

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

THIRD SECTION

CASE OF SASHCHENKO v. RUSSIA

(Application no. 50877/06)

JUDGMENT

STRASBOURG

19 December 2017

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



In the case of Sashchenko v. Russia,

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

Branko Lubarda, *President,*
Pere Pastor Vilanova,
Georgios A. Serghides, *judges,*

and Fatoş Aracı, *Deputy Section Registrar,*

Having deliberated in private on 28 November 2017,

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

PROCEDURE

1. The case originated in an application (no. 50877/06) 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 Sergey Vladimirovich Sashchenko ("the applicant"), on 20 November 2006.

2. The Russian Government ("the Government") were represented initially by Mr G. Matyushkin, the Representative of the Russian Federation to the European Court of Human Rights, and then by his successor in that office, Mr M. Galperin.

3. On 18 May 2015 the complaint concerning non-enforcement of the domestic judicial decision in the applicant' favour was communicated to the Government in accordance with the pilot judgment *Burdov v. Russia (no. 2)* (no. 33509/04, ECHR 2009), and the remainder of the application was declared inadmissible pursuant to Rule 54 § 3 of the Rules of Court.

4. The Government later informed the Court that the non-enforcement of the judgment in the applicant' favour was, *inter alia*, due to the applicant' behaviour. The Court therefore decided to resume examination of the present application.

THE FACTS

I. THE CIRCUMSTANCES OF THE CASE

5. The applicant was born in 1978 and lives in Nizhniy Novgorod.

6. On 25 October 2002 the Military Court of the Vladikavkaz Garrison ("the Military Court") ordered, *inter alia*, the head of the respondent military institute to re-calculate the period of the applicant's service, applying the favourable terms of such calculation for a specified period of

service. The applicant was also awarded some additional allowances and payments for certain periods.

7. The judgment came into force on 5 November 2002.

8. On 3 March 2003 the Military Court issued a writ of execution. On 4 August 2003 the bailiffs' service instituted the enforcement proceedings.

9. On 19 September 2003 the enforcement proceedings were terminated and the writ of execution was returned to the applicant, as the debt could not be recovered.

10. On 13 November 2003 the head of the respondent military institute issued Order No. 463 requiring to make payments in accordance with the judgment of 25 October 2002. However, no calculations or payments were made at that time.

11. On 4 February 2005 the applicant submitted the writ of execution to the Federal Treasury.

12. On 18 May 2005 the writ was returned to the applicant on the ground that the judgment obliged an official of an organisation to take certain actions rather than ordered to recover payments from a budgetary organisation. Thus, the writ of execution was to be submitted to the bailiffs' service.

13. On an unspecified date in 2005 the applicant submitted the writ of execution to the bailiffs' service.

14. On 14 April 2006 the writ of execution was returned to the applicant from the bailiffs' service without enforcement. The bailiffs explained that for the applicant to be able to receive the payments under the judgment, he should obtain a writ of execution stating the sum of the debt to be recovered. After that, the writ could be submitted to the Federal Treasury for enforcement.

15. In 2005 in accordance with Order No. 463, the defendant military institute calculated the amounts due to the applicant as follows: the compensation for the supplementary ration for the period from October 1998 until March 2000 –11,341.85 Russian roubles (RUB); allowance for special regime of the service in 1998-2002 – RUB 2,720.1; and special allowance – RUB 327,000. In total: RUB 341,061.95.

THE LAW

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

16. The applicant complained about non-enforcement of the judgment of 25 October 2002. The Court will examine this complaint under Article 6 § 1

of the Convention and Article 1 of Protocol No. 1 to the Convention, which, as far as relevant, read as follows:

Article 6 § 1

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

Article 1 of Protocol No. 1

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

17. The Government acknowledged that the judgment in the applicant's favour was not fully enforced. They further noted that the lack of specific amounts in the text of the judgment was an obstacle to its full enforcement. The Government also argued that the non-enforcement was due to the applicant's failure to take necessary steps in order to recover the awards in his favour.

18. The applicant maintained his complaint, arguing, in particular, that he had applied to various authorities, such as the Federal Treasury and the bailiffs' service, with the view to have the judgment executed.

A. Admissibility

19. 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

20. 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 further reiterates that a person who has obtained a judgment against the State may not be expected to bring separate enforcement proceedings (see *Metaxas v. Greece*, no. 8415/02, § 19, 27 May 2004). Where a judgment is against the State, the defendant State authority must be duly notified thereof and is thus well placed to take all necessary initiatives to comply with it or to transmit it to another competent State authority responsible for compliance (see *Akashev v. Russia*, no. 30616/05, § 21, 12 June 2008). The complexity of the domestic enforcement procedure or of the State budgetary system cannot relieve the State of its obligation under the Convention to guarantee to

everyone the right to have a binding and enforceable judicial decision enforced within a reasonable time (*Burdov (no. 2)*, cited above, § 70).

21. At the same time, the Court has accepted that a successful litigant may be required to undertake certain procedural steps in order to recover the judgment debt (see *Shvedov v. Russia*, no. 69306/01, § 32, 20 October 2005). The creditor's uncooperative behaviour may be an obstacle to timely enforcement of a judgment, thus alleviating the authorities' responsibility for delays (see *Belayev v. Russia* (dec.), no. 36020/02, 22 March 2011).

22. Turning to the present application, the Court notes that the applicant tried to recover the debt in his favour (see paragraphs 8-15 above). The Court accordingly finds that the arguments advanced by the Government do not justify prolonged non-enforcement of the judgment in the applicant's favour.

23. As to the Government's argument about the lack of specific amounts in the text of the judgment, the Court notes that as in some previous similar cases the wording of the judgment of 25 October 2002 was sufficiently clear and specific to be enforceable. The text of the judgment specified the type of the awarded allowances, the period and method of calculation. Therefore, the amounts due to the applicant could easily be calculated (see *Bulgakova v. Russia*, no. 69524/01, § 29, 18 January 2007). The Court further notes that the relevant calculations were made in 2005 by the defendant authority (see paragraph 15 above), and the Government in their observations did not contest those calculations.

24. The Court has frequently found violations of Article 6 § 1 of the Convention and Article 1 of Protocol No. 1 to the Convention in cases raising similar issues to the ones in the present case (see, for example, *Kochalidze v. Russia*, no. 44038/05, §§ 12-15, 10 April 2012, and *Bezborodov v. Russia*, no. 36765/03, §§ 45-51, 20 November 2008).

25. Having examined the material submitted to it, the Court sees no reason for reaching a different conclusion in the present case. Having regard to its case-law on the subject, the Court finds that by failing for over ten years to comply with the enforceable judgment in the applicant' favour the domestic authorities impaired the essence of his right to a court and prevented him from receiving the money he had reasonably expected to receive.

26. There has accordingly been a violation of Article 6 § 1 of the Convention and Article 1 of Protocol No. 1 to the Convention.

II. APPLICATION OF ARTICLE 41 OF THE CONVENTION

27. 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

28. The applicant claimed in total 1,138,619.9 Russian roubles (RUB) in respect of pecuniary damage. This amount included the main debt RUB 341,061.95 and compensation for the loss of value of that sum due to inflation following the lengthy non-enforcement in the amount of RUB 797,573.37. The amount of the main debt was based on the calculations made by the defendant authority in accordance with Order No. 463 of 13 November 2003 of the head of the respondent military institute (see paragraph 15 above). The applicant enclosed the copies of those calculations. The amount of the loss of value of the judgment debt was calculated using the consumer price index for the reference period (the amount of the main debt multiplied by the consumer price index). The applicant submitted a letter from the Nizhniy Novgorod Regional Department of the State Statistics of 2 October 2015 showing the consumer price index during the reference period in the Republic of North Ossetia. The applicant further claimed RUB 5,000,000 in respect of non-pecuniary damage.

29. The Government submitted that since no violation of the applicant's rights had taken place, no pecuniary damage should be awarded. They did not comment on the method used by the applicant for the calculation of the main debt and inflation losses. As for the non-pecuniary claims, they argued they were excessive and not corresponding to the Court's case-law.

30. The Court reiterates that the most appropriate form of redress in respect of the violations found would be to put the applicants as far as possible in the position they 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, and, *mutatis mutandis, Gençel v. Turkey*, no. 53431/99, § 27, 23 October 2003). It further reiterates its constant approach 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).

31. The Court notes that the applicant's complaint for non-enforcement concerned the unpaid amounts in accordance with the judgment of 25 October 2002. It further notes that the applicant has attached to his claims for just satisfaction the official calculations made by the respondent military institute in accordance with the initial judgment following Order No. 463 of 13 November 2003. The Government neither contested those calculations nor provided any alternative calculation of the main debt or the

method of calculation of the pecuniary damage sustained as a result of the depreciation of the original award.

32. The Court accepts the applicant's calculation of the judgment debt and awards the equivalent in euros of the amount claimed in full. Further, as regards the method used to calculate the loss of value of the judgment debt, and in the absence of the Government's objection in this respect, the Court accepts the method suggested by the applicant. However, it appears that the sum claimed under this head, as calculated by the applicant, comprises both the amount in respect of the loss of value and, for the second time, the judgment debt. In order to avoid a double award of the initial judgment debt, the Court decides to deduce the respective sum from the amount claimed by the applicant under this head. Therefore, the Court awards the applicant 11,576 euros (EUR) in respect of pecuniary damage.

33. As to the claim for 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. Making its assessment on an equitable basis, it awards the applicant EUR 6,000 in respect of non-pecuniary damage, plus any tax that may be chargeable on that amount.

B. Costs and expenses

34. The applicant also claimed RUB 8,180 and RUB 2,100 for the costs and expenses incurred before the Court.

35. The Government agreed that the applicant had substantiated the claims under this head in the amount of RUB 8,180 by submitting the relevant receipts in respect of the legal services and postal expenses. However, they argued that the applicant had failed to confirm the remaining expenses for the translation services as the receipt for RUB 2,100 submitted by him was unreadable.

36. Regard being had to the documents in its possession and to its case-law, the Court awards the sum of EUR 120 covering costs and expenses, plus any tax that may be chargeable on that amount.

C. Default interest

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

FOR THESE REASONS, THE COURT, UNANIMOUSLY,

1. *Declares* the complaint concerning non-enforcement of the judgment of 25 October 2002 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*
   (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 11,576 (eleven thousand five hundred and seventy-six euros) in respect of pecuniary damage;
      (ii) EUR 6,000 (six thousand euros), plus any tax that may be chargeable, in respect of non-pecuniary damage;
      (iii) EUR 120 (one hundred and twenty euros), plus any tax that may be chargeable, in respect of costs and expenses;
   (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 applicant' claims for just satisfaction.

Done in English, and notified in writing on 19 December 2017, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Fatoş Aracı	Branko Lubarda
Deputy Registrar	President