law;

- to adopt measures inducing the parties adequately to use, as much as possible, the presently available cassation appeal to ensure rectification of judicial errors before judgments become final and enforceable..."

THE LAW

I. ALLEGED VIOLATION OF ARTICLE 6 § 1 OF THE CONVENTION AND ARTICLE 1 OF PROTOCOL NO. 1

19. The applicant complained that the quashing of the judgment of 27 November 2002, as upheld on 20 January 2003, by way of supervisory review had violated his "right to a court" under Article 6 § 1 of the Convention and his right to the peaceful enjoyment of possessions under Article 1 of Protocol no. 1. 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 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. Admissibility

20. The Court considers that this complaint is not manifestly ill-founded within the meaning of Article 35 § 3 of the Convention. It further notes that

it is not inadmissible on any other grounds. It must therefore be declared admissible.

B. Merits

1. Alleged violation of Article 6 of the Convention

21. The Government submitted that the quashing of the judgment of 27 November 2002, as upheld on 20 January 2003, occurred on the initiative of a party to the proceedings whose property rights and legitimate interests had been violated as a result of a manifest breach of the provisions of the domestic law by the first-instance and appeal courts. In those circumstances, the Presidium of the Regional Court had been competent, pursuant to Article 390 § 2 of the Code of Civil Procedure, to quash the erroneous judgments and to remit the case for a fresh examination. The Government invited the Court to find that there had been no violation of the applicant's rights under Article 6 § 1 of the Convention.

22. The applicant maintained his complaint.

23. 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).

24. 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).

25. 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).

26. The Court has previously found a violation of the principle of legal certainty and 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, among other authorities, *Ryabykh*, cited above, §§ 51–56; *Volkova v. Russia*, no. 48758/99, §§ 34-36, 5 April 2005; *Roseltrans v. Russia*, no. 60974/00, §§ 27-28, 21 July 2005; *Kutepov and Anikeyenko v. Russia*, no. 68029/01, §§ 49-52, 25 October 2005).

27. In the present case the judgment of 27 November 2002, as upheld on 20 January 2003, was set aside by way of a supervisory review on the ground that the first-instance and appeal courts had incorrectly applied the substantive law. The Court has to assess whether the power to conduct a supervisory review was exercised by the authorities so as to strike, to the maximum extent possible, a fair balance between the interests of the individual and the need to ensure the proper administration of justice (see, among other authorities, *Nikitin v. Russia*, no. 50178/99, §§ 57-59, ECHR 2004-...).

28. The Government distinguished the present application from the above-mentioned cases on account of the fact that the supervisory-review procedure had been initiated by the Commission, that is a party to the case, rather than a State official. The Court, however, is not persuaded that this distinction is of crucial importance for its analysis.

29. It is unavoidable that in civil proceedings the parties would have conflicting views on application of the substantive law. The courts are called upon to examine their arguments in a fair and adversarial manner and make their assessment of the claim. The Court observes that before an application for supervisory review was lodged, the merits of the applicant's claim had been examined three times by the first-instance and appeal courts. It has not been claimed that the courts acted outside their competences or that there was a fundamental defect in the proceedings before them. The fact that the Presidium disagreed with the assessment made by the first-instance and appeal courts was not, in itself, an exceptional circumstance warranting the quashing of a binding and enforceable judgment and re-opening of the proceedings on the applicant's claim.

30. Having regard to these considerations, the Court finds that, by granting the Military Commission's request to set aside the judgment of 27 November 2002, as upheld on appeal on 20 January 2003, the Presidium of the Tambov Regional Court infringed the principle of legal certainty and the applicant's "right to a court" under Article 6 § 1 of the Convention. There has accordingly been a violation of that Article.

2. Alleged violation of Article 1 of Protocol no. 1

31. The Government claimed that there had been no violation of the applicant's property rights because the judgment had been legally enforceable for eight days only, that is from the date it became final on 20 January 2003 until the enforcement had been stayed, by a President's decision, on 28 January 2003.

32. The Court reiterates that the existence of a debt confirmed by a binding and enforceable judgment furnishes the judgment beneficiary with a "legitimate expectation" that the debt would be paid and constitutes the beneficiary's "possessions" within the meaning of Article 1 of Protocol No. 1. Quashing of such a judgment amounts to an interference with his or her right to peaceful enjoyment of possessions (see, among other authorities, *Brumărescu*, cited above, § 74; and *Androsov v. Russia*, no. 63973/00, § 69, 6 October 2005).

33. The Court observes that a substantial sum was recovered by a domestic court from the Commission. The quashing of the enforceable judgment frustrated the applicant's reliance on a 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 judgment of 27 November 2002, as upheld on appeal on 20 January 2003, by way of supervisory review placed an excessive burden on the applicant and was therefore incompatible with Article 1 of Protocol no. 1. There has therefore been a violation of that Article.

II. OTHER ALLEGED VIOLATIONS OF THE CONVENTION

34. The applicant complained that the domestic authorities made his life a misery because he had to fight for his rights and to live through many court hearings. He invokes Article 3 which provides as follows:

> "No one shall be subjected to torture or to inhuman or degrading treatment or punishment."

35. The absolute prohibition of degrading or inhuman treatment enshrined in Article 3 applies when a "minimum level of severity is attained" (see *Price v. the United Kingdom*, no. 33394/96, § 24, ECHR 2001-VII). While the Court sees no reason to doubt the applicant's contention that the course of the proceedings was a source of significant distress, it considers that this situation would not cause the applicant suffering or humiliation of such intensity as to constitute "degrading" or "inhuman" treatment within the meaning of Article 3 (see, among other authorities, *Saliba v. Malta* (dec.), no. 4251/02, 27 November 2003; *Volkova v. Russia* (dec.), no. 48758/99, 18 November 2003).

36. It follows that this complaint is manifestly ill-founded and must be rejected in accordance with Article 35 §§ 3 and 4 of the Convention.

37. The applicant complained under Article 7 of the Convention that the domestic courts gave wrong assessment to the facts in his case and as a result misapplied the provisions of the national law. Article 7 provides as follows:

> "1. No one shall be held guilty of any criminal offence on account of any act or omission which did not constitute a criminal offence under national or international law at the time when it was committed. Nor shall a heavier penalty be imposed than the one that was applicable at the time the criminal offence was committed.
>
> 2. This article shall not prejudice the trial and punishment of any person for any act or omission which, at the time when it was committed, was criminal according to the general principles of law recognised by civilised nations."

38. The Court notes that Article 7 does not apply to civil proceedings, and, therefore, it follows that this complaint must be rejected as falling outside its competence *ratione materiae* in accordance with Article 35 §§ 3 and 4 of the Convention.

39. The applicant further complained under Article 6 that the proceedings lasted too long. In the relevant part Article 6 reads as follows:

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

40. The Court recalls that the reasonableness of the length of proceedings coming within the scope of Article 6 § 1 must be assessed in each case according to the particular circumstances. The Court has to have regard, *inter alia*, to the complexity of the factual or legal issues raised by the case, to the conduct of the applicants and the competent authorities and to what was at stake for the former (see *Frydlender v. France* [GC], no. 30979/96, § 43, ECHR 2000-VII). In addition, only delays attributable to the State may justify a finding of a failure to comply with the "reasonable time" requirement (see *Pedersen and Baadsgaard v. Denmark*, no. 49017/99, § 44, 19 June 2003).The Court first needs to determine the period to be considered. According to the information available to the Court, the applicant first took his case to court on 30 November 2000, and the action was granted in a final decision of 20 January 2003. The proceedings resumed on 26 June 2003 after the decision of the supervisory-review authority to re-open the case. After a fresh examination, the case ended with a judgment of 7 August 2003. Consequently, the proceedings lasted 2 years and 3 months. This period excludes the time between the decision of 20 January 2003 and the supervisory review of 26 June 2003, because no proceedings were pending then (see *Markin v. Russia*, no. 59502/00, 16 September 2004). During this time the merits of the case were examined four times, and there do not appear to be any substantial periods of inactivity of the domestic courts. In these circumstances the Court finds that

the complaint does not disclose any appearance of a violation of the "reasonable time" requirement set out in Article 6 of the Convention.

41. It follows that this complaint is manifestly ill-founded and must be rejected in accordance with Article 35 §§ 3 and 4 of the Convention.

42. Finally, the applicant complains under Article 14 of the Convention about being discriminated against, because the court failed to correctly index-link the amount of the compensation he was awarded. Article 14 provides as follows:

> "The enjoyment of the rights and freedoms set forth in this Convention shall be secured without discrimination on any ground such as sex, race, colour, language, religion, political or other opinion, national or social origin, association with a national minority, property, birth or other status."

43. There is no evidence in the case-file that the applicant has been subjected to discrimination within the meaning of Article 14 of the Convention. This complaint is therefore also manifestly ill-founded and must be rejected in accordance with Article 35 §§ 3 and 4 of the Convention.

III. APPLICATION OF ARTICLE 41 OF THE CONVENTION

44. 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

45. The applicant claimed RUR 1,519,918.90 in respect of pecuniary damage and EUR 30,000 in respect of non-pecuniary damage.

46. The Government argued that there was no causal link between the violation found and the damage alleged. In any event, the claims were unreasonable and excessive.

47. As regards the claim in respect of pecuniary damage, the Court, having regard to the nature of the violations found, considers it appropriate to award the applicant the amount which he would have received had the judgment in his favour not been quashed (see paragraph 11 above) less the sum awarded to him by virtue of the judgment which followed the supervisory-review proceedings (see paragraph 16 above). Accordingly, the Court awards the applicant EUR 22,000 in respect of the pecuniary damage, plus any tax that may be chargeable on this amount.

48. The Court further considers that the applicant suffered distress and frustration resulting from the quashing of the judicial decisions in his favour

by way of supervisory-review proceedings. However, the particular amount claimed is excessive. Making its assessment on an equitable basis, the Court awards the applicant EUR 2,000 in respect of non-pecuniary damage, plus any tax that may be chargeable on this amount.

B. Costs and expenses

49. The applicant claimed RUR 5,515 for postage expenses, RUR 15,500 for legal expenses in the Strasbourg proceedings and RUR 11,100 for translation. The Government did not dispute that those expenses had been actually incurred and reasonable as to quantum.

50. According to the Court's case-law, an applicant is entitled to reimbursement of his costs and expenses only in so far as it has been shown that these have been actually and necessarily incurred and were reasonable as to quantum. In the present case, the applicant submitted receipts supporting his claims in respect of postal expenses, a copy of the legal-assistance contract with his representative before the Court and a copy of the contract with the translator. The sums indicated in the contracts do not appear excessive or unreasonable. Regard being had to the information in its possession, the Court considers it reasonable to award the applicant the sum of EUR 940, plus any tax that may be chargeable on that amount.

C. Default interest

51. 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 judgment in the applicant's favour by way of supervisory review admissible and the remainder of the application inadmissible;

2. *Holds* that there has been a violation of Article 6 § 1 of the Convention;

3. *Holds* that there has been a violation of Article 1 of Protocol No. 1;

4. *Holds*
   (a) that the respondent State is to pay the applicant, within three months from the date on which the judgment becomes final in accordance with

Article 44 § 2 of the Convention, the following amounts, to be converted into Russian roubles at the rate applicable at the date of settlement:

(i) EUR 22,000 (twenty-two thousand euros) in respect of pecuniary damage;

(ii) EUR 2,000 (two thousand euros) in respect of non-pecuniary damage;

(iii) EUR 940 (nine hundred and forty euros) in respect of costs and expenses;

(iv) any tax that may be chargeable on the above amounts;

(b) that from the expiry of the above-mentioned three months until settlement simple interest shall be payable on the above amount at a rate equal to the marginal lending rate of the European Central Bank during the default period plus three percentage points.

Done in English, and notified in writing on 18 January 2007, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Søren NIELSEN
Registrar

Christos ROZAKIS
President