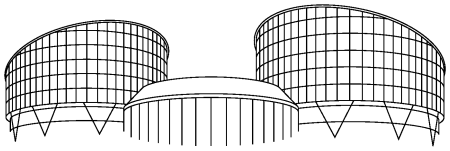

EUROPEAN COURT OF HUMAN RIGHTS
COUR EUROPÉENNE DES DROITS DE L'HOMME

FIRST SECTION

CASE OF GERASIMOV AND OTHERS v. RUSSIA

(Applications nos. 29920/05, 3553/06, 18876/10, 61186/10, 21176/11, 36112/11, 36426/11, 40841/11, 45381/11, 55929/11, 60822/11)

STRASBOURG

1 July 2014

FINAL

01/10/2014

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

In the case of Gerasimov and Others v. Russia,

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

Isabelle Berro-Lefèvre, *President,*
Elisabeth Steiner,
Khanlar Hajiyev,
Mirjana Lazarova Trajkovska,
Julia Laffranque,
Ksenija Turković,
Dmitry Dedov, *judges,*

and Søren Nielsen, *Section Registrar,*

Having deliberated in private on 10 June 2014,

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

PROCEDURE

1. The case originated in eleven applications 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 Russian nationals ("the applicants"). Their details and the dates of their applications to the Court appear below in appendix.

2. On 28 March 2011 the first applicant, Mr Mikhail Yefimovich Gerasimov, passed away. His widow, Ms Yelena Yefimovna Gerasimova, informed the Court of her wish to pursue the proceedings in her late husband's stead. The Government did not object. The Court accepts Ms Gerasimova's standing in the case.

3. The applicant Ms T. Kostyleva was represented by Mr E. Mezak, a lawyer practising in Syktyvkar, Komi Republic. The applicant Ms N. Ilnitskaya was represented by Mr A. Vologin, a legal specialist living in Volsk, Saratov Region. None of the other applicants were represented by a lawyer.

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

5. The applicants alleged, in particular, that the domestic judgments ordering the authorities to grant them flats or to honour other obligations in kind had not been enforced within a reasonable time. Some of the applicants also alleged that they did not dispose of an effetive domestic remedy in respect of the non-enforcement or delayed enforcement of those judgments.

6. On 10 April 2012 the Court decided to communicate the applicants' complaints to the Government, raising additional questions about the structural nature of the underlying problems. The Court also decided to

grant the applications priority under Rule 41 and to inform the parties that it was considering the suitability of applying a pilot-judgment procedure (see *Burdov v. Russia (no. 2)*, no. 33509/04, §§ 125-46, ECHR 2009).

7. In all but two cases (Kostyleva, no. 61186/10 and Grinko, no. 45381/11) the Government submitted unilateral declarations acknowledging the lengthy enforcement of the judgments in the applicants' favour and offering them monetary compensation in that regard. The applicants provided their comments on the Government's declarations. The parties filed observations on the admissibility and merits of the two above-mentioned applications which did not give rise to unilateral declarations by the Government.

THE FACTS

I. THE CIRCUMSTANCES OF THE CASE

8. The applicants are all Russian nationals living in various regions of the Russian Federation. They obtained binding judicial decisions ordering the State authorities to provide them with housing or various services in kind, but the enforcement of those judgments was considerably delayed. Some of the judgments remain unenforced to date. The applicants' individual circumstances are detailed below.

A. Delayed enforcement of the judgments in the applicants' favour

1. The case of Mr Gerasimov (application no. 29920/05 lodged on 26 July 2005)

9. The applicant, Mr Mikhail Yefimovich Gerasimov, was born on 30 June 1927 and lived in Vladivostok, Primorskiy Region.

10. On 3 September 2002 the Leninskiy District Court of Vladivostok ordered the town administration to conclude a contract for utilities with the applicant before 1 December 2002, and to repair the basement of the building he lived in in accordance with the sanitary regulations before the cold season. The judgment became final on 14 September 2002.

11. On 14 March and 17 May 2005 a commission composed of several members of the housing maintenance authority and residents inspected the basement and found it up to standard.

12. On the 27 July 2005 the bailiffs closed the enforcement proceedings in respect of the judgment, finding that the basement had been repaired as required.

13. On 19 July 2007 the Leninskiy District Court of Vladivostok clarified the judgment of 3 September 2002 with regard to the utilities to be supplied. The court specified that the applicant's apartment had to be provided with heating, hot and cold water, wastewater services and a cleaning service for the communal area. The enforcement proceedings were resumed.

14. On an unspecified date, the town administration provided the applicant with a draft contract for the utilities but the applicant refused to sign it without giving a reason.

15. Considering their obligations under the judgment of 3 September 2002 to be fulfilled, the town administration requested that the enforcement proceedings be closed. The bailiffs refused.

16. On 17 October 2007 the Frunzenskiy District Court of Vladivostok dismissed the administration's complaint against the bailiffs' refusal to close the enforcement proceedings.

17. On 11 December 2007 the Primorskiy Regional Court granted the administration's appeal, finding that the latter had taken all possible measures to comply with the judgment of 3 September 2002.

18. The bailiffs accordingly closed the enforcement proceedings on 21 January 2008.

2. The case of Mr Shmakov (application no. 3553/06 lodged on 28 December 2005)

19. The applicant, Mr Andrey Gennadyevich Shmakov, was born on 30 October 1960 and lives in Yakutsk, Republic of Sakha (Yakutiya).

20. On 10 January 2002 the Yakutsk Town Court ordered the town administration to provide the applicant and his family with appropriate housing in Yakutsk, in accordance with the law, in lieu of his house, which had been demolished by the authorities in 2001. The judgment became final on 21 January 2002.

21. As the judgment had still not been enforced, in 2004 the applicant unsuccessfully sought a court order for the seizure of an apartment in a new block which had been built on the plot of land on which his former house had stood.

22. On 7 July 2004 the Yakutsk Town Court specified that the judgment had to be enforced by the mayor's office of Yakutsk.

23. On 3 March 2010 the Yakutsk Town Court modified the method of enforcement, specifying that the judgment could be enforced by the payment of 1,653,264 Russian roubles (RUB) by the town administration. The applicant did not appeal against that judgment and received the monetary award on 1 July 2010.

3. The case of Ms Baranova (application no. 18876/10 lodged on 13 March 2010)

24. The applicant, Ms Lyubov Mikaylovna Baranova, was born on 17 April 1960 and lives in Bazarniy Syzgan, Ulyanovsk Region.

25. On 14 April 2009 the Bazarnosyzganskiy District Court of the Ulyanovsk Region ordered the municipal administration to provide heating supply to her flat. On 26 May 2009 the Ulyanovsk Regional Court upheld that judgment on appeal. In a judgment of 16 July 2009 the Inzenskiy District Court of the Ulyanovsk Region specified possible ways of enforcing the judgment of 14 April 2009, namely, by ensuring either a hot water or natural gas supply for heating purposes.

26. On 23 March 2010 an individual gas heating device was installed in the applicant's flat.

27. On 14 July 2010 the bailiffs closed the enforcement proceedings on the ground that the respondent authority had properly complied with the judgment of 14 April 2009.

4. The case of Ms Kostyleva (application no. 61186/10 lodged on 4 October 2010)

28. The applicant, Ms Tatyana Salikhzanovna Kostyleva, was born on 13 September 1960 and lives in Syktyvkar, Republic of Komi.

29. On 2 October 2000 the Syktyvkar Town Court ordered the town administration to renovate the building in which the applicant held a flat under a social tenancy agreement. The judgment became final on 10 November 2000 ("the first judgment").

30. On 1 December 2000 the bailiffs commenced the enforcement proceedings. The building has at times been included in the town's plans to renovate municipal housing but the repairs have never been carried out owing to a lack of funds and a shortage of temporary housing facilities where residents could be relocated during the renovation.

31. On 20 July 2009 the Syktyvkar Town Court found that the applicant was still living in unsuitable conditions and ordered the town administration to provide her and her family with comfortable housing of at least 40.8 sq. m. On 5 August 2009 the judgment became final ("the second judgment") and on 12 August 2009 the bailiffs started the enforcement proceedings.

32. On 10 February 2010 the Syktyvkar Town Court dismissed the authorities' request for a stay on the enforcement of the second judgment, considering that such a course of action would endanger the applicant's and her family's life and health. The bailiffs' made repeated, albeit unsuccessful attempts to secure the enforcement of the judgment by the town administration, including by warning the head of administration of his criminal liability under Article 315 of the Criminal Code.

33. Neither the first nor the second judgment in the applicant's favour has been enforced to date. According to the latest information received by the Court, she was still living in the same building. On the evening of 14 May 2012 there was an electrical short circuit in the communal area on the first floor, provoking a smoke emission in the building.

34. Meanwhile, the competent authorities continued the enforcement proceedings. After the communication of the present application to the Russian Government, the bailiffs requested the Syktyvkar Town Court on 23 May 2012 to provide them with a duplicate of the writ of execution in respect of the first judgment, which had been lost shortly after its delivery. On 27 June 2012 the court ordered a duplicate of the writ of execution to be delivered and the bailiffs resumed the enforcement proceedings on 13 September 2012. On that date the bailiff of the Inter-District Division for Special Enforcement Procedures in the Komi Republic (*Межрайонный отдел судебных приставов по особым исполнительным производствам Управления Федеральной службы судебных приставов по Республике Коми*) decided as follows:

> "1. To initiate enforcement proceedings no. 10594/12/22/11 [in respect of the Syktyvkar Town Administration].
>
> 2. To set a time-limit of five days for the debtor's voluntary compliance with the requirements provided for in the writ of execution (section 30(12) of the Federal Law 'On enforcement proceedings').
>
> 3. To warn the debtor that it will be liable to pay an enforcement fee of RUB 5,000 in the event of non-compliance within the time-limit set and failure to produce evidence that enforcement is impossible on account of extraordinary and unavoidable circumstances. In the event of extraordinary and objectively unavoidable circumstances and other unexpected and insurmountable obstacles making voluntary enforcement impossible, the debtor is requested to inform the bailiff accordingly within the time-limit set for voluntary compliance.
>
> 4. To warn the debtor that under section 6 of Federal Law no. 229-FZ of 2 October 2007 on enforcement proceedings the requirements of the bailiff are binding on all State authorities, local authorities, individuals and organisations and must be rigorously complied with throughout the territory of the Russian Federation.
>
> 5. To warn the debtor that under section 105(2) of Federal Law no. 229-FZ of 2 October 2007 on enforcement proceedings the bailiff may impose a fine provided for by Article 17.15 of the Code of Administrative Offences on a debtor who does not fulfil, within a new time-limit, the requirements set out in the writ of execution.
>
> 6. To warn the debtor that under sections 116 and 117 of Federal Law no. 229-FZ of 2 October 2007 on enforcement proceedings the expenses related to the enforcement proceedings are to be paid back by the debtor to the federal budget, the creditor and anyone else who incurred those expenses.
>
> 7. To warn the debtor that State officials may be prosecuted under Article 315 of the Criminal Code of the Russian Federation for non-enforcement of a judicial decision.
>
> ... "

35. On 2 August 2012 the bailiff was informed by the Town Administration that the enforcement of the judgment was impossible owing to a lack of available flats.

36. On 10 October 2012 the bailiff informed the applicant that the enforcement proceedings in respect of the second judgment were still pending along with 309 other similar judgments against the town administration. The bailiff noted that the delay in enforcement could be explained, in particular, by the high number of judgments to be enforced, the lack of available flats and insufficient funding allocated for the building of new flats. The enforcement proceedings referred to by the bailiffs in the applicant's case included compulsory requests for the allocation of flats, the inclusion of additional funds in the budget, the identification of available housing and the seizure of available flats with a view to their allocation in accordance with the waiting list. The bailiff also informed the applicant that she was no. 39 on the waiting list.

37. On 11 January 2013 the bailiff warned the head of the town administration about criminal liability under Article 315 of the Criminal Code for non-enforcement of a judgment.

38. According to the latest information, the applicant had moved up to no. 27 on the waiting list.

5. The case of Mr Starostenkov (application no. 21176/11 lodged on 21 February 2011)

39. The applicant, Mr Yuriy Vasilyevich Starostenkov, was born on 8 June 1954 and lives in Smolensk. A retired police officer, he was assigned to life-long disability category two in 1993 on account of injuries sustained during his service.

40. On 3 July 2008 the Velizhskiy District Court of the Smolensk Region upheld the applicant's right to be provided with a car for rehabilitation purposes and ordered the Department for Social Development of the Smolensk Region to ensure he was provided with one. This judgment became final on 18 July 2008.

41. On 2 September 2008 the court supplemented the judgment of 3 July 2008, specifying that the applicant's right to a car might be secured either at the expense of the regional budget or by informing the Federal Health Agency of his needs. However, the judgment was not enforced.

42. After the communication of the present application to the Russian Government, on 19 June 2012 the bailiff imposed a fine of RUB 30,000 on the debtor authority in accordance with Article 17.15 of the Code of Administrative Offences. On 7 August 2012 the bailiff's decision was quashed by the Leninskiy District Court of Smolensk on the ground that the debtor authority's act did not amount to an administrative offence.

43. On 2 October 2012 the bailiff warned the head of the debtor authority about criminal liability under Article 315 of the Criminal Code for non-enforcement of a judgment.

44. On 23 November 2012 the Governor of the Smolensk Region issued Order no. 1695-*р/адм* allocating RUB 354,900 for the purchase of a car for the applicant. According to an estimate issued on 18 October 2012 by the Department for Social Development those funds would cover the purchase of a car (a Lada Kalina 11173 (RUB 298,900)) and special hand control equipment (RUB 56,000).

45. On 24 December 2012 the applicant received a Lada 212140 without any special hand control equipment. On 26 December 2012 the enforcement proceedings were closed.

6. The case of Mr Zakharchenko (application no. 36112/11 lodged on 24 May 2011)

46. The applicant, Mr Anatoliy Arturovich Zakharchenko, was born on 4 September 1966 and lives in Saint Petersburg.

47. The applicant is a military serviceman. On 30 November 2006 the Pushkin Garrison Military Court ordered the Commandant of military unit no. 3526 to provide, as a matter of priority, the applicant and his family with housing in the geographical area of his military service in accordance with the law in force. The judgment became final on 16 December 2006 but was not enforced.

48. After the communication of the present application to the Russian Government on 14 September 2012, the Housing Commission allocated a flat located in the Saint-Petersburg suburbs to the applicant. On 1 October 2012 the applicant was provided with that flat and on 1 February 2013 concluded a social tenancy contract with the authorities.

7. The case of Ms Troshina (application no. 36426/11 lodged on 11 May 2011)

49. The applicant, Ms Marina Yevgenyevna Troshina, was born on 14 July 1961 and lives in Moscow.

50. On 13 April 2007 the Ostankinskiy District Court of Moscow ordered the Moscow Regional Office of the Federal Real Estate Cadastral Agency (*Управление Федерального агентства кадастра объектов недвижимости по Московской области*) to consider a request by the applicant dated 29 December 2005 by which she had requested data from the land register in respect of a plot of land located in the village of Polushkino, Odintsovso District, Moscow Region (cadastral no. 50:20:13:7:2:13). The judgment became final on 4 May 2007 and the enforcement proceedings were brought on an unspecified date. However, the enforcement of the judgment was delayed.

51. On 8 February 2010 the Russian Ministry for Economic Development issued Order no. P/41 for the reorganisation of the defendant authority and its incorporation into the Moscow Regional Directorate of the Federal Registration Agency. The relevant powers were later conferred to the Federal State Agency "Cadastral Chamber" for the Moscow Region (*Федеральное государственное учреждение «Кадастровая палата» по Московской области* - "the Moscow Region Cadastral Chamber").

52. On 22 March 2011 the Ostankinskiy District Court granted the applicant's request for clarification on how the enforcement would be carried out. It specified that the judgment had to be executed by the Moscow Regional Directorate for State Registration, Cadastre and Cartography (*Управление Федеральной службы государственной регистрации, кадастра и картографии* - "the Directorate") as successor to the respondent authority under the judgment of 13 April 2007.

53. On 30 September 2011 the same court dismissed the Directorate's request for appointment of the Moscow Cadastral Chamber as successor to the respondent authority under the judgment of 13 April 2007.

54. On 2 December 2011 the Directorate requested the Moscow Cadastral Chamber to provide the data required by the judgment. On 15 December 2011 the latter informed the Directorate that the register contained no information about the plot of land concerned and recommended that the applicant seek its registration by the competent authority of the Odintsovo district. On 23 December 2011 that information was sent to the applicant.

55. On 26 December 2011 the bailiffs closed the enforcement proceedings. On 20 March 2012 the Meshchanskiy District Court of Moscow dismissed the applicant's complaint against the bailiffs' decision, considering that the judgment of 13 April 2007 had been fully enforced.

8. The case of Ms Ilnitskaya (application no. 40841/11 lodged on 15 June 2011)

56. The applicant, Ms Natalya Vasilyevna Ilnitskaya, was born on 1 September 1961 and lives in Shikhany, Saratov Region. She is a former member of the Russian army.

57. On 24 November 2008 the Volsk District Court of the Saratov Region upheld her right to a housing voucher. The judgment became final on 9 December 2008 but was only enforced on 15 February 2011 when a housing voucher issued on 24 February 2010 (no. 672764) was processed with a view to purchasing a flat in Volsk, Saratov Region.

9. The case of Mr Grinko (application no. 45381/11 lodged on 25 July 2011)

58. The applicant, Mr Aleksey Alekseyevich Grinko, was born on 25 July 1978 and lives in Vatutinki, Moscow Region. He is a military serviceman.

59. On 8 December 2006 the Naro-Fominskiy Garrison Military Court ordered the commandant of military unit no. 72064 to grant the applicant priority housing in accordance with the law in force. The judgment became final on 25 December 2006 but was not enforced.

60. The bailiffs brought the enforcement proceedings on 29 June 2009 but their repeated requests to the respondent authorities did not result in any action being taken.

61. On 22 February 2011 the Naro-Fominskiy Garrison Military Court supplemented the judgment, specifying that it had to be enforced by the Housing Department of the Russian Ministry of Defence (*Департамент жилищного обеспечения Министерства обороны Российской Федерации* – "the Housing Department").

62. After the communication of the present application to the Russian Government, on 14 May 2012, the competent bailiff addressed the Minister of Defence with a view to bringing the officials responsible to administrative responsibility.

63. On 23 May 2012 the bailiff of the Inter-District Division for Special Enforcement Procedures in Moscow (*Межрайонный отдел судебных приставов по особым исполнительным производствам Управления Федеральной службы судебных приставов по Москве*) warned the head of the Housing Department that she could face criminal liability under Article 315 of the Criminal Code for non-enforcement of a judgment. On 12 June, 12 July and 24 October 2012 the bailiffs again requested the debtor to comply with the judgment.

64. On 22 June 2012 the bailiffs of the Moscow Special Operational Division (*Специализированный отдел оперативного дежурства УФССП России по Москве*) appeared in person to summon the head of the Housing Department but the latter was not found at her place of residence.

65. On 28 June 2012 the bailiff handed a warning under Article 315 of the Criminal Code in person to the head of the Housing Department at her place of residence but the latter refused to acknowledge receipt.

66. On 6 July 2012 the Odintsovskiy Garrison Military Court found that the allocation of an apartment to the applicant in Balashikha, Moscow Region, had been unlawful.

67. On 10 December 2012 the bailiff suspended the State registration proceedings in respect of 327 apartments in Moscow in order to compel the respondent authority to comply with the judgment.

68. On 28 January 2013 the bailiff again summoned the head of the Housing Department to appear in person in order to explain the reasons for the prolonged non-enforcement of the judgment.

69. According to the latest information received by the Court, the judgment in the applicant's favour remained unenforced.

10. The case of Ms Antonova (application no. 55929/11 lodged on 10 September 2011)

70. The applicant, Ms Svetlana Nikolayevna Antonova, was born on 10 September 1959 and lives in Lyubertsy, Moscow Region. She served in the Border Control Service of the Federal Security Service of the Russian Federation ("the FSB") and was entitled to housing.

71. On 5 April 2005 the Odintsovo Garrison Military Court ordered the relevant department of the FSB to provide the applicant and her family, as a matter of priority, with housing located in the geographic area of her service in accordance with the law in force.

72. That judgment became final on 22 April 2005 but was only enforced on 16 February 2012 when the applicant concluded a social tenancy agreement with military unit no. 55002 for a flat located in Lyubertsy, Moscow Region.

11. The case of Ms Tsvetkova (application no. 60822/11 lodged on 16 August 2011)

73. The applicant, Ms Yelena Aleksandrovna Tsvetkova, was born on 12 December 1951 and lives in Kostroma.

74. On 15 December 2008 the Ostrovskiy District Court of the Kostroma Region ordered the local administration to provide the applicant with comfortable social housing in accordance with the sanitary and technical regulations in force and located in Ostrovskoye, Kostroma Region. On 30 December 2008 that judgment became final but its enforcement was delayed.

75. On 1 September 2011 the district court granted the applicant's application for a change in the method of enforcement and ordered the local administration to pay her RUB 442,368, that is, the market value of the housing to which she was entitled. On 3 October 2011 the judgment was upheld on appeal by the Kostroma Regional Court. The award was paid to the applicant in six instalments between 31 January and 22 March 2012.

B. Attempts to use domestic remedies against delayed enforcement of the judgments

1. The Compensation Act

76. The six applicants mentioned below applied to the competent Russian courts with claims for compensation for delayed enforcement of the judgments in their favour, relying on Federal Law no. 68-FZ of 30 April 2010, "On Compensation for Violation of the Right to a Trial within a Reasonable Time or the Right to Enforcement of a Judgment within a Reasonable Time" ("the Compensation Act").

77. The domestic courts consistently found those actions inadmissible. They held that the judgments at issue imposed on the authorities various obligations in kind, while the Compensation Act was only applicable to delayed enforcement of judgments establishing a monetary debt to be recovered from the State budgets. The Supreme Court of the Russian Federation confirmed on appeal that the Compensation Act was only applicable to monetary judicial awards.

78. The domestic courts concerned and the dates of their decisions are detailed below.

Ms Kostyleva: Supreme Court of the Komi Republic, 30 July 2010 (upheld on appeal by the Supreme Court of the Russian Federation on 28 September 2010);

Mr Zakharchenko: Leningrad Circuit Military Court, 6 October 2010 (upheld on appeal by the Supreme Court on 2 December 2010);

Ms Ilnitskaya: Saratov Regional Court, 4 February 2011 (upheld on appeal by the Supreme Court on 12 April 2011);

Mr Grinko: Moscow Circuit Military Court, 26 October 2010 (upheld on appeal by the Supreme Court on 25 January 2011);

Ms Antonova: Moscow Circuit Military Court, 29 August 2011;

Ms Tsvetkova: Kostroma Regional Court, 21 June 2011 (upheld on appeal by the same court on 27 July 2011).

2. Chapter 25 of the Code of Civil Procedure

79. On 31 May 2011 the applicant Ms Kostyleva sued the town administration for failure to comply with the judgments in her favour (see paragraphs 29 and 31 above). Relying on Chapter 25 of the Code of Civil Procedure she asked the Syktyvkar Town Court to acknowledge the administration's failings to be in breach of both the domestic law and the Convention.

80. On 2 June 2011 the court dismissed the complaint without considering the merits. It specified that such a complaint had to be considered in accordance with a special procedure provided for under Article 441 of the Code of Civil Procedure.

81. On 30 June 2011 the Supreme Court of the Komi Republic granted the applicant's appeal and quashed the judgment. It found that the applicant's complaint should have been examined by the lower court under Chapter 25 of the Code of Civil Procedure.

82. On 11 September 2011 the Syktyvkar Town Court reconsidered the applicant's complaint and granted it in part. With reference to the Convention and the Court's case-law, the Syktyvkar Town Court found the administration's failings unlawful and held that there had been a violation of Article 6 § 1 of the Convention in the applicant's case. It noted in particular that the first judgment of 2000 had not been enforced for at least eight and a half years, that is, until the delivery of the second judgment in 2009. At the same time the court rejected the applicant's request that the administration be ordered to comply with the first judgment by 31 December 2011, considering that the building she lived in was unsuitable for renovation and that the second judgment in the applicant's favour had already ordered the town administration to provide her with other housing.

83. On 7 November 2011 the Supreme Court of the Komi Republic dismissed the administration's appeal against the judgment of 11 September 2011.

3. The Civil Code

84. On 13 January 2012 the Syktyvkar Town Court partially granted Ms Kostyleva's civil action against the town administration and awarded her RUB 150,000 in compensation for non-pecuniary damage resulting from the administration's failure to comply with the first judgment in her favour for at least eight and a half years, that is, until the delivery of the judgment of 20 July 2009. The court relied in particular on Article 151 of the Civil Code in conjunction with Article 13 of the Convention.

85. On 20 February 2012 the applicant brought an appeal against that judgment. She argued that the monetary award had not adequately compensated for the serious non-pecuniary damage she had sustained and was not comparable to the amounts that the Court would have granted in such circumstances (*Zolotareva and Others v. Russia*, nos. 14667/05 et al., 12 April 2011).

86. The applicant's complaint was dismissed and the judgment upheld on appeal and cassation on 19 April 2012 and 17 July 2012 respectively.

II. RELEVANT DOMESTIC LAW AND PRACTICE

A. Constitution of the Russian Federation

87. The Constitution provides that everyone is entitled to judicial protection of his rights and freedoms (Article 46 § 1) and that the State authorities' acts and decisions are subject to judicial review (Article 46 § 2).

B. Binding force of judicial decisions and enforcement procedure

88. Federal Constitutional Law no. 1-FKZ of 31 December 1996 "On the Judicial System of the Russian Federation" holds that all judicial decisions which have become binding (literally "come into legal force" – *вступившие в законную силу*) are mandatory for all authorities without any exception and shall be rigorously complied with throughout the whole territory of the Russian Federation (section 6(1)). Failure to comply with a judicial decision and any other act amounting to contempt of court entail liability under federal law (section 6(2)).

89. Under Articles 13, 209 and 338 of the Code of Civil Procedure, as in force at the material time, a court judgment which has become binding is mandatory and must be executed.

90. Between 1997 and 2008, the enforcement procedure was governed by the Federal Law of 21 July 1997 (no. 119-FZ). It provided that a bailiff was to set a time-limit of up to five days for the defendant's voluntary compliance with a writ of execution. The bailiff was to warn the defendant that coercive action would follow, should the defendant fail to comply with the time-limit (section 9). The enforcement proceedings had to be completed within two months of the receipt of the writ of execution by the bailiff (section 13).

91. Federal Law on Enforcement Proceedings no. 229-FZ of 2 October 2007, which entered into force on 1 February 2008, broadened the bailiffs' powers. Under section 6 of the Law the requirements of the bailiff are binding on all State authorities, the local authorities, individuals and organisations and must be rigorously complied with throughout the territory of the Russian Federation. If a debtor does not fulfil the requirements set out in the writ of execution the bailiff imposes a fine under Article 17.15 of the Code of Administrative Offences (section 105). The bailiffs may, in particular, seize the debtor's property, apply to the State registration authorities for the registration of property rights and impose temporary restrictions on the debtor's travel abroad (section 64). They may send requests to the tax authorities and financial institutions asking for the debtor's bank details and information about any funds and valuables he holds and the respective authorities must provide such information within seven days (section 69). The expenses related to the enforcement

proceedings are to be paid back by the debtor to the federal budget, the creditor and anyone else who incurred those expenses (sections 116 and 117). Complaints about the bailiffs' decisions, actions and omissions in the course of the enforcement proceedings may be submitted to their heirarchical superior in accordance with the procedure provided for in the Law (sections 121-28).

C. Domestic remedies in respect of the non-execution or delayed execution of judgments

1. Compensation Act

92. On 30 April 2010 Russian Parliament adopted Federal Law no. 68-FZ "On Compensation for Violation of the Right to a Trial within a Reasonable Time or the Right to Enforcement of a Judgment within a Reasonable Time" ("the Compensation Act"). On the same date the Parliament adopted Federal Law no. 69-FZ, introducing a number of corresponding changes to the relevant federal laws. Both laws entered into force on 4 May 2010.

93. The Act entitles the party concerned to bring an action for compensation for a violation of his or her right to a trial within a reasonable time or the right to enforcement within a reasonable time of a judgment establishing a debt to be recovered from the State budgets (section 1(1)). A breach of the statutory time-limits for examination of the case does not amount *per se* to a violation of the right to a trial within a reasonable time or the right to enforcement of a judgment within a reasonable time (section1(2)). A compensation award is not dependent on the competent authorities' fault (section 1(3)). The compensation is awarded in monetary form (section 2(1)). The amount of the compensation should be determined by the courts according to the applicant's claims, the circumstances of the case, the length of the period during which the violation took place, the significance of its consequences for the applicant, the principles of reasonableness and fairness, and the practice of the European Court of Human Rights (section 2(2)). Further details of the Compensation Act may be found in the Court's decision in *Nagovitsyn and Nalgiyev v. Russia* (dec.), nos. 27451/09 and 60650/09, § 40, 23 September 2010.

94. The *travaux préparatoires* preceding the adoption of the Compensation Act reveal that the draft text initiated by the President of the Russian Federation provided that the parties to the enforcement proceedings also be entitled to claim compensation for delayed enforcement of a judicial decision establishing an obligation other than a monetary payment from the State budgets, if such delays resulted from failings on the part of the bailiffs (section 1(1)(2) of the draft). However, on 18 February 2010 the Government of the Russian Federation issued an opinion (no. 626-p-P4),

suggesting, *inter alia*, that the latter provision be deleted from the draft, arguing that the main purpose of the new legislation was to address non-enforcement of judgments against the State, its entities and municipalities, that is, public-law entities. The relevant paragraph was therefore deleted from the final draft Compensation Act as it was tabled in Parliament on 22 March 2010.

2. Restricted scope of the Compensation Act as upheld by the Russian supreme courts

95. Following the adoption of the Compensation Act several domestic courts attempted a wider interpretation of its section 1 so as to include the right to compensation for delayed enforcement of any judgment against the State, including judgments like those at issue in the present case. The courts' conclusions were supported by references to Russia's undertakings under the Convention and to the Court's case-law. They considered in particular that the reference to "a judgment establishing a debt to be recovered from the State budgets" should not restrict the scope of the Compensation Act to monetary obligations since the State's obligations in kind were also fulfilled at the expense of the State's budget (see, for example, the judgment by the Northern Caucasus Circuit Military Court of 13 July 2010 cited in *Ilyushkin and Others v. Russia*, nos. 5734/08 et al., § 12, 17 April 2012). However, the Supreme Court of the Russian Federation systematically quashed such judgments and held that the Compensation Act was only applicable to monetary judgment debts to be paid by the State (ibid., § 22).

96. This case-law was upheld by Joint Ruling no. 30/64 issued by the Supreme Court and the Supreme Commercial Court on 23 December 2010 containing the guidelines for interpretation of the Compensation Act by Russian courts. As a result, the Compensation Act has been consistently held not to include the right to compensation in respect of delayed enforcement of the judgments ordering the State to provide housing or to comply with other obligations in kind (see *Ilyushkin and Others*, cited above, §§ 19-20). The Supreme Court held that claimants who are not entitled to claim compensation for delayed enforcement of judgments under the Compensation Act may still claim compensation by way of a tort action in accordance with Articles 1069 and 1070 of the Civil Code or claim compensation in respect of non-pecuniary damage under Article 151 of that Code.

97. The problem of the limited scope of the Compensation Act was also raised before the Constitutional Court of the Russian Federation in two cases. The first case was brought by the Leningrad Circuit Military Court, which had reached the conclusion that section 1(1) of the Compensation Act was unconstitutional. The second was brought by an individual, Mr Golovin, whose complaint on account of the delayed enforcement of a

judgment against a private person had earlier been dismissed by the Saratov Regional Court and the Supreme Court. The Constitutional Court found both applications inadmissible by decisions delivered on 18 January (no. 45-O-O) and 8 February 2011 (no. 115-O-O), respectively. In the Constitutional Court's view, it was not acceptable that the public authorities could abuse their special position resulting from the impossibility of seizure of their budgetary funds through enforcement proceedings; the proper enforcement of such judgments should therefore be ensured through other means, such as the establishment of appropriate procedures for liability and effective remedies in accordance with Article 13 of the Convention. That the Compensation Act only addressed the delayed enforcement of judgments of a particular type did not mean that the legislator excluded the right to claim damages for other instances of delayed enforcement resulting from the fault of another. Referring to the above-mentioned Ruling by the Supreme Court, the Constitutional Court found that the general provisions of the Civil Code allowed compensation for delayed enforcement of judgments in cases falling outside the Compensation Act. As a result, the Constitutional Court did not find that section 1(1) of the Compensation Act violated the constitutional rights of the persons concerned. It added that it could not take over the legislator's function in extending the scope of the Compensation Act.

3. Code of Civil Procedure

98. Chapter 25 of the Code of Civil Procedure sets out the procedure for challenging State authorities' acts or inaction in courts. If a court finds that such a complaint is well-founded, it orders the State authority concerned to remedy the breach or unlawfulness found (Article 258).

4. Civil Code

99. Damage caused by unlawful action or inaction of State or local authorities or their officials is to be compensated from the Federal Treasury or a federal entity's treasury (Article 1069). Compensation for damage caused to an individual by unlawful conviction, prosecution, detention on remand or prohibition on leaving his or her place of residence pending trial is granted in full regardless of the fault of the State officials concerned and following the procedure provided for by law (Article 1070 § 1). Damage caused in the course of the administration of justice is compensated if the fault of the judge is established by a final judicial conviction (Article 1070 § 2).

100. A court may hold the tortfeasor liable for non-pecuniary damage caused to an individual by actions impairing his or her personal non-property rights or affecting other intangible assets belonging to him or her (Articles 151 and 1099 § 1). Compensation for non-pecuniary damage

sustained through an impairment of an individual's property rights is recoverable only in cases provided for by law (Article 1099 § 2 of the Civil Code). Compensation for non-pecuniary damage is payable irrespective of the tortfeasor's fault if damage was caused to an individual's life or limb, sustained through unlawful criminal prosecution, dissemination of untrue information and in other cases provided for by law (Article 1100 of the Civil Code).

101. On 3 July 2008 the Constitutional Court held (decision no. 734-O-P) that Article 151 of the Civil Code was not to be interpreted as preventing courts from awarding compensation for damage resulting from non-enforcement of domestic judicial decisions delivered against the State and its entities. In the Constitutional Court's view, this did not relieve the legislator from the obligation to rapidly set up the criteria and procedure for compensation for damage arising from non-enforcement of domestic judicial decisions by the State and its entities.

5. Criminal Code

102. Article 315 of the Criminal Code stipulates sanctions for persistent failure by a State official or civil servant to comply with a judicial decision that has acquired legal force. The sanctions include a fine, temporary suspension from service, community service (*обязательные работы*) for a maximum term of 240 hours or deprivation of liberty for a maximum term of two years.

D. Social housing

103. The RSFSR Housing Code (Law of 24 June 1983, in force until 28 February 2005) provided that a Russian citizen was entitled to possess a flat owned by the State under the terms of a tenancy agreement. Flats were granted for permanent use (Article 10). Priority was given to certain "protected" categories of individuals, such as disabled persons, war veterans, Chernobyl victims, police officers and judges. A decision to grant a flat was implemented by the local municipal authority issuing the citizen with an occupancy voucher (*ордер на жилое помещение*) (Article 47). On 1 March 2005 the new Housing Code of the Russian Federation came into force (Law no. 188-FZ of 29 December 2004). It upholds the right of certain Russian citizens to possess a flat owned by the State, under the terms of a tenancy agreement (Article 49). Numerous substantive and procedural mechanisms relating to citizens' right to housing and its implementation are set forth in the Code and in other federal laws and regulations.

E. Servicemen's right to housing

104. Federal Law no. 76-FZ of 27 May 1998 on the Status of Servicemen grants them the right to housing (section 15(1)(1)). That provision has been subject to numerous amendments over the years. According to the text in force as from 8 May 2006 (Law no. 66-FZ of 8 May 2006), the State was to ensure that servicemen be provided with housing or monetary funds to allow them to purchase housing in accordance with the procedure and under the conditions set by the federal laws and regulations. The text was again modified as from 1 January 2014 to specify, *inter alia*, that housing for servicemen or the monetary funds allocated for them to purchase housing are to be charged to the federal budget (Law no. 405-FZ of 28 December 2013). Numerous substantive and procedural mechanisms relating to servicemen's right to housing and its implementation are set forth in the Law on the Status of Servicemen and in other federal laws and regulations.

F. The problems related to delayed enforcement of judgments against the State as addressed by the Russian authorities

1. The President of the Russian Federation

105. In his annual address to the Federal Assembly delivered on 5 November 2008, the President of the Russian Federation stated in particular that it was necessary to establish a mechanism for compensation for damage caused by violations of citizens' rights to a trial within a reasonable time and to the full and timely implementation of court decisions. The President stressed that the execution of court decisions was still a huge problem which concerned all courts, including the Constitutional Court. He further stated that the problem was notably due to the lack of real accountability of officials and citizens who fail to execute court decisions and that this accountability was to be established.

106. In his latest address to the Federal Assembly delivered on 12 December 2013, the President specifically addressed the problem of the allocation of social housing. He stated that the Government had additionally planned to build 25 million square metres of housing by 2017, thus allowing families with modest revenues to improve their housing conditions. Overall, it was planned to build 75 million square metres of housing per year by 2016, while at the same time introducing legislative and administrative changes to facilitate the relevant procedures and provide the necessary facilities in the building area. The President further specified that all servicemen of the Ministry of Defence who were placed on the waiting list before 1 January 2012 had to be provided with permanent housing by the end of the year. He concluded that in the very near future the problem would be resolved and drew the attention of the Minister of Defence to the

issue, asking him to look into each individual case so as to find the most suitable solution.

2. The Federal Assembly of the Russian Federation

107. On 11 March 2014 a new Bill (no. 470358-6) was tabled with the State Duma by Mr O. Kazakovtsev, a member of the Council of Federation, providing for the extension of the scope of the Compensation Act to include delayed enforcement of judgments imposing obligations in kind on the State authorities. The Bill has been included in a preliminary programme of the State Duma to be considered in June 2014.

3. The Government of the Russian Federation

(a) The Government's monitoring of compliance with the Constitutional Court's and the European Court's judgments

108. In its annual report for 2012 submitted to the President in accordance with his Decree no. 657 of 20 May 2011 establishing the monitoring of the application of the law in the Russian Federation, the Government stated that the Ministries of Justice, Finance and Economic Development, in cooperation with the Supreme Court, the Supreme Commercial Court and the General Prosecutor's Office, were to draw up amendments to the Compensation Act in order to address the enforcement by the State of judgments imposing obligations in kind. Those steps were proposed in accordance with the Court's judgments in the cases of *Kalinkin* and *Ilyushkin* (cited below) and in connection with the communication by the Court of the case of *Gerasimov and Others* to the Government.

(b) The Government's Federal Programmes in the field of justice

109. A Federal Programme for Development of the Russian Judicial System for 2007-2012 (Decree no. 583 of 21 September 2006) stated that the enforcement of domestic judgments lacked effectiveness as the compulsory enforcement rate did not exceed 52%. An analogous federal programme for 2013-2020 (Decree no. 1406 of 27 December 2012) acknowledged problems in the administration of justice, including the ineffective enforcement of judicial decisions. The introduction of modern information technologies into the judicial system was found to be necessary. The programme envisaged in particular the setting up of a computer-based information system with the Federal Bailiff Service and development of an electronic archive. The latest Federal Programme, named "Justice" (Decree no. 517-r of 4 April 2013), listed the improvement of the quality of the enforcement of judicial decisions among the priorities of the State's official policy in the area.

4. The Commissioner for Human Rights of the Russian Federation

110. The Commissioner for Human Rights of the Russian Federation has regularly addressed the problem of non-enforcement of domestic judgments in his annual activity reports. The report for 2007 pointed out that the perception of domestic judgments as what one might call "non-compulsory recommendations" was still a widespread phenomenon not only in society but also within State bodies. It noted that the non-enforcement problem had also arisen in respect of judgments of the Constitutional Court.

111. In the report for 2010 the Commissioner stated that the situation regarding the non-enforcement of domestic judgments in Russia had started to improve in the wake of the *Burdov* pilot judgment. While acknowledging some positive developments, he stated that there were still numerous complaints about the enforcement of domestic judgments.

112. The report for 2012 pointed out that the allocation of housing to military servicemen was still complicated, not least by the poor organisation of the related functions within the Ministry of Defence. The Commissioner received complaints that were indicative of structural problems in the functioning of the relevant authorities, such as a lack of transparency in the distribution of housing, excessive delays in examining servicemen's complaints and in completing the formalities that allow them to move into the allocated apartments. According to the Commissioner's own inquiry, 1,200 sets of enforcement proceedings for allocation of housing in Moscow to servicemen of the Ministry of Defence, the Ministry of the Interior's troops and the FSB were pending before the Moscow Bailiff Department. According to the statistics received by the Commissioner from the Ministry of Defence, more than 1,000 of those judgments, three of which dated back to 1999, still remained unenforced.

III. COMMITTEE OF MINISTERS' SUPERVISION OF THE EXECUTION OF THE COURT'S JUDGMENTS IN SIMILAR RUSSIAN CASES

113. The Committee of Ministers is supervising the implementation of the Court's judgments delivered on numerous individual applications concerning the failed or delayed execution of domestic judgments imposing various obligations in kind on the State. The oldest case in this group has been pending before the Committee of Ministers since 2005 (*Shpakovskiy v. Russia*, no. 41307/02, 7 July 2005). In its Interim Resolution CM/ResDH(2009)43, adopted on 19 March 2009, the Committee of Ministers assessed the state of affairs in the following terms:

> "Recalling the consistent position of the Committee of Ministers, shared by the Russian authorities, as demonstrated in the Committee's previous decisions, that the problems at the basis of the violations found by the Court in these judgments were large-scale and complex in nature and that their resolution required the

implementation of comprehensive and complex measures at both federal and local level;

Considering the Memorandum (CM/Inf/DH(2006)19rev3) presenting the measures taken by the authorities and the outstanding issues and the Conclusions of two high-level Round Tables on non-enforcement of court decisions by the state and its entities respectively of October 2006 (CM/Inf/DH(2006)45) and of June 2007 (CM/Inf/DH(2007)33);

As regards prevention of non-execution or delayed execution:

Noting in particular the progress made by the competent Russian authorities in resolving the main structural problems underlying the violations, through:

- continuous improvement of the legislative and regulatory framework which resulted particularly in the setting up of execution and enforcement mechanisms;

- adoption of a number of organisational measures, thus ensuring better monitoring of the execution by the state and its entities of court decisions;

- reform of the budgetary regulations with a view to guaranteeing additional funding to avoid unnecessary delays in the execution of judicial decisions in case of shortfalls in the initial budgetary appropriations;

Noting with satisfaction that these measures are, to a certain extent, based on the proposals made in the Committee of Ministers' documents (see in particular CM/Inf/DH(2006)19 rev 3 and CM/Inf/DH(2006)45) and welcoming the authorities' coordinated and interdisciplinary approach to their implementation;

Considering that despite the positive developments mentioned above, the major effects of these reforms, not least in preventing new applications before the Court, remain to be demonstrated and that further action is still needed to ensure full compliance by the Russian Federation with its obligations resulting from the Court's judgments;

...

Stressing that the situation continues to give rise to serious concerns in a number of problematic areas and/or in respect of certain defendant state authorities, in particular

...

- execution of judicial decisions by the Ministry of the Interior, the Ministry of Defence and certain other agencies;

Stressing therefore the need for the competent Russian authorities to enhance their efforts to make rapid and visible progress in the areas concerned, thus effectively ensuring at domestic level appropriate redress for violations of the Convention and preventing the risk of a further influx of applications before the Court;

As regards domestic remedies

Stressing that the provision of such remedies is all the more pressing in case of repetitive violations, so as to enhance the remedial capacity of the national judicial system, pending the implementation of more comprehensive and time-consuming reforms;

Recalling that in order for such remedy to be effective in cases of non-enforcement or delayed enforcement of domestic judicial decisions, the following core requirements of the Convention should be met:

- a person should not be required to prove the existence of non-pecuniary damage as the latter is strongly presumed to be the direct consequence of the violation itself;

- compensation should not be conditional on the establishment of fault on the part of officials or the authority concerned as the state is objectively liable under the Convention for its authorities' failure to enforce court decisions delivered against them within a reasonable time;

- the level of compensation must not be unreasonable in comparison with the awards made by the Court in similar cases;

- adequate budgetary allocations should be foreseen so as to ensure that compensation is paid promptly and generally no later than six months from the date on which the decision awarding compensation becomes enforceable;

...

Noting with interest the draft federal constitutional law submitted by the Supreme Court of the Russian Federation to Parliament on 30 September 2008, which takes account of these requirements of the Convention;

Noting further that a special working group involving the representatives of the main State agencies has been set up upon the President's mandate rapidly to find an appropriate solution with a view to introducing a remedy required by the Convention in the Russian legal system;

...

CALLS UPON the Russian authorities to rapidly translate into concrete actions the will expressed at the highest political level to combat non-enforcement and delayed enforcement of domestic judicial decisions and to set up to that end effective domestic remedies either through rapid adoption of the constitutional law mentioned above or through amendment of the existing legislation in line with the Convention's requirements;

URGES the Russian authorities to give priority to resolving outstanding non-enforcement issues in the problem areas identified above so as rapidly to achieve concrete and visible results, thus limiting the risk of new violations of the Convention and of further applications before the Court;

ENCOURAGES the Russian authorities to continue their efforts in the implementation of the initiated reforms so as to ensure full and timely execution of domestic courts decisions, in particular through:

- ensuring better coordination between different authorities responsible for the execution of domestic judicial decisions so as to avoid the risk that claimants are caught in a vicious circle in which different authorities send them back and forth;

- further improving the rules governing all execution procedures, including appropriate role for bailiffs and judicial review;

- ensuring the existence of appropriate general regulations and procedures at federal and local level for the implementation of the authorities' financial obligations;

- further developing recourse to different remedies already provided by Russian legislation so as to ensure their implementation in case of non-enforcement or belated enforcement of judicial decisions with sufficient certainty as required by the Convention;

- strengthening state liability for non-execution as well as the individual responsibility (disciplinary, administrative and criminal where appropriate) of civil servants;

... ”

114. According to the latest information available to the Court, the Committee of Ministers was awaiting updated information from the Russian authorities on further measures adopted or envisaged to comply with the Court’s judgments in this group of cases. In twenty-four cases the applicants complained that the domestic judgments in their favour had remained unenforced notwithstanding the finding of violations by the Court and its decisions that the authorities must secure the enforcement by appropriate means. The issue as to the effectiveness of domestic remedies against such violations in view of the limited scope of the Compensation Act also remained outstanding. However, the latest “action plan” submitted by the Government to the Committee of Ministers on 13 May 2014 fails to address the latter issue (see DH-DD(2014)658 of 19 May 2014).

THE LAW

I. JOINDER OF THE APPLICATIONS

115. The Court notes that all the above applications contain similar grievances and raise similar issues under the Convention. It finds it appropriate, in the interests of the proper administration of justice, that the applications be joined in accordance with Rule 42 § 1 of the Rules of Court.

II. THE GOVERNMENT’S UNILATERAL DECLARATIONS AND REQUESTS TO STRIKE OUT NINE APPLICATIONS UNDER ARTICLE 37 OF THE CONVENTION

116. The Court reiterates at the outset that a distinction must be drawn between, on the one hand, declarations made in the course of strictly confidential friendly-settlement proceedings and, on the other, unilateral declarations made by a respondent Government in public and adversarial proceedings before the Court, as in the present case (see *Tahsin Acar v. Turkey* (preliminary issue) [GC], no. 26307/95, §§ 74-77, ECHR 2003-VI). It will therefore examine in detail the Government’s unilateral declarations and the applicants’ comments on them in the light of the relevant Convention principles.

A. The Government's unilateral declarations and the applicants' comments

117. On 1 October 2012 the Government submitted unilateral declarations with a view to resolving the issue raised in the six applications lodged by Mr Gerasimov, Ms Baranova, Ms Troshina, Ms Ilnitskaya, Ms Antonova and Ms Tsvetkova. On 19 February 2013 the Government submitted similar declarations aiming at the resolution of the three other cases brought by Mr Shmakov, Mr Starostenkov and Mr Zakharchenko.

118. In all those cases the Government acknowledged the lengthy enforcement of the domestic judgments in the applicants' favour and informed the Court of the dates of their enforcement (see paragraphs 9-75 above). The Government declared their readiness to pay the applicants the following sums as just satisfaction (the enforcement delays calculated by the Government in each case appear within parentheses):

Mr Gerasimov – 2,625 Euros (EUR) (5 years 4 months and 7 days);
Mr Shmakov – EUR 6,500 (8 years 5 months and 10 days);
Ms Baranova – EUR 560 (1 year 1 month and 18 days);
Mr Starostenkov – RUB 35,820 (4 years 5 months and 8 days);
Mr Zakharchenko – EUR 6,010 (6 years 1 month and 15 days);
Ms Troshina – EUR 2,280 (4 years 7 months and 22 days);
Ms Ilnitskaya – EUR 2,145 (2 years 2 months and 7 days);
Ms Antonova – EUR 6,500 (6 years 9 months and 24 days);
Ms Tsvetkova – EUR 3,165 (3 years 2 months and 23 days).

119. The Government therefore invited the Court to strike those applications out of the list of cases, suggesting that their declarations might be accepted by the Court as "any other reason" justifying such a course of action in accordance with Article 37 § 1 (c) of the Convention.

120. Each declaration was concluded as follows:

> "The sum referred to above, which is to cover any pecuniary and non-pecuniary damage as well as costs and expenses, will be free of any taxes that may be applicable. It will be payable within three months from the date of notification of the decision taken by the Court pursuant to Article 37 § 1 of the European Convention on Human Rights. In the event of failure to pay this sum within the said three-month period, the Government undertake to pay simple interest on it from expiry of that period until settlement, at a rate equal to the marginal lending rate of the European Central Bank during the default period plus three percentage points.
>
> The payment will constitute the final resolution of the case."

121. The first applicant's widow, Ms Gerasimova, and the applicant Ms Antonova agreed to the terms of the Government's declarations on 25 February 2013 and 3 December 2012, respectively. The other seven applicants declined the Government's offers of compensation and maintained their complaints for the following reasons.

122. By a letter of 1 April 2013 Mr Shmakov considered that while the authorities' actions appeared correct on the face of it, his family's legitimate right to housing, upheld by the courts, had been severely violated for more than eight years, thus inducing him to accept the replacement of the initial housing award by an inadequate monetary sum (see paragraph 23 above).

123. Ms Baranova submitted on 7 November 2012 that the Government's offer would not even come close to compensating for the damage to health and mental suffering sustained by her family, including her 85 year-old mother and 13 year-old daughter, who had had to spend two cold seasons in an unheated apartment.

124. On 18 March 2013 Mr Starostenkov disagreed with the Government's declaration, considering that the measures taken by the authorities had not secured full redress. He argued that the respondent authority had not equipped the car with a special hand control device and, therefore, had enforced the judgment in a superficial manner without taking account of his special needs as a handicapped person. He concluded that his case could only be settled through an additional payment of RUB 56,000, corresponding to the costs of the hand control equipment (see paragraph 44 above).

125. Mr Zakharchenko submitted on 15 April 2013 that the compensation offered by the Government was not commensurate to the damage arising from the six-year delay in the enforcement of the judgment in his favour, a clear breach of the domestic law.

126. On 15 November 2012 Ms Troshina also questioned the appropriateness of the Government's declaration. She argued that the judgment of 13 April 2007 had not been enforced by the authorities, as they had failed to consider her request for data from the land registry in accordance with the domestic law in force at the material time. As a result she had not received the necessary information and could not enjoy her property rights in respect of the plot of land concerned.

127. On 10 November 2012 Ms Ilnitskaya rejected the Government's offer, pointing to the substantially higher awards made by the Court for similar violations of Articles 6 § 1 and 13 of the Convention and Article 1 of Protocol No. 1 (*Ilyushkin and Others*, cited above). She highlighted in particular the damage arising from the continuing absence of an effective domestic remedy capable of granting redress for the delayed enforcement of the judgment in her favour.

128. By a letter received by the Court on 19 November 2012, Ms Tsvetkova considered the Government's offer insufficient and maintained her complaint.

B. The Court's assessment

129. The Court observes that two applicants agreed to the Government's offer, while seven others asked the Court to continue the examination of their applications. It reiterates that, under certain circumstances, it may be appropriate to strike out an application under Article 37 § 1 (c) of the Convention on the basis of a unilateral declaration by the respondent Government, even if the applicant wishes the examination of the case to be continued. It will, however, depend on whether the unilateral declaration offers a sufficient basis for finding that respect for human rights as defined in the Convention does not require the Court to continue its examination of the case (Article 37 § 1 *in fine*; see also *Tahsin Acar*, cited above, § 75).

130. Relevant factors in this respect include the nature of the complaints made, whether the issues raised are comparable to issues already determined by the Court in previous cases, the nature and scope of any measures taken by the respondent Government in the course of the execution of judgments delivered by the Court in any such previous cases, and the impact of these measures on the case at hand. Other relevant factors may include the question of whether in their unilateral declaration the respondent Government have made any admission(s) in relation to the alleged violations of the Convention and, if so, the scope of such admissions and the manner in which they intend to provide redress to the applicant (ibid., § 76).

131. In connection with the last-mentioned point, the Court notes that the declarations submitted by the Government in the present case were no doubt intended to resolve the issues raised by the nine applications concerned. Indeed, they acknowledged, at least in substance, the well-foundedness of the applicants' complaints arising from the delayed enforcement of the judgments in their favour, confirmed that those judgments had eventually been enforced and offered monetary compensation for the delays in enforcement.

132. The Court, like the applicants, does not question the Government's admissions on account of the delayed enforcement of the judgments in the applicants' favour. It notes, nonetheless, that seven applicants challenge the adequacy of the remedial measures proposed and, in particular, the amounts offered in compensation. While noting that the offers of compensation are directly proportionate to the delays in enforcement of the judgments, the Court is of the view that the adequacy of each of them should also be assessed with due regard to what was at stake in each particular application and to the amounts of just satisfaction the Court has awarded under the Convention in similar circumstances (see *Burdov (no. 2)*, cited above, § 154). However, the Court does not find it necessary to proceed at this stage to a detailed assessment of the offers in view of the following considerations, which compel it in any event to pursue the examination of the applications.

133. As noted by one of the applicants (see paragraph 127 above), the Government's declarations ignore another key aspect of the case, namely, the right to an effective domestic remedy. However, a violation of that right has been invoked by the majority of the applicants and was explicitly raised by the Court in respect of all the applications when they were communicated to the Government on 10 April 2012.

134. At that point the Court also raised a question of principle as to the existence of a systemic problem arising both from delayed enforcement of domestic judgments imposing obligations in kind on the State authorities and the lack of domestic remedies in respect of such delays. A pilot judgment procedure was accordingly set in motion. In so doing, the Court took account of its finding that large groups of people were still deprived of an effective domestic remedy and thus compelled to seek redress in the Court for straightforward violations of their Convention rights (see *Kalinkin and Others v. Russia*, nos. 16967/10 et al., §§ 37-38, 17 April 2012, and *Ilyushkin and Others*, cited above, §§ 43-44). These elements weigh heavily in the Court's assessment of whether respect for human rights as defined in the Convention requires the examination of the case to be continued.

135. Indeed, when a case raises questions of a general character affecting the observance of the Convention, the Court may find it necessary to continue the examination of that case, notwithstanding its settlement by the parties or the existence of any other ground for striking the case out of its list (see *Tyrer v. the United Kingdom*, no. 5856/72, Commission's report of 14 December 1976, § 2, Series B 24). Such questions of a general character would arise, for example, where there is a need to clarify the States' obligations under the Convention or to induce the respondent State to resolve a structural deficiency affecting other persons in the same position as the applicant. The Court has thus been frequently led, under Articles 37 and 39, to verify that the general problem raised by the case had been or was being remedied and that similar legal issues had been resolved by the Court in other cases (see *Korolev v. Russia* (dec.), no. 25551/05, ECHR 2010, with further references).

136. Considering the present case along these lines, as required by Article 37 § 1 *in fine*, and having regard to its responsibilities under Article 19 of the Convention, the Court discerns the existence of special reasons that warrant its examination on the merits.

137. While the Court has already determined similar issues in previous cases and ascertained the member States' obligations under the Convention, it continues to receive hundreds of meritorious applications of that kind from the Russian Federation as a result of the deficiencies of domestic remedies (see, for example, *Kalinkin* and *Ilyushkin and Others*, cited above, which concern fifty Russian servicemen and their families). This situation is at odds with the principle of subsidiarity, thus fundamentally undermining respect for human rights as defined in the Convention. The Court

accordingly communicated the present applications with an emphasis on Article 13 (see paragraphs 6 above and 141 below), which gives direct expression to the States' obligation, enshrined in Article 1 of the Convention, to protect human rights first and foremost within their own legal systems (see *Kudła v. Poland* [GC], no. 30210/96, § 152, ECHR 2000-XI, and *Burdov (no. 2)*, cited above, § 96). In that context, the Court specifically referred to the fact that the Compensation Act adopted in response to the *Burdov* pilot judgment did not encompass the present applicants' complaints.

138. Against this background, the Court observes that the Government's declarations do not bear any undertaking to address this crucial issue under the Convention, although it still affects a very large group of people in Russia, including the applicants. While the material before the Court reveals certain initiatives seeking to rectify the present situation (see paragraphs 107-108 above), they do not in any way engage the Government *vis-à-vis* either the Court or the applicants. The Court further notes the Government's failure to address this crucial point in their latest "action plan" submitted on 13 May 2014 to the Committee of Ministers under Article 46 of the Convention (see paragraph 114 above). The acceptance of the Government's request to strike the present "pilot" applications out of the Court's list would leave the current situation unchanged without any guarantee that a genuine solution would be found in the near future. Nor would it bring the Court any further in the fulfilment of its task under Article 19, that is to "ensure the observance of the engagements undertaken by the High Contracting Parties in the Convention and the Protocols thereto" (see, *mutatis mutandis*, *Rantsev v. Cyprus and Russia*, no. 25965/04, §§ 199 and 201, ECHR 2010 (extracts), and compare *Korolev*, cited above).

139. In view of the above, the Court decides that respect for human rights as defined in the Convention requires it to pursue the examination of all the nine applications notwithstanding the Government's admissions and offers of compensation in respect of the delayed enforcement of the domestic judgments. This conclusion equally applies to the seven declarations contested by the applicants and the two others accepted by them. The requests to strike the applications out of its list on the basis of the Government's declarations must therefore be rejected.

III. ALLEGED VIOLATIONS OF ARTICLES 13 AND 6 OF THE CONVENTION ON ACCOUNT OF DELAYED ENFORCEMENT OF THE JUDGMENTS AND THE LACK OF AN EFFECTIVE DOMESTIC REMEDY

140. All the applicants complained, either explicitly or in substance, that the authorities' failure to enforce the judgments in their favour within a

reasonable time had violated their right to a court guaranteed by Article 6 of the Convention. The relevant provision reads as follows:

> "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 ..."

141. Six applicants also complained that there was a lack of effective domestic remedies in respect of their complaints about the prolonged non-enforcement by the authorities of the domestic judgments in their favour. Given that the alleged ineffectiveness of domestic remedies concerns all the present applications and many others being brought before it, the Court has raised this issue in respect of all the applicants and requested the parties' observations. Article 13 provides as follows:

> "Everyone whose rights and freedoms as set forth in [the] Convention are violated shall have an effective remedy before a national authority notwithstanding that the violation has been committed by persons acting in an official capacity."

A. The parties' submissions

1. The Government

142. While acknowledging that the excessive delays in the enforcement of the judgments in the applicants' favour were inconsistent with Article 6 of the Convention, the Government deemed the applications inadmissible, considering that Ms Kostyleva had lost her victim status and the other applicants had failed to exhaust the available domestic remedies.

143. The Government insisted that the applicants had had at their disposal effective domestic remedies as they could have claimed compensation from the State under the Civil Code. Compensation so awarded had to be paid from the federal budget and could not be at the respondent authority's expense. Referring to the Constitutional Court's and the Supreme Court's position (see paragraphs 96-97 and 101 above), the Government maintained that the exclusion of the present cases from the Compensation Act did not prevent the applicants from using the Civil Code provisions, which complied with the requirements of clarity, foreseeability and certainty. Thus, the applicant Ms Kostyleva obtained two judgments by the domestic court acknowledging unlawful inaction on the part of the respondent administration and awarding substantial compensation in that regard (see paragraphs 82 and 84. above). The Government also provided three similar decisions by the courts of general jurisdiction awarding compensation for non-enforcement of judgments against the State authorities concerning the provision of housing: the judgment of 6 June 2008 by the Nevskiy District Court of Saint-Petersburg awarding RUB 30,000 to each applicant for an enforcement delay of eight years, the judgment of 19 April 2012 by the Syktyvkar Town Court awarding RUB 35,000 for an enforcement delay of four years, and the judgment of

1 September 2010 by the Iglinskiy District Court of the Republic of Bashkortostan awarding RUB 50,000 to each applicant for an enforcement delay of five years. The courts justified their awards by reference to the Constitution, the Convention and the Court's case-law.

144. The Government provided, in addition, nine judgments of commercial courts awarding damages on account of delayed enforcement of judgments ordering various obligations in kind in commercial disputes with the State. The commercial courts found that the bailiffs were at fault for failing to ensure the timely enforcement of the judgments and awarded compensation to the aggrieved parties to be paid from the State's budget.

2. The applicants

145. The applicant Ms Kostyleva submitted that she remained a victim of a persistent and continuing violation of the Convention which could not be remedied by a simple monetary award. She argued that the compensation for non-pecuniary damage she had received in court would only have been meaningful if her right to decent housing conditions upheld by the domestic courts in 2000 and 2009 had eventually been exercised. However, the respondent local authorities had continued to ignore their obligation arising from the courts' judgments. As regards the domestic remedies referred to by the Government, the applicant argued that they were ineffective for two reasons. First, the domestic judicial awards referred to by the Government, including that made in the applicant's case, were far too low in comparison with those made by the Court in similar situations. Secondly, the Government had not referred to any remedy that would accelerate enforcement of the judgment after such a long delay.

146. Likewise, the applicant Mr Grinko submitted that the domestic remedies were ineffective as regards both the amounts awarded in compensation by Russian courts and the inability of the latter to ensure that the right recognised in those judgments could be exercised. The applicant insisted that neither the bailiffs nor the Prosecutor's Office, which had to supervise compliance with the law, had been able to induce the respondent authorities to act in his case.

147. Seven other applicants also maintained their complaints (see paragraphs 122-128 above).

B. Court's assessment

1. Admissibility

(a) Victim status of the applicant Ms Kostyleva

148. The Court notes that the Syktyvkar Town Court considered the applicant's complaints on 11 September 2011 and 13 January 2012 and

granted her claims in part: a delay of eight and a half years in the enforcement of the judgment of 2 October 2000 was acknowledged and the applicant was awarded RUB 150,000 in compensation (approximately EUR 3,700).

149. It reiterates, however, that a decision or measure favourable to the applicant is not in principle sufficient to deprive him of his status as a "victim" unless the national authorities have acknowledged, either expressly or in substance, and then afforded redress for, the breach of the Convention (*Amuur v. France*, 25 June 1996, § 36, *Reports of Judgments and Decisions* 1996-III).

150. The Court observes that the domestic court only granted the applicant partial satisfaction in respect of her complaints under the Convention. This applies first to the scope of the administration's failings acknowledged by the domestic court. Indeed, it limited its assessment to the eight-year delay in complying with the first judgment of 2 October 2000, leaving aside the obvious fact that the applicant's situation had already been aggravated by the administration's continuing failure to comply with the second judgment of 20 July 2009 for more than two years by that time.

151. Secondly, the adequacy of the monetary amount set by the domestic court in compensation is open to doubt: the sum awarded is less than half of the Court's awards in the similar cases involving comparable enforcement delays (see, for example, *Kalinkin and Others*, cited above, §§ 44 and 59-62, and *Ilyushkin and Others*, cited above, §§ 50 and 74-77). The Court's reasoning in those cases is largely relevant to Ms Kostyleva's personal circumstances and her argument that the amount she was awarded in compensation was unreasonably low is sound.

152. Most importantly, however, the Court is convinced by the applicant's argument that monetary compensation in her case did not in any event secure adequate redress, given the defendant authority's persistent failure to honour the judgments for more than two years after payment of the compensation for non-enforcement (see, *mutatis mutandis*, *Nagovitsyn and Nalgiyev v. Russia* (dec.), cited above, § 35). Indeed, the Court has still not received any confirmation that either the first or the second judgment in the applicant's favour has been complied with. As a result, her housing conditions remain unacceptable more than thirteen years after the first judicial decision ordering their improvement.

153. In view of the foregoing, the Court concludes that the Syktyvkar Town Court's judgments relied upon by the Government neither contained an appropriate acknowledgment of the alleged breach of the Convention, nor afforded adequate redress in that respect. Accordingly, they do not deprive the applicant of her status as a "victim" and the Government's objection must therefore be dismissed.

(b) Exhaustion of domestic remedies

154. The Court reiterates that the purpose of Article 35 § 1 is to afford the Contracting States the opportunity of preventing or putting right – usually through the courts – the violations alleged against them before those allegations are submitted to the Court (see *Fressoz and Roire v. France* [GC], no. 29183/95, § 37, ECHR 1999‑I). The rule is based on the assumption, reflected in Article 13 of the Convention – with which it has close affinity – that there is an effective remedy available to deal with the substance of an "arguable complaint" under the Convention and to grant appropriate relief (*Ananyev and Others v. Russia*, nos. 42525/07 and 60800/08, § 93, 10 January 2012). 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 and Others v. Turkey*, judgment of 16 September 1996, § 68, *Reports* 1996‑IV, and *Kovaleva and Others v. Russia* (dec.), no. 6025/09, 25 June 2009).

155. The Government's objection is based on their view that such remedies exist in Russian law and that the applicants failed to exhaust them with the exception of Ms Kosyleva. The Court notes that this objection is closely linked to the issue of effectiveness of domestic remedies and alleged violation of Article 13 of the Convention. It therefore joins the Government's objection to the merits.

(c) Conclusion

156. The Court further finds that the complaints are neither manifestly ill-founded within the meaning of Article 35 § 3 (a) of the Convention nor inadmissible on any other grounds. They must therefore be declared admissible.

2. Merits

(a) Existence of effective domestic remedies as required by Article 13 of the Convention

157. The Court observes at the outset that it has already given thorough consideration to the issue of effective domestic remedies in the context of numerous Russian cases concerning delayed enforcement of domestic judgments by the respondent State authorities. It refers notably to its first pilot judgment in the *Burdov* case focusing on that issue and setting out the applicable Convention principles in that regard (*Burdov (no.2)*, cited above, §§ 96-100).

158. The Court must once again reiterate these principles and firmly insist on the primordial role of the domestic remedies to ensure the appropriate functioning of the Convention system. The need for effective domestic remedies is all the greater in respect of large numbers of repetitive

cases which require the finding of basic facts or the calculation of monetary compensation (see *Demopoulos and Others v. Turkey* (dec.), nos. 46113/99 et al., § 69, ECHR 2010, and *Nagovitsyn et Nalgiyev* (dec.), cited above, § 40).

159. The *Burdov* pilot judgment thus pursued the aim of bringing large numbers of cases concerning the authorities' failure to comply with domestic judgments first and foremost within the jurisdiction of Russian courts (see *Burdov (no. 2)*, cited above, §§ 141 and point 6 of the operative part). That was also the rationale behind two legislative proposals which were tabled before and after the pilot judgment with a view to setting up a special judicial compensatory mechanism to ensure adequate redress for such repetitive violations at the domestic level: a draft constitutional law tabled by the Supreme Court on 26 September 2008 (see *Burdov (no. 2)*, cited above, §§ 34-37) and a new one tabled by the President of the Russian Federation on 22 March 2010 (see paragraph 94 above).

160. Those successive legislative initiatives coming from different Russian authorities leave little doubt about their common understanding that the classic civil remedies provided for by the Civil Code and the Code of Civil Procedure did not ensure genuinely effective redress in such cases. The Court's pilot judgment upheld the same view, concluding that there was no effective domestic remedy in Russian law, either preventive or compensatory, allowing for adequate and sufficient redress in the event of prolonged non-enforcement of judicial decisions against the State authorities (see *Burdov (no. 2)*, §§ 101-17).

161. While reaching this conclusion, the Court made no distinction of principle between domestic judgments ordering monetary payments from the State budget as in the *Burdov* case and judgments ordering the provision of housing or other specific action to be taken by the State authorities. Nor did any such difference appear in the Supreme Court's draft constitutional law of 26 September 2008, which sought to establish a compensation mechanism in the event of non-enforcement of any judgment by respondent State authorities. Against that background, the Government opted at a later stage for radically restricting the scope of the draft Compensation Act to judgments awarding monetary payments against the State (see paragraph 94 above). As a result, the effective domestic remedy set up by the Compensation Act is not available to the applicants in the present cases.

162. Relying on the Constitutional Court's case-law and the Supreme Court's guidance, the Government argued before the Court that the restricted scope of the Compensation Act did not exclude the applicants' right to claim compensation for non-pecuniary damage under the relevant provisions of the Civil Code (see paragraphs 96-97 and 101 above). However, the Court finds no tangible element in the Government's submissions to overrule the widely shared view that those remedies were ineffective in the applicants' cases.

163. The Constitutional Court's basic assumption that the Compensation Act does not bar the applicants' access to a civil claim for compensation under the Civil Code (see paragraph 97 above) does not mean, as the Government seem to suggest, that the latter avenue is sufficiently effective in practice in the light of the Convention requirements. As the Court has repeatedly held in its judgments, while the possibility of such compensation was not totally excluded – and was indeed granted in certain rare cases – this remedy did not offer reasonable prospects of success, being notably conditional on the establishment of the authorities' fault (see *Burdov (no. 2)*, cited above, § 110). The Court reiterates its view that such fault is particularly difficult to establish as the respondent authority may delay execution of a domestic judgment due to various obstacles which do not, as a rule, entail the authorities' civil responsibility under the Russian law (ibid., § 111). The establishment of fault as a precondition for the State's responsibility for delayed enforcement of judgments by respondent State authorities is still difficult to reconcile with the very strong presumption that such delays will occasion non-pecuniary damage (ibid., §§ 100 and 111, and compare Section 1(3) of the Compensation Act).

164. The Government did not point to any major development in domestic case-law demonstrating the contrary. The three decisions of the courts of general jurisdiction produced by the Government for the period from 2008 to 2012 (see paragraph 143 above) still appear as exceptional and isolated instances rather than evidence of established and consistent case-law. As to the other examples of domestic judgments by Russian commercial courts (see paragraph 144 above), they are of little relevance since commercial courts had no competence to adjudicate the issues raised by the applicants in the present case. In any event, the existence of a limited number of such examples from domestic court practice cannot alter the Court's earlier conclusion that the remedy in issue is not sufficiently effective in both theory and practice.

165. In view of the foregoing, the Court is bound to uphold its earlier conclusions that there is no effective domestic remedy in Russia allowing acceleration of – or compensation for – delayed enforcement of domestic judgments delivered against State authorities in all cases that do not fall within the limited scope of the Compensation Act (see *Kalinkin and Others*, cited above, §§ 37-38, and *Ilyushkin and Others*, cited above, §§ 43-44).

166. The Court finds it beyond any dispute that the Compensation Act is not applicable to the present applications, all of which concern judgments by which the respondent State authorities were ordered to provide the applicants with housing or to comply with other obligations in kind (see paragraphs 76-78 above). The applicants thus disposed of no effective remedy at the domestic level in respect of their arguable complaints. The Court therefore rejects the Government's plea of non-exhaustion of

domestic remedies and finds that there was a violation of Article 13 of the Convention in respect of all the applicants.

(b) Alleged violations of Article 6 of the Convention

167. The parties did not dispute that the delays in enforcement of the judgments breached the applicants' right to a court under Article 6 of the Convention (see paragraphs 118 and 142 above). The Court also considers that the prolonged delays here at issue leave no doubt in that regard. However, given the importance of clarifying the Convention requirements for the sake of future adjudication and settlement of similar cases, the Court finds it appropriate to reiterate the main Convention principles set out in its case-law and to clarify the way they should apply to the present and similar applications.

168. Execution of a judgment given by any court is an integral part of the "trial" for the purposes of Article 6 of the Convention; an unreasonably long delay in enforcement of a binding judgment may therefore breach the Convention (see *Hornsby v. Greece*, 19 March 1997, § 40, *Reports* 1997-II, and *Burdov v. Russia*, no. 59498/00, § 37, ECHR 2002-III). Some delay may be justified in particular circumstances but it may not, in any event, be such as to impair the essence of the right protected under Article 6 § 1 (see *Burdov*, cited above, § 35). The reasonableness of such delay is to be determined having regard in particular to the complexity of the enforcement proceedings, the applicant's behaviour and that of the competent authorities, and what was at stake for the applicant in a given case (see *Raylyan v. Russia*, no. 22000/03, §§ 31-34, 15 February 2007, with further references).

169. As the Court was deciding a plethora of complaints about delayed enforcement of judgments by the Russian State authorities, its case-law yielded certain presumptions allowing more effective adjudication of numerous repetitive cases. The Court thus consistently held that a delay of less than one year in payment of a monetary judicial award was in principle compatible with the Convention, while any longer delay was *prima facie* unreasonable (see, among many others, *Kosheleva and Others v. Russia*, no. 9046/07, § 19, 17 January 2012). However, this presumption may be rebutted in view of particular circumstances and with due regard to the aforementioned criteria of "reasonableness" (see, for example, *Belayev v. Russia* (dec.), no. 36020/02, 22 March 2011, where a delay of more than one year in payment of a judgment debt was considered acceptable given the applicant's uncooperative stance).

170. The application of the above-mentioned criteria of reasonableness to the enforcement of judgments ordering that specific action be taken by the State may trigger a different presumption. The enforcement of certain judgments of that type must, in the Court's view, be completed within a stricter time-limit. For example, the judgment in Ms Troshina's favour

required a straightforward act to be taken by the administration, that is, to respond to the applicant's request for certain data from the land register. As regards the applications of Mr Gerasimov, Ms Baranova and Mr Starostenkov, the domestic judgments in their favour were more burdensome for the respondent authorities but nonetheless required special diligence given what was at stake for the applicants (respectively, the obligation to ensure basic utility services and renovation, the provision of heating supply in time for the cold season and a car for rehabilitation of a person affected by a lifelong disability). The Court considers that a delay in the enforcement of any of these four judgments exceeding six months should in principle be considered as unreasonably long and, therefore, inconsistent with the Convention requirements.

171. The seven other applications here at issue concern the State authorities' duty to provide the applicants with housing or a housing voucher. The Court has already acknowledged that enforcing a judgment requiring allocation of housing may take longer than the payment of a monetary sum (see *Kravchenko and Others*, no. 11609/05, § 35, 21 February 2011). In the great majority of such housing cases decided in the past, violations of the Convention were found on account of enforcement delays exceeding two years (see more than one hundred applications decided by groups in *Kravchenko and Others*; *Zolotareva and Others*; *Ilyushkin and Others*; *and Kalinkin and Others*, all cited above). The Court will thus presume, with due regard to the complexity of housing allocation procedures, that a delay of below two years in the enforcement of such a judgment would not be incompatible with the "reasonable time" requirement unless it disclosed an exceptional situation requiring special diligence. For example, enforcement delays of one year or longer were considered by the Court to violate the Convention when a judgment ordered the applicants' rehousing from derelict buildings (see *Bulycheva v. Russia*, no. 24086/04, § 33, 8 April 2010, and *Nevolin v. Russia*, no. 38103/05, §§ 15-19, 12 July 2007) or to provide housing to homeless victims of terrorism (*Sitnitskiye v. Russia*, no. 17701/03, §§ 17-18, 12 June 2008, and *Lyudmila Dubinskaya v. Russia*, no. 5271/05, § 17, 4 December 2008). The Court will continue to follow this approach in similar cases requiring special diligence.

172. In any event, the existence of the above-mentioned presumptions, intended to facilitate the examination of mass claims arising from the same structural problem, does not exclude the possibility of the Court reaching a different conclusion in a particular case following an individual assessment of its specific circumstances in the light of the criteria referred to above (see paragraph 168 above).

173. Lastly, the Court will continue to consider that the delay in enforcement of a judgment is calculated from the date when it became binding and enforceable until the date when the obligation in kind imposed

by the judgment was fully complied with by the respondent State authority (see, *mutatis mutandis*, *Burdov (no. 2)*, cited above, §§ 72 and 79). Domestic courts are better placed to ascertain the proper method of enforcement and to decide the issue of whether and when full and appropriate compliance with a judgment has been secured. In accordance with its established case-law, the Court requires that any dispute in that respect be first and foremost examined by domestic courts (see, by way of example, the parties' lawsuits against the bailiffs' decision to pursue or to close the enforcement proceedings referred to in paragraphs 16-17 and 55 above). The Court may only depart from this principle and accept an argument about the improper enforcement of a judgment in the event of flagrant inconsistency between the judgment requirements and the defendant authority's acts (see *Kotsar v. Russia*, no. 25971/03, §§ 26-27, 29 January 2009; *Kravchenko and Others*, cited above, § 32; and *Zolotareva and Others*, cited above, § 38).

174. Turning back to the circumstances of the present case, the Court finds it beyond any dispute that the delays in enforcement of the binding judgments in the applicants' favour fell short of the Convention requirements set out above. There has accordingly been a violation of Article 6 § 1 of the Convention in respect of each applicant.

IV. ALLEGED VIOLATION OF ARTICLE 1 OF PROTOCOL No. 1 IN CERTAIN CASES

175. The applicants Mr Shmakov, Ms Kostyleva, Mr Zakharchenko, Ms Troshina, Ms Ilnitskaya, Mr Grinko and Ms Antonova complained that the authorities' prolonged failure to comply with the binding and enforceable judgments in their favour also violated their right to the peaceful enjoyment of their possessions under Article 1 of Protocol No. 1, which, in so far as relevant, read as follows:

> "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. ..."

176. The Government acknowledged a violation of that provision in respect of Mr Shmakov, Ms Kostyleva, Mr Zakharchenko and Mr Grinko, while simply acknowledging delayed enforcement of the judgments in respect of Ms Troshina, Ms Ilnitskaya and Ms Antonova. They specified that the judgment of 13 April 2007 in Ms Troshina's favour does not entitle the applicant to any possession.

177. The Court reiterates at the outset that the concept of "possessions" in the first part of Article 1 of Protocol No. 1 has an autonomous meaning which is not limited to ownership of physical goods and is independent from the formal classification in domestic law: certain other rights and

interests constituting assets can also be regarded as property rights, and thus as "possessions" for the purposes of this provision (see *Beyeler v. Italy* [GC], no. 33202/96, § 100, ECHR 2000 I, and *Iatridis v. Greece* [GC], no. 31107/96, § 54, ECHR 1999 II).

178. The Court further reiterates that the right to any social benefit is not included as such among the rights and freedoms guaranteed by the Convention (see, for example, *Aunola v. Finland* (dec.), no. 30517/96, 15 March 2001). The right to live in a particular property not owned by the applicant does not as such constitute a "possession" within the meaning of Article 1 of Protocol No. 1 (see *H.F. v. Slovakia* (dec.), no. 54797/00, 9 December 2003; *Kovalenok v. Latvia* (dec.), no. 54264/00, 15 February 2001; and *J.L.S. v. Spain* (dec.), no. 41917/98, 27 April 1999).

179. However, pecuniary assets, such as debts, by virtue of which the applicant can claim to have at least a "legitimate expectation" of obtaining effective enjoyment of a particular pecuniary asset may fall within the notion of "possessions" contained in Article 1 of Protocol No. 1 (see *Pine Valley Developments Ltd and Others v. Ireland*, judgment of 29 November 1991, § 51, Series A no. 222; *Pressos Compania Naviera S.A. and Others v. Belgium*, judgment of 20 November 1995, § 31, Series A no. 332; and, *mutatis mutandis*, *S.A. Dangeville v. France*, no. 36677/97, §§ 44-48, ECHR 2002-III). In particular, the Court has consistently held that a "claim" — even to a particular social benefit — can constitute a "possession" within the meaning of Article 1 of Protocol No. 1 if it is sufficiently established to be enforceable (see *Burdov*, cited above, § 40, and *Stran Greek Refineries and Stratis Andreadis v. Greece*, judgment of 9 December 1994, § 59, Series A no. 301-B).

A. Application of Ms Troshina

180. The Court notes that the domestic court's judgment of 13 April 2007 ordered the competent authority to consider the applicant's request for certain data from the land register in respect of a plot of land located in the Moscow Region. While acknowledging that the obligation arising from the judgment was directly relevant to determination of the applicant's right to use a plot of land, the Court discerns nothing in the judgment that would create a "legitimate expectation" of obtaining effective enjoyment of a particular pecuniary asset. The Court therefore agrees with the Government and concludes that the applicant's claim under Article 1 of Protocol No. 1 is manifestly ill-founded and must be rejected in accordance with Article 35 §§ 3 and 4 of the Convention.

B. Six other applicants

1. Admissibility

181. The Court finds that the complaints are not manifestly ill-founded within the meaning of Article 35 § 3 (a) of the Convention; nor are they inadmissible on any other grounds. They must therefore be declared admissible.

2. Merits

182. The Court notes that the domestic judgments in the applicants' favour upheld their right to housing. The judgments did not require the authorities to give the applicants ownership of certain particular flats. They rather obliged them to provide each applicant with any flat satisfying the court-defined criteria either directly or by issuing a housing voucher. Accordingly, the applicants received, by virtue of the judgments in their favour, a "legitimate expectation" to acquire a pecuniary asset, which was sufficiently established to constitute a "possession" falling within the ambit of Article 1 of Protocol No. 1 (see *Teteriny v. Russia*, no. 11931/03, §§ 45-50, 30 June 2005; *Malinovskiy v. Russia*, no. 41302/02, § 46, ECHR 2005-VII (extracts); *Kukalo v. Russia*, no. 63995/00, § 61, 3 November 2005; and *Sypchenko v. Russia*, no. 38368/04, § 45, 1 March 2007).

183. The prolonged delays in the enforcement of those judgments, as acknowledged by the Government, constituted an unjustified interference with the applicants' right to peaceful enjoyment of their possessions. The Court concludes therefore that there has been a violation of Article 1 of Protocol No. 1 in respect of each of the six applicants.

V. OTHER ALLEGED VIOLATIONS OF THE CONVENTION

184. The applicants Mr Gerasimov and Mr Shmakov complained that the delayed enforcement of the judgments in their favour violated Articles 2 and 3 of the Convention respectively. The Court finds no appearance of such violations: the impugned inaction by the State neither amounts to a deprivation of life nor attains the minimum level of severity to be qualified as inhuman or degrading treatment. These complaints are manifestly ill-founded and must be rejected in accordance with Article 35 §§ 3 and 4 of the Convention.

185. The applicant Ms Kostyleva alleges a violation of Article 14 of the Convention on account of the inapplicability of the Compensation Act to domestic judgments imposing obligations in kind. The Court notes that it has already examined this complaint under Article 13 of the Convention and found a violation of that provision (see paragraphs 157-166 above). It considers it unnecessary to examine the same issue under Article 14 of the

Convention and decides to reject this complaint pursuant to Article 35 §§ 3 and 4 of the Convention.

VI. APPLICATION OF ARTICLE 41 OF THE CONVENTION

186. 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. Non-pecuniary damage

187. The first applicant's widow, Ms Gerasimova, and the applicants Mr Starostenkov and Ms Antonova agreed to the sums offered by the Government in their unilateral declarations in respect of non-pecuniary damage (see paragraphs 121 and 124 above). The applicant Ms Baranova claimed a higher unspecified amount, stating that the authorities' failure to comply with the judgment had compelled her family to spend two cold seasons in an unheated apartment (see paragraph 123 above). The other applicants either maintained their initial claims in respect of non-pecuniary damage or submitted new claims amounting to the following sums:

Mr Shmakov: 2,000,000 Russian roubles (RUB) (approximately 50,000 euros (EUR) at the date of the claim);

Ms Kostyleva: EUR 11,000 minus EUR 3,700 already awarded by the domestic court (see paragraph 84. above);

Mr Zakharchenko: EUR 50,000;

Ms Troshina: EUR 15,000;

Ms Ilnitskaya: EUR 100,000;

Mr Grinko: EUR 10,000;

Ms Tsvetkova: EUR 50,000.

188. The Government found the applicants' claims excessive and unsubstantiated.

189. The Court reiterates that the authorities' non-compliance or delayed compliance with a binding and enforceable judgment usually occasion non-pecuniary damage that cannot be compensated by the mere finding of a violation (see *Burdov (no. 2)*, cited above, § 152). The Court's established case-law clearly demonstrates that its awards in respect of non-pecuniary damage are, in principle, directly proportionate to the period during which a binding and enforceable judgment remained unenforced, while also taking account of other factors such as the applicant's age, personal income and the nature of the domestic court awards (ibid., § 154).

190. The Court will, in addition, bear in mind that distress and frustration arising from non-enforcement of domestic judgments may be

heightened by the existence of a practice incompatible with the Convention since it seriously undermines, as a matter of principle, citizens' confidence in the judicial system. This factor has, however, to be carefully balanced against the respondent State's attitude and efforts to combat such a practice with a view to meeting its obligations under the Convention (ibid., § 156). When awarding just satisfaction, the Court accordingly took account of the persistent failure to ensure an effective domestic remedy in respect of the obvious violations of the Convention (see *Kalinkin and Others*, § 60, and *Ilyushkin and Others*, § 75, cited above). Far from being a punitive measure, increased awards in such cases are intended to serve two purposes. On the one hand they encourage States to find their own, universally accessible, solution to the problem, and on the other hand they allow applicants to avoid being penalised for a lack of domestic remedies (see *Scordino v. Italy (no. 1)* [GC], no. 36813/97, § 176, ECHR 2006−V).

191. The Court reiterates at the same time that following the principle *ne ultra petitum* it does not award, as a rule, an amount exceeding that claimed by the applicant.

192. Turning to the present case, the Court observes that three of the applicants, Ms Gerasimova, Mr Starostenkov and Ms Antonova agreed to the sums offered by the Government in respect of compensation for non-pecuniary damage, that is, EUR 2,625, RUB 35,820 and EUR 6,500 respectively (see paragraphs 121 and 124 above) and the Court grants them the same amounts. The sum awarded to Mr Starostenkov should be converted into euro at the date on which the applicant commented on the Government's offer. The Court awards him EUR 900.

193. As regards Ms Kostyleva's claim, the Court notes the Government's argument that the amount claimed exceeds the amounts granted so far in similar cases, which range from EUR 2,000 to EUR 9,000. The Court takes account, at the same time, of Ms Kostyleva's situation, which is marked by the defendant authority's persistent and extremely prolonged failure to comply with the two judgments in her favour notwithstanding her repeated attempts to secure enforcement by all available means in domestic law. It also takes account of the fact that the judgments remained unenforced for more than two years after the payment of the domestic compensation award and that there is still no solution in sight for the applicant, who continues to live in the very poor conditions that the domestic court found to endanger her life and health (paragraphs 31-33 above). All these elements taken together increase the applicant's distress and frustration and justify, in the Court's view, a higher award than those referred to by the Government. The Court thus accepts the applicant's claim and awards her EUR 11,000 minus EUR 3,700 already received through the domestic proceedings.

194. As regards Ms Baranova, the Court agrees with the applicant that the relatively short enforcement delay in her case must be considered in the

light of what was at stake for the applicant and the special diligence required from the defendant authorities. The sum proposed by the Government does not take account of the applicant's specific situation, which substantially increased her suffering (see paragraph 123 above). Having regard to those special circumstances and ruling in equity, the Court awards the applicant EUR 5,000 in respect of non-pecuniary damage.

195. The Court agrees with the Government that the amounts claimed by the other applicants are excessive in the light of the Court's judgments in similar cases (*Kalinkin and Others*, § 62, and *Ilyushkin and Others*, § 77, both cited above). Having regard to this case-law, which is based on the aforementioned criteria and takes account of the continuing failure to provide the aggrieved parties with an effective domestic remedy (see paragraphs 157-166 above and 216 below), the Court awards the applicants the following amounts in compensation for non-pecuniary damage:

EUR 9,000 to Mr Shmakov;
EUR 9,000 to Mr Zakharchenko;
EUR 9,000 to Mr Grinko;
EUR 3,500 to Ms Troshina;
EUR 2,600 to Ms Ilnitskaya;
EUR 3,900 to Ms Tsvetkova.

B. Pecuniary damage

196. The applicants Ms Kostyleva and Mr Grinko submitted that they had still not recovered the judgment debts, without claiming any specific amount. Mr Shmakov maintained his initial claim of RUB 800,000 for pecuniary damage without providing further detail. Mr Starostenkov claimed RUB 56,000, corresponding to the costs of the hand control equipment he had allegedly had to buy for his car (see paragraph 124 above). The applicant Ms Torshina insisted that the judgment in her favour had not been enforced and claimed EUR 51 668, corresponding to the value of the plot of land that she was allegedly unable to use owing to the administration's failure to provide her with the relevant data from the land registry. The other applicants did not submit any claim in respect of pecuniary damage.

197. The Government submitted that the applicants' claims were unfounded and unsubstantiated, asking the Court to make no award under this head.

198. The Court refers at the outset to its consistent position that the enforcement of the domestic judgment remains the most appropriate form of redress in respect of violations of Article 6 like those found in the present case (see, among many other authorities, *Kalinkin and Others*, § 55, and *Ilyushkin and Others*, § 64, cited above). The Court therefore finds that the respondent State must secure, without further delay, the enforcement by

appropriate means of the judgments in favour of Ms Kostyleva and Mr Grinko as a consequence of the Court's findings in the present case.

199. As regards Ms Troshina's complaint, the Court, like the Government, gives credit to the domestic court's finding of 20 March 2012 that the judgment in her favour had been fully enforced (paragraphs 55 and 173 above).

200. As regards all the other claims in respect of pecuniary damage, the Court notes that the applicants failed either to establish the causal link between the violations and the amounts claimed or to substantiate them by making itemised calculations and producing invoices or other documentary evidence of the material loss they had allegedly sustained. Thus, the estimated cost of the hand equipment submitted by Mr Starostenkov (paragraph 124 above) cannot be accepted as a sufficient proof of pecuniary damage. The Court accordingly rejects all those claims.

C. Costs and expenses

201. The applicant Ms Kostyleva also claimed EUR 1,850 for legal costs and EUR 100 for postal expenses. The applicant Ms Troshina claimed EUR 98, corresponding to the cost of the valuation of her plot of land. The applicant Mr Grinko claimed EUR 50 in respect of postal expenses.

202. The Government accepted the latter claim and challenged the others as excessive or unsupported by the relevant documents.

203. 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 are reasonable as to quantum.

204. The Court notes that the expenses incurred by Ms Troshina are not relevant to the complaint which has been found admissible by the Court and must therefore be rejected. As regards Ms Kostyleva's claim, the Court finds that the legal costs incurred in the domestic proceedings are relevant in so far as they were incurred in order to remedy the violations of the Convention found by the Court. Regard being had to the documents in its possession and the above criteria, the Court considers it reasonable to award the sum of EUR 1,850 for the costs of legal assistance and RUB 2,723.92 (EUR 67) for postal expenses to Ms Kostyleva, and EUR 50 for postal expenses to Mr Grinko.

D. Default interest

205. 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.

VII. APPLICATION OF ARTICLE 46 OF THE CONVENTION

206. The Court observes that non-enforcement or delayed enforcement of domestic judicial decisions has been a recurrent problem in the respondent State that has led to the most frequent violations of the Convention since its ratification by Russia on 5 May 1998. Moreover, for a long time the Court was compelled to decide such complaints as a first-instance tribunal, given the respondent State's failure to provide the applicants with effective domestic remedies in accordance with the Convention. While part of the problem was successfully resolved by the first pilot judgment and the ensuing adoption of the Compensation Act (see paragraphs 92-93 above), numerous cases which do not fall within the latter's scope still have, however, little chance of being resolved at the domestic level and thus continue to be lodged with the Court.

207. Nevertheless, the Court does not have the capacity, nor is it appropriate to its function as an international court, to adjudicate on large numbers of cases which require the finding of basic facts or the calculation of monetary compensation – both of which should, as a matter of principle and effective practice, be the domain of domestic jurisdictions (see *Demopulos and Others* (dec.), cited above, § 69). It therefore identified and communicated the present applications on 10 April 2012 with an emphasis on the remaining underlying problems and raised the possibility of applying anew a pilot-judgment procedure. It will thus examine the case under Article 46 of the Convention, which in so far as relevant provides the following:

Article 46
Binding force and execution of judgments

"1. The High Contracting Parties undertake to abide by the final judgment of the Court in any case to which they are parties.

2. The final judgment of the Court shall be transmitted to the Committee of Ministers, which shall supervise its execution.

..."

A. The parties' submissions

208. One of the applicants, Ms Kostyleva, submitted that her application revealed a structural problem incompatible with the Convention as regards both the delays, sometimes extreme, in the enforcement of domestic judgments ordering obligations in kind and the lack of effective domestic remedies in that respect. Thus, in the town of Syktyvkar alone, which has a population of 250,000 people, the Bailiff Department was attempting to secure enforcement of some 300 final judgments ordering the administration to provide housing. Enforcement of all those judgments was being delayed

in breach of the Convention. The applicant further argued that in a situation of enforcement delays exceeding three years, an acceleratory remedy becomes of primary importance so as to ensure that the required obligation in kind be ultimately complied with by the defendant authority. In the applicant's view, a pilot-judgment procedure was required with a view to incorporating appropriate acceleratory and compensatory remedies into the Russian law.

209. The Government discerned neither an underlying structural problem nor the existence of a practice incompatible with the Convention in relation to the present applications. They supported this conclusion by arguing that effective domestic remedies were available in respect of the applicants' claims (see paragraphs 143-144 above). It was pointed out, in particular, that the Constitutional Court had found that there had been no discrimination on account of the exclusion of the present cases from the scope of the Compensation Act. The Government concluded that there was no ground for the application of the pilot-judgment procedure in the present case.

B. The Court's assessment

1. The structural problem at stake and the application of a pilot-judgment procedure

210. The Court refers to the well-established principles governing the application of Article 46 of the Convention and the pilot-judgment procedure set out in the *Burdov* pilot judgment (cited above, §§ 125-28). It reiterates that the purpose of the pilot-judgment procedure is twofold. Its primary aim is to facilitate the implementation of the judgment by indicating to the respondent State certain measures to be taken, if appropriate, within a certain time-limit, so as to resolve the structural problem that has led to the violations found by the Court. Another important aim is to induce the respondent State to resolve large numbers of individual cases arising from the same structural problem, thus implementing the principle of subsidiarity which underpins the Convention system. The Court may thus decide to adjourn adjudication of such cases, awaiting their resolution at the domestic level in accordance with the pilot judgment. This adjudicative approach is consistent with the Court's role, as defined by Article 19, to "ensure the observance of the engagements undertaken by the High Contracting Parties in the Convention and the Protocols thereto".

211. The Court notes the parties' disagreement about the suitability of applying the pilot-judgment procedure in the present case. One of the applicants suggested this to be the right avenue, while the Government found it inappropriate, seeing no underlying structural problem.

212. The Court finds it impossible to adhere to the Government's view. While their submissions fail to address the point, both the present case and a wealth of other material at the Court's disposal leave no doubt that Russia is experiencing major structural problems in the enforcement of judgments imposing obligations in kind on the State authorities.

213. The Court has already decided more than 150 applications of that type against the Russian Federation (most of them cited above), while some 600 similar ones are still on the Court's list, which is steadily growing. The selection of the applications joined in the present case is eminently illustrative of the issues the Court has been confronted with over the years and those still being raised in incoming cases. They demonstrate a variety of situations, the vulnerability of the people affected by them, the vast territory of Russia on which the same recurrent problems arise and the persistence of those problems in time since almost fifteen years ago. The Court's findings made in such cases, including the present one, definitely confirm that the underlying problems are widespread and the need for effective solutions urgent.

214. The structural nature of the underlying problems is all the more striking when it comes to enforcing judgments ordering the allocation of housing by the State. The Court's numerous judgments suggest that there is a gap between, on the one hand, the State's social obligation to provide housing to certain individuals and, on the other hand, the respondent authorities' incapacity to comply with those obligations with reference, most often, to the scarcity of available resources. The Convention has consistently been interpreted as not allowing a State authority to cite lack of funds as an excuse for not honouring a judgment debt within a reasonable time (see *Burdov*, cited above, § 35). However, the materials at the Court's disposal clearly show systematic delays in the State's compliance with its social obligations enshrined in the law and upheld by domestic courts (see, in particular, paragraphs 106, 112 and 208 above).

215. In this context the bailiffs' capacity to ensure enforcement in accordance with the law is severely weakened. In the present case the respondent authorities either remained deaf to the bailiffs' insistent summons (paragraphs 63-69 above), or plainly responded that the enforcement of the judgment was impossible (paragraph 35 above). The bailiffs' repeated threats under Article 315 of the Criminal Code did not yield a single criminal sanction (paragraphs 32, 37, 43, 63-65 above) and their decision to impose a fine on the respondent authority in accordance with the Code of Administrative Offences was quashed by the court (paragraph 42 above). The bailiffs were thus unable to compel the respondent authorities to comply with the judgments within a reasonable time. Their "enforcement acts" turned to a mere restatement of legal provisions and fruitless warnings, while binding judgments remained inoperative for years. In the Court's view, this situation is incompatible with

the State's obligation to secure to everyone the right to a court guaranteed by the Convention and, more generally, undermines individuals' confidence in the State's judicial system.

216. The above-mentioned problems are largely aggravated by the continuous lack of effective domestic remedies in respect of such obvious and recurrent violations of the Convention (see paragraphs 157-166 above). The Court has at times highlighted the incompatibility of this situation with the Convention requirements (see *Burdov (no. 2)*, cited above, §§ 101-17 and 133) and regretted that the Government had missed the opportunity to resolve that problem in the wake of the first pilot judgment or even later (see *Kalinkin and Others*, cited above, § 30, and *Ilyushkin and Others*, § 36, both cited above). As a result, people affected by the most basic and undisputable violations of the Convention, like those acknowledged by the Government in the present case, still continue to seek redress before the Court in the first instance. As the Court has repeatedly noted, this situation is at odds with the principle of subsidiarity, which commands that the High Contracting Parties bear primary responsibility for securing the rights and freedoms set out in the Convention. It observes, moreover, that a number of applicants further complain that the domestic judgments in their favour remain unenforced at the domestic level notwithstanding the Court's judgments obligating the State to secure their enforcement by appropriate means (see paragraph 114 above). Such complaints raise serious doubts about the authorities' compliance with their obligations even in cases subject to the Committee of Ministers' supervision.

217. While noting a perceptible trend towards an improvement in this sensitive area and the increasing attention paid to the problems by the respondent State at the highest level (see paragraphs 106-108 above), the Court is bound to conclude that the recurrent violations of the Convention, such as those found in the present case, reveal persistent structural dysfunctions which amount, by their nature and scale, to a practice incompatible with the Convention (see *Bottazzi v. Italy* [GC], no. 34884/97, § 22, ECHR 1999 V, and *Burdov (no. 2)*, cited above, § 135).

218. The Court also finds that the nature of the underlying problems, a large number of people affected by them in Russia and the urgent need to grant them speedy and appropriate redress at the domestic level justify the application of the pilot-judgment procedure in the present case (see *Burdov no. 2*, § 130, and *Ananyev and Others*, cited above, § 190). The mere repetition of the Court's findings in similar individual cases would not be the best way to achieve the Convention's purpose. The pilot judgment procedure now appears to be the most timely and effective way to assist the respondent State in finding the appropriate solutions and the Committee of Ministers in supervising the execution of the judgments (see Resolution Res(2004)3 of the Committee of Ministers on judgments revealing an

underlying systemic problem, and the Declarations adopted by the High Contracting Parties at the Interlaken, Izmir and Brighton conferences).

2. General measures

219. As it was already noted by the Court and acknowledged by the Russian authorities themselves (see paragraphs 105-112 above), the problems at the root of the violations of Article 6 and Article 1 of Protocol No. 1 found in this case are large-scale and complex in nature. Systematic delays in the enforcement of judgments by the State do not stem from a specific legal or regulatory provision or a particular lacuna in Russian law (see paragraphs 213-215 above). The resolution of those problems is contingent on the implementation of complex strategies by various authorities at both federal and local level.

220. The Committee of Ministers has already given consideration to this matter and continues to examine it in the cases concerned (see Interim Resolution CM/ResDH(2009)43, paragraphs 113-114 above). While the effects of the most recent encouraging developments reported by the authorities with regard to the housing allocated to servicemen still remain to be assessed (see paragraph 106 above), the ultimate solution to the structural problems identified by the Court in paragraphs 213-215 above will no doubt require further general measures. Particular attention would have to be paid to the bailiffs' and other authorities' present incapacity to secure enforcement in such cases and the need to find appropriate mechanisms to that effect. However, given the complex legal, practical and policy considerations involved, the assessment of the specific measures required goes beyond the Court's judicial function. It is not the Court's task to advise the respondent Government in such a complex legal, political and budgetary process, let alone recommend a particular way of organising the domestic enforcement procedure in respect of judgments against the State. The Court will thus abstain in these circumstances from indicating any specific measure to be taken. The Committee of Ministers is better placed and equipped to monitor the general measures to ensure that all domestic judgments against the State authorities and entities be enforced within a reasonable time (see *Burdov (no. 2)*, cited above, §§ 136-37, and *Ananyev and Others*, cited above, § 194).

221. Against this background, the Court's findings in respect of domestic remedies (see paragraph 216 above) reveal essentially a legal problem that lends itself to be resolved through an amendment of domestic legislation, as demonstrated by the positive experience of the *Burdov* pilot judgment. Indeed, the Compensation Act was successfully introduced in 2010 within a limited time to provide an effective remedy against delayed enforcement of domestic judgments ordering monetary payments from the State budgets.

222. The Court further notes that the draft constitutional law tabled by the Supreme Court on 26 September 2008 attempted to make a new effective remedy applicable to cases involving the State's obligations in kind (see paragraphs 159-161 above). The Court has no official information about the reasons that eventually led the Russian legislator to restrict the scope of the Compensation Act (see paragraph 94 above). Be that as it may, the Court does not find it appropriate to examine any such reason at the present stage, its task being solely to ascertain the prospective legal implications of the present pilot judgment so as to ensure the observance of the engagements undertaken by the Russian Federation under the Convention.

223. The Court considers that its findings in paragraphs 157-166 above, viewed in the light of Articles 1 and 46 § 1 of the Convention, impose on the respondent State a legal obligation to set up an effective domestic remedy or combination of such remedies accessible to all persons in the applicants' position (see *Burdov (no. 2)*, cited above, §§ 125 and 138, with further references).

224. There are several avenues by which this goal can be achieved in Russian law and the Court would not impose any specific option, having regard to the respondent State's discretion to choose the means it will use to comply with the judgment (see *Scozzari and Giunta v. Italy* [GC], nos. 39221/98 and 41963/98, § 249, ECHR 2000-VIII). The Russian authorities may obviously choose the most straightforward solution, extending the scope of the Compensation Act to all cases concerning non-enforcement of judgments delivered against the State and the Court welcomes the recent legislative initiatives to that end (see paragraphs 107-108 above). The authorities may nonetheless choose to introduce changes to other legal texts that would produce the same effect. Any legislative exercise would benefit from the Constitutional Court's case-law (see paragraphs 97 and 101), the Supreme Court's experience that resulted in its draft law of 2008 (*Burdov (no. 2)*, cited above, §§ 34-37), the Committee of Ministers' texts adopted under Article 46 of the Convention (see paragraph 113 above) and its more general Recommendations CM/Rec (2004) 6 and CM/Rec (2010) 3 on effective domestic remedies. It would be, for instance, quite appropriate for the authorities to seek, by any means, to combine a compensatory remedy with an acceleratory one (see *Nagovitsyn and Nalgiev*, cited above, § 35), at least for certain cases involving persistent enforcement delays or requiring special diligence in the enforcement process (see, in particular, paragraphs 152 and 170 above).

225. In any event, it will remain for the State to ensure, under the supervision of the Committee of Ministers, that such a remedy or combination of remedies respects both in theory and in practice the requirements of the Convention set out in the Court's case-law (see *Burdov (no. 2)*, cited above, §§ 96-100, with further references).

226. Having regard to the foregoing considerations, and given in particular the pressing need to secure, without further delay, a genuine domestic protection against the recurrent violations of the Convention affecting large groups of people in Russia, the Court decides that a domestic remedy or a combination of remedies required by the present judgment must be available in Russian law within one year of the date on which the judgment becomes final. In the Court's view, that time-limit is also consistent with the experience of the first pilot judgment, the nature of the measures to be adopted by the respondent State and the domestic legislative initiatives already taken to that effect (see *Burdov (no. 2)*, cited above, § 141 and point 6 of the operative part; compare *Ananyev and Others*, cited above, § 233).

3. Redress to be granted in similar cases

227. The Court reiterates that one of the aims of the pilot-judgment procedure is to allow the speediest possible redress to be granted at the domestic level to the large numbers of people suffering from the underlying structural problem (see *Burdov (no. 2)*, cited above, § 127). It may thus decide in the pilot judgment that its proceedings in all cases stemming from such a problem be adjourned pending the implementation of the relevant measures by the respondent State. If, however, the respondent State fails to adopt such measures following the pilot judgment and continues to violate the Convention, the Court will have no choice but to resume examination of all similar applications pending before it and to take them to judgment so as to ensure effective observance of the Convention (ibid., § 128).

228. In line with its approach taken in the *Burdov* pilot judgment, the Court considers it appropriate to adjourn adjudication of all cases concerning delayed enforcement of domestic judgments imposing obligations in kind on the State's authorities pending the implementation of the present pilot judgment by the Russian Federation. The Court will nonetheless differentiate its approach between the cases already pending before the Court and those that could be brought in the future (see *Burdov (no. 2)*, cited above, §§ 142-46).

(a) Applications lodged after the delivery of the present judgment

229. The Court will adjourn the proceedings on all new applications lodged with the Court after the delivery of the present judgment, in which the applicants complain of non-enforcement or delayed enforcement of domestic judgments imposing obligations in kind on the State authorities. The adjournment will be effective for a maximum period of two years after the present judgment becomes final. The applicants in these cases would be informed accordingly.

(b) Applications lodged before the delivery of the present judgment

230. As in the *Burdov* pilot judgment, the Court decides to follow a different course of action in respect of the applications lodged before the delivery of the judgment. In the Court's view, it would be unfair if the applicants in such cases, who have allegedly been suffering for years as a result of continuing violations of their right to a court and sought relief in this Court, were compelled yet again to resubmit their complaints to the domestic authorities, be it on the grounds of a new remedy or otherwise.

231. The Court therefore considers that the respondent State must grant redress, within two years from the date on which the judgment becomes final, to all victims of delayed enforcement of judgments imposing obligations in kind on the State authorities who lodged their applications with the Court before the delivery of the present judgment and whose applications were or will be communicated to the Government under Rule 54 § 2 (b) of the Rules of the Court. Enforcement delays should be calculated and assessed by reference to the Convention requirements and, notably, in accordance with the criteria as defined in the present judgment (see in particular paragraphs 168-173 above). In the Court's view, such redress may be achieved through implementation *proprio motu* by the authorities of an effective domestic remedy in these cases or through *ad hoc* solutions such as friendly settlements with the applicants or unilateral remedial offers in line with the Convention requirements.

232. Pending the adoption of domestic remedial measures by the Russian authorities, the Court decides to adjourn adversarial proceedings in all these cases for a maximum period of two years from the date on which the judgment becomes final. This decision is without prejudice to the Court's power at any moment to declare inadmissible any such case or to strike it out of its list following a friendly settlement between the parties or the resolution of the matter by other means in accordance with Articles 37 or 39 of the Convention.

FOR THESE REASONS, THE COURT ,UNANIMOUSLY,

1. *Decides* to join the applications;

2. *Decides* to join to the merits the Government's plea of non-exhaustion of domestic remedies and rejects it;

3. *Declares* admissible the complaints under Articles 6 and 13 of the Convention concerning the State authorities' prolonged failure to comply with binding and enforceable judgments in the applicants' favour and the lack of effective domestic remedies in that regard;

4. *Declares* admissible the complaints lodged by Mr Shmakov, Ms Kostyleva, Mr Zakharchenko, Ms Ilnitskaya, Mr Grinko and Ms Antonova concerning the alleged breach by the State of their right to peaceful enjoyment of their possessions under Article 1 of Protocol No. 1;

5. *Declares* the remainder of the applicants' complaints inadmissible;

6. *Holds* that there has been a violation of Article 13 of the Convention on account of the lack of effective domestic remedies in respect of non-enforcement or delayed enforcement of judgments in the applicants' favour;

7. *Holds* that there has been a violation of Article 6 of the Convention in respect of the applicants on account of the State's prolonged failure to enforce the domestic judgments in their favour;

8. *Holds* that there has been a violation of Article 1 of Protocol No. 1 in respect of Mr Shmakov, Ms Kostyleva, Mr Zakharchenko, Ms Ilnitskaya, Mr Grinko and Ms Antonova on account of the breach of their right to the peaceful enjoyment of their possessions;

9. *Holds*

(a) that the respondent State must secure without delay and by appropriate means the enforcement of the domestic judgments in favour of Ms Kostyleva and Mr Grinko;

(b) 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 amounts, to be converted into the currency of the respondent State at the rate applicable at the date of settlement, plus any tax that may be chargeable on those amounts:

(i) in respect of non-pecuniary damage:

EUR 2,625 to Ms Gerasimova;
EUR 9,000 to Mr Shmakov;
EUR 5,000 to Ms Baranova;
EUR 7,300 to Ms Kostyleva;
EUR 900 to Mr Starostenkov;
EUR 9,000 to Mr Zakharchenko;
EUR 3,500 to Ms Troshina;
EUR 2,600 to Ms Ilnitskaya;
EUR 9,000 to Mr Grinko;
EUR 6,500 to Ms Antonova;

EUR 3,900 to Ms Tsvetkova;
(ii) in respect of costs and expenses:
EUR 1,917 to Ms Kostyleva;
EUR 50 to Mr Grinko;

(c) 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;

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

11. *Holds* that the above violations originated in a practice incompatible with the Convention which consists in the State's recurrent failure to honour its obligations in kind ordered by domestic judgments and in respect of which aggrieved parties have no effective domestic remedy;

12. *Holds* that the respondent State in cooperation with the Committee of Ministers must set up, within one year from the date on which the judgment becomes final in accordance with Article 44 § 2 of the Convention, an effective domestic remedy or combination of such remedies which secures adequate and sufficient redress for non-enforcement or delayed enforcement of domestic judgments imposing obligations in kind on the State's authorities in line with the Convention principles as established in the Court's case-law;

13. *Holds* that the respondent State must grant redress, within two years from the date on which the judgment becomes final, to all victims of delayed enforcement of judgments imposing obligations in kind on the State authorities who lodged their applications with the Court before the delivery of the present judgment and whose applications were or will be communicated to the Government under Rule 54 § 2 (b) of the Rules of Court;

14. *Holds* that pending the adoption of the above measures, the Court will adjourn, for a maximum period of two years from the date on which the judgment becomes final, the proceedings in all cases concerning the non-enforcement or delayed enforcement of domestic judgments imposing obligations in kind on the State authorities, without prejudice to the Court's power at any moment to declare inadmissible any such case or to strike it out of its list following a friendly settlement between the parties or the resolution of the matter by other means in accordance with Articles 37 or 39 of the Convention.

Done in English, and notified in writing on 1 July 2014, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Søren Nielsen Registrar	Isabelle Berro-Lefèvre President

APPENDIX

No	Application No	Lodged on	Applicant Date of birth, Place of residence
1.	29920/05	26/07/2005	**Mikhail Yefimovich GERASIMOV** 30/06/1927 (died 28/03/2011), Vladivostok Legal successor: **Yelena Yefimovna GERASIMOVA** 05/05/1931 Vladivostok
2.	3553/06	28/12/2005	**Andrey Gennadyevich SHMAKOV** 30/10/1960, Yakutsk
3.	18876/10	13/03/2010	**Lyubov Mikhaylovna BARANOVA** 17/04/1960, Baz-Syzgan
4.	61186/10	04/10/2010	**Tatyana Salikhzanovna KOSTYLEVA** 13/09/1960, Syktyvkar
5.	21176/11	21/02/2011	**Yuriy Vasilyevich STAROSTENKOV** 08/06/1954, Smolensk
6.	36112/11	24/05/2011	**Anatoliy Arturovich ZAKHARCHENKO** 04/09/1966, St Petersburg
7.	36426/11	11/05/2011	**Marina Yevgenyevna TROSHINA** 14/07/1961, Moscow
8.	40841/11	15/06/2011	**Natalya Vasilyevna ILNITSKAYA** 01/09/1961, Shikhany
9.	45381/11	03/07/2011	**Aleksey Alekseyevich GRINKO** 25/07/1978, Moscow
10.	55929/11	18/08/2011	**Svetlana Nikolayevna ANTONOVA** 10/09/1959, Lubertsy
11.	60822/11	16/08/2011	**Yelena Aleksandrovna TSVETKOVA** 12/12/1951, Kostroma