



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

THIRD SECTION

**CASE OF GUBASHEVA AND FERZAULI v. RUSSIA**

*(Application no. 38433/17)*

JUDGMENT

Art 8 • Family life • Failure by the authorities to enforce a judgment granting a mother a residence order in respect of her very young daughter for some four and a half years • Manifest inaction and inadequate action of the bailiffs' service • Small administrative fine imposed on the father for his refusal to comply • Consequences for the child's physical and mental well-being and the tie with her mother

STRASBOURG

5 May 2020

**FINAL**

**05/08/2020**

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



**In the case of Gubasheva and Ferzauli v. Russia,**

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

Paul Lemmens, *President*,

Georgios A. Serghides,

Dmitry Dedov,

Alena Poláčková,

María Elósegui,

Gilberto Felici,

Erik Wennerström, *judges*,

and Milan Blaško, *Section Registrar*,

Having regard to:

the application 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, Ms Asya Baudiyevna Gubasheva (“the first applicant”) and Ms Ramina Renatovna Ferzauli (“the second applicant”), on 19 May 2017;

the decision to give notice to the Russian Government (“the Government”) of the complaints concerning the authorities’ failure to enforce the judgment granting the first applicant a residence order in respect of the second applicant and the absence of an effective domestic remedy in this respect, and to declare inadmissible the remainder of the application;

the decision to grant priority to the above application under Rule 41 of the Rules of Court;

the parties’ observations;

Having deliberated in private on 16 April 2020,

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

## INTRODUCTION

The present case concerns the failure by the domestic authorities to enforce a judgment granting the first applicant a residence order in respect of the second applicant and the absence of an effective domestic remedy in this regard. It raises issues under Articles 8 and 13 of the Convention.

## THE FACTS

1. The applicants are mother and daughter. They were born in 1989 and 2012 respectively and live in the Chechen Republic and the Republic of Ingushetia respectively. They were represented by Ms V. Kogan and Mr E. Wesselink from the Stichting Russian Justice Initiative (“the SRJI”), an NGO based in Moscow.

2. The Russian Government (“the Government”) were represented by Mr M. Galperin, Representative of the Russian Federation to the European Court of Human Rights.

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

#### I. THE CIRCUMSTANCES OF THE CASE

4. On 2 February 2012 the first applicant married R.F.

5. On 15 May 2012 the first applicant gave birth to their daughter, the second applicant.

6. In August 2012 the first applicant and R.F. separated. The second applicant continued to live with the first applicant.

7. In August 2014 R.F. abducted the second applicant.

8. On 23 September 2014 the marriage between the first applicant and R.F. was officially dissolved.

9. On 28 November 2014 the first applicant applied to the Sunzhenskiy District Court of the Republic of Ingushetia (“the District Court”) for a residence order in respect of the second applicant. In response, R.F. instituted proceedings for an order ruling that the child’s residence was to be with him.

10. On 9 February 2015 the District Court held that the child should reside with her mother, the first applicant. R.F.’s application for a residence order was dismissed. The judgment became final on 9 June 2015.

11. On 5 August 2015 bailiff Ye. from the Sunzhenskiy District Bailiffs’ Service in the Republic of Ingushetia opened enforcement proceedings in this connection.

12. On 21 August 2015 R.F. explained to bailiff Ch. that he was resident in the Chechen Republic and asked that the enforcement proceedings be referred to the Bailiffs’ Service in the Chechen Republic.

13. On 24 August 2015 bailiff Ch. from the Sunzhenskiy District Bailiffs’ Service instructed the Zavodskoy District Bailiffs’ Service in Grozny, the Chechen Republic, to establish R.F.’s place of residence.

14. On 27 August 2015 the enforcement proceedings were suspended pending attempts to ascertain R.F.’s residence in the Chechen Republic.

15. On 5 October 2015 bailiff K. from the Zavodskoy District Bailiffs’ Service in Grozny visited R.F.’s presumed place of residence in Grozny. It was established that R.F. was not living in the flat in question, which had been rented out to another person since 2012.

16. On 9 October 2015 bailiff Ch. from the Sunzhenskiy District Bailiffs’ Service visited R.F.’s presumed place of residence in the Republic of Ingushetia. The door was opened by R.F.’s mother, who explained that her son was living in Grozny.

17. On 7 December 2015 bailiff K. from the Zavodskoy District Bailiffs' Service in Grozny obtained explanations from R.F., who again submitted that he was living in Grozny and was prepared to appear before a bailiff as soon as he was summoned.

18. On 9 December 2015 the enforcement proceedings in the Republic of Ingushetia were suspended, and on 30 December 2015 it was decided to refer them to the Zavodskoy District Bailiffs' Service in Grozny.

19. On 16 February 2016 the enforcement proceedings were referred to the Zavodskoy District Bailiffs' Service in Grozny.

20. On 16 March 2016 bailiff T. from the Zavodskoy District Bailiffs' Service in Grozny again visited R.F.'s presumed place of residence in Grozny and established that he was not living there.

21. On 11 April 2016 an administrative fine of 1,000 Russian roubles (approximately 15 euros (EUR)) was imposed on R.F. for failure to comply with the judgment of 9 February 2015.

22. On 21 April 2016 bailiff T. from the Zavodskoy District Bailiffs' Service in Grozny instituted a search for the second applicant.

23. On 3 June 2016 it was established that the second applicant was attending a kindergarten in the Republic of Ingushetia.

24. On 22 June 2016 it was decided to return the enforcement proceedings to the Sunzhenskiy District Bailiffs' Service in the Republic of Ingushetia.

25. On 1 August 2016 the enforcement proceedings were returned to the Sunzhenskiy District Bailiffs' Service in the Republic of Ingushetia.

26. On 9 August 2016 bailiff A. visited R.F.'s presumed place of residence in the Republic of Ingushetia. Nobody opened the door. The bailiff then visited R.F.'s workplace and spoke to him. R.F. stated that he worked in the Republic of Ingushetia and lived in the Chechen Republic, and that he did not intend to return the child to the first applicant.

27. On 5 October 2016 the enforcement proceedings were again returned to the Chechen Republic.

28. On 4 November 2016 the Bailiffs' Service in Grozny refused to institute enforcement proceedings in respect of R.F. in the Chechen Republic.

29. On 13 December 2016 the enforcement file was sent back to the Sunzhenskiy District Bailiffs' Service in the Republic of Ingushetia.

30. In the meantime, on 12 October 2016 the first applicant brought judicial proceedings to contest the lawfulness of the bailiffs' actions.

31. On 22 November 2016 the District Court found the inaction of the Sunzhenskiy District Bailiffs' Service to be unlawful and noted that the bailiffs' actions were manifestly insufficient in terms of securing enforcement of the judgment of 9 February 2015, that the bailiffs' demands had been of a limited and formal nature, and that long periods of inactivity

had been attributable to the bailiffs. The bailiffs were required to remedy the above violations.

32. On 23 December 2016 the enforcement proceedings were referred to the Grozny Bailiffs' Service in the Chechen Republic for the third time.

33. On 31 January 2017 the enforcement file was received by the Grozny Bailiffs' Service.

34. However, on 27 February 2017 the enforcement proceedings were again referred to the Sunzhenskiy District Bailiffs' Service in the Republic of Ingushetia.

35. To date the judgment of 9 February 2015 remains unenforced.

## II. RELEVANT DOMESTIC LAW

36. For the relevant provisions of domestic law, see *Pakhomova v. Russia* (no. 22935/11, §§ 91-112, 24 October 2013).

37. The Federal Law On Enforcement Proceedings of 2 October 2007 ("the Enforcement Proceedings Act 2007") further provides that if a child in respect of whom a search has been instituted is found, the bailiff carrying out the search must immediately notify the childcare authority in the locality where the child is discovered and must take measures for the child to be transferred to the person (legal representative, guardian or trustee) indicated in the enforcement order. If immediate transfer of the child is not possible, the bailiff is to transfer the child to the childcare authority in the locality where the child is discovered and immediately inform the person concerned (section 65 § 14).

## THE LAW

### I. ALLEGED VIOLATION OF ARTICLE 8 OF THE CONVENTION

38. The first applicant complained, on her own behalf and on behalf of the second applicant, that the authorities had failed to enforce the judgment of 9 February 2015 granting her a residence order in respect of the second applicant. She referred to Article 8 of the Convention, which reads as follows:

"1. Everyone has the right to respect for his private and family life ...

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."

39. The Government submitted that Russian legislation on enforcement proceedings provided for a number of mechanisms aimed at ensuring that a non-compliant individual would fulfil the requirements of a judgment.

These included administrative or criminal liability, the possibility for third parties to contest the lawfulness of bailiffs' actions (or inaction) before the court, and a nationally followed protocol for the actions to be taken by bailiffs in organising and carrying out searches for a defaulter (or a child). They further submitted that in the present case the domestic authorities had taken all the measures necessary to ensure the fastest possible execution of the judgment of 9 February 2015. However, given that R.F. had been in hiding with the child, the judgment in question remained unenforced. In April 2016 R.F.'s actions in deliberately delaying and impeding enforcement of the judgment were found to have amounted to an administrative offence and an administrative fine was imposed on him. The Government concluded that the applicants' complaint was manifestly ill-founded.

40. The applicants submitted that the actions undertaken by the bailiffs' service in the context of the enforcement proceedings had been manifestly ineffective and protracted and had yielded no result. Meanwhile, the bond between the applicants had been damaged irreparably, causing both of them anguish and psychological trauma.

41. The enforcement measures had been limited to three visits to R.F.'s presumed place of residence, one visit to his workplace and one to the second applicant's kindergarten. R.F.'s failure to comply with the judgment was sanctioned only once, when he was subjected to an administrative fine. The amount of the fine was negligible. The search for R.F. had been instituted many months after it became clear that no information was available about his actual place of residence. No measures to enforce the judgment had been taken when the child was found to be attending the kindergarten in the Republic of Ingushetia and when it was established that R.F. was working in the Republic of Ingushetia. The enforcement proceedings had been transferred to the Chechen Republic and back to the Republic of Ingushetia on three occasions. Furthermore, the domestic court had found that the bailiffs' actions, and their failure to act, had been unlawful, noting that the actions taken were manifestly insufficient, limited and formal in nature.

#### **A. Admissibility**

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

## B. Merits

### 1. *General principles*

43. The essential object of Article 8 of the Convention is to protect the individual against arbitrary interference by the public authorities. There may also be positive obligations inherent in an effective “respect” for family life. In cases where contact and residence disputes concerning children arise between parents and/or other members of the children’s family, the Court’s case-law has consistently held that this Convention provision includes, among other things, a right for a parent to have measures taken with a view to his or her being reunited with their child, and an obligation on the national authorities to take such measures (see *Muruzheva v. Russia*, no. 62526/15, § 49, 15 May 2018, with further references therein).

44. At the same time, the national authorities’ obligation to take measures to facilitate reunion is not absolute, since the reunion of a parent with children who have lived for some time with the other parent may not be able to take place immediately, and may require preparatory measures. The nature and extent of such preparation will depend on the circumstances of each case, but the understanding and cooperation of all concerned are always important ingredients. Whilst the national authorities must do their utmost to facilitate such cooperation, any obligation to apply coercion in this area must be limited, since the interests as well as the rights and freedoms of all concerned must be taken into account, as should be, more particularly, the best interests of the child and his or her rights under Article 8 of the Convention. The adequacy of a measure is to be judged by the swiftness of its implementation, as the passage of time can have irremediable consequences for relations between the child and the parent. Although coercive measures involving a child are not desirable in this sensitive area, the use of sanctions must not be ruled out in the event of unlawful behaviour by the parent with whom the child lives (see *Muruzheva*, cited above, § 50, with further references therein).

### 2. *Application in the present case*

45. The Court notes, firstly, that it was common ground between the parties that the tie between the applicants constituted “family life” for the purposes of Article 8 of the Convention. The Court further notes that the judgment of the Sunzhenskiy District Court of the Republic of Ingushetia of 9 February 2015 granting the first applicant a residence order in respect of her daughter, the second applicant, then aged two years and eight months, remains unenforced some four and a half years later. Accordingly, it has to be determined whether in the particular circumstances of the case the national authorities took all the necessary steps which could reasonably have been expected of them to facilitate enforcement of that judgment.

46. The Court observes that the judgment of 9 February 2015 entered into force on 9 June 2015 and that on 5 August 2015 bailiff Ye. from the Sunzhenskiy District Bailiffs' Service in the Republic of Ingushetia opened enforcement proceedings in this connection.

47. The Court further observes that between 5 August 2015 and 27 February 2017 the enforcement file was on three occasions transferred from the Bailiffs' Service in the Republic of Ingushetia to the Bailiffs' Service in the Chechen Republic and back (see paragraphs 11, 18, 24, 27, 29, 32 and 34 above). This resulted from the domestic authorities' failure to establish whether R.F. resided in the Republic of Ingushetia or in the Chechen Republic and, consequently, to determine which bailiffs' service had competence to lead the enforcement proceedings.

48. The domestic authorities alleged that they were unable to establish R.F.'s place of residence despite the fact that he was not in hiding. However, they had been in contact with the Bailiffs' Services in both regions. The Court notes in this connection that on 7 December 2015 bailiff K. from the District Bailiffs' Service in Grozny obtained explanations from R.F. and on 9 August 2016 bailiff A. from the District Bailiffs' Service in the Republic of Ingushetia visited R.F.'s workplace and spoke to him (see paragraphs 17 and 26 above). It further notes that, aside from visiting R.F.'s presumed places of residence in both regions, no recourse had been had to other available enforcement measures in order to ascertain his exact place of residence. It was not until 21 April 2016 that a search for the second applicant had been instituted (see paragraph 22 above).

49. The Court further notes that despite having established R.F.'s workplace in the Republic of Ingushetia and the fact that the second applicant was attending a kindergarten in the Republic of Ingushetia (see paragraph 23 above), the Bailiffs' Service continued to transfer the enforcement proceedings to the Bailiffs' Service in the Chechen Republic. Moreover, the fact that the second applicant's whereabouts were ascertained would have enabled the bailiffs to take immediate measures in order to transfer her to the first applicant (see paragraph 37 above). However, no such measures were taken by the bailiffs.

50. Furthermore, despite R.F.'s open refusal to comply with the judgment of 9 February 2015, only one administrative fine, amounting to about EUR 15, was imposed on him on 11 April 2016 (see paragraph 21 above). Nothing in the case file suggests that the fine was actually recovered from R.F. In any event, it was too negligible and insufficiently supported by further enforcement measures to be capable of inciting R.F.'s compliance with the judgment.

51. The Court observes that on 22 November 2016 the District Court found the inaction of the Sunzhenskiy District Bailiffs' Service to have been unlawful and noted that the actions taken by the bailiffs to enforce the judgment of 9 February 2015 had been manifestly inadequate, that the

demands made by them had been of a limited and formal nature, and that long periods of inactivity had been attributable to the bailiffs (see paragraph 31 above). However, despite the District Court's instruction that the bailiffs remedy the deficiencies in the enforcement proceedings, there is nothing in the case file to suggest that this was actually done.

52. As regards the Government's argument about the existence in Russia of various mechanisms aimed at securing effective enforcement of judgments similar to the one in question (see paragraph 39 above), the Court notes that while those mechanisms might exist, they have not been set in motion in the present case.

53. The Court observes with serious concern that the judgment of 9 February 2015 determining the second applicant's place of residence as being with her mother (the first applicant) remains unenforced, more than four and a half years after it was delivered. This inordinate period represents a very large part of the child's life, with all the consequences this might have for her physical and mental well-being. It further undermines the tie between the applicants and thus seriously compromises their family life.

54. Having regard to the foregoing, and without overlooking the difficulties created by the refusal of the child's father to comply, the Court concludes that the Russian authorities failed to take, without delay, all the measures that they could reasonably have been expected of them to enforce the judgment of 9 February 2015 and thereby breached the applicants' right to respect for their family life, as guaranteed by Article 8.

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

## II. ALLEGED VIOLATION OF ARTICLE 13 OF THE CONVENTION

56. The first applicant further complained, on behalf of herself and the second applicant, about the absence of an effective domestic remedy in respect of their complaint under Article 8 concerning enforcement of the judgment determining the second applicant's place of residence as being with her. She relied on Article 13 of the Convention, which reads 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."

57. The Government did not make any separate submissions under Article 13.

58. The applicants argued that there was no effective legislation at the domestic level with regard to the enforcement of court decisions concerning the determination of a child's place of residence. They identified the following deficiencies: the low amounts of the administrative fines for non-compliance with the requirements of an enforcement order; difficulties

arising when a non-compliant parent moves from one place to another or changes his/her official residence, resulting in the enforcement proceedings being discontinued in one region and instituted in another; lack of clarity in court decisions on children's residence and access; significant gaps in the enforcement proceedings on account of bailiffs' inactivity; lack of promptness in judicial examination of complaints about bailiffs' actions (inactivity); lack of sanctions against bailiffs following judicial supervision of their actions (inactivity); absence of good practice in handling the transfer of a child from one parent to another; lack of a clear plan of action and coordination between authorities in ascertaining the whereabouts of a child and a non-compliant parent; and absence of fixed deadlines for enforcement.

59. The Court notes that this complaint is linked to the one examined above and must therefore likewise be declared admissible.

60. Having regard to its finding with regard to Article 8 of the Convention (see paragraphs 45-55 above), the Court considers that it is not necessary to examine whether there has been a violation of Article 13 in this case.

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

61. 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

62. The applicants claimed compensation for the non-pecuniary damage sustained as a result of the alleged violation of the Convention, in an amount to be determined by the Court.

63. The Government considered that, since the applicants had failed to quantify their claim for non-pecuniary damage, the claim should be rejected.

64. The Court considers that the applicants must have suffered, and continue to suffer, profound distress as a result of their inability to maintain a relationship with one another. It considers that, in so far as the first applicant is concerned, sufficient just satisfaction would not be provided solely by a finding of a violation. In the light of the circumstances of the case, and making an assessment on an equitable basis as required by Article 41, the Court awards the first applicant 12,500 euros (EUR) under this head. As to the second applicant, the Court considers that the finding of a violation provides sufficient just satisfaction for any non-pecuniary damage she may have suffered as a result of the violation of her Article 8

rights (see *Hromadka and Hromadkova v. Russia*, no. 22909/10, § 180, 11 December 2014, with further references).

## **B. Costs and expenses**

65. The first applicant claimed EUR 3,154.78 for the costs and expenses incurred before the domestic courts and the Court. The sum claimed comprised legal research and preparation amounting to EUR 2,850, administrative costs (telephone, fax and e-mail, photocopying and stationary, administrative support personnel) and postal expenses amounting to EUR 304.78. In support of this claim, the first applicant submitted a copy of a legal services agreement with the SRJI dated 20 March 2017, under which, if the Court awarded the applicant costs and expenses, she was to pay legal fees in the amount of EUR 50 per hour for SRJI staff lawyers' work and EUR 150 per hour for SRJI experts' work, administrative expenses in the amount of 7% of the final legal fee, and postal expenses. The first applicant further submitted a detailed invoice dated 25 May 2018, reflecting the amount of legal work performed in the case, administrative costs and postal expenses, supported by a DHL invoice. She requested that the costs and expenses be paid directly into the bank account of the SRJI.

66. The Government argued that the first applicant had failed to prove that the costs and expenses claimed had been actually incurred. In particular, the legal services agreement between the first applicant and her representative provided that those expenses were payable to the representative only in the event of a successful outcome of the proceedings before the Court, which made such an agreement unenforceable against the applicant in Russia.

67. According to the Court's case-law, an applicant is entitled to the reimbursement of his costs and expenses in so far as it has been shown that these have been actually and necessarily incurred and are reasonable as to quantum (see *Buzadji v. the Republic of Moldova* [GC], no. 23755/07, § 130, ECHR 2016, and, more recently, *Merabishvili v. Georgia* [GC], no. 72508/13, § 370, ECHR 2017). A representative's fees are considered to have been actually incurred if an applicant has paid them or is liable to pay them (see *Ždanoka v. Latvia*, no. 58278/00, § 122, 17 June 2004, and *Merabishvili*, cited above, § 372). Regarding being had to the documents in its possession and the above criteria, the Court considers it reasonable to award the first applicant EUR 3,155 in respect of the costs and expenses incurred in the proceedings before the domestic courts and the Court. The award is to be paid directly into the SRJI's bank account, as identified by the first applicant.

**C. Default interest**

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

FOR THESE REASONS, THE COURT, UNANIMOUSLY,

1. *Declares* the complaints under Articles 8 and 13 of the Convention admissible;
2. *Holds* that there has been a violation of Article 8 of the Convention;
3. *Holds* that there is no need to examine the complaint under Article 13 of the Convention;
4. *Holds*
  - (a) that the respondent State is to pay the first applicant, 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:
    - (i) EUR 12,500 (twelve thousand five hundred euros), plus any tax that may be chargeable, in respect of non-pecuniary damage;
    - (ii) EUR 3,155 (three thousand one hundred and fifty-five euros), plus any tax that may be chargeable to the first applicant, in respect of costs and expenses, to be paid to the bank account of the SRJI;
  - (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;
5. *Holds* that the finding of a violation constitutes in itself sufficient just satisfaction for any non-pecuniary damage sustained by the second applicant.

Done in English, and notified in writing on 5 May 2020, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Milan Blaško  
Registrar

Paul Lemmens  
President