



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

FIRST SECTION

**CASE OF KAZAKEVICH  
and 9 other “army pensioners” cases v. RUSSIA**

*(Applications nos. 14290/03, 19089/04, 42059/04, 27800/04, 43505/04,  
43538/04, 3614/05, 30906/05, 39901/05 and 524/06)*

*JUDGMENT*

*STRASBOURG*

14 January 2010

**FINAL**

*14/04/2010*

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



**In the case of Kazakevich and 9 other “army pensioners” cases 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 Hajiyev,

Dean Spielmann,

Sverre Erik Jebens, *judges*,

and Søren Nielsen, *Section Registrar*,

Having deliberated in private on 15 December 2009,

Delivers the following judgment, which was adopted on the last-mentioned date:

## PROCEDURE

1. The case originated in ten applications (nos. 14290/03, 19089/04, 42059/04, 27800/04, 43505/04, 43538/04, 3614/05, 30906/05, 39901/05 and 524/06) 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 ten Russian nationals (“the applicants”). The applicants’ names and the dates of their applications to the Court appear in the table below.

2. The applicant V. Kazakevich was represented by Mr R. Martinovskiy, a lawyer practising in Sebastopol. The applicant V. Zorin was represented by Mr D. Chilikov, a lawyer practising in Vologda. 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 the quashing on supervisory-review of binding and enforceable judgments delivered in their favour between 2000 and 2004.

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 CASES

6. The applicants’ names and other details are indicated in the table below. All the applicants except Ms Odintsova are Russian retired servicemen entitled to payment of pensions by the State. Ms Odintsova is the widow of a colonel who died in the crash of a training aircraft.

7. On various dates the applicants sued the military commissions in their regions and, in case of *Kazakevich* and *Osipov*, the Ministry of Defense and the Federal Security Service (FSB) respectively, claiming payment of a pension or increase of pensions on account of their military service and, in the case of *Odintsova*, on account of her husband’s death.

8. The domestic courts granted the applicants’ claims (see details of the judgments in the table below). The judgments in cases of *Sukchev* and *Zamakhayev* were upheld on appeal; other judgments were not appealed against by the defendant authorities. All the judgments in the applicants’ favour thus became binding and enforceable on the dates indicated in the table below.

9. On various dates the Presidiums of higher courts allowed the defendant authorities’ applications for supervisory review and quashed the judgments in the applicants’ favour, considering that the lower courts misapplied the material law (see details of the judgments in the table below). In the cases of *Odintsova* and *Osipov* the Presidiums dismissed the applicants’ claims by the same judgments. In the other cases the Presidiums sent the cases back to the first instance courts, which later dismissed the applicants’ claims.

10. In five cases (*Kazakevich*, *Odintsova*, *Osipov*, *Sukchev* and *Zamakhayev*), the judgments in the applicants’ favour were not enforced. In the other five cases (*Legkov*, *Afanasyev*, *Polyanskiy*, *Malakhov* and *Zorin*), the judgments in the applicants’ favour were enforced as regards the lump sum and/or monthly awards. It appears that the payment of monthly awards was stopped a short time before or after the quashing of the judgments on supervisory review.

11. In the case of *Odintsova*, the Samarskiy District Court of Samara delivered on 27 May 2003 another judgment in the applicant’s favour, granting pension arrears and a sum of 2,500.00 Russian roubles (RUB) as compensation for non-pecuniary damage and costs. The judgment was not appealed against and became enforceable on 6 June 2003. The Government submitted that all awards had been credited to the applicant’s bank account on 12 August 2003 and that a separate sum of RUB 2,500.00 had again been credited to the applicant’s account on 9 November 2004 as a result of a clerical error. The applicant submitted that the pension arrears awarded by

the court had been credited to her account on 3 September 2003 but the remainder award of RUB 2,500.00 had only been credited in November 2004.

12. On 24 December 2001 Ms Odintsova filed a separate lawsuit against the Ministry of Defense, claiming compensation in respect of pecuniary and non-pecuniary damage. On 2 October 2003 the Kirovskiy District Court of Samara rejected her claims. On 11 November 2003 the Samara Regional Court upheld the judgment on appeal.

## II. RELEVANT DOMESTIC LAW

13. The relevant domestic law governing the supervisory review procedure at 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 *et al.*, §§ 33-42, 3 May 2007).

14. In 2001-2005 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 *et al.*, §§ 33-39, 21 June 2007).

## 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. All applicants complained of violations of Article 6 on account of the quashing of the binding and enforceable judgments in their favour by way of supervisory review. Most of them also complained of violations of Article 1 of Protocol No. 1 in relation to the same facts. The Court will consider all the cases in the light of both provisions, which insofar as relevant, 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**

*1. Alleged abuse of the right to individual petition in the case of Polyanskiy (no. 43538/04)*

17. In his observations on the admissibility and merits of 7 October 2007 the applicant challenged the impartiality of a judge of the Moscow City Court and the good faith of the former Russian Representative at the Court. The Government argued that these provocative statements were unacceptable within the meaning of Article 35 § 3 of the Convention.

18. The Court reiterates that the persistent use of insulting or provocative language may be considered an abuse of the right of application within the meaning of Article 35 § 3 (see *Chernitsyn v. Russia*, no. 5964/02, § 25, 6 April 2006). However, the Court does not discern any unacceptable statement by the applicant in the present case. While referring to the Government’s possible intention to distort the facts and challenging the judge’s attitude in his case, the applicant’s criticism was neither insulting, nor persistent (see *Zhuk v. Russia*, no. 42389/02, §§ 18-19, 14 November 2008). Accordingly the Court finds no ground to declare the application inadmissible as an abuse of the right of petition. The Government’s objection should therefore be dismissed.

*2. Applicability of Article 6*

19. The Government argued in some cases that Article 6 of the Convention was not applicable to the domestic litigations as they concerned the retired military personnel and could therefore not be qualified as “civil”. The Government thus submitted that the complaints were incompatible *ratione materiae* with the Convention.

20. The applicants disagreed, maintaining that Article 6 was applicable.

21. The Court reiterates 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 considers that these conditions were not satisfied in the present cases, as all applicants had access to courts in accordance with the domestic law. Accordingly, the Government’s objection should be dismissed in line with the Court’s decisions in numerous similar cases (see *Dovguchits v. Russia*, no.2999/03, §§ 19-24, 7 June 2007, and *Kulkov and Others v. Russia*, nos. 25114/03 *et al.*, § 19, 8 January 2009).

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

## **B. Merits**

23. All applicants argued in substance that the quashing of the binding and enforceable judgments in their favour by way of supervisory review had violated the principle of legal certainty and therefore their right to a court under Article 6. They provided a number of arguments supporting the lawfulness of the domestic courts’ awards in their favour and referred to similar judgments delivered by other Russian courts in respect of army pensioners. Most of the applicants thus insisted on their legitimate expectations to receive the court awards at issue, emphasising the fact that the authorities had failed to appeal against the judgments before they became binding and enforceable.

24. The Government argued that the supervisory review proceedings resulting in the quashing of the judgments at issue were lawful: they were initiated by the defendant authorities within the time-limits provided for by domestic law. The regional courts quashed lower courts’ unlawful judgments, thus correcting flagrant injustice and erasing dangerous precedents. In the Government’s view, no expectation of any benefit could have arisen from such flawed judgments. They provided detailed information on the material law that had allegedly been ignored by the lower courts. The Government specified, in addition, that the first instance court violated the statute of limitations in the case of *Osipov* (no. 42059/04) and acted beyond its jurisdiction in the case of *Afanasyev* (no. 43505/04). They pointed out that some of the judgments at issue were nonetheless enforced until their quashing. Finally, the Government referred to the Committee of Ministers’ Resolution ResDH (2006)1 of 8 February 2006, which acknowledged positive developments in the supervisory review procedure. They concluded that the supervisory review of the judgments was exercised so as to strike, to the maximum extent possible, a fair balance between the interests of the individual and the need to ensure the proper and uniform administration of justice.

25. 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).

26. The Court further recalls that it has already found numerous violations of the Convention on account of the quashing of binding and enforceable judgments by way of supervisory review under the Code of Civil Procedure as in force at the material time. Some of these violations were found in similar and, on certain occasions, virtually identical circumstances involving retired servicemen (see *Sergey Petrov v. Russia*, no. 1861/05, 10 May 2007; *Parolov v. Russia*, no. 44543/04, 14 June 2007, and *Kulkov and others*, cited above). In those cases the Court found that the quashing of final judgments in the applicants’ favour was not justified by circumstances of compelling and exceptional character. The Court finds no reason to come to a different conclusion in the present cases.

27. The arguments submitted by the Government in the present cases were addressed in detail and dismissed in previous similar cases. Misapplication of material law by the first instance courts does not in itself justify the quashing of binding and enforceable judgments on supervisory review, even if the latter was exercised within the one-year time-limit set in domestic law (*Kot v. Russia*, no. 20887/03, § 29, 18 January 2007). Nor can the Court discern any fundamental defect in the cases of *Osipov* and *Afanasyev* arising from the specific grounds put forward by the Government. In both cases, like in all others, the supervisory review was prompted by higher courts’ disagreement about the applicants’ entitlement to social benefits, which was determined in fair adversarial proceedings at the first-instance (compare *Protsenko v. Russia*, no. 13151/04, §§ 30-34, 31 July 2008, and *Tishkevich v. Russia*, no. 2202/05, §§ 25-26, 4 December 2008). Finally, while the aim of uniform application of domestic law may be achieved through various legislative and adjudicative means, it cannot justify disregard for the applicants’ legitimate reliance on *res judicata* (see *Kulkov and Others*, cited above, § 27).

28. The Court accordingly concludes that the quashing of the binding and enforceable judgments in the applicants’ favour amounts to a breach of the principle of legal certainty in violation of Article 6 of the Convention.

29. 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 ON ACCOUNT OF PROCEDURAL SHORTCOMINGS OF THE SUPERVISORY REVIEW PROCEEDINGS

30. In some cases the applicants also complained of unfairness of the supervisory review proceedings on account of various procedural defects. Ms Odintsova furthermore complained of the excessive length of the proceedings concluded by the judgment delivered on supervisory review. Given its finding that the applicants’ right to a court was violated by the quashing of the judgments in their favour by way of supervisory review (see paragraph 28 above), the Court does not find it necessary to examine separately the alleged procedural shortcomings of those proceedings.

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

31. Four applicants (Mr Kazakevich, Ms Odintsova, Mr Osipov and Mr Zamakhayev) 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 which were quashed on supervisory review. Ms Odintsova complained in addition of delayed enforcement of the judgment of 27 May 2003 (see paragraph 11 above). The relevant parts of the Convention provisions referred to by the applicants are quoted above.

32. 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 (see paragraph 28 above), 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).

33. A separate issue as to non-enforcement of judgments arises only in the cases of *Kazakevich*, *Osipov* and *Zamakhayev* as the judgments in the applicants’ favour remained unenforced for one year or more before they were quashed on supervisory review (see *Kulkov and Others*, cited above, § 36). The Court will also examine separately Ms Odintsova’s complaint

regarding alleged non-enforcement of the judgment of 27 May 2003, which has never been quashed (see paragraph 11 above).

### A. Admissibility

34. The Government alleged that the applicants had not exhausted the domestic remedies available to them under domestic law. They notably referred to Chapter 25 of the Code of Civil Procedure allowing to complain about the authorities’ negligence and to Chapter 59 of the Civil Code opening a way to claim non-pecuniary damage. In the Government’s view the latter provision had proven its effectiveness in practice, as shown by several examples of domestic case-law.

35. The Court reiterates that it recently assessed the effectiveness of the remedies referred to by the Government and concluded that no effective domestic remedy was available in respect of non-enforcement or delayed enforcement of judgments (see *Burdov v. Russia* (no. 2), no. 33509/04, §§ 101-116, ECHR 2009-...). The Government’s objection must therefore be dismissed.

36. 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

#### 1. *Judgments in favour of Mr Kazakevich, Mr Osipov and Mr Zamakhayev*

37. The Government argued that the delays in enforcement of these judgments were reasonable and justified. They referred to various procedural steps taken by the authorities to enforce these judgments prior their quashing on supervisory review.

38. The applicants maintained their complaints.

39. 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).

40. The Court notes that the binding and enforceable judgments in the applicants’ favour remained unenforced for one year or more. The enforcement of judicial awards was not complex, being limited to payment

of monetary awards. The Court has frequently held that the authorities’ failure for such prolonged periods to honour their monetary debts under domestic judgments were not compatible with the Convention (see, among many others, *Kozodoyev and Others v. Russia*, nos. 2701/04, 3597/04, 11898/04, 31946/04 and 34826/04, § 11, 15 January 2009). It finds no reason to depart from this case-law in the present cases.

41. There has, accordingly, been a violation of Article 6 § 1 of the Convention and Article 1 of Protocol No. 1. on account of prolonged non-enforcement of the judgments in favour of these three applicants.

## *2. Judgment of 27 May 2003 in favour of Ms Odintsova*

42. The parties gave divergent accounts as to how and when the judgment of 27 May 2003 was enforced (see paragraph 11 above). They also submitted some contradictory financial documents on this issue. Having examined the material in its possession, the Court cannot find it established that the amount of RUB 2,500.00 was excluded from the sum credited to the applicant’s account on 3 September 2003 and that the full enforcement of the judgment was delayed until November 2004 as suggested by the applicant. Accordingly, the Court cannot find any violation on this count.

## V. OTHER ALLEGED VIOLATIONS OF THE CONVENTION

43. Referring to various provisions of the Convention, some applicants complained of dismissal by the domestic courts of their claims following the quashing of the judgments in their favour. Ms Odintsova also complained under Article 6 and Article 14 about the outcome of the proceedings which ended in the judgment of 11 November 2003 (see paragraph 12 above). She referred in particular to discrimination of her daughter as the latter was denied additional compensation allegedly due under the Civil Code. Some applicants furthermore complained of the impossibility to contest the judgments delivered on supervisory review before any other judicial instance.

44. The Court reiterates that it does not review, in principle, the application of the national law made by domestic courts (see *García Ruiz v. Spain* [GC], no. 30544/96, § 28, ECHR 1999-I, with further references). The domestic judgments dismissing the applicants’ claims and other materials at the Court’s disposal do not disclose any unlawfulness or arbitrariness and it is not for the Court to reassess the question of the applicants’ entitlement to social benefits under domestic law (see *Larioshina v. Russia* (dec.), no. 56869/00, 23 April 2002). Nor does the Convention guarantee, as such, a right to appellate remedies in respect of the decisions taken by way of supervisory review: the mere fact that the

judgment of the highest judicial body is not subject to further judicial review does not infringe the Convention (see *Parolov*, cited above, § 35).

45. Referring to Article 6 § 1 of the Convention, Ms Odintsova further complained about the excessive length of two sets of proceedings concluded by the judgments of 27 April 2001 and 11 November 2003. The Court finds that these complaints are inadmissible for the following reasons. The complaint relating to the former set of proceedings is out of time as it was lodged more than six months after the judgment of 27 April 2001. The complaint concerning the latter set of proceedings is manifestly ill-founded: the overall length of these proceedings was less than two years for two levels of jurisdiction.

46. Finally Ms Odintsova complained under Article 2 of Protocol No. 1 of a violation of her daughter’s right to education on account of delays in payment of the judgment debts. However, the Court considers this complaint to be a restatement of the applicant’s complaints relating to non-enforcement of the domestic judgments (see paragraphs 31 and 42 above).

47. The Court concludes that all the above complaints must be rejected as inadmissible under Article 35 §§ 1, 3 and 4 of the Convention.

## VI. APPLICATION OF ARTICLE 41 OF THE CONVENTION

48. 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*

49. The applicants claimed in respect of pecuniary damage the sums that should have been paid to them in accordance with the domestic judgments in their favour. The applicants’ claims include the unpaid lump sum and/or monthly awards made by the courts. Some of the applicants included additional amounts for compensation of inflation losses for the period elapsed since the domestic judgments in their favour. In addition, the applicants claimed various amounts for non-pecuniary damage. The details of the applicants’ claims appear in the table below.

50. The Government disagreed and asked the Court to reject the applicants’ claims. As to pecuniary damage, the Government submitted that the Court must not substitute itself to the national courts which eventually dismissed the applicants’ claims under domestic law. Therefore, the

applicants have no right to any pension or pension increases. As to possible inflation losses arising from enforcement delays, the applicants should have submitted the relevant claims to domestic courts. As to non-pecuniary damage, the Government considered the applicants’ claims to be excessive and unreasonable.

## 2. The Court’s assessment

### (a) Pecuniary damage

51. 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), 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 as it did in numerous similar ones decided in the past (see *Dovguchits*, cited above, §48).

52. The Court therefore finds it appropriate to award the applicants the amounts they would have received under the domestic judgments. On the other hand, the Court cannot grant the applicants’ claims in so far as they include the monthly payments allegedly due after the quashing of the domestic judgments on supervisory review and the ensuing dismissal of the applicants’ claims by the domestic courts. Indeed, once the final judgments quashed, they ceased to exist under domestic law; the Court cannot restore the power of these judgments nor assume the role of the national authorities in awarding social benefits for the future. Therefore, the Court should only award the sums which must have been paid to the applicants until the quashing of the judgments in their favour and the final rejection of their claims at the domestic level (*Tarnopolskaya and Others v. Russia*, nos. 11093/07 *et al.*, § 51, 7 July 2009).

53. The Court also accepts the applicants’ claims relating to the loss of value of the court awards since the delivery of the judgments in their favour and finds it appropriate to award additional sums in this respect, where they were requested (see *Kondrashov and Others v. Russia*, nos. 2068/03 *et al.*, § 42, 8 January 2009).

54. As the Government have not submitted any alternative method of calculation of the applicants’ pecuniary losses, the Court will determine the compensation on the basis of the calculations provided by the applicants. The Court accordingly awards the following amounts:

RUB 81,000 (EUR 2,300) to Mr Kazakevich;  
 RUB 37,943.84 (EUR 1,020) to Ms Odintsova;  
 RUB 418,244.13 (EUR 11,370) to Mr Osipov;  
 RUB 32,298.50 (EUR 910) to Mr Sukchev;  
 RUB 127,931.81 (EUR 3,625) to Mr Zamakhayev;

These amounts include the compensation for loss of value of the domestic court awards where such compensation was claimed by the applicants. The sums in Russian roubles are converted into Euros at the rate applicable on the date of submission of the applicants’ claims.

55. As regards the other five cases (*Legkov, Afanasyev, Polyanskiy, Malakhov and Zorin*), the Court notes that the domestic judgments in the applicants’ favour were enforced until their quashing on supervisory review (see paragraph 10 above). The applicants’ claims in these cases correspond to the amounts which were allegedly due after the dismissal of their claims at the domestic level. Having regard to its conclusion in paragraph 52 above, the Court dismisses the applicants’ claims for pecuniary damage in these five cases.

#### **(b) Non-pecuniary damage**

56. With reference to its established case-law in similar cases the Court 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**

57. In three cases (*Kazakevich, Polyanskiy and Zorin*) the applicants claimed certain amounts for costs and expenses (see details in the table below). The Government found those claims unsubstantiated.

58. The Court reiterates that 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. Regard being had to the information in its possession and the above criteria, the Court decides to grant the applicants’ claims in these three cases. Accordingly, the Court awards 1,247.00 Ukrainian Hryvnias (UAH) (EUR 190) to Mr Kazakevich, RUB 1,960.90 (EUR 55) to Mr Polyanskiy and RUB 40,628.40 (EUR 1,130) to Mr Zorin.

### **C. Default interest**

59. 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 these 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 prolonged non-enforcement of the judgments prior to their quashing in the cases of *Kazakevich*, *Osipov* and *Zamakhayev* and that there has been no violation of these provisions on account of enforcement of the judgment of 27 May 2003 in the case of *Odintsova*;
5. *Holds* that it is not necessary to consider separately the remainder of the applicants’ complaints relating to non-enforcement of the judgments and/or procedural shortcomings of the supervisory review proceedings;
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 2,300 (two thousand three hundred euros) to V. Kazakevich;
      - EUR 1,020 (one thousand and twenty euros) to Y. Odintsova;
      - EUR 11,370 (eleven thousand three hundred and seventy euros) to I. Osipov;
      - EUR 910 (nine hundred and ten euros) to B. Sukchev;
      - EUR 3,625 (three thousand six hundred and twenty five euros) to V. Zamakhayev;
    - (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 190 (one hundred and ninety euros) to V. Kazakevich;
      - EUR 55 (fifty five euros) to V. Polyanskiy;

EUR 1,130 (one thousand one hundred and thirty euros) to V. Zorin;

(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 14 January 2010, 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<br>BIRTH)                   | JUDGMENT(S)<br>COURT(S)/DATE(S)                                                                      | AMOUNT(S)<br>AWARDED                                               | SUPERVISORY<br>REVIEW JUDGMENT<br>COURT/DATE(S)                                | JUST SATISFACTION<br>CLAIMS (ARTICLE 41)                                                                         |
|------------------------|---------------------------------------------------|------------------------------------------------------------------------------------------------------|--------------------------------------------------------------------|--------------------------------------------------------------------------------|------------------------------------------------------------------------------------------------------------------|
| 14290/03<br>(2/04/03)  | Kazakevich<br>Valery<br>Yulyanovich<br>(1951)     | Novorossiysk Garrison<br>Military Court, 15/05/02,<br>enforceable on 28/05/02                        | Order to allocate a<br>pension                                     | Presidium of the<br>Northern Caucasus<br>Circuit Military Court,<br>27/05/03   | RUB 134,246.00<br>(pecuniary damage);<br>RUB 500,000.00<br>(non-pecuniary damage);<br>UAH 1,247.00 (costs)       |
| 19089/04<br>(25/04/04) | Odintsova<br>Yelena<br>Vladimirovna<br>(1957)     | Samarskiy District Court<br>of Samara, 24/03/04,<br>enforceable 04/04/04                             | RUB 21,559.00                                                      | Presidium of the<br>Samara Regional Court,<br>10/02/05                         | RUB 1,622,054.21<br>(pecuniary damage);<br>RUB 100,000.00<br>(non-pecuniary damage)                              |
| 42059/04<br>(03/11/04) | Osipov<br>Innokentiy<br>Nikolayevich<br>(1948)    | Leninskiy District Court<br>of Ulyanovsk, 28/04/03,<br>enforceable on 12/05/03                       | RUB 269,226.99                                                     | Presidium of the<br>Ulyanovsk Regional<br>Court, 01/07/04                      | RUB 418,244.13<br>(pecuniary damage);<br>RUB 418,244.13<br>(non-pecuniary damage)                                |
| 27800/04<br>(05/07/04) | Legkov<br>Aleksandr<br>Sergeyevich<br>(1953)      | Tverskoy District Court<br>of Moscow, 27/09/02,<br>enforceable on 8/10/02                            | RUB 176,408.97<br>(lump sum)<br>plus increased<br>monthly payments | Presidium of the<br>Moscow City Court,<br>08/07/04                             | RUB 89,031.00<br>(pecuniary damage);<br>unspecified amount for<br>non-pecuniary damage                           |
| 43505/04<br>(26/11/04) | Afanasyev<br>Vladimir<br>Petrovich<br>(1952)      | Tverskoy District Court<br>of Moscow, 23/08/02,<br>enforceable on 03/09/02                           | RUB 13,619.44<br>(lump sum)<br>plus increased<br>monthly payments  | Presidium of the<br>Moscow City Court,<br>3/06/04                              | RUB 250,202.00<br>(pecuniary damage);<br>EUR 3,000.00<br>(non-pecuniary damage)                                  |
| 43538/04<br>(30/11/04) | Polyanskiy<br>Venomin<br>Aleksandrovich<br>(1938) | Tverskoy District Court<br>of Moscow, 11/10/02,<br>enforceable on 21/10/02                           | RUB 232,512.66<br>(lump sum)<br>plus increased<br>monthly payments | Presidium of the<br>Moscow City Court,<br>10/06/04                             | RUB 218,269.20<br>(pecuniary damage);<br>unspecified amount for<br>non-pecuniary damage;<br>RUB 1,960.90 (costs) |
| 3614/05<br>(03/12/04)  | Malakhov<br>Anatoliy<br>Leonidovich<br>(1939)     | Tverskoy District Court<br>of Moscow, 08/07/02,<br>enforceable on 18/07/02                           | RUB 104,988.80<br>(lump sum)<br>plus increased<br>monthly payments | Presidium of the<br>Moscow City Court,<br>09/06/04                             | Unspecified<br>(the details of the<br>applicant's claim<br>submitted out of time)                                |
| 30906/05<br>(28/07/05) | Zorin<br>Vladimir<br>Sergeyevich<br>(1958)        | Vologda Town Court of<br>the Vologda Region,<br>19/09/00, enforceable on<br>30/09/00                 | Order to<br>recalculate the<br>pension                             | Presidium of the<br>Vologda Regional<br>Court, 5/03/05                         | RUB 69,979.62<br>(pecuniary damage);<br>RUB 180,000.00<br>(non-pecuniary damage);<br>RUB 40,628.40 (costs)       |
| 39901/05<br>(27/09/05) | Sukchev<br>Boris<br>Mikhaylovich<br>(1948)        | Sovetskiy District Court<br>of Kazan, Republic of<br>Tatarstan, 08/06/04,<br>enforceable on 12/08/04 | RUB 20,528.86<br>(lump sum)<br>plus increased<br>monthly payments  | Presidium of the<br>Supreme Court of the<br>Republic of Tatarstan,<br>01/06/05 | RUB 93,177.90<br>(pecuniary damage);<br>EUR 20,000.00<br>(non-pecuniary damage)                                  |
| 524/06<br>(2/11/05)    | Zamakhayev<br>Valeriy<br>Nikolayevich<br>(1953)   | Sovetskiy District Court<br>of Kazan, Republic of<br>Tatarstan, 30/01/04,<br>enforceable on 26/04/04 | Order to<br>recalculate pay<br>arrears                             | Presidium of the<br>Supreme Court of the<br>Republic of Tatarstan,<br>3/08/05  | RUB 173,274.73<br>(pecuniary damage);<br>RUB 100,000.00<br>(non-pecuniary damage)                                |