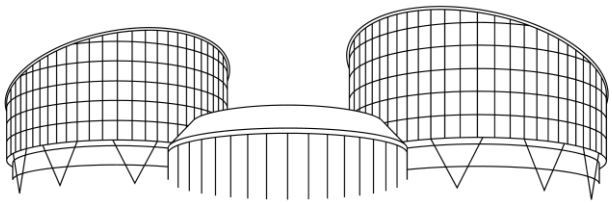

EUROPEAN COURT OF HUMAN RIGHTS
COUR EUROPÉENNE DES DROITS DE L'HOMME

FIRST SECTION

CASE OF ASMAYEV v. RUSSIA

(Application no. 44142/05)

JUDGMENT

STRASBOURG

14 March 2013

This judgment is final but it may be subject to editorial revision.

In the case of Asmayev v. Russia,

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

Khanlar Hajiyev, *President,*
Julia Laffranque,
Dmitry Dedov, *judges,*
and André Wampach, *Deputy Section Registrar,*

Having deliberated in private on 19 February 2013,

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

PROCEDURE

1. The case originated in an application (no. 44142/05) 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 Igor Timofeyevich Asmayev ("the applicant"), on 8 November 2005.

2. The Russian Government ("the Government") were represented by Mr G. Matyushkin, the 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.

4. On 12 October 2009 the Court communicated the application to the respondent Government. It decided to rule on the admissibility and merits of the application at the same time (Article 29 § 1).

THE FACTS

I. THE CIRCUMSTANCES OF THE CASE

5. The applicant was born in 1930 and lives in Moscow.

6. In 1995 he opened a fixed-term interest-bearing deposit account at the Rostov-on-Don Branch of the Savings Bank of the Russian Federation ("the bank"). On an unspecified date in 1996-1997 the bank unilaterally reduced the interest rate on his deposit account. The applicant sued the bank for reinstatement of the initial interest rate and compensation of unpaid interest and damages.

A. Proceedings concerning reduction of the interest rate

1. Initial proceedings concerning the interest rate

7. On 1 April 1999 the applicant challenged the reduction of the interest rate in the Proletarskiy District Court of Rostov-on-Don. On 21 June 1999 the Proletarskiy District Court of Rostov rendered a default judgment in favour of the applicant, ordering the bank to cancel its decision to reduce the rate. The judgment was not appealed against and became final. It remained unenforced.

8. On 22 March 2001 the Presidium of the Rostov Regional Court, upon the bank's application for supervisory review, quashed the judgment of 21 June 1999 and remitted the case for fresh consideration.

2. The applicant's claim for compensation of unpaid interest and damages

9. Due to non-execution of the above judgment of 21 June 1999 by the Bank, in September 1999, the applicant brought another claim to the Proletarskiy District Court of Rostov against the Bank, seeking compensation of unpaid interest and damages.

10. On 13 July 2000 the Proletarskiy District Court of Rostov rejected the claim.

11. On 11 October 2000 the Rostov Regional Court quashed the above judgment on appeal and remitted the case for a fresh consideration to the first instance court.

3. The consolidation of cases in relation to the applicant's claims and the judgment of 9 October 2001 in his favour

12. On an unspecified date, apparently after the quashing of 22 March 2001, the Proletarskiy District Court decided to join the claims concerning the reduction of the rate and the unpaid interest.

13. On 9 October 2001 the Proletarskiy District Court of Rostov-on-Don found for the applicant in part. It held that the reduction of the interest rate was unlawful and awarded the applicant 184,132.77 Russian roubles (RUB) which he would have received if the interest rate had not been reduced during the validity of the contract, up to 9 October 2001. It rejected the remainder of the applicant's claims as unfounded.

14. On 26 December 2001 the Rostov Regional Court upheld the judgment on appeal.

15. On 2 April 2002 the applicant was paid RUB 184,132.77, and the enforcement proceedings were closed.

16. On 5 April 2002 the applicant introduced a request for clarification of the judgment of 9 October 2001, claiming that the latter obliged the bank

to renew the regular payments on the basis of unreduced interest rate. On 18 September 2002 the Rostov Regional Court in the final instance rejected his claim, having found that the renewal issue had not been a subject-matter of the judicial decision of 9 October 2001.

4. Proceedings for further recalculation of payments

17. On 6 May 2003 the applicant brought separate proceedings against the bank for payments under the initial interest rate according to the deposit agreement to be calculated from 10 October 2001, as well as for non-pecuniary damage. He relied on the judgment of the Proletarskiy District Court of Rostov of 9 October 2001, which had recalculated the rate until the latter date.

18. On 25 March 2004 the Kirovskiy District Court of Rostov-on-Don found for the applicant and ordered the bank to recalculate the interest rate as from 10 October 2001, on the basis of the findings made in the judgment of the Proletarskiy District Court of 9 October 2001. The court further rejected the claims for non-pecuniary damage as having no basis in domestic law.

19. On 2 June 2004 the Rostov Regional Court upheld the judgment on appeal.

20. On 30 June 2005 the bank produced documents confirming recalculation of the rate, as required by the judgment of 25 March 2004. By a decision issued on the same date the bailiffs discontinued the enforcement proceedings, since the above judgment had been complied with in full.

5. Supervisory review of the judgment of 9 October 2001

21. On 28 July 2004 the Proletarskiy District Court allowed the bank's request of 12 July 2004 for restoration of the time-limit for an application for supervisory review of the final judgment of 9 October 2001. According to the applicant, he was not informed about the hearing.

22. On an unspecified date the bank lodged an application for supervisory review.

23. On 26 August 2004 a judge of the Rostov Regional Court rejected the application.

24. On an unspecified date the bank lodged a request for quashing of the judgment of 9 October 2001 due to newly discovered circumstances, namely, the new case-law of the domestic courts of 2003-2004 and the authoritative interpretation of the domestic law provisions by the Presidium of the Supreme Court of the Russian Federation issued on 14 July 2004.

25. On 22 November 2004 the Proletarskiy District Court rejected the request. On 19 January 2005 the Rostov Regional Court upheld the decision on appeal. The courts found that the changed case-law did not constitute a newly-discovered circumstance. The courts noted, however, that it remained

open for the bank to bring a request for supervisory review of the judgment in question on procedural grounds.

26. Meanwhile, the bank applied to the President of the Rostov Regional Court with a request to revise a refusal to initiate the supervisory-review proceedings, arguing that the courts incorrectly applied domestic law to the circumstances of the case.

27. On 2 June 2005 the Presidium of the Rostov Regional Court quashed the final judgment of 9 October 2001, as upheld on 26 December 2001, by way of the supervisory-review proceedings. The Presidium found that the lower courts had incorrectly established the facts of the case. In particular, it noted that the District Court had omitted to examine whether the applicant had been informed of the entirety of contents of the deposit agreement and whether he had had agreed to a subsequent change of the interest rate without his explicit approval. Furthermore, it found that the lower courts had wrongly interpreted the domestic law, since they had based their judgments on the provisions of the Civil Code of the Russian Federation inapplicable to the dispute at stake. The case was remitted for a fresh examination.

28. According to the applicant, he was not informed about the hearing of 2 June 2005 and learned about it on 6 July 2005 only.

29. At some point the applicant challenged the decision of 28 July 2004 on appeal. On 30 November 2005 the Rostov Regional Court rejected his request and upheld the decision.

6. Subsequent proceedings

(a) As regards the claim for payments at the initial rate and the arrears due until 9 October 2001

30. On 1 July 2005 the Proletarskiy District Court on the Bank's request issued an interlocutory injunction seizing the applicant's bank account. On 24 August 2005, the Rostov Regional Court upheld the decision on appeal.

31. On 27 July 2005, as a result of re-consideration of the case after the quashing by way of supervisory review (see paragraph 27 above), the Proletarskiy District Court of Rostov rejected the applicant's claims.

32. On 24 August 2005 the Rostov Regional Court upheld the judgment on appeal.

33. On 11 October 2005 the Proletarskiy District Court of Rostov decided that the applicant should reimburse to the bank RUB 184,132.77 which he had earlier received under the reversed judgment of 9 October 2001. The judgment was not appealed against.

34. On 13 March 2006 the above amount was debited from the applicant's account.

(b) As regards further recalculation of payments

35. On 18 October 2005 the Kirovskiy District Court, acting upon the bank's request and referring to the ruling of the Presidium of the Rostov Regional Court of 2 June 2005 (see paragraph 27 above), quashed its judgment of 25 March 2004 due to newly established circumstances and ordered a fresh examination of the case.

36. On 14 November 2005 the same court rejected the applicant's claims.

37. On 16 January 2006 the Rostov Regional Court upheld the judgment on appeal.

(c) As regards enforcement of the judgment of 25 March 2004

38. At some point the applicant challenged the bailiffs' decision of 30 June 2005 to discontinue the enforcement proceedings in respect of the judgment of 25 March 2004 as unlawful. He argued that the judgment remained unenforced. According to him, even though the bank had made a recalculation of the interest rate, the calculation had been incorrect and the applicant had not received respective arrears due to him.

39. On 12 October 2005 the Leninskiy District Court rejected the claim. On 30 November 2005 the decision was annulled on appeal and the case sent for a fresh consideration.

40. On 1 February 2006 the Leninskiy District Court dismissed his action. The court found, first, that the judgment of 25 March 2004 had been quashed on 2 June 2005, the applicant's claims had been considered afresh and rejected. In these circumstances, his claim for enforcement of the award of 24 March 2005 was devoid of purpose. Second, the court observed that in any event the respondent bank had duly complied with the obligation to recalculate the interest rate as ordered by the judgment of 25 March 2004. At the same time, the latter judgment had not contained an obligation to pay any pecuniary award to the applicant.

41. On 15 March 2006 the Rostov Regional Court upheld the judgment on appeal.

B. Proceedings concerning dissolution of the deposit agreement

42. On 9 February 2005 the Kirovskiy District Court of Rostov granted the Bank's claim and dissolved the deposit agreement of 11 May 1995 due to substantially changed circumstances. On 25 April 2005 the Rostov Regional Court upheld the judgment on appeal and awarded the applicant RUB 5,000 of compensation of non-pecuniary damage.

43. It appears that the applicant had not received the compensation.

II. RELEVANT DOMESTIC LAW

44. Relevant domestic law provisions governing the supervisory review procedure at the material time are summarised in the Court's judgment in the case of *Kot v. Russia* (no. 20887/03, § 17, 18 January 2007).

THE LAW

I. ALLEGED VIOLATION OF ARTICLE 6 § 1 OF THE CONVENTION AND ARTICLE 1 OF PROTOCOL No. 1 ON ACCOUNT OF QUASHING OF THE JUDGMENT IN THE APPLICANT'S FAVOUR

45. The applicant complained that the quashing of the judgment of 9 October 2001 in his favour, as upheld on 26 December 2001, by way of supervisory review 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. He further complained that he had not been informed of the date of the supervisory instance hearing and that the domestic courts had allowed the Bank's request for restoration of the time-limit for lodging the supervisory review complaint in breach of the domestic law requirements. Relevant Convention provisions read as follows:

Article 6 § 1

"In the determination of his civil rights and obligations ... everyone is entitled to a ... 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

46. The Government submitted that the complaint was inadmissible. The quashing was necessary in order to correct a fundamental error in the lower courts' reasoning, namely their failure to establish all relevant circumstances of the case correctly. The courts had omitted to establish whether the applicant had been fully informed of the conditions of the

deposit agreement and whether, by accepting the deposit agreement terms, he had also authorised an eventual reduction of the interest rate by the bank in the absence of his prior explicit approval. Furthermore, the courts had disregarded the clarifications of the Presidium of the Supreme Court of the Russian Federation of 14 July 2004 providing authoritative interpretation of the relevant domestic law provisions and establishing, in particular, that the bank deposit agreements issue should have been governed by the Fundamentals of the USSR Civil Law of 31 May 1991 and not the Civil Code of the Russian Federation of 1996. The prohibition of a unilateral change of the interest rate was introduced by the Civil Code of the Russian Federation and could not be applied retroactively. Thus, the domestic courts' retroactive reference to the provisions of the Civil Code constituted a manifestly wrong application of material law. Hence this judgment had had to be quashed. The quashing had been legitimate, lawful, necessary to ensure uniformity of the domestic courts' case-law and compliant with the principle of legal certainty. The time-limit for lodging an application for supervisory review was restored in accordance with domestic law.

47. As regards Article 1 of Protocol No. 1, they submitted that the repayment of the judgment debt by the applicant to the respondent bank had been necessary in order to protect the property rights of a legitimate owner of the sum of money in question, i.e. the bank. They pointed out that the judgment of 9 October 2001 in the applicant's favour had been enforced on 2 April 2002. In any event, first, they argued in broad terms that the amount at stake was insignificant. Second, they claimed that the respondent bank was a private company, and the Government was not responsible for its debts. Third, they submitted that the applicant's claims had been rejected by the final decisions of the domestic courts and accordingly he did not have a legitimate expectation to have the initial interest rate reinstated. Thus, his claim was not sufficiently established to constitute a possession.

48. Finally, referring to the case of Merzhoyev (see *Merzhoyev v. Russia*, no. 68444/01, § 55, 8 October 2009), the Government submitted that the Savings Bank had had to change the interest rate on many occasions in view of the difficult economic situation in early 1990s in Russia. They considered that the reduction of the interest rate was justified by the extraordinary circumstances of deteriorating welfare of the State in 1990s and therefore the interference in the present case was justified by the need to protect public interests.

49. The applicant maintained his complaint. He argued that the quashing had been unjustified because the District Court based its decision on the relevant law, and because the interpretation of the law by the Supreme Court in 2004 had been given after the judgment. The supervisory instance's judgment had been unfair and the Presidium misinterpreted both the facts and the domestic law applicable to his case. The procedural time-limit for lodging the supervisory-review appeal had been restored in

violation of the time-limits set out in the domestic law. Finally, the applicant stressed that the amount at stake had been significant for him, given that he was a pensioner and needed to take care of his family.

B. The Court's assessment

1. Admissibility

50. The Court notes the Government's submission that the amount at stake was not significant for the applicant. In so far as they may be understood to claim that the applicant did not suffer significant disadvantage as a result of the quashing within the meaning of in accordance with Article 35 § 3 (b), as amended by Protocol 14, the Court observes that the amount of the judgment debt at stake was RUB 184,132.77, that is approximately 6,795 euros (EUR), if converted into euros at the rate applicable on 9 October 2001, the date of the consideration of his claims by the domestic court. Having regard to the amount at stake, the Court finds that the applicant, an old-age pensioner, cannot be deemed not to have suffered a significant disadvantage (see, by way of contrast, *Korolev v. Russia* (dec), no. 25551/05, 1 July 2010, and *Vasilchenko v. Russia*, no. 34784/02, § 49, 23 September 2010). It accordingly rejects the Government's objection under this head.

51. As regards the Government's arguments that they were not responsible for the bank's debts, and so far as they may be understood to raise the *ratione personae* objection, the Court notes that, in the present case, it is not called upon to decide whether the State is to be held liable for the debts of the Savings Bank of Russia, nor was the issue matter of the State responsibility subject to examination in the impugned proceedings. The issue to be determined in this case is whether the supervisory review procedure in question infringed the principle of legal certainty and the applicant's "right to a court" within the meaning of Article 6 § 1 of the Convention, as well as whether the interference with the applicant's property rights as a result of the quashing was compatible with the requirements of Article 1 of Protocol No. 1 thereto. The court accordingly rejects the Government's argument under this head.

52. In so far as the Government raise a *ratione materiae* objection under Article 1 of Protocol No. 1, the Court observes that by virtue of the judgment of 9 October 2001 the applicant obtained a lump sum which he would have received if the interest rate had not been reduced. The Court reiterates that that the existence of a debt confirmed by a binding and enforceable judgment constitutes the beneficiary's "possession" within the meaning of Article 1 of Protocol No. 1 (see, among other authorities, *Androsov v. Russia*, no. 63973/00, § 69, 6 October 2005). It does not see any reason to depart from its established case-law and considers that the

applicant's claim was sufficiently established to constitute a possession within the meaning of Article 1 of Protocol No. 1 (see, by contrast, *Cherkashin v. Russia* (dec.), no. 7412/02, 30 March 2006, and *Pupkov v. Russia* (dec.), no. 42453/02, 17 January 2008). It accordingly decides to reject the Government's argument under this head.

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

2. Merits

(a) Alleged violation of Article 6 of the Convention

(i) Supervisory review: legal certainty

54. The Court reiterates that the quashing by way of supervisory review of a judicial decision which has become final and binding may render the litigant's right to a court illusory and infringe the principle of legal certainty (see, among many other authorities, *Brumărescu v. Romania* [GC], no. 28342/95, § 62, ECHR 1999-VII; *Ryabykh v. Russia*, no. 52854/99, §§ 56-58, ECHR 2003-IX). In certain circumstances legal certainty can be disturbed in order to correct a "fundamental defect" or a "miscarriage of justice". Departures from the legal certainty principle are justified only when made necessary by circumstances of a substantial and compelling character (see *Kot*, cited above, § 24; *Protsenko v. Russia*, no. 13151/04, §§ 25-34, 31 July 2008; and *Tishkevich v. Russia*, no. 2202/05, §§ 25-26, 4 December 2008). In such cases, the Court has to assess, in particular, whether a fair balance was struck between the interests of the applicants and the need to ensure the proper administration of justice (see, *mutatis mutandis*, *Kurinnyy v. Russia*, no. 36495/02, §§ 13, 27-28, 12 June 2008). The judgment in question can be quashed exclusively in order to rectify an error of truly fundamental importance to the judicial system (see *Shchurov v. Russia*, no. 40713/04, § 21, 29 March 2011). The "right to a court" would be illusory if a Contracting State's domestic legal system allowed a final and enforceable judicial decision to be quashed by a higher court merely on the ground of disagreement with the assessment made by lower courts with the view of carrying out a fresh examination (see *Kot*, cited above, §§ 27-30).

55. Turning to the present case, the Court observes that the Government did not advance any argument to the effect that the judgment of 9 October 2001 had been based on the fundamental defect rather than on a trivial mistake (see *Shchurov*, cited above, § 22). The Court does not find that the proceedings in question had been tarnished by a fundamental defect. Indeed,

the judgment in the applicant's favour was set aside on the ground that the Proletarskiy District Court had incorrectly applied the substantive domestic law and incorrectly established the facts of the case, that ground not constituting a fundamental defect within the meaning of the Court's case-law (see *Luchkina v. Russia*, no. 3548/04, § 21, 10 April 2008). The Court has found on several occasions that a party's disagreement with the assessment made by the lower courts is not a circumstance of a substantial and compelling character warranting the quashing of a binding and enforceable judgment and re-opening of the proceedings on the applicant's claim (see, among others, *Dovguchits v. Russia*, no. 2999/03, § 30, 7 June 2007, and *Kot*, cited above, § 29).

56. Having regard to the above considerations, the Court finds that by quashing the judgment of 9 October 2001 by way of supervisory review the Presidium infringed the principle of legal certainty and the applicant's "right to a court" within the meaning of Article 6 § 1 of the Convention.

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

(ii) Supervisory review: procedural issues

58. As to the alleged violation of the applicant's procedural rights in the supervisory review proceedings, the Court considers that given the finding of a violation by the very use of supervisory review, it is unnecessary to examine the complaint in this part (see *Ryabykh*, cited above, § 59).

(b) Alleged violation of Article 1 of Protocol No. 1

59. The Court has already established that the judgment debt of 9 October 2001 amounted to "possession" within the meaning of Article 1 of Protocol No. 1 (see paragraph 52 above). The Court further observes that by virtue of the judgment of 9 October 2001 the applicant received a lump sum of RUB 184,132.77. The quashing frustrated the applicant's reliance on a binding judicial decision. Furthermore, following the quashing, his claims were reconsidered and rejected by the domestic courts. Moreover, on 11 October 2005 the domestic court ordered the applicant to return to the respondent bank the amount he had already received pursuant to the judgment of 9 October 2001, and the applicant complied with the repayment order (see paragraphs 33 and 34 above). Thus, the applicant had to return the initial award through no fault of his own.

60. Turning to the "force majeure" argument raised by the Government, the Court rejects it since economic difficulties of 1990s were not subject to examination by the Presidium on 2 June 2005 and did not constitute a ground for the quashing in question. Indeed, this issue was in no way addressed by the Presidium of the Rostov Regional Court on 2 June 2005.

61. In these circumstances, even assuming that the interference was lawful and pursued a legitimate aim, the Court considers that the quashing of the enforceable judgment of 9 October 2001 by way of supervisory

review placed an excessive burden on the applicant and was incompatible with Article 1 of Protocol No. 1 of the Convention.

62. There has therefore been a violation of that Article.

II. OTHER ALLEGED VIOLATIONS OF THE CONVENTION

63. The applicant complained under Article 6 and Article 1 of Protocol No. 1 of the Convention about the quashing of the judgment of 21 June 1999 by way of the supervisory review proceedings.

64. The Court 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 quashing by the Presidium took place on 22 March 2001, and the application was lodged in 2005, that is more than six months after the judgment had been annulled and ceased to be binding and enforceable. 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.

65. By letter of 12 April 2007 the applicant further complained that the bank had failed to comply with the judgment of 25 March 2004 in full.

66. The Court notes that the judgment in question was quashed on 18 October 2005 (see paragraph 35 above). Bearing in mind that the quashing is an instantaneous act (see paragraph 64 above), the Court notes that the applicant only raised this grievance on 12 April 2007, that is more than six months after the judgment had been quashed and the judicial award in his favour had ceased to exist. Similarly, in so far as the applicant's claims against the bailiffs might be concerned, the final judgment in the respective set of proceedings had been issued on 15 March 2006 (see paragraph 41 above), that is outside the six-month time limit set out in Article 35 § 1 of the Convention.

67. 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.

68. Lastly, the applicant submitted a number of additional complaints under Article 6 of the Convention and Article 1 of Protocol No. 1. In particular, he complained in broad terms that the proceedings in their entirety were excessively long and unfair.

69. However, having regard to all the material in its possession, and in so far as these complaints fall within its competence, the Court finds that there is no appearance of a violation of the rights and freedoms set out in the Convention or its Protocols. It follows that this part of the application must be rejected as manifestly ill-founded, pursuant to Article 35 §§ 3 and 4 of the Convention.

III. APPLICATION OF ARTICLE 41 OF THE CONVENTION

70. 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

71. In respect of pecuniary damage, the applicant claimed the arrears "in respect of the bank's debt for the period until 9 February 2005". He also claimed interest in respect of the arrears at the annual rate of nine percent for the period between 9 February 2005 and the date of the payment of the arrears, as well as index-linking of the arrears for the same period. He further claimed 500,000 Russian roubles (RUB) in respect of non-pecuniary damage.

72. The Government contested the claim as excessive and ill-founded. In particular, their reiterated in respect of the claim for pecuniary damage that they were not responsible for the bank's debts, since the latter was a separate legal entity. They further pointed out that the applicant had failed to submit itemized particulars in respect of his claims, nor did he indicate the exact amount claimed.

73. As regards the claim for pecuniary damage, the Court reiterates that the most appropriate form of redress in respect of the violations found would be to put the applicant as far as possible in the position he would have been if the Convention requirements had not been disregarded (see *Piersack v. Belgium* (Article 50), 26 October 1984, § 12, Series A no. 85, 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 violations found.

74. It observes that as a result of the annulment of the judgment on supervisory review the applicant had to repay the award paid to him under the judgment of 9 October 2001 in the amount of RUB 184,132.77 (see paragraphs 33 and 34 above). In these circumstances, the Court decides that the amount of the judgment debt of 9 October 2001 should be repaid to him and awards him 6,795 euros (EUR) under this head, plus any tax that may be chargeable on this amount. As regards the remainder of the claim in respect of pecuniary damage, the Court agrees with the Government that the applicant had failed to submit itemized particulars in respect of his claims or to indicate the amount claimed. Furthermore, the Court does not see a causal link between the amounts claimed and the violation found, and rejects the claim in this part.

75. The Court further considers that the applicant suffered distress and frustration resulting from the quashing of the judicial decision in his favour by way of supervisory review proceedings. The damage can not be sufficiently compensated by a finding of a violation. 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, and rejects the remainder of the claims under this head.

B. Costs and expenses

76. The applicant did not seek reimbursement of costs and expenses, and this is not a matter which the Court is required to examine of its own motion (see *Motière v. France*, no. 39615/98, § 26, 5 December 2000).

C. Default interest

77. 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* the complaint under Article 6 of the Convention and Article 1 of Protocol No. 1 concerning the supervisory review of the judgment of 9 October 2001 admissible and the remainder of the application inadmissible;

2. *Holds* that there has been a violation of Article 6 § 1 of the Convention on account of the quashing of the final judgment in the applicant's favour;

3. *Holds* that there has been a violation of Article 1 of Protocol No. 1 on account of the quashing of the final judgment in the applicant's favour;

4. *Holds*
   (a) that the respondent State is to pay the applicant, within three months, the following amounts, to be converted into Russian roubles at the rate applicable at the date of settlement:
      (i) EUR 6,795 (six thousand seven hundred and ninety-five euros), plus any tax that may be chargeable, in respect of pecuniary damage;

(ii) EUR 2,000 (two thousand euros), plus any tax that may be chargeable, in respect of non-pecuniary damage;

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

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

Done in English, and notified in writing on 14 March 2013, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

André Wampach
Deputy Registrar

Khanlar Hajiyev
President