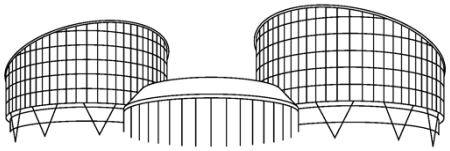

EUROPEAN COURT OF HUMAN RIGHTS
COUR EUROPÉENNE DES DROITS DE L'HOMME

FIRST SECTION

CASE OF DAVYDOV v. RUSSIA

(Application no. 18967/07)

JUDGMENT

STRASBOURG

30 October 2014

FINAL

30/01/2015

This judgment has become final under Article 44 § 2 of the Convention. It may be subject to editorial revision.

In the case of Davydov v. Russia,

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

Isabelle Berro-Lefèvre, *President,*
Elisabeth Steiner,
Khanlar Hajiyev,
Linos-Alexandre Sicilianos,
Erik Møse,
Ksenija Turković,
Dmitry Dedov, *judges,*
and Søren Nielsen, *Section Registrar,*

Having deliberated in private on 7 October 2014,

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

PROCEDURE

1. The case originated in an application (no. 18967/07) 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 Pavel Viktorovich Davydov ("the applicant"), on 12 March 2007.

2. The Russian Government ("the Government") were represented by their Agent, Mr G. Matyushkin, Representative of the Russian Federation at the European Court of Human Rights.

3. The applicant complained of the quashing in supervisory-review proceedings of a binding and enforceable judgment delivered in his favour.

4. On 3 May 2010 the application was communicated to the Government.

THE FACTS

I. THE CIRCUMSTANCES OF THE CASE

5. The applicant was born in 1962 and lives in Saransk.

6. In 2005 the applicant brought civil proceedings against the Ministry of Internal Affairs of the Republic of Mordoviya ("the Ministry") seeking compensation for damage to his health caused during his service in the police ("the compensation").

7. On 7 November 2005 the Leninskiy District Court of Saransk ("the District Court") found in the applicant's favour and ordered the Ministry:

(a) to pay the applicant the compensation due to him for the period from 19 November 2004 to 31 October 2005 in the amount of 77,250.12 Russian roubles (RUB); and (b) starting from 1 November 2005, to make monthly compensation payments to the applicant of RUB 6,892.92 with subsequent indexation in accordance with the law. The judgment was not appealed against and became final on 22 November 2005.

8. However, on 12 October 2006, following a request lodged by the Ministry, the Presidium of the Supreme Court of the Republic of Mordoviya ("the Presidium") quashed the final judgment by way of supervisory review and dismissed the applicant's claims. The Presidium found that the first-instance court had erroneously applied and interpreted substantive legal provisions which had resulted in their significant violation. The Presidium held that there was no basis under domestic law for awarding the applicant the compensation sought and that he was entitled instead to insurance payments. The applicant did not provide the Court with information as to whether he had applied for those payments and/or was receiving them.

9. The District Court's judgment of 7 November 2005 had been duly enforced until it was quashed by way of supervisory review.

II. RELEVANT DOMESTIC LAW AND PRACTICE

A. Code of Civil Procedure

10. The Code of Civil Procedure of the Russian Federation, as in force at the material time, provided as follows:

Article 362. Grounds on which appeal courts may quash or alter judicial decisions

"1. The grounds on which appeal courts may quash or alter judicial decisions are:

...

(4) a violation or incorrect application of substantive or procedural legal provisions.

..."

Article 387. Grounds on which judicial decisions may be quashed or altered by way of supervisory review

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

Article 390. Competence of the supervisory-review court

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

(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 fresh examination, if substantive legal provisions have been erroneously applied or interpreted.

...”

11. The Code of Civil Procedure as currently in force provides as follows:

Article 392. Grounds on which final judicial decisions may be re-examined (in the light of newly discovered or new circumstances)

“1. Final judicial decisions may be re-examined in the light of newly discovered or new circumstances.

2. Grounds on which final judicial decisions can be re-examined are:

...

2) new circumstances – the circumstances indicated in paragraph 4 of the present Article which have appeared after the adoption of a judicial decision and which are significant for the correct resolution of a case.

...

4. The new circumstances are:

...

4) a finding by the European Court of Human Rights, after examination of a case in which the final decision has been the subject of an application before it, of a violation of the provisions of the Convention for the Protection of Human Rights and Fundamental Freedoms.”

B. Constitutional Court’s case-law

12. Article 392 § 4 (4) of the Code of Civil Procedure was adopted as a consequence of judgment No. 4-P of the Constitutional Court of the Russian Federation of 26 February 2010 in a case concerning the review of the constitutionality of Article 392 § 2 of the Code of Civil Procedure in connection with complaints lodged by A. A. Doroshok, A. Ye. Kot, and Ye. Yu. Fedotova.

13. In its judgment the Constitutional Court argued that former Article 392 § 2 of the Code of Civil Procedure did not allow a court of general jurisdiction to refuse to re-examine a decision in the light of newly discovered circumstances upon an individual’s request if the European Court of Human Rights had established that the impugned decision had breached the Convention, and if that decision had served as grounds for applying to the European Court of Human Rights. The Constitutional Court went on to say, in paragraph 3.5 of its judgment, that “it is the competent court which decides on the possibility to re-examine a judicial decision relying on full and comprehensive examination of the applicant’s arguments and the circumstances of the case”. In the Constitutional Court’s view, any other interpretation of Article 392 § 2 of the Code of Civil Procedure in law-enforcement practice would be inconsistent with the Russian Constitution and the Convention.

14. The Constitutional Court pointed out that the establishment of a specific procedure for the re-examination of final judicial decisions was a general measure for the purposes of implementing the Convention. The State was obliged to take general measures under Article 46 of the Convention and the Constitution of the Russian Federation. Accordingly, the Constitutional Court held that there was a need to establish a statutory mechanism for the execution of final judgments delivered by the European Court of Human Rights, and urged the federal legislator to introduce amendments to the Code of Civil Procedure that would guarantee an opportunity to re-examine final judicial decisions delivered in violation of the Convention.

C. Ruling by the Plenary of the Supreme Court

15. In its Resolution No. 21 of 27 June 2013 on the "Application of the Convention for the Protection of Human Rights and Fundamental Freedoms of 4 November 1950 and its Protocols by the courts of general jurisdiction", the Plenary of the Supreme Court of the Russian Federation issued, *inter alia,* the following explanations to the courts:

> "17. In accordance with the provisions of Article 46 of the Convention, interpreted in the light of the Recommendation of the Committee of Ministers of the Council of Europe R (2000) 2 on the re-examination or reopening of certain cases at domestic level following judgments of the European Court of Human Rights (hereafter 'the Recommendation on re-examination'), not every violation of the Convention or its Protocols established by the European Court in respect of the Russian Federation calls for re-examination of the domestic judicial acts in the light of new circumstances.
>
> The courts should bear in mind that a judicial act should be re-examined if the applicant continues to suffer from the negative consequences of such an act (for instance, if the person remains in prison in violation of the Convention), and just satisfaction, awarded by the European Court in accordance with Article 41 of the Convention and paid to the applicant, or measures other than re-examination do not ensure the restoration of the violated rights and freedoms.
>
> At the same time, the violation established by the European Court may enable at least one of the following conclusions to be arrived at:
>
> - that the judicial act directly contravenes the Convention on its merits (for example, where a decision as to administrative deportation of a person from the Russian Federation has been found by the European Court to be in breach of Article 8 of the Convention);
>
> - that the violation of the Convention or its Protocols of a procedural nature puts in question the outcome of the proceedings (for example, the court's refusal to call a witness whose statements could have been decisive for the outcome of the case (Article 6 of the Convention)).
>
> When deciding on re-examination, the courts should verify the existence of a causal link between the violations established by the European Court and the negative consequences from which the applicant continues to suffer.

...

21. If the European Court establishes a procedural violation of the rights of the persons who have taken part in the proceedings, or who have been unjustifiably excluded from such proceedings, the court may, when re-examining the judicial decision in question, upon ensuring if possible in the circumstances of the case the reparation of the violations of the Convention or its Protocols which have occurred previously, adopt a judicial act which would be similar to the previous one (Article 46 of the Convention, as interpreted in accordance with the Recommendation on re-examination).

22. If the judicial act in question had been enforced by the time of entry into force of the European Court's judgment finding violations of the Convention and its Protocols by that act, the re-examination of that act under the new circumstances in view of the said judgment of the European Court should prevail over the principle of legal certainty (Article 46 of the Convention, interpreted in the light of the Recommendation on re-examination). If after the quashing of the executed judicial act a new decision is adopted, rejecting the claims in total or in part, or if the court refuses to consider the claim on its merits, the execution of the judicial act should be reversed, with the exception of cases falling under Article 445 of the Code of Civil Procedure."

III. RELEVANT COUNCIL OF EUROPE DOCUMENTS

16. On 19 January 2000 the Committee of Ministers of the Council of Europe adopted Recommendation No. R (2000) 2 to member States on the re-examination or reopening of certain cases at domestic level following judgments of the European Court of Human Rights. In that document the Committee of Ministers:

"I. Invites, in the light of these considerations the Contracting Parties to ensure that there exist at national level adequate possibilities to achieve, as far as possible, *restitutio in integrum*;

II. Encourages the Contracting Parties, in particular, to examine their national legal systems with a view to ensuring that there exist adequate possibilities of re-examination of the case, including reopening of proceedings, in instances where the Court has found a violation of the Convention, especially where:

i. the injured party continues to suffer very serious negative consequences because of the outcome of the domestic decision at issue, which are not adequately remedied by the just satisfaction and cannot be rectified except by re-examination or reopening, and

ii. the judgement of the Court leads to the conclusion that

a. the impugned domestic decision is on the merits contrary to the Convention, or

b. the violation found is based on procedural errors or shortcomings of such gravity that a serious doubt is cast on the outcome of the domestic proceedings complained of."

17. The explanatory memorandum to the above recommendation provides, *inter alia,* as follows:

"3. Although the Convention contains no provision imposing an obligation on Contracting Parties to provide in their national law for the re-examination or

reopening of proceedings, the existence of such possibilities have, in special circumstances, proven to be important, and indeed in some cases the only, means to achieve *restitutio in integrum*. An increasing number of States have adopted special legislation providing for the possibility of such re-examination or reopening. In other States this possibility has been developed by the courts and national authorities under existing law.

...

10. The practice of the Convention organs has demonstrated that it is primarily in the field of criminal law that the re-examination of a case, including the reopening of proceedings, is of the greatest importance. The recommendation is, however, not limited to criminal law, but covers any category of cases, in particular those satisfying the criteria enumerated in sub-paragraphs (i) and (ii). The purpose of these additional criteria is to identify those exceptional situations in which the objectives of securing the rights of the individual and the effective implementation of the Court's judgments prevail over the principles underlying the doctrine of res judicata, in particular that of legal certainty, notwithstanding the undoubted importance of these principles.

Sub-paragraph (i) is intended to cover the situation in which the injured party continues to suffer very serious negative consequences, not capable of being remedied by just satisfaction, because of the outcome of domestic proceedings. It applies in particular to persons who have been sentenced to lengthy prison sentences and who are still in prison when the Convention organs examine the "case". It applies, however, also in other areas, for example, when a person is unjustifiably denied certain civil or political rights (in particular in case of loss of, or non-recognition of legal capacity or personality, bankruptcy declarations or prohibitions of political activity), if a person is expelled in violation of his or her right to family life or if a child has been unjustifiedly forbidden contacts with his or her parents. It is understood that there must exist a direct causal link between the violation found and the continuing suffering of the injured party.

...

14. The recommendation does not address the special problem of "mass cases", i.e. cases in which a certain structural deficiency leads to a great number of violations of the Convention. In such cases it is in principle best left to the State concerned to decide whether or not reopening or re-examination are realistic solutions or, whether other measures are appropriate.

15. When drafting the recommendation it was recognised that reopening or re-examination could pose problems for third parties, in particular when these have acquired rights in good faith. This problem exists, however, already in the application of the ordinary domestic rules for re-examination of cases or reopening of the proceedings. The solutions applied in these cases ought to be applicable, at least mutatis mutandis, also to cases where re-examination or reopening was ordered in order to give effect to judgments of the Court.

In cases of re-examination or reopening, in which the Court has awarded some just satisfaction, the question of whether, and if so, how it should be taken into account will be within the discretion to the competent domestic courts or authorities taking into account the specific circumstances of each case."

THE LAW

I. THE GOVERNMENT'S REQUEST TO STRIKE OUT THE APPLICATION UNDER ARTICLE 37 OF THE CONVENTION

18. On 8 March 2011 the Government informed the Court of their intention to resolve the issue raised by the application. They produced a unilateral declaration to that effect, requesting that the Court strike out the application in accordance with Article 37 § 1 (c) of the Convention. On 8 February 2012 the Government submitted a modified unilateral declaration and withdrew the previous one.

19. By letter of 31 March 2012 the applicant disagreed with the unilateral declaration and objected to the striking out of his application from the Court's list of cases. He wished to have the merits of his complaint determined with a view to obtaining appropriate redress. He stressed that the object of his application to the Court was to restore his rights violated by the quashing of a final judgment delivered in his favour and to have the periodic compensation payments recommenced. The applicant maintained that the only possibility of achieving that was to have his application examined by the Court on the merits. The Court's judgment could be the only legal basis for the re-examination of his case at national level in accordance with Article 392 of the Code of Civil Procedure (see paragraph 11 above). Such a re-examination would allow the quashing of the Presidium's judgment of 12 October 2006 and the upholding of the District Court's judgment of 7 November 2005.

20. The applicant further argued that neither the Government's unilateral declaration of 8 February 2012, nor the Court's decision to strike his application out of its list of cases would serve as a valid legal ground for re-examination of the Presidium's judgment of 12 October 2006. Thus, the Russian authorities' unilateral declaration was of a formalistic character and would not lead to the real restoration of the applicant's rights. Accordingly, the applicant asked the Court to reject the Government's unilateral declaration and to examine the case on the merits.

21. The Court considers that, under certain circumstances, it may be appropriate to strike out an application under Article 37 § 1 (c) of the Convention on the grounds that the respondent Government have made a unilateral declaration, even if the applicant wishes the examination of the case to be continued. However, it depends on whether the unilateral declaration offers a sufficient basis for finding that respect for human rights as defined in the Convention does not require the Court to continue its examination of the case (Article 37 § 1 *in fine*; see also *Tahsin Acar v. Turkey* (preliminary issue) [GC], no. 26307/95, § 75, ECHR 2003-VI; and *Seleckis v. Latvia* (dec.), no. 41486/04, § 21, 2 March 2010, and the case-law cited therein).

22. Relevant factors in this respect include the nature of the complaints made, whether the issues raised are comparable to issues already determined by the Court in previous cases, the nature and scope of any measures taken by the respondent Government in the course of the execution of judgments delivered by the Court in any such previous cases, and the impact of those measures on the case at hand. Whether the facts are in dispute between the parties may also be important, and, if they are, to what extent, and what prima facie evidentiary value is to be attributed to the parties' submissions on the facts. In that connection, whether the Court has already taken evidence in the case for the purposes of establishing the facts will be of significance. Other relevant factors may include the question of whether, in their unilateral declaration, the respondent Government have made any admission(s) in relation to the alleged violations of the Convention and, if so, the scope of such admissions and the manner in which they intend to provide redress to the applicant. As to the latter point, in cases in which it is possible to eliminate the effects of an alleged violation (as, for example, in certain categories of property cases) and where the respondent Government declare their readiness to do so, the intended redress is more likely to be regarded as appropriate for the purposes of striking out the application – the Court, as always, retaining its power to restore the application to its list as provided for in Article 37 § 2 of the Convention and Rule 44 § 5 of the Rules of Court (see *Tahsin Acar*, cited above, § 76).

23. The foregoing list is not intended to be exhaustive. Depending on the particular circumstances of each case, it is conceivable that further considerations may come into play in the assessment of a unilateral declaration for the purposes of Article 37 § 1 (c) of the Convention (see *Melnic v. Moldova*, no. 6923/03, §§ 24 and 25, 14 November 2006).

24. The Court also observes, as it has previously stated (see *Tahsin Acar*, cited above, §§ 74-77), that a distinction must be drawn between, on the one hand, declarations made in the course of strictly confidential friendly-settlement proceedings and, on the other hand, unilateral declarations – such as in the present case – made by a respondent Government in public and adversarial proceedings before the Court, as in the present case. The Court will therefore proceed to examine the Government's unilateral declaration in the present case in the light of the applicable Convention principles set out in paragraphs 21-23 above.

25. The Court reiterates that a judgment in which the Court finds a breach imposes on the respondent State a legal obligation to put an end to the breach and make reparation for its consequences in such a way as to restore as far as possible the situation existing before the breach (see, *inter alia, Papamichalopoulos and Others v. Greece* (Article 50), 31 October 1995, § 34, Series A no. 330-B). This obligation reflects the principles of international law whereby a State responsible for a wrongful act is under an obligation to make restitution, consisting in restoring the situation that

existed before the wrongful act was committed, provided that restitution is not "materially impossible" and "does not involve a burden out of all proportion to the benefit deriving from restitution instead of compensation" (Article 35 of the Articles of the International Law Commission on Responsibility of States for Internationally Wrongful Acts). In other words, while restitution is the rule, there may be circumstances in which the State responsible is exempted – fully or in part – from this obligation, provided that it can show that such circumstances obtain (see *Verein gegen Tierfabriken Schweiz (VgT) v. Switzerland (no. 2)* [GC], no. 32772/02, § 86, ECHR 2009). The States should organise their legal systems and judicial procedures so that this result may be achieved (see ibid., § 97, and Recommendation No. R (2000) 2, cited above).

26. The Court's judgments are essentially declaratory in nature and, in general, it is primarily for the State concerned to choose, subject to supervision by the Committee of Ministers, the means to be used in its domestic legal order in order to discharge its obligation under Article 46 of the Convention (see, among other authorities, *Scozzari and Giunta v. Italy* [GC], nos. 39221/98 and 41963/98, § 249, ECHR 2000-VIII, and *Brumărescu v. Romania* (just satisfaction) [GC], no. 28342/95, § 20, ECHR 2001-I).

27. The Court notes, however, that under certain circumstances, re-examination of the case or reopening of proceedings constitutes the most efficient, if not the only, means of achieving *restitutio in integrum* (see Recommendation No. R (2000) 2, cited above). The practice of the Convention organs has demonstrated that it is primarily in the field of criminal law that the re-examination of a case, including the reopening of proceedings, is of the greatest importance, given the seriousness of the consequences of the violation for the applicants. Thus, in certain judgments the Court has indicated that in principle, the most appropriate form of redress would be the reopening of proceedings, if requested (see, among other authorities, *Malininas v. Lithuania*, no. 10071/04, § 43, 1 July 2008, and *Popov v. Russia*, no. 26853/04, § 263, 13 July 2006).

28. The Court notes at the same time that such a need for a case to be reopened at the domestic level is not necessarily confined to violations in the field of criminal law but may also arise in cases where the applicant continues to suffer very negative consequences of the violation which have not been adequately remedied by just satisfaction. Accordingly, a number of countries have introduced a general provision allowing a claimant to request the reopening of proceedings also in civil cases. Thus the Court has refused to accept unilateral declarations if the right to apply for reopening was not guaranteed to an applicant, as it would be for an applicant in respect of whom the Court delivered a judgment (see paragraph 17 above, and *Šarić and Others v. Croatia*, nos. 38767/07 et al., §§ 26-29, 18 October 2011; *Vojtěchová v. Slovakia*, no. 59102/08, §§ 27-28, 25 September 2012).

29. The Court's position that applicants should be provided with a possibility to request the re-examination of their case or the reopening of proceedings does not, however, prejudge the domestic court's decision on whether such a re-examination or reopening should indeed be granted in a specific case. The specific remedial measures, if any, required of a respondent State in order to discharge its obligations under Article 46 of the Convention must depend on the particular circumstances of the individual case and be determined in the light of the Court's judgment in that case, and with due regard to the Court's case-law (see *Öcalan v. Turkey* [GC], no. 46221/99, § 210, ECHR 2005-IV). It is even more so when the violation of the Convention results from a general problem generating repetitive applications (see point 14 of the Explanatory Report referred to in the paragraph 17 above). Therefore, the Court will not, as a rule, order any such measure in its judgment, leaving it to the authorities of the respondent State to adopt, under the supervision of the Committee of Ministers, the most appropriate measures to ensure the maximum possible reparation of the violations found by the Court (see *Savriddin Dzhurayev v. Russia*, no. 71386/10, § 255, ECHR 2013 (extracts), and paragraph 25 above).

30. As regards specifically violations of the legal-certainty requirement on account of the quashing of final judgments by way of supervisory review, the Court reiterates that it cannot restore the power of the domestic judgment quashed nor assume the role of the national authorities in awarding social benefits for the future (see *Tarnopolskaya and Others v. Russia*, nos. 11093/07 et al., § 51, 7 July 2009). As the Constitutional Court stated in its judgment of 26 February 2010 No. 4-P, "it is the competent court which decides on the possibility to reconsider a judicial decision relying on full and comprehensive examination of the applicant's arguments and the circumstances of the case" (see paragraph 13 above). The Court finds this approach to be in line with the general principles governing the implementation of the Court's judgments (see paragraphs 25 and 27 above).

31. The Court notes that the situation in Russia is similar to that in the cases referred to above (see paragraph 28 above). Article 392 § 4 (4) of the Russian Code of Civil Procedure does provide for the possibility of re-examination of a case where a breach of the Convention has been found by the Court. The recent Resolution of the Plenary Supreme Court of the Russian Federation (see paragraph 15 above), which refers to Recommendation No. R (2000) 2, cited above, did not clarify whether an acknowledgement of a violation of the Convention by the Government by means of a unilateral declaration constitutes a basis for reopening the proceedings. Thus, there is a substantial risk that a decision to strike out the present application might bar the applicant's request for re-examination of his case at the national level and thus formally prevent the Russian courts from considering the issue of the appropriateness of reopening the

proceedings in his case. The Court cannot therefore accept that the applicant in the present case might be deprived of the possibility to re-submit his claims to the domestic courts. In the Court's view such a situation would not be consistent with respect for human rights as defined in the Convention (see also the Constitutional Court's position in paragraph 13 above that a formal refusal to re-examine the case following a violation of the Convention would contravene the Russian Constitution as well as the Convention).

32. In view of the foregoing, the Court, without prejudging its decision on the admissibility and merits of the case, accepts the applicant's argument and holds that respect for human rights as defined in the Convention and its Protocols requires the continued examination of the case. The Government's request for the application to be struck out of the list of cases under Article 37 of the Convention must therefore be rejected.

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

33. The applicant complained that the quashing by way of supervisory review of the binding and enforceable judgment in his favour had violated the principle of legal certainty and, therefore, his "right to a court" guaranteed by Article 6. He also complained in substance that Article 1 of Protocol No. 1 had been violated. The relevant provisions read as follows:

Article 6 § 1

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

Article 1 of Protocol No. 1

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

A. Admissibility

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

B. Merits

35. The Court reiterates that legal certainty, which is one of the fundamental aspects of the rule of law, presupposes respect for the principle of *res judicata*, that is, the principle of the finality of judgments. A departure from that principle is justified only when made necessary by circumstances of a substantial and compelling character (see *Brumărescu v. Romania* [GC], no. 28342/95, § 61, ECHR 1999-VII, and *Ryabykh v. Russia*, no. 52854/99, §§ 51-52, ECHR 2003-IX), such as the need to correct a "fundamental defect" or a "miscarriage of justice". However, these notions do not lend themselves to precise definition. The Court has to decide, in each case, to what extent the departure from the principle of legal certainty is justified (see *Sutyazhnik v. Russia*, no. 8269/02, § 35, 23 July 2009, with further references).

36. The Court has to assess whether the quashing of the final judgment by way of supervisory review was indeed justified by such circumstances (*Kuzmina v. Russia,* no. 15242/04, § 23, 2 April 2009).

37. In the present case the final judgment was quashed on the grounds that the lower court had erred in law. According to the Court's settled case-law, the fact that the Presidium disagreed with the interpretation of substantive law made in the lower court's final judgment was not, in itself, an exceptional circumstance warranting the quashing of a binding and enforceable judgment and the reopening of the proceedings on the applicant's claim (see *Kot v. Russia*, no. 20887/03, § 29, 18 January 2007). No other reasons for the quashing of the final judgment were relied upon by the higher court (see paragraph 8 above).

38. The foregoing considerations are sufficient to enable the Court to conclude that in the present case there were no circumstances justifying a departure from the principle of legal certainty.

39. The Court further reiterates that the binding and enforceable judgment unconditionally ordered the Ministry to pay the applicant certain sums of money on a monthly basis, with subsequent indexation. The judgment was thus specific enough to create an asset within the meaning of Article 1 of Protocol No. 1 (see *Vasilopoulou v. Greece*, no. 47541/99, § 22, 21 March 2002, and *Malinovskiy v. Russia*, no. 41302/02, § 43, ECHR 2005-VII (extracts)). The quashing of this judgment in breach of the principle of legal certainty frustrated the applicant's reliance on the binding judicial decision and deprived him of the opportunity to receive a judicial award he had legitimately expected to receive (see *Gorfunkel v. Russia*, no. 42974/07, § 36, 19 September 2013). There has accordingly been a violation of Article 6 § 1 of the Convention and Article 1 of Protocol No. 1.

III. APPLICATION OF ARTICLE 41 OF THE CONVENTION

40. 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. Pecuniary damage

1. Submissions of the parties

41. The applicant claimed 3,259,558.03 Russian roubles (RUB) in respect of pecuniary damage. According to his calculation, that sum comprised the following amounts:

Claim A: RUB 423,203.76 representing arrears of the monthly compensation payments that should have been made to the applicant for the period from 1 November 2006 to 30 November 2010, in accordance with the District Court's judgment of 7 November 2005, which had been quashed in violation of the Convention. The method of calculation used by the applicant took into consideration indexation of the relevant amounts, as determined by the judgment in his favour;

Claim B: RUB 2,668,014.12 representing the monthly compensation payments that were supposed to be made to the applicant for the period from 1 December 2010 to 4 September 2032. The applicant argued that the domestic judgment in his favour had stated that the monthly compensation payments would be made for life. Drawing an analogy with the Federal Law "On Bankruptcy" of 26 October 2002, he maintained that the payments were meant to be made until he reached the age of 70. Accordingly, he had calculated the amount of compensation that was supposed to be paid to him in the future;

Claim C: RUB 100,546.05 for loss as a result of inflation in the period from 1 November 2006 to 30 November 2010;

Claim D: RUB 67,794.10 for expenses incurred by the applicant as a consequence of the quashing of the final domestic judgment in his favour. These expenses were related to the deterioration of the applicant's health and covered the cost of medicines, medical services, health-resort treatment, as well as a return train ticket between his home and the place of treatment.

42. The Government disagreed with the applicant's claims for pecuniary damage. They commented on the four claims as follows:

Claim A: the method of calculating the arrears of the monthly compensation payments that should have been made to the applicant for the period from 1 November 2006 to 30 November 2010 was inconsistent with the provisions of domestic law. The indexation of the monthly awards should have been calculated using another method;

Claim B: the claim for the recovery of the monthly compensation payments that should have been made to the applicant for the period from 1 December 2010 to 4 September 2032 had no basis in domestic law;

Claim C: the Government did not comment on the applicant's claim to recover loss as a result of inflation;

Claim D: the applicant had failed to prove that there was a causal link between the quashing of the court judgment delivered in his favour and the deterioration of his health after the quashing of that judgment. Thus, the applicant's claims in respect of his expenses for medicines, medical services, health-resort treatment and travel should be dismissed.

2. The Court's assessment

43. The Court reiterates that in general the most appropriate form of redress in respect of violations found is to put applicants, as far as possible, in the position they would have been in if the Convention requirements had not been disregarded (see *Piersack v. Belgium* (Article 50), 26 October 1984, § 12, Series A no. 85; *mutatis mutandis*, *Gençel v. Turkey*, no. 53431/99, § 27, 23 October 2003; and *Dovguchits v. Russia*, no. 2999/03, § 48, 7 June 2007).

44. In the instant case, the Court has found a violation of Article 6 § 1 of the Convention and Article 1 of Protocol No. 1 arising from the fact that the judgment in the applicant's favour was quashed by way of supervisory review. The applicant submitted that he had received all the money he had legitimately expected to receive under that final judgment before it was quashed. Therefore, no award for pecuniary damage is called for in that regard.

45. As regards the applicant's claims in respect of his pecuniary loss in the period after the final judgment was quashed, however, the Court reiterates that after the quashing, the final judgment ceased to exist under domestic law. The Court cannot restore the power of that judgment nor assume the role of the national authorities in awarding social benefits for the future (see *Tarnopolskaya and Others*, cited above, § 51; *Dokolin v. Russia*, no. 28488/04, § 18, 18 September 2008; and *Sirotin v. Russia* (dec.), no. 38712/03, 14 September 2006). Furthermore, the applicant's claim in respect of future loss inevitably relies on highly speculative assumptions that veil it in a great deal of uncertainty (see *Parolov v. Russia*, no. 44543/04, § 45, 14 June 2007). Given the many imponderables in evolving political and economic conditions that could affect future entitlements and calculations, it would be a largely hypothetical exercise to attempt to predict in the long term the amount of compensation which would have been paid, if any, if the final judgment had not been quashed. Consequently, no pecuniary award can be made for the period after the final judgment was quashed, and therefore the Court rejects claims A, B and C (see paragraph 41 above) on this ground. It would be for the domestic

authorities to reassess the issue of the applicant's entitlement to the benefits in accordance with the applicable Russian law and to account for the Court's findings in the present case.

46. As regards claim D (see paragraph 41 above), the Court agrees with the Government that the applicant has failed to prove the existence of a causal link between the quashing of the court judgment delivered in his favour and the deterioration of his health after the quashing of that judgment. For that reason the Court rejects this claim.

B. Non-pecuniary damage

47. The applicant also claimed 20,000 euros (EUR) in respect of non-pecuniary damage.

48. The Government considered that claim wholly excessive. They agreed to pay the applicant EUR 2,000.

49. The Court accepts that the applicant must have suffered non-pecuniary damage as a result of the violations found, which cannot be compensated by the mere finding of a violation. Having regard to the circumstances of the case and making its assessment on an equitable basis, the Court agrees with the Government and awards the applicant the sum of EUR 2,000 in respect of non-pecuniary damage, plus any tax that may be chargeable on that amount.

C. Costs and expenses

50. The applicant did not claim any costs or expenses. Accordingly, the Court does not make any award under this head.

D. Default interest

51. 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. *Rejects* the Government's request to strike the application out of its list of cases;

2. *Declares* the application admissible;

3. *Holds* that there has been a violation of Article 6 of the Convention and 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 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 amount 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 remainder of the applicant's claim for just satisfaction.

Done in English, and notified in writing on 30 October 2014, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Søren Nielsen
Registrar

Isabelle Berro-Lefèvre
President