FIRST SECTION

CASE OF ZAKAYEV AND SAFANOVA v. RUSSIA

(Application no. 11870/03)

JUDGMENT

STRASBOURG

11 February 2010

This judgment will become final in the circumstances set out in Article 44 § 2 of the Convention. It may be subject to editorial revision.

In the case of Zakayev and Safanova v. Russia,

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

Christos Rozakis, *President*,
Anatoly Kovler,
Khanlar Hajiyev,
Dean Spielmann,
Sverre Erik Jebens,
Giorgio Malinverni,
George Nicolaou, *judges*,
and Søren Nielsen, *Section Registrar*,

Having deliberated in private on 21 January 2010,

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

PROCEDURE

1. The case originated in an application (núm. 11870/03) 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 Mr Ramzan Zakayev, a national of Kazakhstan, and his wife Mrs Imani Safanova (Zakayeva), a national of Russia ("the applicants"), on 8 April 2003.

2. The applicants were represented by lawyers from the Memorial Human Rights Centre. The Russian Government ("the Government") were represented by Mr G. Matyushkin, Representative of the Russian Federation at the European Court of Human Rights.

3. The applicants alleged, in particular, a violation of their right to respect for their family life on account of the first applicant's removal to Kazakhstan.

4. On 20 May 2008 the President of the First Section decided to give notice of the application to the Government. It was also decided to examine the merits of the application at the same time as its admissibility (Article 29 § 3).

THE FACTS

I. THE CIRCUMSTANCES OF THE CASE

5. The applicants were born in 1958 and 1963 respectively. The first applicant was removed to Kazakhstan in April 2003; the second applicant lives in Moscow.

1. Events prior to January 2003

6. Both applicants come from families of ethnic Chechens who were forcibly deported to Kazakhstan in the 1940s. The second applicant's family returned to Chechnya in 1981. On 1 March 1992 the first applicant acquired Kazakh nationality, since at that time he was living with his family in Kazakhstan. Some time later in 1992 the first applicant and some of his family moved to Russia and settled in Chechnya. His parents and two adult sisters remained in Kazakhstan. Since the creation of the

independent states of Russia and Kazakhstan in 1991 citizens of Kazakhstan have not needed a visa to enter Russia.

7. In 1994 the applicants married in Chechnya. Between 1994 and 1999 the couple had three children – P.Z. born in 1994, I.Z. born in 1996 and K.Z. born in 1999. The family lived in the village of Gikalo in the Grozny district of Chechnya, as attested in September 2003 by the head of the village authority. It does not appear that the first applicant took any steps to obtain Russian nationality or to regularise his stay during that period.

8. At some point between 1994 and 1995 the family went to Kazakhstan, fleeing from the hostilities in Chechnya. However, as soon as the situation calmed down they returned to Chechnya.

9. In October 1999 a second round of hostilities started in Chechnya. In December 2000 the second applicant moved to Moscow. The three children joined her there in August 2001. The first applicant was in Kazakhstan between August 2001 and March 2002, when he came to Moscow to live with his family.

10. In February 2002 the second applicant was living in a room let to her by the proprietor, who had left to receive medical treatment abroad. Hence, as she submitted, she was unable to obtain a temporary registration permit in Moscow, since that required written permission from the landlord. The second applicant submitted that she had informed the local police station about the practical difficulties she had faced in obtaining registration and that they had been willing to allow her to resolve those difficulties.

11. On 28 October 2002 the first applicant was arrested at home and taken to the local police station (the Levoberezhny ROVD of Moscow) for about two hours. He submitted that he had been questioned about the hostage-taking in the Moscow "Nord-Ost" theatre on 23-26 October 2002 by a group of Chechen fighters, of which he had denied any knowledge.

12. On 15 November 2002 the first applicant was asked to come to the Levoberezhny ROVD. He was again questioned about his status in Moscow and about Chechen illegal armed groups and was released several hours later. The Government submitted a copy of the registration log of the ROVD for 15 November 2002, which contained an entry concerning the first applicant's questioning. It did not refer to any offences or sanctions.

13. On 22 November 2002 a member of the State Duma Mr Igrunov, at the request of the NGO Civic Assistance, wrote to the head of the Levoberezhny ROVD requesting permission for the applicants to remain in the flat without registration until the family were able to resolve the practical difficulties encountered in obtaining the necessary documents.

14. Also on 22 November 2002 Mr Igrunov wrote a letter to the Prosecutor General asking him whether the police in Moscow had been instructed to conduct checks on all Chechens in relation to the hostage crisis of 23-26 October 2002. He referred to information from the NGO Civic Assistance, which helped refugees and forced migrants, according to which a large number of Chechens in Moscow had been detained and questioned in the days and weeks following the terrorist attack. Mr Igrunov reminded the Prosecutor General of the unlawfulness of such a practice. He attached seventeen pages to the letter giving details of individual cases, including the applicants' case.

15. On 12 December 2002 the head of the Levoberezhny ROVD replied to Mr Igrunov and stated that the applicants had not applied to that office for registration. The letter recalled that temporary registration was necessary for both Russian citizens and

foreign nationals within three days of arrival. The letter further pointed out that the first applicant was a national of Kazakhstan and that his failure to comply with the relevant provisions of Russian law could lead to his expulsion.

16. On 10 January 2003 the Moscow city prosecutor's office informed Mr Igrunov that the information concerning the individual cases had been checked. In respect of the applicants, the Golovinskiy district prosecutor's office had established that they had been residing unlawfully in Moscow. In summer 2002 the first applicant had been warned of the need to take steps to obtain temporary registration. On 14 November 2002 the second applicant had been fined by the Levoberezhny ROVD for residing in Moscow without registration. On 28 October and 15 November 2002 the first applicant had been brought to the Levoberezhny ROVD and questioned about his residence status. The applicants never sought to obtain temporary registration at the local police station.

2. The first applicant's arrest and expulsion

17. On 15 January 2003 a police officer visited the applicants' home and asked them to appear at the Levobereznhy ROVD the following day. According to the applicants, on the morning of 16 January 2003 they went to the police station. Their documents were examined and the first applicant had his passport taken from him and was placed in a cell. The second applicant was allowed to leave.

18. On 17 January 2003 an officer of the Levoberezhny ROVD drew up a report concerning the first applicant's administrative arrest for a breach of Article 18.8 of the Code of Administrative Offences. According to the transcript of the questioning, the first applicant explained that he had lived in Moscow since January 2002 with his wife and three children. He did not work, but remained at home and looked after the children. On the same day the documents were transferred to a court, with a recommendation for removal.

19. On 17 January 2003 a judge of the Golovinskiy District Court of Moscow ordered, in accordance with Article 18.8 of the Code of Administrative Offences, that the first applicant should pay a fine of 500 Russian roubles (RUB) and be removed to Kazakhstan. According to the decision, the applicant had explained that he had been living in Moscow without registration because he intended to return to Kazakhstan but had no means of paying for the ticket. He had no permanent work and mostly remained at home assisting his wife in looking after the children. By the same decision the judge ordered the first applicant's detention in temporary detention centre No. 1 of the Moscow City Department of the Interior until 17 April 2003.

20. On 24 January 2003 the applicant's lawyer submitted an appeal to the Moscow City Court. In the appeal the lawyer referred to the applicant's family situation, the fact that his wife and three children were Russian nationals and the fact that he had attempted to obtain registration papers in Moscow. She also contested the lawfulness of the first applicant's detention.

21. On 27 February 2003 the Moscow City Court, in the presence of the applicant's lawyer, upheld the decision of 17 January 2003. The City Court noted that the first applicant had been living in Russia for a long time but had taken no steps to regularise his position. Referring to section 25(10) of the Law on the Procedure for Entering and Leaving the Russian Federation, the court found that the first applicant had been guilty of a breach of the residence regulations for foreign nationals. The court remarked that the first applicant's "personal circumstances did not call for a mitigation of the sentence imposed".

22. On 15 April 2003 the first applicant was removed to Kazakhstan at the expense of the NGO Civic Assistance, which had been supporting the family.

3. Subsequent developments

23. On 30 September 2003 the applicants' fourth child, D.Z., was born in Moscow.

24. The applicants attempted to obtain judicial review of the removal order by means of supervisory review. On 25 December 2003 the vice-president of the Moscow City Court refused to take action to start supervisory review proceedings. He found no reasons to consider the sentence unfair or disproportionate to the offence committed.

25. According to the applicants, in 2004 the first applicant attempted to return to Russia by train, but was stopped by the border police since he was not allowed to enter Russia for five years after his removal.

26. The applicants submitted that the second applicant continued to live in Moscow with the couple's four minor children, without permanent registration. She was unable to take up a permanent job and had no means of visiting her husband in Kazakhstan. The first applicant lived with his parents in a small village in Kazakhstan; his financial situation was very poor and he was not in a position to send money to his family. They maintained regular telephone contact.

27. The applicants submitted that the children were deeply affected by the separation. They attached several medical certificates issued in 2004 which confirmed that the four children were regularly examined by the local children's health centre for various problems related to heart conditions and respiratory and gastric diseases.

28. In 2008 the applicants obtained papers from the local school and from a psychologist. According to these documents, the applicants' three eldest children were fully integrated in the school, spoke fluent Russian and were accustomed to living in Moscow. The youngest child attended a kindergarten. They missed their father, with whom they maintained regular telephone contact. The fourth child had never seen his father. His absence from their lives was a source of stress for the children and for the second applicant.

29. The second applicant submitted that after her husband's expulsion she had been unable to work for a while, since she had no one to look after the children. This situation had further deteriorated after the birth of D.Z. in September 2003. In November 2004 the second applicant was diagnosed with tuberculosis of the lungs. For several years she survived by receiving regular financial aid from Civic Assistance. In 2008 the second applicant resumed casual work and, according to her own estimates, earned between RUB 800 and RUB 1,000 a day.

II. RELEVANT DOMESTIC LAW

30. Article 18.8 of the Code of Administrative Offences of the Russian Federation provides that a foreign national who infringes the residence regulations of the Russian Federation, including by residing on the territory of the Russian Federation without a valid residence permit or by failing to comply with the established procedure for residence registration, will be liable to punishment by an administrative fine of RUB 500 to 1,000 and possible administrative removal from the Russian Federation. Under Article 28.3 § 2 (1) a report on the offence described in Article 18.8 is drawn up by a police officer. Article 28.8 requires such a report to be transmitted within one day to a judge or to an officer competent to examine administrative matters. Article 23.1 § 3 provides that the determination of any administrative charge that may result in removal from the Russian Federation shall be made by a judge of a court of general jurisdiction.

Article 30.1 § 1 guarantees the right to appeal against a decision on an administrative offence to a court or to a higher court.

31. Section 25.10 of the Federal Law on the Procedure for Entering and Leaving the Russian Federation (no. 114-FZ of 15 August 1996, as amended in 2008) provides that a foreign national who does not have documents proving the lawfulness of his stay in Russia, or who does not leave the territory of Russia after the expiry of his permitted stay, is deemed to be residing in Russia unlawfully and incurs liability in accordance with the relevant legislation. Section 27(2) of the same Law provides that a foreign national is not allowed to enter the country for five years after the day of his administrative deportation from Russia.

THE LAW

I. ALLEGED VIOLATION OF ARTICLE 8 OF THE CONVENTION

32. The applicants complained that the decision to remove the first applicant constituted an unjustified interference with their family life, in so far as it had led to the separation of the nuclear family. In particular, the applicants argued that the first applicant's removal had not been necessary in a democratic society and was in breach of the guarantees of Article 8 of the Convention, which reads as follows:

> "1. Everyone has the right to respect for his private and family life, his home and his correspondence.
>
> 2. There shall be no interference by a public authority with the exercise of this right except such as is in accordance with the law and is necessary in a democratic society in the interests of national security, public safety or the economic well-being of the country, for the prevention of disorder or crime, for the protection of health or morals, or for the protection of the rights and freedoms of others."

33. The Government contested that argument.

A. Admissibility

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

B. Merits

1. The applicants

35. The applicants stressed, first, that they could not be held entirely responsible for the first applicant's failure to obtain a residence permit. They referred to their attempts to regularise their stay in Moscow. However, due to the prevailing circumstances, including the fact that as ethnic Chechens they had been viewed with suspicion, none of their attempts had been successful.

36. The applicants stressed that the domestic courts had not taken into account their family situation, thus failing to balance their rights against the public interest being protected, in particular in view of the rather minor nature of the offence. They pointed out that as a result of the first applicant's removal, contact between the members of the

applicants' family had been reduced to sporadic telephone conversations, a situation which adversely affected the emotional ties between parents and children. This was also a cause of suffering and distress to both applicants. As to the possibility of the family moving to Kazakhstan, the applicants referred to the first applicant's precarious financial situation in that country, to the documents attesting to the children's integration in Moscow and to the regular financial support provided to the second applicant by the NGO Civic Assistance.

2. The Government

37. The Government argued that the first applicant's removal had been carried out in accordance with the law and in compliance with the procedural safeguards. The decision had been taken by a judge in full cognisance of the applicants' family situation and had been reviewed and found lawful by the second-instance court. The first applicant had been represented by a lawyer and could raise his arguments about the proportionality of the measure. In their additional observations, the Government referred to several decisions taken by the Russian courts in similar circumstances, when the second level of jurisdiction had reversed decisions by the lower courts to expel illegal immigrants, in view of their family situation.

38. The Government further pointed out that the first applicant had for a long time failed to comply with the domestic regulations on the stay of foreign nationals. Despite being fined on 28 October 2002 and warned of the impeding consequences of unlawful residence, on 17 January 2003 he had again been found in breach of the same provisions. In ordering his removal the courts had taken into account his previous breaches of the immigration rules and the fact that he had no fixed residence and no stable source of income. The Government stressed that the first applicant held Kazakh citizenship, that he had been born and lived most of his life in that country and that his parents and other family members continued to live there. The second applicant had also been born in Kazakhstan and lived there, before her family had moved to the Russian Federation and again in 1994-1995. The age of the children was such that they could easily adjust to life in Kazakhstan. There were thus no obstacles to their continuing their family life outside Russia. Finally, the Government argued that after the expiry of the five-year limitation period, it would be open to the first applicant to resume his family life in Moscow, provided he complied with the applicable rules.

39. The Government argued that the discretion granted to the member States of the Council of Europe permitted them to make sovereign choices as to the expulsion of undesirable aliens from their territory. They referred to the Court's own jurisprudence in this respect and to the widespread practice of forcible return of illegal immigrants from other European countries.

3. The Court's assessment

40. The parties do not dispute that the first applicant's removal constituted an interference with the applicants' right to respect for their family life, as guaranteed by Article 8 § 1 of the Convention. The Court also finds that the interference was in accordance with the law, namely Article 18.8 of the Code of Administrative Offences, and that it pursued legitimate aims, such as the economic well-being of the country and the prevention of disorder and crime.

41. The key question for the Court is whether the measure was necessary in a democratic society. The relevant criteria that the Court uses to assess whether an expulsion measure is necessary in a democratic society have recently been summarised as follows (see *Üner v. the Netherlands* [GC], no. 46410/99, §§ 57-58, ECHR 2006-...):

"57. Even if Article 8 of the Convention does not therefore contain an absolute right for any category of alien not to be expelled, the Court's case-law amply demonstrates that there are circumstances where the expulsion of an alien will give rise to a violation of that provision (see, for example, the judgments in *Moustaquim v. Belgium*, *Beldjoudi v. France* and *Boultif v. Switzerland*, [cited above]; see also *Amrollahi v. Denmark*, no. 56811/00, 11 July 2002; *Yılmaz v. Germany*, no. 52853/99, 17 April 2003; and *Keles v. Germany*, 32231/02, 27 October 2005). In the case of *Boultif* the Court elaborated the relevant criteria which it would use in order to assess whether an expulsion measure was necessary in a democratic society and proportionate to the legitimate aim pursued. These criteria, as reproduced in paragraph 40 of the Chamber judgment in the present case, are the following:

- the nature and seriousness of the offence committed by the applicant;

- the length of the applicant's stay in the country from which he or she is to be expelled;

- the time elapsed since the offence was committed and the applicant's conduct during that period;

- the nationalities of the various persons concerned;

- the applicant's family situation, such as the length of the marriage, and other factors expressing the effectiveness of a couple's family life;

- whether the spouse knew about the offence at the time when he or she entered into a family relationship;

- whether there are children of the marriage, and if so, their age; and

- the seriousness of the difficulties which the spouse is likely to encounter in the country to which the applicant is to be expelled.

58. The Court would wish to make explicit two criteria which may already be implicit in those identified in the *Boultif* judgment:

- the best interests and well-being of the children, in particular the seriousness of the difficulties which any children of the applicant are likely to encounter in the country to which the applicant is to be expelled; and

- the solidity of social, cultural and family ties with the host country and with the country of destination."

42. Turning to the circumstances of the present case, the Court first notes that the offence for which the first applicant was expelled consisted of a breach of the registration rules for foreign nationals. This offence is punishable under the Code of Administrative Offences by a fine of RUB 500 to 1,000 (about 11 to 23 euros (EUR)) and possible administrative removal. The Court also notes that there is no evidence of the first applicant having been previously penalised for this offence, even though his irregular situation had been known to the authorities prior to 17 January 2003. Given the margin of sanctions in the national law and the fact that the first applicant was simply warned on previous occasions about the need to obtain registration, the Court concludes that the offence was not a particularly serious one and that on 17 January 2003 the first applicant was punished under the relevant provisions for the first time.

43. Further, the Court notes that the first applicant arrived in Russia in 1992 and remained there most of the time, with the exception of two periods in 1994-1995 and August 2001-March 2002. On both occasions he was forced to leave for Kazakhstan by the fighting and insecurity in Chechnya and on both occasions he returned to Russia, where his wife and children had remained since 1995. Being a national of Kazakhstan, the first applicant did not need a visa to travel to Russia and thus did not face any difficulties in crossing the border. The local village authority in Chechnya confirmed the first applicant's residence in that village between the periods of hostilities (see paragraph 7 above).

44. Next, the Court notes that the second applicant and the couple's four minor children are citizens of Russia. They have never held Kazakh citizenship, and even

though the second applicant was born and spent her childhood years in Kazakhstan, by 1991 – the time of the dissolution of the Soviet Union – she and her family had returned to their native Chechnya and resided there for ten years. It is not alleged that she has any grounds on which to claim Kazakh nationality, and this link would be even more tenuous for the couple's children. The first applicant does not have a stable job in Kazakhstan and has been unable to provide a source of income for his family since he was removed to there.

45. As to the applicants' family situation, by the time of the first applicant's removal the applicants had been in a lawful marriage for over ten years. Three children were born of that marriage and the fourth child was conceived. The applicants lived together, brought up the children and both contributed to the common household. The existence of strong emotional ties between them has never been disputed. The applicants submitted that the first applicant had played a particularly important role in the upbringing of the couple's three elder children, since it was the second applicant who had worked following their move to Moscow. This information was supported by the documents from the removal procedure (see paragraph 19) and was not disputed by the Government. It is apparent that the expulsion of the first applicant has seriously affected the situation of the children and the second applicant, especially in view of the birth of D.Z. in September 2003 (see paragraphs 27-29).

46. Finally, the Court notes that the applicants and their children were already subjected to the stress of forced migration on at least two occasions between 1994 and 2003. The reports submitted by the applicants described the fragile health of their children and their integration in their current environment (see paragraphs 27-28 above). The second applicant's assertion that further moves to an unfamiliar milieu could only be contrary to the children's interests and lead to a deterioration of their well-being do not appear ill-founded in such circumstances.

47. The Court does not overlook the Government's argument that in 2002 the first applicant failed for several months to comply with the Russian legislation concerning the residence of foreign nationals. It also notes that no attempts were made by him prior to 2002 to obtain a permanent residence permit or Russian nationality, despite his long-term presence in Russia and his marriage to a Russian citizen. Although such behaviour is open to serious reproach, this case should be distinguished from others where the Court considered that the persons concerned could not at any time have reasonably expected to be able to continue family life in the host country (see, for example, *Jerry Olajide Sarumi v. the United Kingdom* (dec.), no. 43279/98, 26 January 1999, and *Y. v. Russia*, no. 20113/07, § 105, 4 December 2008). The Court considers that these arguments are particularly valid in the present case, since for a significant period of time the applicants lived in Chechnya, an area of the Russian Federation which had witnessed a virtual breakdown of law and order and where State institutions had ceased to function. It is also apparent that the applicants at least attempted to comply with the regulations in Moscow in 2002 (see paragraphs 10, 13, 15 and 16); however they were not successful because of practical difficulties.

48. In view of the above considerations the Court finds that the first applicant's removal in 2003 for a breach of the residence regulations had far-reaching negative consequences for the family life of the applicants and their children. The authorities did not give proper consideration to these issues. In the particular circumstances of the present case the Court considers that the economic well-being of the country and the prevention of disorder and crime did not outweigh the applicants' rights under Article 8.

49. There has accordingly been a violation of Article 8 of the Convention.

II. OTHER ALLEGED VIOLATIONS OF THE CONVENTION

50. The applicants complained that the first applicant's removal to Kazakhstan amounted to a violation of Article 3 of the Convention. The first applicant alleged a violation of Article 5 § 1 (f) on account of his detention between 17 January and 15 April 2003. Under the same heading he alleged a violation of Article 5 § 5. The applicants claimed that the decision of the Golovinskiy District Court of 17 January 2003 had been adopted in breach of the fair trial guarantees of Article 6 § 1 of the Convention. They claimed a violation of Article 14 in so far as the above violations had occurred on account of their Chechen ethnic origin. Finally, the applicants alleged a violation of Article 1 of Protocol No. 7 to the Convention, because the first applicant had been expelled in breach of its guarantees for aliens lawfully residing in the territory of a Contracting Party.

51. However, in the light of all the material in its possession, and in so far as the matters complained of are within its competence, the Court finds that they do not disclose any appearance of a violation of the rights and freedoms set out in the Convention or its Protocols.

52. It follows that these complaints are manifestly ill-founded and must be rejected in accordance with Article 35 §§ 3 and 4 of the Convention.

III. APPLICATION OF ARTICLE 41 OF THE CONVENTION

53. Article 41 of the Convention provides:

> "If the Court finds that there has been a violation of the Convention or the Protocols thereto, and if the internal law of the High Contracting Party concerned allows only partial reparation to be made, the Court shall, if necessary, afford just satisfaction to the injured party."

A. Damage

54. The applicants claimed 50,000 euros (EUR) in respect of non-pecuniary damage. They also asked the Court to restore their rights by ordering positive measures to secure their family's reunion.

55. The Government found the claims exaggerated and unfounded. As to the applicants' request to obtain a temporary residence permit, the Government stressed that it was open to them to submit the relevant requests to the authorities in accordance with the applicable national legislation. So far they had failed to do so.

56. Having regard to its above findings regarding the violation of the right to family life under Article 8, the Court finds it appropriate to award the applicants EUR 9,000 in respect of non-pecuniary damage. As to the applicants' claim for additional measures, the Court finds that this request is unnecessary in view of the relevant national legislation (see paragraph 31 above). The applicants have not taken any steps to secure the reunion of their family and it is premature to judge whether there are any obstacles to it. The Court therefore dismisses this claim.

B. Costs and expenses

57. The aggregate claim in respect of costs and expenses relating to the applicants' legal representation amounted to EUR 4,041 (3,782.98 pounds sterling (GBP)). They submitted the following breakdown of costs:

(a) GBP 2,700 for 27 hours' legal work by a United Kingdom-based lawyer at a rate of GBP 100 per hour;

(b) GBP 907.98 for translation costs; and

(c) GBP 175 for administrative and postal costs.

58. The Government questioned whether the amounts claimed under this head were reasonable and justified.

59. According to the Court's case-law, an applicant is entitled to the reimbursement of costs and expenses only in so far as it has been shown that these have been actually and necessarily incurred and were reasonable as to quantum.

60. Having regard to the details of the documentation submitted, the Court is satisfied that these rates are reasonable and reflect the expenses actually incurred by the applicants' representatives.

61. The Court, however, notes that it found a violation of Article 8 while finding the remainder of the complaints inadmissible. The Court therefore finds that it can reduce the amount claimed.

62. Having regard to the details of the claims submitted by the applicants' representatives and its findings set out above, the Court awards them the amount of EUR 2,000 together with any value-added tax that may be chargeable to the applicants, the net award to be paid into the representatives' bank account in the United Kingdom, as identified by the applicants.

C. Default interest

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

FOR THESE REASONS, THE COURT UNANIMOUSLY

1. *Declares* the complaint concerning Article 8 admissible and the remainder of the application inadmissible;

2. *Holds* that there has been a violation of Article 8 of the Convention;

3. *Holds*

(a) that the respondent State is to pay, 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 Russian roubles at the rate applicable at the date of settlement, save in the case of the payment in respect of costs and expenses:

(i) EUR 9,000 (nine thousand euros), plus any tax that may be chargeable, in respect of non-pecuniary damage;

(ii) EUR 2,000 (two thousand euros), plus any tax that may be chargeable to the applicants, in respect of costs and expenses, to be paid into the representatives' bank account in the United Kingdom;

(b) that from the expiry of the above-mentioned three months until settlement simple interest shall be payable on the above amounts at a rate equal to the marginal lending rate of the European Central Bank during the default period plus three percentage points;

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

Done in English, and notified in writing on 11 February 2010, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Søren Nielsen Christos Rozakis
Registrar President

ZAKAYEV AND SAFANOVA v. RUSSIA JUDGMENT