



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

FIRST SECTION

**CASE OF KULKOV AND OTHERS v. RUSSIA**

*(Applications nos. 25114/03, 11512/03, 9794/05, 37403/05, 13110/06,  
19469/06, 42608/06, 44928/06, 44972/06 and 45022/06)*

JUDGMENT

STRASBOURG

8 January 2009

**FINAL**

*08/04/2009*

*This judgment may be subject to editorial revision.*



**In the case of Kulkov and others v. Russia,**

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

Christos Rozakis, *President*,

Nina Vajić,

Anatoly Kovler,

Elisabeth Steiner,

Khanlar Hajiyeu,

Dean Spielmann,

Sverre Erik Jebens, *judges*,

and Søren Nielsen, *Section Registrar*,

Having deliberated in private on 4 December 2008,

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

**PROCEDURE**

1. The case originated in ten applications (nos. 25114/03, 11512/03, 9794/05, 37403/05, 13110/06, 19469/06, 42608/06, 44928/06, 44972/06, 45022/06) 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 twelve Russian nationals (“the applicants”). The applicants’ names and the dates of their applications to the Court appear in the appended table.

2. The applicant Y. Shelestovskaya (no. 11512/03) was represented by Mr V. Gandzyuk, a lawyer practising in Ryazan. The applicant V. Kashcheyev (no. 9794/05) was represented by Mr R. Zarbeyev, a lawyer practising in St. Petersburg. The applicant N. Sobakar (no.13110/06) was represented by Mr I. Sivoldayev, a lawyer practising in Voronezh. Other applicants were not represented by a lawyer.

3. The Russian Government (“the Government”) were represented by Mr P. Laptev and Ms V. Milinchuk, former representatives of the Russian Federation at the Court, and by Mr G. Matyushkin, the Representative of the Russian Federation at the Court.

4. The applicants complained *inter alia* of non-enforcement of binding and enforceable judgments delivered in their favour between 2001 and 2006 and of their quashing in supervisory-review proceedings.

5. On various dates the President of the First Section decided to communicate these complaints to the respondent Government. It was also decided in all cases to examine the merits of the applications at the same time as their admissibility (Article 29 § 3). The Government objected to the joint examination of the admissibility and merits in several cases, but the Court rejected this objection.

## THE FACTS

### I. THE CIRCUMSTANCES OF THE CASE

6. The applicants' names and other details are indicated in the appended table. All the applicants were active or retired servicemen at the material time.

7. On various dates they sued their employer military units, a military commissioner's office or the competent federal ministries in courts for payment of monetary sums on account of their service in the military forces or some specific missions undertaken during this service, such as field works (case of *Kulkov*) or peace-keeping operations in Bosnia-Herzegovina (case of *Shelestovskaya*), Kosovo (cases of *Bisero* and *others*, *Dubovov*, *Davydov* and *Pyshnograev*) or South Ossetia (case of *Kashcheyev*). The applicant Doroshok claimed compensation of health damage and severe injuries caused during his military mission in Chechnya. The applicants Sobakar and Sereda claimed a recalculation of their pensions and a compensation of shortfalls in monthly payments made in the past.

8. The domestic courts granted the applicants' claims (see dates of the judgments and sums awarded in the appended table). The judgments were not appealed against in cassation and became binding and enforceable on the dates indicated in the appended table. However, only one of these judgments was enforced (the judgment of 13 May 2003 in favour of V. Kashcheyev, see paragraph 12 below). All the other judgments, including the second judgment in favour of V. Kashcheyev delivered on 14 July 2006, were not enforced.

9. On various dates the Presidiums of higher courts decided, upon the defendant authorities' requests for supervisory review, to quash the judgments in the applicants' favour considering that the lower courts misapplied the material law (see details in the appended table). With the exception of two cases (*Kulkov* and *Shelestovskaya*), the higher courts dismissed the applicants' claims in full by the same decisions.

10. In the case of *Kulkov*, the Presidium of the Privolzhskiy Circuit Military Court quashed on 18 April 2002 the judgment in the applicant's favour by way of supervisory review initiated by the President of this court. However, the judgment of 18 April 2002 was itself overruled by the Supreme Court of the Russian Federation on 11 April 2003 and the first-instance judgment in the applicant's favour was thus restored. It remained in force until it was quashed for a second time on 25 December 2003 by the Presidium of the Privolzhskiy Circuit Military Court upon application of the defendant military unit. While dismissing the applicant's claims for field allowance (RUB 70,675), the Presidium upheld the first-instance court's

decision as regards the award of the regional bonus to the applicant (RUB 1,112.33).

11. In the case of *Shelestovskaya*, the Presidium of the Moscow Circuit Military Court quashed on 7 April 2004 the judgment in the applicant's favour. However, the judgment of 7 April 2004 was itself overruled by the Supreme Court of the Russian Federation on 12 August 2004 and the first-instance judgment in the applicant's favour was thus restored. On 15 September 2004 the Presidium again quashed the latter judgment and awarded the applicant smaller amounts, i.e. RUB 270 in respect special allowance and RUB 250 in respect of legal aid. The Presidium dismissed the remainder of the applicant's claims.

12. The first of the two judgments, which was delivered in favour of V. Kashcheyev on 13 May 2003 and became enforceable on 26 May 2003, was enforced on 15 September 2005. On 18 June 2007 the Pskov Garrison Military Court awarded the applicant RUB 133,774.30 in respect of compensation for the inflation losses arising from this enforcement delay. On 26 December 2007 the authorities credited the latter amount on the applicant's account.

## II. RELEVANT DOMESTIC LAW

13. The relevant domestic law governing the supervisory review procedure in the material time is summed up in the Court's judgment in the case of *Sobelin and others* (see *Sobelin and Others v. Russia*, nos. 30672/03, 30673/03, 30678/03, 30682/03, 30692/03, 30707/03, 30713/03, 30734/03, 30736/03, 30779/03, 32080/03 and 34952/03, §§ 33-42, 3 May 2007).

14. In 2001-2005 the judgments delivered against the public authorities were executed in accordance with a special procedure established, *inter alia*, by the Government's Decree No. 143 of 22 February 2001 and, subsequently, by Decree No. 666 of 22 September 2002, entrusting execution to the Ministry of Finance (see further details in *Pridatchenko and Others v. Russia*, nos. 2191/03, 3104/03, 16094/03 and 24486/03, §§ 33-39, 21 June 2007). The Law of 27 December 2005 (No. 197-Φ3) introduced a new Chapter in the Budget Code modifying this special procedure. The Law notably empowered the Federal Treasury to execute judgments against legal entities funded by the federal budget and the Ministry of Finance to execute judgments against the State. Under Article 242.2.6 of the Budget Code, the judgments must be executed within three months after receipt of the execution documents.

## THE LAW

### I. JOINDER OF THE APPLICATIONS

15. Given that these ten applications concern similar facts and complaints and raise almost identical issues under the Convention, the Court decides to consider them in a single judgment.

### II. ALLEGED VIOLATION OF ARTICLE 6 AND ARTICLE 1 OF PROTOCOL NO. 1 ON ACCOUNT OF THE QUASHING OF THE JUDGMENTS IN THE APPLICANTS' FAVOUR

16. The applicants complained that the quashing by way of supervisory review of the binding and enforceable judgments in their favour violated their rights under Article 6 and Article 1 of Protocol No.1, which insofar as relevant, provide 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**

17. The Government argued in all but two cases (*Sobakar* and *Sereda*) that Article 6 of the Convention was not applicable to the domestic litigations at issue as the applicants were on service in the Russian military forces at the material time. They supported their argument by reference to the special jurisdiction exercised by military courts and stressed that the applicants' cases were not amenable to ordinary courts that were competent in ordinary civil cases. Accordingly, their lawsuits in Russian military courts could not be qualified as “civil” and the applicants' complaints were incompatible *ratione materiae* with the Convention.

18. Some applicants contested this argument. They notably stressed that their access to courts was allowed by domestic legislation and that their claims had been effectively considered by domestic military courts. They

concluded that Article 6 was applicable. Other applicants simply maintained their complaints.

19. The Court notes that it has already considered the argument submitted by the Government and rejected it in previous similar cases (see, among other authorities, *Dovguchits v. Russia*, no.2999/03, §§19-24, 7 June 2007). It recalls that civil servants can only be excluded from the protection embodied in Article 6 if the State in its national law expressly excluded access to a court for the category of staff in question and if this exclusion was justified on objective grounds in the State's interest (see *Vilho Eskelinen and Others v. Finland*, [GC], no. 63235/00, §62, ECHR 2007-...). The Court observes that these conditions were not satisfied in the present cases. The applicants lawfully sued their employer military units, the Ministry of Defence or the Ministry of Interior in domestic courts and the latter initially granted their claims. The cases were later reconsidered by higher courts and the judgments in the applicants' favour quashed. The Court therefore concludes that the applicants' access to a court was allowed by domestic legislation and that Article 6 accordingly applied to their cases. That the applicants' cases fell within the jurisdiction of special military courts cannot alter this conclusion. The Government's objection must therefore be dismissed.

20. The Court further notes that the applicants' complaints are not manifestly ill-founded within the meaning of Article 35 § 3 of the Convention. It further notes that they are not inadmissible on any other grounds. They must therefore be declared admissible.

## **B. Merits**

21. The applicants argued that the quashing of the binding and enforceable judgments delivered by domestic courts in their favour had violated the principle of legal certainty and, therefore, their right to a court and the right to peaceful enjoyment of their possessions. It was noted in particular that the defendant authorities had failed to appeal against the judgments within statutory time-limits before they became binding and enforceable and that their subsequent quashing in the supervisory review proceedings was not justified by higher courts' mere disagreement with the decisions on the merits.

22. The Government stated that the supervisory-review proceedings had been lawful and necessary to remedy errors in the application of material law by lower courts. They provided detailed information on the material norms that had allegedly been ignored by the lower courts. In the Government's view, the applicants should accordingly have had no expectation of any benefit arising from the judgments in their favour. They stressed that a judicial decision could not be considered as equitable and lawful, and the judicial protection as effective, without judicial errors being

corrected. As regards the cases of *Shelestovskaya*, *Biserov and others*, *Dubovov*, *Davydov* and *Pyshnogradov*, the Government pointed out that Russian military courts had dismissed in 2001-2004 similar claims in more than 200 cases.

23. The Government further submitted that the applications for supervisory review had been introduced within a reasonable time by the defendants in the proceedings and not by State officials. If there were delays they were justified by the circumstances. In cases of *Sobakar* and *Sereda*, the request for supervisory review had been introduced within a very short time, i.e. less than two months after the first-instance judgment in the applicants' favour. The Government concluded that the quashing of the judgments in all present cases had been justified, well-founded and thus compatible with the principle of legal certainty.

24. 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, such as correction of fundamental defects or miscarriage of justice (see *Brumărescu v. Romania* [GC], no. 28342/95, § 61, ECHR 1999-VII; *Ryabykh v. Russia*, no. 52854/99, § 51-52, ECHR 2003-IX).

25. The Court recalls that it has already considered on numerous occasions the application of the supervisory review procedure governed by the new Code of Civil Procedure entered into force on 1 February 2003. The Code allowed a supervisory-review complaint to be introduced only by the parties to the proceedings and within one-year time-limit. The Court found nonetheless that the supervisory-review procedure so amended did not ensure respect for the legal-certainty requirement. Indeed, once launched, the proceedings might last indefinitely through various levels of supervisory-review adjudication (see *Denisov v. Russia* (dec.), no. 33408/03, 6 May 2004, and *Sobelin and others*, cited above, § 57). Furthermore, the laxity of the time-limits for instituting supervisory-review proceedings allow the defendant to lodge consecutive applications and to challenge the judgment even later than one year after it became binding and enforceable (see *Prisyazhnikova and Dolgopolov v. Russia*, no. 24247/04, § 25, 28 September 2006).

26. The Court has to consider whether the application of the supervisory-review procedure was justified in the present cases by circumstances of a substantial and compelling character, such as correction of fundamental defects or miscarriage of justice (see paragraph 24 above).

27. The Court notes at the outset that the misapplication of material law by the first-instance courts was the sole reason quoted by the higher courts for quashing the binding and enforceable judgments in the supervisory-review proceedings. It is not the Court's role to reconsider what domestic



provisions should have been applied in the applicants' cases. While acknowledging the need stressed by the Government to correct judicial errors and to ensure a uniform application of the domestic case-law, the Court considers that these must not be achieved at any cost and notably with disregard for the applicants' legitimate reliance on *res judicata*. The authorities must strike a fair balance between the interests of the applicants and the need to ensure the proper administration of justice (*Nikitin v. Russia*, no. 50178/99, § 59, ECHR 2004-VIII).

28. The Court considers that in the present cases the authorities failed to preserve the required balance in this regard. It reiterates that the mere disagreement about the application of the material law is not in itself an exceptional circumstance justifying departure from the principle of legal certainty (see *Kot v. Russia*, no. 20887/03, § 29, 18 January 2007). Nor can this departure be justified by the position of other domestic courts which reportedly dismissed similar claims in numerous cases at the material time.

29. The Court further notes that none of the judgments delivered by the first-instance courts was appealed against by the defendant authorities in cassation before it became binding and enforceable. Yet such appeals would have allowed the respondent authorities to challenge in a timely matter the alleged misapplication of material law before the higher courts which were later led to reconsider the cases in supervisory-review proceedings. The Government pointed out in the case of *Sobakar* that the statutory time-limit of ten days for cassation appeal was too short for the authorities to lodge such an appeal. However, this fact cannot relieve the State from its obligations under the Convention.

30. As for the time elapsed between the judgments and their quashing, the Court reiterates that the one-year time-limit for introduction of a supervisory-review complaint did not guarantee the respect for the requirement of legal certainty (see paragraph 25 above). Thus, the relatively short time elapsed from the moment when the judgments became binding and enforceable in cases of *Kashcheyev*, *Doroshok*, *Sobakar* and *Sereda* to the moment of their quashing does not in itself make the procedure compatible with this requirement.

31. The Court further observes that the one-year time-limit emphasised by the Government did not prevent the quashing of the judgments in the six other cases at a far later stage, i.e. more than two years after the judgments in the applicants' favour became binding and enforceable. In the cases of *Kulkov* and *Shelestovskaya*, the delay was due to repeated examinations of the cases at various levels of supervisory-review adjudication. In cases of *Biserov and others*, *Dubovov*, *Davydov* and *Pyshnograev*, the time-limit for the introduction of the supervisory-review complaint by the respondent military unit was restored by the Kaluga Garrison Military Court on 23 August 2005, i.e. more than 3 years after the judgment at issue became binding and enforceable. This decision to restore the time-limit was upheld

by the Moscow Circuit Military Court on 1 November 2005. The Court is struck by the fact that the main justification provided by the defendant military unit and accepted by the courts was the lack of adequate legal assistance in the defendant military unit during the relevant period. These decisions by the domestic courts corroborate the Court's earlier conclusion about the laxity of time-limits for institution of the supervisory-review proceedings (see paragraph 25 above). In the Court's view, such a practice renders nugatory the statutory time-limit for lodging a supervisory-review complaint and thus seriously frustrates the reliance on a final judgment.

32. In the view of the foregoing, the Court concludes that the quashing of the judgments in the applicants' favour by way of supervisory review violated the requirement of legal certainty and, therefore, the applicants' right to a court protected by Article 6 of the Convention.

33. The Court further reiterates that the binding and enforceable judgments created an established right to payment in the applicants' favour, which is considered as "possession" within the meaning of Article 1 of Protocol No. 1 (see *Vasilopoulou v. Greece*, no. 47541/99, § 22, 21 March 2002). The quashing of these judgments in breach of the principle of legal certainty frustrated the applicants' reliance on the binding judicial decisions and deprived them of an opportunity to receive the judicial awards they had legitimately expected to receive (see *Dovguchits*, cited above, § 35). There has accordingly been also a violation of that Article 1 of Protocol No. 1.

### III. ALLEGED VIOLATION OF ARTICLE 6 OF THE CONVENTION AND ARTICLE 1 OF PROTOCOL NO. 1 ON ACCOUNT OF THE NON-ENFORCEMENT OF THE JUDGMENTS

34. The applicants also complained of a violation of Article 6 of the Convention and of Article 1 of Protocol No. 1 on account of non-enforcement of the judgments delivered in their favour. The relevant parts of these provisions are quoted above.

35. The Court reiterates that the principles insisting that a final judicial decision must not be called into question and should be enforced represent two aspects of the same general concept, namely the right to a court. Having regard to its finding of violations of Article 6 on account of the quashing of the judgments in supervisory-review proceedings, the Court finds that it is not necessary to examine separately the issue of their subsequent non-enforcement by the authorities (see *Boris Vasilyev v. Russia*, no. 30671/03, §§41-42, 15 February 2007; and *Sobelin and others*, cited above, §§67-68). Therefore, the Court does not consider it necessary to examine separately the issue of non-enforcement in the cases of *Kashcheyev* (judgment of 14 July 2006), *Doroshok*, *Sobakar* and *Sereda*, in which the judgments in

the applicants' favour were quashed within a relatively short time after they became binding and enforceable.

36. The Court considers that the situation is different in respect of the prolonged non-enforcement of the judgments prior to their quashing in supervisory-review proceedings. Indeed, the judgments in the applicants' favour in the cases of *Kulkov*, *Shelestovskaya*, *Biserov and others*, *Dubovov*, *Davydov*, and *Pyshnograev* and the judgment of 13 May 2003 in the case of *Kashcheyev* remained binding and enforceable for long periods of time but the authorities failed to abide by their terms. The applicants' complaints in this respect thus call for a separate examination (see *Dovguchits*, cited above, §§ 40-41).

37. In the case of *Kulkov*, the applicant did not specify if the authorities had executed the decision to award him a regional bonus, as upheld by the judgment delivered on 25 December 2003 by the Presidium the Privolzhskiy Circuit Military Court (see paragraph 10 above). In these circumstances, the Court will limit its examination to the question of non-enforcement of the judgment of 28 March 2001 only in its part concerning the award of the field allowance.

## A. Admissibility

### 1. The alleged failure to exhaust domestic remedies in certain cases

38. In several cases (*Kashcheyev*, *Biserov and others*, *Dubovov*, *Davydov*, *Pyshnograev*), the Government alleged that the applicants had not exhausted the domestic remedies available to them under domestic law. First, the applicants could have complained under Chapter 25 of the Code of Civil Procedure about the authorities' failure to comply with the judgments in the applicants' favour. The authorities' negligence in the execution of judgments could thus have been condemned by domestic courts. Second, the applicants could have requested to upgrade the judgment debt under Article 208 of the Code of Civil Procedure. In certain earlier cases, the Court had found that the exhaustion of this remedy deprived the applicants of their victim status (see *Nemakina v. Russia* (dec.), no. 14217/04, 10 July 2007; *Derkach v. Russia* (dec.), no. 3352/05, 3 May 2007; *Yakimenko v. Russia* (dec.), no. 23500/04, 15 May 2007). The Government submitted that the applicant *Kashcheyev* had successfully used this remedy (see paragraph 12 above) and lost his victim status under the Convention. Third, the applicants could have lodged a claim for non-pecuniary damage under Chapter 59 § 4 of the Civil Code. The Government argued that this remedy had proven its effectiveness in practice, quoting three examples from the domestic case-law (decision of 21 October 1999 in the case of *Bylichev and Bylichev* by the Lipetsk Regional Court; decision of 23 October 2006 in the case of *Khakimov* by the Novo-Savinovskiy

District Court of Kazan, Tatarstan; decision of 28 March 2008 in the case of *Shubin* by the Beloretskiy Town Court, Bashkortostan).

39. The applicants submitted that they had lodged their requests for execution of the judgments with the authorities. In their opinion, the competent authorities were thus aware of their claims but failed to comply with their obligation under domestic law to pay the judgment debt in a timely manner. The applicants concluded that they had not had in these circumstances any other remedy to exhaust.

40. The Court reiterates that the only remedies that must be exhausted are those that are effective and available in theory and in practice at the relevant time (see *Akdivar and Others v. Turkey*, judgment of 16 September 1996, *Reports of Judgments and Decisions* 1996-IV, § 68; *K.-F. v. Germany*, judgment of 27 November 1997, *Reports* 1997-VII, § 46). The effective and available remedies are those which are accessible, capable of providing redress in respect of the applicant's complaints and offer reasonable prospects of success (see *Akdivar*, cited above, § 68).

41. The Court has already assessed the effectiveness of the remedies quoted by the Government and concluded that they did not satisfy the Convention requirements at the material time.

42. An appeal against the Ministry's negligence would yield a declaratory judgment that would reiterate what was in any event evident from the original judgment: the State was to honour its debt. Such a new judgment would not bring the applicant closer to his desired goal, that is the actual payment of the judicial award (see *Jasiūnienė v. Lithuania* (dec.), no. 41510/98, 24 October 2000; *Plotnikovy v. Russia*, no. 43883/02, § 16, 24 February 2005).

43. As regards the compensatory remedies for delay in enforcement invoked by the Government, the Court notes that Article 208 of the Code of Civil Procedure would only allow for compensation of inflation losses but not of any further pecuniary or non-pecuniary damage caused by delays. The Court does not consider its decisions quoted by the Government (see paragraph 38 above) to establish a general principle that mere compensation for inflation losses constitutes full and adequate redress for late enforcement of a judgment. Such an upgrading remedy, however accessible and effective in practice, is thus not capable of affording redress as required by the Convention. The Court cannot therefore agree with the Government that the applicant in the case of *Kashcheyev* lost his victim status after the award in his favour was successfully upgraded under Article 208 of the Code (see paragraphs 12 and 38 above).

44. As for the possibility of compensation for non-pecuniary damage referred to by the Government, the Court refers to its previous finding that it was not, at the material time, sufficiently certain in practice as required by the Convention (see, *inter alia*, *Wasserman v. Russia* (no. 2), no. 21071/05, § 54, 10 April 2008). With the exception of a limited number of cases listed

in Articles 1070 and 1100 of the Civil Code, compensation of non-pecuniary damage is subject to the establishment of the authorities' fault. The Court notes that this condition can hardly be systematically satisfied in non-enforcement cases in view of the complexities of the enforcement proceedings and of possible objective circumstances preventing enforcement, such as the lack of funds on the debtor's account.

45. The doubts about the effectiveness of this remedy in cases of non-enforcement or late enforcement of domestic judgments are corroborated by the Government's failure to demonstrate before the Court the existence of sufficiently established and consistent case-law proving that this remedy was effective both in theory and in practice. As regards the three domestic judgments cited by the Government (see paragraph 38 above), they rather appear as isolated instances and thus cannot alter the Court's conclusion that the compensation of non-pecuniary damage in non-enforcement cases was highly uncertain and, therefore, ineffective at the material time.

46. It is all the more implausible that the applicants could have successfully sought such compensation in the present cases once the judgments in their favour were quashed in supervisory-review proceedings. Indeed, the Government provided no example demonstrating that compensation for non-enforcement or late enforcement of judgments was possible in practice after the quashing of judgments by way of supervisory review.

47. The Court thus concludes that the remedies quoted by the Government cannot be considered as effective in theory and in practice and as offering reasonable prospects of success for the applicants. The Government's objection must therefore be dismissed.

## *2. Other admissibility grounds*

48. The Court notes that the applicants' complaints are not manifestly ill-founded within the meaning of Article 35 § 3 of the Convention. It further notes that they are not inadmissible on any other grounds. They must therefore be declared admissible.

## **B. Merits**

49. The Government argued that the aforementioned delays in enforcement were reasonable and justified. It referred *inter alia* to a complex multilevel procedure of execution of judgments against the State and its entities and to the insufficient funding which delayed in 2001-2004 the execution of more than 96,000 judgments in similar cases. In the case of *Kashcheyev*, the Government argued that the applicant was responsible to a large extent for the delay: he initially sent the execution documents to the bailiffs and not to the competent Treasury department and then failed to

provide the latter with a certified copy of the judgment and to request the court for clarification of the exact amount to be paid.

50. The applicants maintained their complaints.

51. The Court reiterates that an unreasonably long delay in enforcement of a binding judgment may breach the Convention (see *Burdov v. Russia*, no. 59498/00, ECHR 2002-III). The reasonableness of such delay is to be determined having regard in particular to the complexity of the enforcement proceedings, the applicant's own behaviour and that of the competent authorities, the amount and the nature of court award (see *Raylyan v. Russia*, no. 22000/03, § 31, 15 February 2007).

52. The binding and enforceable judgments in the applicants' favour remained unenforced, prior to their quashing, for prolonged periods of time ranging from 1 year and 8 months in the case of *Shelestovskaya* to 4 years in the cases of *Biserov and others*, *Dubovov*, *Davydov* and *Pyshnograyev*.

53. In the light of the Court's established case-law, such long delays appear at the outset incompatible with the requirement to enforce the judgments within a reasonable time. The Court also recalls that it has already found violations of Article 6 of the Convention and of Article 1 of Protocol No. 1 on account of non-enforcement of domestic judicial decisions in certain cases concerning similar facts as those at issue in the present case (see, among others, *Dovguchits* cited above, §§40-44, and *Tetsen v. Russia*, no. 11589/04, § 22-23, 3 April 2008). The Government provided no argument allowing the Court to come to a different conclusion in the present cases.

54. The Court notes in particular that the enforcement of judgments in these cases required a simple payment of monetary awards to the applicants and thus was not in itself of any complexity. The Court reiterates that it is not open to a State authority to cite the lack of funds as an excuse for not honouring a judgment debt (see *Burdov*, cited above, § 35). Nor can the complexity of the domestic enforcement procedure relieve the State of its obligation under the Convention to guarantee to everyone the right to have a binding and enforceable judicial decision enforced within a reasonable time. It is for the Contracting States to organise their legal systems in such a way that the competent authorities can meet their obligation in this regard (see *mutatis mutandis Comingersoll S.A. v. Portugal* [GC], no. 35382/97, § 24, ECHR 2000-IV *Frydlender v. France* [GC], no. 30979/96, § 45, ECHR 2000-VII).

55. Finally, the Court cannot accept the Government's argument in the case of *Kashcheyev* stating that the applicant is himself responsible for prolonged non-enforcement of the judgment. The Court reiterates that while a successful litigant may be required to undertake certain procedural steps in order to recover the judgment debt, this requirement must not go beyond what is strictly necessary and the authorities must in any event take timely and *ex officio* action, on the basis of the information available to them, with

a view to honouring the judgment against the State (*Akashev v. Russia*, no. 30616/05, § 22, 12 June 2008). Accordingly, the applicant cannot be blamed for not having submitted a certified copy of the judgment. Indeed, since the State authorities were defendant in the proceedings at issue they must have been duly notified of the judgment and have taken the necessary action to ensure the payment the judgment debt within a reasonable time (see *Akashev*, cited above, § 21). Nor should the applicant be blamed for the alleged lack of clarity as to the amount to be paid (USD 13,004 less RUB 31,000). Even assuming that the competent authorities were unable to calculate the exact amount to be paid, they were well placed to seek any clarification from the competent court. In any event, the applicant cannot be held responsible for such errors or omissions in the judgment.

56. In view of the foregoing, the Court concludes that the prolonged failure to enforce the judgments in the applicants' favour amounted to violations of Article 6 of the Convention and of Article 1 of Protocol No. 1.

#### IV. OTHER ALLEGED VIOLATIONS OF THE CONVENTION

57. In the case of *Kulkov*, the applicant also complained of a violation of Article 6 of the Convention on account of excessive length of the domestic judicial proceedings. However, having regard to its finding that there has been a violation of the applicant's right to a court, the Court does not consider it necessary to examine separately this complaint.

58. In the case of *Doroshok*, the applicant also alleged violations of Article 13 and 14 of the Convention. However, the applicant did not substantiate these complaints. In these circumstances, and having regard to its finding that it was not necessary to examine separately the applicant's complaint concerning the non-enforcement of the judgment (see paragraph 35 above), the Court also considers that there is no need for a separate examination of the applicant's complaint about the lack of domestic remedies in this respect. As to the complaint under Article 14, it does not disclose any appearance of a violation and must therefore be rejected as manifestly ill-founded in accordance with Article 35 §§ 3 and 4 of the Convention.

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

59. 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

### 1. *The parties submissions*

60. The applicants claimed in respect of pecuniary damage the sums awarded to them by the domestic courts' judgments, which were later quashed in supervisory-review proceedings, and compensation for inflation losses or default interest. They also claimed various sums in respect of non-pecuniary damage. The details of the applicants' claims appear below.

#### *Case of Kulkov*

Pecuniary damage: RUB 70,675 (judicial award) plus upgrades for inflation losses; Non-pecuniary damage: EUR 400,000;

#### *Case of Shelestovskaya*

Pecuniary damage: RUB 548,309.80 (judicial award) plus RUB 413,261.09 for inflation loss; Non-pecuniary damage: EUR 7,000;

#### *Case of Kashcheyev*

Pecuniary damage: RUB 193,679 (judicial award) plus upgrades for inflation loss (to be based on the index of consumer prices); Non-pecuniary damage: EUR 20,000;

#### *Case of Doroshok*

Pecuniary damage: RUB 226,344.11 (judicial award) plus RUB 163,420.45 for inflation loss; RUB 327,694.90 (total of upgraded monthly awards for 2004-2007); Non-pecuniary damage: EUR 50,000;

#### *Case of Pyshnograyev*

Pecuniary damage: RUB 460,534.80 (judicial award) plus RUB 368,888.37 for default interest; Non-pecuniary damage: EUR 10,000;

#### *Case of Dubovov*

Pecuniary damage: RUB 468,883.14 (judicial award) plus RUB 375,997.39 for default interest; Non-pecuniary damage: EUR 10,000;

#### *Case of Biserov and others*

V. Biserov: RUB 484,228.80 (judicial award) plus RUB 387,867.27 for default interest; Non-pecuniary damage: EUR 10,000

Y. Sviridov: RUB 484,228.80 (judicial award) plus RUB 387,867.27 for default interest; Non-pecuniary damage: EUR 10,000

S. Morozov: RUB 460,534.80 (judicial award) plus RUB 368,888.37 for default interest; Non-pecuniary damage: EUR 10,000

#### *Case of Davydov*

Pecuniary damage: RUB 467,537.58 (judicial award) plus RUB 374,497.61 for default interest; EUR 100,000 (health damage); Non-pecuniary damage: EUR 14,000

#### *Case of Sobakar*

Pecuniary damage: RUB 25,799.91 (judicial award); RUB 38,336.79 (total of monthly payments in 2005-2007); Non-pecuniary damage: EUR 3,000;



*Case of Sereda*

Pecuniary and non-pecuniary damage: no amount specified.

61. The Government considered that nothing should be awarded while making no specific comment on the methods of calculation of pecuniary damage by the applicants. They notably stated that the applicants could have sought compensation for inflation or other losses arising from the enforcement delays before domestic courts but had failed to do so. They considered the applicants' claims for non-pecuniary damage as excessive and unreasonable.

*2. The Court's assessment*

62. The Court recalls that the most appropriate form of redress in respect of the violations found would be to put the applicants as far as possible in the position they would have been if the Convention requirements had not been disregarded (see *Piersack v. Belgium* (Article 50), judgment of 26 October 1984, Series A no. 85, p. 16, § 12, and, *mutatis mutandis*, *Gençel v. Turkey*, no. 53431/99, § 27, 23 October 2003). The Court considers that this principle should apply in the present cases (see *Dovguchits* cited above, §48).

63. The applicants were prevented from receiving the amounts they had legitimately expected to receive under the binding and enforceable judgments delivered by domestic courts in their favour. Accordingly the Court awards them these amounts to be converted in euros (EUR). In case of Shelestovskaya, the Court awards the applicant the difference between the amounts awarded by the judgment of the Ryazan Garrison Military Court of 25 July 2002 and those awarded to her by the judgment of 15 September 2004 of the Presidium of the Moscow Circuit Military Court (see paragraph 11 above), i.e. a total of RUB 547,789.80 to be converted in euros (EUR).

64. The Court further accepts the applicants' arguments regarding the loss of value of these awards. The Court has already considered the Government's argument about the applicants' failure to apply for compensation of such losses before domestic courts and rejected it (see paragraphs 42-46 above). As the Government has not submitted any comment in respect of the methods used or suggested by the applicants for the calculation of these losses, the Court accepts them and grants the applicants' claims in full. In the case of *Kashcheyev*, the applicant did not specify the amount of such losses and requested a compensation on the basis of the index of retail prices in Russia. In the case of *Kulkov*, the applicant also requested such a compensation without specifying any detail. The Court decides to grant the applicants' claims and awards EUR 1,150 to Mr Kashcheyev and EUR 1,770 to Mr Kulkov for inflation losses.

65. The Court notes that the applicants in the cases of Doroshok and Sobakar claimed in addition the amounts of monthly payments that were

due to them under the domestic judgments. They also requested these amounts to be upgraded so as to compensate for inflation losses. The Court considers that the applicants should have expected to receive these monthly payments at least until the quashing of the judgments in supervisory-review proceedings. The Court accordingly decides to award these applicants a sum of monthly awards including upgrades for inflation losses due until the quashing of the judgments in supervisory-review proceedings, i.e. the amounts of EUR 2,180 to A. Doroshok and of EUR 250 to N. Sobakar. The Court rejects the remainder of the applicants' claims. The Court also notes that A. Sereda did not submit any specific claim for inflation losses or monthly payments and makes no award in this respect.

66. As regards the amount of 100,000 EUR claimed by the applicant in the case of *Davydov* for health damage, the Court does not discern any causal link between the violations found and the pecuniary damage alleged; it therefore rejects this claim.

67. The Court furthermore finds that the applicants 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 cases and making its assessment on an equitable basis, as required by Article 41 of the Convention, the Court awards to each applicant a sum of EUR 3,000 in respect of non-pecuniary damage, plus any tax that may be chargeable on that amount.

## **B. Costs and expenses**

68. The applicants in the cases of *Shelestovskaya*, *Kashcheyev* and *Sobakar*, who were represented by lawyers, claimed RUB 10,000 (EUR 285), RUB 100,000 (EUR 2,850) and EUR 2,000 respectively for legal costs. They attached the lawyers' bills in support of their claims. The Government considered the claims as unsubstantiated in the cases of *Shelestovskaya* and *Kashcheyev*, while accepting that the sum claimed in the case of *Sobakar* was reasonable.

69. According to the Court's case-law, an applicant is entitled to the reimbursement of 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 cases, regard being had to the information in its possession and the above criteria, the Court decides to award the sums claimed by Y. Shelestovskaya and N. Sobakar in full, i.e. EUR 285 and EUR 2,000 respectively, plus any tax that may be chargeable on that amount. The Court agrees with the Government that the sum claimed by V. Kashcheyev for costs and expenses appears excessive and decides to award him EUR 2,000, plus any tax that may be chargeable on that amount.

70. The applicants V. Bisserov and V. Davydov claimed EUR 283 and EUR 364 respectively for various costs relating to the proceedings before

the Court. The Court notes that these claims are unsubstantiated and rejects them.

### C. Default interest

71. 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. *Decides* to join the applications;
2. *Declares* the complaints concerning the quashing of the binding and enforceable judgments in supervisory-review proceedings and the non-enforcement of judgments admissible and the remainder of the applications inadmissible;
3. *Holds* that there has been a violation of Article 6 of the Convention and of Article 1 of Protocol No. 1 in all cases on account of the quashing of the judgments in the applicants' favour by way of supervisory review;
4. *Holds* that there has been a violation of Article 6 of the Convention and of Article 1 of Protocol No. 1 on account of non-enforcement of the judgments prior to their quashing in cases of *Kulkov, Shelestovskaya, Biserov and others, Dubovov, Davydov* and *Pyshnograyev* and on account of late enforcement of the judgment of 13 May 2003 in the case of *Kashcheyev*;
5. *Holds* that it is not necessary to consider separately the reminder of the applicants' complaints relating to non-enforcement of the judgments;
6. *Holds*
  - (a) that the respondent State is to pay the applicants, within three months from the date on which the judgment becomes final in accordance with Article 44 § 2 of the Convention, the following sums to be converted into Russian roubles at the rate applicable at the date of the settlement:
    - (i) in respect of pecuniary damage:  
EUR 3,828 (three thousand eight hundred twenty eight euros) to V. Kulkov;

EUR 27,255 (twenty seven thousand two hundred fifty five euros) to Y. Shelestovskaya;  
EUR 6,376 (six thousand three hundred seventy six euros) to V. Kashcheyev;  
EUR 13,315 (thirteen thousand three hundred fifteen euros) to A. Doroshok;  
EUR 23,299 (twenty three thousand two hundred ninety nine euros) to V. Pyshnograyev;  
EUR 23,733 (twenty three thousand seven hundred thirty three euros) to S. Dubovov;  
EUR 24,497 (twenty four thousand four hundred ninety seven euros) to V. Biserov;  
EUR 24,497 (twenty four thousand four hundred ninety seven euros) to Y. Sviridov;  
EUR 23,299 (twenty three thousand two hundred ninety nine euros) to S. Morozov;  
EUR 23,653 (twenty three thousand six hundred fifty three euros) to V. Davydov;  
EUR 957 (nine hundred and fifty seven euros) to N. Sobakar;  
EUR 811 (eight hundred and eleven euros) to A. Sereda;  
(ii) EUR 3,000 (three thousand euros) to each applicant in respect of non-pecuniary damage plus any tax that may be chargeable on these amounts;  
(iii) in respect of costs and expenses:  
EUR 285 (two hundred eighty five euros) to Y. Shelestovskaya;  
EUR 2,000 (two thousand euros) to V. Kashcheyev;  
EUR 2,000 (two thousand euros) to N. Sobakar;  
plus any tax that may be chargeable on these amounts;

- (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;

7. *Dismisses* the remainder of the applicants' claim for just satisfaction.

Done in English, and notified in writing on 8 January 2009, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Søren Nielsen  
Registrar

Christos Rozakis  
President

## APPENDIX

| APP. NO.<br>(DATE)     | APPLICANT<br>(YEAR OF BIRTH)                       | JUDGMENT(S)<br>COURT(S)/DATE(S)/No(S)                                                                                                       | AMOUNT(S)<br>AWARDED<br>(RUB)                                                                         | DOMESTIC<br>DEFENDANT                                        | SUPERVISORY REVIEW<br>JUDGMENT(S)<br>COURT(S)/DATE(S)                                                                                                                                         |
|------------------------|----------------------------------------------------|---------------------------------------------------------------------------------------------------------------------------------------------|-------------------------------------------------------------------------------------------------------|--------------------------------------------------------------|-----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| 25114/03<br>(4/09/03)  | Kulkov Valery<br>Alexeyevich<br>(1964)             | Ufa Garrison Military<br>Court, 28/03/01,<br>enforceable on 8/04/01                                                                         | 70,675.00<br>(field<br>allowance);<br>1,112.33<br>(regional<br>bonus)                                 | Military unit<br>No. 71111                                   | Presidium of the<br>Privolzhskiy Circuit<br>Military Court:<br>1 <sup>st</sup> judgment of 18/04/02<br>(quashed on 11/02/03 by<br>the Supreme Court);<br>2 <sup>nd</sup> judgment of 25/12/03 |
| 11512/03<br>(5/02/03)  | Shelestovskaya<br>Yelena<br>Alexandrovna<br>(1957) | Ryazan Garrison<br>Military Court,<br>25/07/02,<br>enforceable on 6/08/02                                                                   | 544,257.00<br>(additional<br>wage);<br>3,052.80<br>(special<br>allowance);<br>1,000.00<br>(legal aid) | Ministry of<br>Defence                                       | Presidium of the Moscow<br>Circuit Military Court:<br>1 <sup>st</sup> judgment of 7/04/04<br>(quashed on 12/08/04 by<br>the Supreme Court);<br>2 <sup>nd</sup> judgment of 15/09/04           |
| 9794/05<br>(25/01/05)  | Kashcheyev<br>Vyacheslav<br>Borisovich<br>(1968)   | Pskov Town Court,<br>13/05/03, enforceable<br>on 26/05/03<br><br>Vyborg Garrison<br>Military Court,<br>14/07/06, enforceable<br>on 28/07/06 | USD 13,004<br>less RUB<br>31,000;<br><br>193,679.78                                                   | Military unit<br>No. 27880<br><br>Military unit<br>No. 41734 | None; judgment of<br>13/05/03 enforced in full on<br>5/09/2005<br><br>Presidium of the Leningrad<br>Circuit Military Court,<br>22/11/06                                                       |
| 37403/05<br>(22/09/05) | Doroshok<br>Aleksey<br>Alekseyevich<br>(1966)      | Rostov Garrison<br>Military Court,<br>21/05/04, enforceable<br>on 1/06/04                                                                   | 226,344.11<br>(lump sum)<br><br>6,849.81<br>(monthly)                                                 | Ministry of<br>Interior                                      | Presidium of the Northern<br>Caucasus Circuit Military<br>Court, 22/03/05                                                                                                                     |
| 13110/06<br>(25/02/06) | Sobakar<br>Nikolay<br>Pavlovich<br>(1955)          | Voronezh Central<br>District Court, 2/08/05,<br>enforceable on<br>26/08/05                                                                  | 25,799.91<br>(lump sum)<br>plus<br>additional<br>monthly<br>payments                                  | Voronezh<br>Regional<br>Military<br>Commissioner             | Presidium of the Voronezh<br>Regional Court, 19/12/05<br>(No.44r-441)                                                                                                                         |
| 19469/06<br>(5/03/06)  | Sereda Alexadr<br>Semenovich<br>(1957)             | Voronezh Central<br>District Court, 2/08/05,<br>enforceable on<br>26/08/05                                                                  | 29,221.62<br>(lump sum)<br>plus<br>additional<br>monthly<br>payments                                  | Voronezh<br>Regional<br>Military<br>Commissioner             | Presidium of the Voronezh<br>Regional Court, 19/12/05<br>(No.44r-441)                                                                                                                         |

| APP. N°<br>(DATE)      | APPLICANT<br>(YEAR OF BIRTH)                                                                                                       | JUDGMENT(S)<br>COURT(S)/DATE(S)/No(S)                                      | AMOUNT(S)<br>AWARDED<br>(RUR)                  | DOMESTIC<br>DEFENDANT     | SUPERVISORY REVIEW<br>JUDGMENT(S)<br>COURT(S)DATE(S)                      |
|------------------------|------------------------------------------------------------------------------------------------------------------------------------|----------------------------------------------------------------------------|------------------------------------------------|---------------------------|---------------------------------------------------------------------------|
| 42608/06<br>(12/09/06) | Biserov Vasilii<br>Arkadyevich<br>(1964)<br>Sviridov Yuriy<br>Vasiliyevich<br>(1969)<br>Morozov<br>Sergey<br>Nikolaevich<br>(1959) | Kaluga Garrison<br>Military Court,<br>27/02/02, enforceable<br>on 11/03/02 | 484,228.80<br><br>484,228.80<br><br>460,534.80 | Military unit<br>no.21939 | Presidium of the Moscow<br>Circuit Military Court,<br>5/04/06 (No.HГ-992) |
| 44928/06<br>(12/09/06) | Dubovov<br>Sergey<br>Anatolyevich<br>(1966)                                                                                        | Kaluga Garrison<br>Military Court,<br>27/02/02, enforceable<br>on 11/03/02 | 468,883.14                                     | Military unit<br>no.21939 | Presidium of the Moscow<br>Circuit Military Court,<br>5/04/06 (No.HГ-992) |
| 44972/06<br>(12/09/06) | Davydov<br>Vitaliy<br>Alekseyevich<br>(1953)                                                                                       | Kaluga Garrison<br>Military Court,<br>27/02/02, enforceable<br>on 11/03/02 | 467,537.58                                     | Military unit<br>no.21939 | Presidium of the Moscow<br>Circuit Military Court,<br>5/04/06 (No.HГ-992) |
| 45022/06<br>(12/09/06) | Pyshnograev<br>Vladimir<br>Nikolayevich<br>(1973)                                                                                  | Kaluga Garrison<br>Military Court,<br>27/02/02, enforceable<br>on 11/03/02 | 460,534.80                                     | Military unit<br>no.21939 | Presidium of the Moscow<br>Circuit Military Court,<br>5/04/06 (No.HГ-992) |