CONSEIL DE L'EUROPE

COUNCIL OF EUROPE

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

FOURTH SECTION

DECISION

AS TO THE ADMISSIBILITY OF

Application no. 74831/01
by Anatoliy Ermolayevich TRUSOV
against Russia

The European Court of Human Rights (Fourth Section), sitting on 17 January 2006 as a Chamber composed of:

Sir Nicolas BRATZA, *President*,
Mr K. TRAJA,
Mr A. KOVLER,
Mr S. PAVLOVSCHI,
Mr L. GARLICKI,
Ms L. MIJOVIĆ,
Mr J. ŠIKUTA, *judges*,
and Mr M. O'BOYLE, *Section Registrar*,

Having regard to the above application lodged on 23 August 2001,

Having regard to the observations submitted by the respondent Government and the observations in reply submitted by the applicant,

Having deliberated, decides as follows:

THE FACTS

The applicant, Anatoliy Ermolayevich Trusov, is a Russian national, who was born in 1933 and lives in the city of Dukhovshchina, Smolensk region. The respondent Government are represented by Mr P. Laptev, the Representative of the Russian Federation at the European Court of Human Rights.

A. The circumstances of the case

The facts of the case, as submitted by the parties, may be summarised as follows.

The applicant claimed that during the World War II he had been detained in a German concentration camp. By a Presidential Decree of 15 October 1992, former prisoners of German concentration camps became entitled to certain social benefits, in particular, to a supplement to their retirement pension. On 1 October 1994 a special municipal commission ("the commission") granted the applicant the pension supplement on this ground.

On 11 April 2000 the commission revoked its decision of 1 October 1994, referring to the lack of evidence that the applicant in fact had been in a concentration camp, and, thus, had indeed been entitled to the supplement.

On 7 July the commission decided to withhold 20 percent of the applicant's retirement pension to cover the sums wrongly paid to him between 1994 and 2000. As a result, according to the respondent Government, between August 2000 and March 2001 the commission withheld from the applicant's pension 1,122.35 Russian Roubles to compensate for the previous erroneous payments.

The applicant brought a civil action against the commission seeking restoration of the supplement, recovery of the sums withheld, and compensation for damage.

On 22 December 2000 the Dukovschinskiy District Court of the Smolensk Region found in the applicant's favour, holding that the retirement pension was the applicant's "possession". According to Article 35 § 3 of the Russian Constitution, no one could be deprived of his possession otherwise than by a court decision. Therefore, the deduction of the 20 percent from his pension by an administrative decision had been unlawful. The district court also noted that the commission had failed to hear the applicant and witnesses, and to obtain an expert opinion. Finally, the court found that no legal procedure existed to revoke the supplement once granted. The court quashed the decision of 11 April 2000 ordering the commission to return to the applicant the money deducted from his pension and to resume paying him the supplement.

The defendant appealed. On 27 February 2001 the Smolensk Regional Court delivered a new judgment on the merits. Firstly, the Regional Court found that the decision to revoke the supplement had been "well-founded". The Court further stated that, on the other hand, the money paid in excess could be deducted from the retirement pension only in case of an abuse by the pensioner, which was not the case. The court found that the deduction from the applicant's pension had been unlawful.

In the operative part of the judgement the Regional Court quashed the decision of 1994, confirming that the applicant was no longer entitled to receive the supplement. The Regional Court also held that no deduction could be made from the applicant's pension. However, the Court did not order, at least explicitly, the reimbursement of the sum withheld between August 2000 and March 2001.

As follows from the Government's submissions, pursuant to the decision of 27 February 2001 the money withheld was returned to the applicant. Thus, on 23 March 2001 the local Commission on State pensions decided to return to the applicant 206.57 Russian Roubles (protocol of the deliberations of the Commission no. 30). On 21 September 2001 the commission decided to return to the applicant the remaining of the sum withheld, namely 915.78 Roubles (protocol of the deliberations no. 92). Those amounts were transferred to the applicant in April and October 2001 respectively. The applicant did not contest these facts.

COMPLAINTS

1. Under Article 6 of the Convention the applicant complained that the court proceedings in his case were not fair.

2. The applicant further complained under Article 1 of Protocol no. 1 to the Convention that the deductions from his pension made between August 2000 and February 2001 were found unlawful by the domestic court, but that he had not been compensated in this respect.

THE LAW

1. The applicant complained about the outcome of the proceedings concerning the supplement to his retirement pension. He referred to Article 6 of the Convention, which, insofar as relevant, reads as follows:

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

The Government submitted that the court decision at issue had been lawful and well-founded. The applicant maintained his complaints and maintained that the decision confirming the cessation of the payment of the supplement to his pension was arbitrary and unlawful.

The Court notes that, as regards the alleged inadequacy of the court decision concerning the amount of the applicant's pension, it is not for the Court to act as a court of appeal, or as sometimes is said, as a court of fourth instance from the decisions taken by domestic courts. It is the role of the

domestic courts to interpret and apply relevant rules of procedural or substantive law. Furthermore, it is the domestic courts which are best placed for assessing the credibility of witnesses and the relevance of evidence to the issues in the case (see, amongst many authorities, the *Vidal v. Belgium* judgment of 22 April 1992, Series A no. 235-B, pp. 32-33, § 32; the *Edwards v. the United Kingdom* judgment of 16 December 1992, Series A no. 247-B, § 34). The Court finds no indication that the procedures or decisions adopted by domestic courts in this case infringed the fairness requirement at the heart of Article 6 § 1 of the Convention. Nor is there indication of any issues under other provisions of the Convention and the protocols thereto. Having regard to all the material in its possession, the Court finds that this matter does not disclose any appearance of a violation of the rights and freedoms set out in the Convention or its Protocols.

It follows that this part of the application must be rejected as being manifestly ill-founded, pursuant to Article 35 §§ 3 and 4 of the Convention.

2. The applicant further complained that the courts had failed to order the return of money unlawfully withheld from his pension. He referred to Article 1 of Protocol No. 1, which reads as follows:

> "Every natural or legal person is entitled to the peaceful enjoyment of his possessions. No one shall be deprived of his possessions except in the public interest and subject to the conditions provided for by law and by the general principles of international law.
>
> The preceding provisions shall not, however, in any way impair the right of a State to enforce such laws as it deems necessary to control the use of property in accordance with the general interest or to secure the payment of taxes or other contributions or penalties."

The Government submitted that the money withheld from the applicant's pension had been returned to him in full in two instalments – in April and October 2001 (see the "Facts" part above). The Government concluded that the applicant's complaint in this respect was thus manifestly ill-founded. In his submissions in reply the applicant challenged the lawfulness of the court decisions confirming the withdrawal of the supplement to his pension, but he did not deny that the amounts withdrawn from his pension had been returned to him. Having regard to the Government's statement, as well as the consistent nature of the Government's submissions in this respect, the Court accepts the fact that the money was returned to the applicant as granted. Moreover, this has not been contested by the applicant. It leads the Court to a conclusion that, although the court judgment did not order in clear terms the return of the money, the applicant's pecuniary rights were finally fully restored. The Court notes that it took the domestic authorities about eight months to return the whole sum to the applicant. However, in view of its previous case-law in cases concerning the delays in payment of the judgment awards (see, mutatis mutandis, *Krapyvnitsky v. Ukraine* (dec.), no. 60858/00, 17 September 2002; *Denisov v. Ukraine* (dec.), no. 18512/02,

1 February 2005), the Court concludes that the delay which occurred in the present case does not amount to an "interference" with the applicant's possessions.

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

For these reasons, the Court unanimously

Declares the application inadmissible.

Michael O'BOYLE
Registrar

Nicolas BRATZA
President