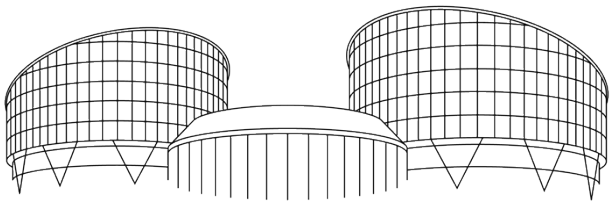

EUROPEAN COURT OF HUMAN RIGHTS
COUR EUROPÉENNE DES DROITS DE L'HOMME

FIRST SECTION

CASE OF ZELENKEVICH AND OTHERS v. RUSSIA

(Application no. 14805/02)

JUDGMENT

STRASBOURG

20 June 2013

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

In the case of Zelenkevich and Others v. Russia,

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

Elisabeth Steiner, *President,*
Mirjana Lazarova Trajkovska,
Linos-Alexandre Sicilianos, *judges,*
and André Wampach, *Deputy Section Registrar,*

Having deliberated in private on 28 May 2013,

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

PROCEDURE

1. The case originated in an application (no. 14805/02) 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 five Russian nationals, Mr Konstantin Igorevich Zelenkevich, Mrs Irina Valentinovna Zelenkevich, Mr Sergey Viktorovich Sosnovskiy, Mrs Svetlana Evgenyevna Yeliseyeva (Sosnovskaya) and Mr Ivan Nikolayevich Anpilov ("the applicants"), on 14 March 2002.

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

3. On 30 August 2006 the application was communicated to the Government.

THE FACTS

THE CIRCUMSTANCES OF THE CASE

4. The applicants were born in 1962, 1962, 1967, 1969 and 1962 respectively and live in Budennovsk of the Stavropol Region.

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

5. Three applicants, Mr Sosnovskiy, Mrs Yeliseyeva and Mr Anpilov, are acting military servicemen. Two applicants, Mrs Zelenkevich and Mr Zelenkevich, retired from the armed forces in 1998 and 1999 respectively.

The applicants, all acting military servicemen at the material time, were entitled to a special monthly allowance due to combatants.

6. On 25 April 2001 the applicants brought a civil action against their military unit requesting arrears of a special allowance.

7. On 19 September 2001 the Pyatigorsk Garrison Military Court of the North-Caucasian Command granted the applicants' claims in part and awarded different sums to be calculated by the defendant at the moment of actual payment on the basis of applicants' wages multiplied by their personal coefficient, including but not limited to 19,301.19 and 69,822.48 Russian roubles (RUB) to Mr Zelenkevich; RUB 24,092.98 to Mrs Zelenkevich; RUB 170,765 to Mr Sosnovskiy; RUB 103,246.40 to Mrs Yeliseyeva; RUB 50,947 to Mr Anpilov and taking into account the inflation index in the region on the day of actual payment.

8. The judgment was not appealed against and became final on 2 October 2001.

9. On 22 October 2001 the court issued writs of execution. The applicants forwarded them to the local branch of the State treasury. On 14 December 2001 the writs were returned to the applicants unexecuted. The Ministry of Finance explained that the debtor had no available funds which could have been used for paying off the judgment debts. The applicants were advised to address the writs of execution to the Ministry of Defence, which they did later.

10. On 11 April 2002 the President of the North-Caucasian Command Military Court brought a request for supervisory review of the judgment of 19 September 2001 and ordered to stay the enforcement proceedings.

11. On 11 June 2002 the Presidium of the North-Caucasian Command Military Court quashed by way of a supervisory review the judgment of 19 September 2001 because of misapplication of material law by the first-instance court and remitted a case for a fresh examination to the first-instance court.

12. On 21 November 2002 the Pyatigorsk Garrison Military Court dismissed the applicants' claims in full.

13. On 8 January 2003, upon the applicants' appeal, the North-Caucasian Command Military Court upheld the judgment of 21 November 2002.

THE LAW

I. ALLEGED VIOLATION OF ARTICLE 6 § 1 OF THE CONVENTION AND OF ARTICLE 1 OF PROTOCOL No. 1 ON ACCOUNT OF SUPERVISORY REVIEW

14. 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

15. Referring to the case of *Pellegrin v. France* [GC], no. 28541/95, ECHR 1999-VIII, the Government argued that the applicants' complaint under Article 6 was incompatible *ratione materiae* with the Convention insofar as the applicants were military officers.

16. The Court notes that it has already considered the argument submitted by the Government and rejected it in previous similar cases (see *Tetsen v. Russia*, no. 11589/04, § 18, 3 April 2008, and *Dovguchits v. Russia*, no. 2999/03, § 19, 7 June 2007). Article 6 accordingly applied to their cases. The Government's objection must therefore be dismissed.

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

B. Merits

1. Article 6 of the Convention

(a) Supervisory review procedure: legal certainty

18. 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.

19. The Government stated that the supervisory-review proceeding had been lawful and necessary to remedy fundamental errors made by lower courts. They provided information on the material norms that had allegedly been ignored by the lower courts. In the Government's view, a judicial decision could not be considered as equitable and lawful, and the judicial protection as effective, without judicial errors being corrected. In view of the Government, the domestic courts struck a fair balance between the interests of the applicants and the need to ensure the proper administration of justice (see *Nikitin v. Russia*, no. 50178/99, §§ 58-59, ECHR 2004-VIII).

20. 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, and *Ryabykh v. Russia*, no. 52854/99, §§ 51-52, ECHR 2003-IX).

21. 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 20 above).

22. The Court notes at the outset that the misapplication of material law by the first-instance court 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 (see *Nikitin*, cited above, § 59).

23. The Court considers that in the present cases the authorities failed to preserve the required balance in this regard. The Court further reiterates its constant approach that in the absence of a fundamental defect in the proceedings that have been concluded by a final and lengthy judgment party's disagreement with the assessment made by the first-instance and appeal courts is not a circumstance of a substantial and compelling character warranting the quashing of that judgment and re-opening of the proceedings on the applicant's claim (see *Dovguchits*, cited above, § 30, and *Kot v. Russia*, no. 20887/03, § 29, 18 January 2007). The Government did not put forward any argument which would enable the Court to reach a different conclusion in the present case. There has been, accordingly, a violation of Article 6 § 1 of the Convention.

(b) Supervisory review procedure: procedural issues

24. The applicants also complained about the procedural defects and errors in facts and law of the supervisory-review proceeding.

The Court finds that, having concluded that there had been an infringement of the applicants' "right to a court" by the very use of the supervisory review procedure, it is not necessary to consider whether the procedural guarantees of Article 6 of the Convention were available in those proceedings (see *Volkova v. Russia*, no. 48758/99, § 39, 5 April 2005).

2. Article 1 of Protocol No. 1

25. The Court reiterates that the existence of a debt confirmed by a binding and enforceable judgment constitutes the beneficiary's "possession" within the meaning of Article 1 of Protocol No. 1 (see *Androsov v. Russia*, no. 63973/00, § 69, 6 October 2005). The Court has found in many cases that the quashing of binding and enforceable judgments by way of supervisory review frustrated the applicants' reliance on the binding judicial decision and deprived them of an opportunity to receive the money they had legitimately expected to receive (see, among others, *Sizintseva and Others v. Russia*, nos. 38585/04 et al., § 35, 8 April 2010). There has therefore been a violation of Article 1 of the Protocol No. 1.

II. ALLEGED VIOLATION OF ARTICLE 6 OF THE CONVENTION AND ARTICLE 1 OF PROTOCOL No. 1 ON ACCOUNT OF NON-ENFORCEMENT

26. The applicants complained about the non-enforcement of the judgment in their favour. They relied on Article 6 § 1 of the Convention and Article 1 of Protocol No. 1, both cited above.

27. The Government argued that the judgment of 19 September 2001 was not enforced, being quashed by way of supervisory review. According

to the Government, the request for supervisory review of the judgment of 19 September 2001 was made by the President of the North-Caucasian Command Military Court at an early stage and the applicants were informed of this request at least on 1 February 2001. Consequently, the length of enforcement procedure calculated up to this day was less than one year, which is not excessive in view of the Court's case-law (see *Presnyakov v. Russia* (dec.), no. 41145/02, 10 November 2005).

28. 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 proceeding, 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 *Sizintseva and Others*, cited above, § 39). Therefore, the Court does not consider it necessary to examine separately the issue of non-enforcement because the judgment in the applicants' favour was quashed within a relatively short time after they became binding and enforceable.

III. APPLICATION OF ARTICLE 41 OF THE CONVENTION

29. 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

30. The applicants claimed in respect of pecuniary damage the sums awarded to them by the domestic courts' judgment, which were later quashed in supervisory-review proceedings.

31. The Government argued that the judgement was partly enforced in respect of Mr. Zelenkevich.

32. The Court reiterates that under Rule 60 of the Rules of Court any claim for just satisfaction must be itemised and submitted in writing together with the relevant supporting documents, failing which the Court may reject the claim in whole or in part.

33. The Court notes that the applicants failed to submit itemised claim of just satisfaction. It is therefore impossible for the Court to calculate it on the basis of the domestic judgement in so far as the latter did not specify the

exact sums to be paid by the defendant but rather a method for calculation including certain data available only to the defendant authority.

34. Having regard to the principles outlined in paragraph 34 above, the Court considers it appropriate to Court rejects the claims for pecuniary damage as unsubstantiated.

35. The applicants did not make any claim in respect of non-pecuniary damage.

36. Consequently, the Court does not award any sum under this head.

B. Costs and expenses

37. The applicants did not make any claim in respect costs and expenses.

38. Consequently, the Court does not award any sum under this head.

C. Default interest

39. The Court considers it appropriate that the default interest rate should be based on the marginal lending rate of the European Central Bank, to which should be added three percentage points.

FOR THESE REASONS, THE COURT UNANIMOUSLY

1. *Declares* the complaint under Article 6 of the Convention and Article 1 of Protocol No. 1 concerning the non-enforcement and quashing of the judgment in the applicants' favour on supervisory review admissible and the remainder of the application inadmissible;

2. *Holds* that there has been a violation of Article 6 of the Convention and of Article 1 of Protocol No. 1 on account of the quashing of the judgment of 19 September 2001 in the applicants' favour by way of supervisory review;

3. *Holds* that there is no need to examine the complaint under Article 6 of the Convention and Article 1 of Protocol No. 1 on account of non-enforcement of the judgment of 19 September 2001 and on account of alleged defects of the supervisory review procedure;

4. *Dismisses* the applicants' claim for just satisfaction.

Done in English, and notified in writing on 20 June 2013, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

André Wampach	Elisabeth Steiner
Deputy Registrar	President