

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

THIRD SECTION

CASE OF PALIY v. RUSSIA

(Application no. 42267/15)

JUDGMENT

This judgment was revised in accordance with Rule 80 of the Rules of Court in a judgment of 17 May 2022

STRASBOURG

14 December 2021

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



In the case of Paliy v. Russia,

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

María Elósegui, *President,*
Darian Pavli,
Frédéric Krenc, *judges,*
and Olga Chernishova, *Deputy Section Registrar,*

Having regard to:

the application (no. 42267/15) 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 a Russian national, Mr Ivan Ivanovich Paliy ("the applicant"), on 5 August 2015;

the decision to give notice to the Russian Government ("the Government") of the application;

the parties' observations;

Having deliberated in private on 23 November 2021,

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

INTRODUCTION

1. The case concerns alleged breaches of Article 6 and 13 of the Convention and Article 1 of Protocol No. 1 to the Convention on account of the non-enforcement of the final judgment in the applicant's favour.

THE FACTS

2. The applicant was born in 1949 and lives in Sadovyy (Krasnodar Region); he was represented by Ms T.I. Sladkova.

3. The Government were represented by Mr M. Galperin, the Representative of the Russian Federation to the European Court of Human Rights, and then by his successor in that office, Mr M. Vinogradov.

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

I. THE JUDGMENT IN THE APPLICANT'S FAVOUR AND THE ENFORCEMENT PROCEEDINGS

5. On 28 April 2011 the Ministry of Defence of Russia upheld an order on liquidation of the Federal Budgetary Institution "Direction of North-Caucasian Military Circuit" *(федеральное бюджетное учреждение "Управление Северо-Кавказского военного округа")* ("the Direction"). This decision was not published anywhere.

6. On 17 August 2011 the Leninskiy District Court of Rostov-on-Don ("the District Court") partially granted the applicant's claim against the

Direction and awarded him 300,000 Russian roubles (RUB) (about 7,020 euros (EUR) on the date when the judgment became final) of moral damages caused by the death of the applicant's son in connection with the performance of his military service. The representative of the Direction was present at the hearing and objected to the merits of the claim.

7. On 17 October 2011 the Rostov Regional Court upheld the judgment on cassation.

8. On 31 October 2011 the District Court issued the writ of execution and sent it to the applicant.

9. On 8 December 2011 the Tax Inspection made a record of the beginning of liquidation of the Direction in the State Register of Legal Entities.

10. On 7 February 2012 the Ministry of Defence informed the applicant that the Direction had been liquidated and advised him to submit a request to change the debtor without any indication of a new debtor.

11. On an unspecified date the applicant lodged with the District Court a request to change the debtor to the Ministry of Defence. In the hearing of 23 May 2012 the District Court established that the Direction had not been formally liquidated yet, and the applicant asked to terminate the proceedings for the debtor's replacement.

12. On 28 June 2012 the bailiff refused to initiate the enforcement proceedings referring, *inter alia,* to Article 242.3 of the Budget Code (see paragraph 20 below) that presupposed special order of execution for judgments against the State entities by the Federal Treasury.

13. On 27 November 2013 the Federal Treasury of Rostov-on-Don returned the writ of execution to the applicant on the grounds that the Direction's account had been closed on 3 May 2011. The Treasury recommended that the applicant should initiate proceedings for changing the method of enforcement proceedings or for vicarious liability.

14. On 13 February 2014 the Tax Inspection made a record of the liquidation of the Direction in the State Register of Legal Entities, and the organisation ceased to exist without determining any legal successor. According to the above-mentioned Register, the only founder of the Direction was the Ministry of Defence of Russia.

15. On 11 June 2014 the District Court dismissed the applicant's claim to change the method of the enforcement proceedings and to oblige the Direction of Finance of the Ministry of Defence *(Управление финансового обеспечения Министерства обороны)* to enforce the judgment in question, having found that the applicant had requested in substance to reopen the initial proceedings for the recovery of moral damages.

II. THE PROCEEDINGS FOR CHANGING A DEBTOR

16. On 29 June 2015 the District Court dismissed the applicant's claim to change the debtor in the enforcement proceedings for the Federal State Institution "Joint Strategic Command of the South Military Circuit" *(ФКУ "Объединенное стратегическое командование Южного военного округа")*, having established that, in accordance with the Civil Code, the liquidation did not imply any succession (see paragraph 21 below). On 29 October 2015 and 22 April 2016 the Rostov Regional Court upheld the judgment sitting as a court of appeal and the first cassation instance respectively.

III. THE COMPENSATION PROCEEDINGS

17. On an unspecified date the applicant lodged a compensation claim for non-enforcement of the judgment of 17 August 2011 (see paragraph 5 above) on the basis of 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" of 30 April 2010 ("Compensation Act") (see paragraph 19 below). On 3 March 2015 the Rostov Regional Court rejected the applicant's compensation claim on the grounds that the applicant had once again not sent the writ of execution to the Ministry of Finance, neither had he challenged the notification of the Federal Treasury of 27 November 2013 (see paragraph 13 above) and the decision of 11 June 2014 (see paragraph 15 above). In addition, the court stated without any specific reasoning that the applicant had not lost the possibility of enforcement of the judgment of 17 August 2011.

18. On 25 May 2015 the Rostov Regional Court upheld the judgment as a court of appeal, and on 16 October 2015 and 9 December 2015 the same Court and the Supreme Court respectively dismissed the applicant's cassation appeals.

RELEVANT LEGAL FRAMEWORK

19. The relevant provisions of the Compensation Act are exposed in the judgment *Gerasimov and Others v. Russia* (nos. 29920/05 and 10 others, § 93, 1 July 2014).

20. According to Article 242.3 § 1 of the Budget Code, a writ of execution which provides for recovery of federal budget funds on the basis of obligations of a federal institution as a debtor shall be sent by a court upon request of a creditor or by a creditor himself to the body of the Federal Treasury where the institution's current account is opened.

21. According to Article 61 § 1 of the Civil Code, liquidation of a legal entity shall entail its termination without the transfer of its rights and duties to other entities by way of succession.

22. According to Article 63 §§ 1 and 2 of the Civil Code, a liquidation commission shall take measures to find creditors and the recovery of debts, and shall notify them in written form about the liquidation of the legal entity. After the expiry of the term for submitting claims by the creditors, the liquidation commission shall prepare an interim liquidation balance sheet which contains information on the legal entity's property, on the list of the creditors' claims and on the results of their examination.

THE LAW

I. ALLEGED VIOLATION OF ARTICLE 6 § 1 AND ARTICLE 13 OF THE CONVENTION AND ARTICLE 1 OF PROTOCOL No. 1 TO THE CONVENTION

23. The applicant complained of the non-enforcement of the judgment in his favour and of a lack of any effective remedy in domestic law. He relied on Article 6 § 1 and Article 13 of the Convention, and on Article 1 of Protocol No. 1, which read as follows in their pertinent parts:

Article 6 § 1

"In the determination of his civil rights and obligations ..., everyone is entitled to a fair and public hearing within a reasonable time by [a] ... tribunal ..."

Article 13

"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."

Article 1 of Protocol No. 1

"Every natural or legal person is entitled to the peaceful enjoyment of his possessions. No one shall be deprived of his possessions except in the public interest and subject to the conditions provided for by law and by the general principles of international law ..."

A. Admissibility

24. The Government asked to declare the application inadmissible as manifestly ill-founded and did not submit any other objections as to the admissibility. The Court notes that the Direction, the sole founder of which was the State acting through the Ministry of Defence (see paragraph 14 above), did not enjoy sufficient institutional and operational independence from the State and, in the absence of any submissions of the Government under this head, it concludes that the State is to be held responsible under

the Convention for the judgment debt in the applicant's favour (see, *mutatis mutandis*, *Liseytseva and Maslov v. Russia*, nos. 39483/05 and 40527/10, §§ 214 and 219, 9 October 2014). The application is therefore compatible *ratione personae* with the provisions of the Convention.

25. The Court further notes that this complaint is neither manifestly ill-founded nor inadmissible on any other grounds listed in Article 35 of the Convention. It must therefore be declared admissible.

B. Merits

26. The applicant maintained his complaints, arguing that it had been the obligation of the State to execute the judgment in question.

27. The Government stated that the enforcement of the judgment in question had become impossible due to the applicant's own behaviour. It referred to the domestic legislation and submitted that the authorities could not enforce the judgments in question, since the applicant had failed to cooperate with a view to the recovery of the awards, namely to submit the writ of execution to the competent authorities.

28. The Court notes, at the outset, that, by virtue of the judgment of 17 August 2011 ordering monetary payment in the applicant's favour, the latter had a "legitimate expectation" to acquire a pecuniary asset, which was sufficiently established to constitute a "possession" within the meaning of Article 1 of Protocol No. 1.

29. The Court reiterates that an unreasonably long delay in the enforcement of a binding judgment may breach the Convention (see *Burdov v. Russia*, no. 59498/00, ECHR 2002-III). It has been the Court's constant position that a person who has obtained a judgment against the State may not be expected to bring separate enforcement proceedings (see, among many other authorities, *Koltsov v. Russia*, no. 41304/02, § 16, 24 February 2005, with further references), and that the burden to ensure compliance with a judgment against the State lies primarily with the State authorities starting from the date on which the judgment becomes binding and enforceable (see *Burdov v. Russia* (no. 2), no. 33509/04, § 69, ECHR 2009).

30. In the present case, the Court cannot overlook the fact that the Direction has been liquidated without any legal succession (see paragraphs 5, 9 and 14 above). At the moment of pronouncement of the judgment of 17 August 2011, the Ministry of Defence had already taken the decision on liquidation (see paragraph 5 above) and the Direction's current account had been closed (see paragraph 13 above), which, in the Court's view, excluded its enforcement in an ordinary course of proceedings established by the Budget Code (see paragraph 20 above). However, the representative of the Direction did not inform the trial court of this fact but objected to the merits of the case (see paragraph 6 above). Nor does it appear that the liquidation commission took any measures so as to notify the

applicant of the liquidation and to include his claim in the interim liquidation balance sheet, as provided by the legislation (see paragraph 22 above). The facts of the present case would suggest that the State authorities did not consider themselves bound by the obligation to honour the judgment debt after they had decided to liquidate the debtor. The Court has already ruled that such an attitude is difficult to reconcile with the State's obligations under the Convention to comply with domestic judicial decisions within a reasonable time (see, *mutatis mutandis*, *Liseytseva and Maslov*, cited above, § 222).

31. The Court observes, moreover, that the applicant took numerous steps aimed at the enforcement of the judgment in question (sending the writ of execution to the Federal Treasury and to the bailiffs, initiating separate proceedings for the changing of a method of enforcement and of a debtor in the enforcement proceedings) between 2012 and 2016, that is, during four years (see paragraphs 11-16 above), mostly following the recommendations given by the authorities. However, none of those actions led to any outcome, owing to the liquidation of the debtor. The Court cannot therefore discern any failure from the applicant's part to take steps in order to recover the judgment debt. Nor did the Government mention any procedural tool that the applicant had failed to apply.

32. The Court concludes that by failing to comply with the judgment of 17 August 2011 in the applicant's favour for more than ten years the domestic authorities violated his right to a court and prevented him from receiving the money he could reasonably have expected to receive.

33. Regard being had to its well-established practice (see, among many other authorities, *Tkhyegepso and Others v. Russia*, nos. 44387/04 and 11 others, § 18, 25 October 2011), the Court considers that there has been a violation of Article 6 § 1 of the Convention and Article 1 of Protocol No. 1.

34. Having regard to this conclusion, the Court considers that there is no need to examine the admissibility and merits of the complaint submitted by the applicant under Article 13 separately, because it is closely linked to the examined complaints and is based on the same facts (see, *mutatis mutandis*, *Kin-Stib and Majkić v. Serbia*, no. 12312/05, § 90, 20 April 2010, with further references).

II. APPLICATION OF ARTICLE 41 OF THE CONVENTION

35. 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."

36. The applicant claimed 11,690 euros (EUR) in respect of pecuniary damage: the main debt 300,000 Russian roubles (RUB) (EUR 7,020 on the

date of entry of the judgment into force) and EUR 4,670 of compensation for the loss of value of that sum due to the loss of purchasing power of the rouble of 66,53%, according to the applicant's calculations. He further claimed EUR 2,000 of non-pecuniary damage.

37. The Government submitted that the claim for pecuniary damage was unsubstantiated and the claim for non-pecuniary damage was excessive.

38. The Court reiterates that the most appropriate form of redress in respect of the violations found would be to put the applicant insofar as possible in the position he would have been if the Convention requirements had not been disregarded (see *Piersack v. Belgium* (Article 50), 26 October 1984, § 12, Series A no. 85). Its constant approach is that the adequacy of the compensation would be diminished if it were to be paid without reference to various circumstances liable to reduce its value (see, *mutatis mutandis, Gizzatova v. Russia*, no. 5124/03, § 28, 13 January 2005).

39. The Court notes that the applicant's complaint for non-enforcement concerned the unpaid amount in accordance with the judgment of 17 August 2011. It further notes that the applicant has attached to his claims for just satisfaction the official inflation rates confirming the loss of purchase power of the rouble. Nevertheless, the Court cannot discern any link between loss of purchase power of the rouble and the loss of value of the judgment debt calculated in euros. Therefore, it awards the applicant the equivalent in euros of the amount he would have received if the judgment in his favour had been enforced, that is, EUR 7,020 in respect of pecuniary damage, plus any tax that may be chargeable (see, for the same approach, *Tkhyegepso and Others v. Russia*, nos. 44387/04 and 11 others, § 30, 25 October 2011), and rejects the remainder of the claim as manifestly ill-founded. The Court also deems this award to be a sufficient redress for the loss of value of the judgment debt.

40. As to the non-pecuniary damage, the Court accepts that the applicant must have suffered distress and frustration resulting from the State authorities' failure to enforce the judgment in his favour in good time. It awards him the claimed sum, plus any tax that may be chargeable.

41. 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.

42. The applicant did not submit any claims for costs and expenses. Accordingly, the Court will not make any award under this head.

FOR THESE REASONS, THE COURT, UNANIMOUSLY,

1. *Declares* the application admissible;

2. *Holds* that there has been a violation of Article 6 § 1 of the Convention and Article 1 of Protocol No. 1 to 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 applicant, within three months, the following amounts, to be converted into the currency of the respondent State at the rate applicable at the date of settlement:

(i) EUR 7,020 (seven thousand twenty euros), plus any tax that may be chargeable, in respect of pecuniary damage;

(ii) EUR 2,000 (two thousand euros), plus any tax that may be chargeable, in respect of non-pecuniary damage;

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

5. *Dismisses* the remainder of the applicant's claim for just satisfaction.

Done in English, and notified in writing on 14 December 2021, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

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Olga Chernishova
Deputy Registrar

María Elósegui
President