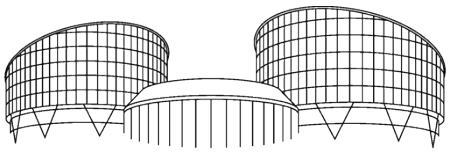

EUROPEAN COURT OF HUMAN RIGHTS
COUR EUROPÉENNE DES DROITS DE L'HOMME

FIRST SECTION

CASE OF PELIPENKO v. RUSSIA

(Application no. 69037/10)

JUDGMENT
(Just satisfaction)

STRASBOURG

16 January 2014

FINAL

02/06/2014

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

In the case of Pelipenko v. Russia,

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

Isabelle Berro-Lefèvre, *President,*
Elisabeth Steiner,
Khanlar Hajiyev,
Mirjana Lazarova Trajkovska,
Julia Laffranque,
Erik Møse,
Dmitry Dedov, *judges,*
and Søren Nielsen, *Section Registrar,*

Having deliberated in private on 17 December 2013,

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

PROCEDURE

1. The case originated in an application (no. 69037/10) 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 two Russian nationals, Ms Svetlana Grigoryevna Pelipenko and Mr Aleksandr Vitalyevich Pelipenko ("the applicants"), on 2 November 2010.

2. In a judgment delivered on 2 October 2012 ("the principal judgment"), the Court decided to rule on the admissibility and merits of the application at the same time (Article 29 § 1) and declared the complaints under Articles 6 and 8 of the Convention admissible. It further held that there had been a violation of Article 6 of the Convention in view of the bailiffs' failure to enforce a final judgment issued against a private company and ordering the applicants' resettlement from the accommodation they were occupying at the time to another flat (see *Pelipenko v. Russia*, no. 69037/10, § 56, 2 October 2012). The Court also found that the applicants' eviction from their home, which was effected in the absence of any legal basis and in violation of the final court judgment, ran counter to the guarantees afforded by Article 8 of the Convention (ibid., § 67).

3. Under Article 41 of the Convention the applicants sought provision of a new flat and various sums by way of just satisfaction.

4. Since the question of the application of Article 41 of the Convention was not ready for decision, the Court reserved it and invited the Government and the applicants to submit, within three months of the date on which the judgment became final, their written observations on that issue and, in particular, to notify the Court of any agreement they might reach (ibid., § 72, and point 4 of the operative provisions).

5. The applicants and the Government each submitted observations, but failed to reach an agreement.

THE FACTS

NATIONAL PROCEEDINGS FOLLOWING THE PRINCIPAL JUDGMENT

6. The first applicant lodged an action with the Anapa Town Court against Ms A., the owner of the house at the time when the applicants' eviction was effected and on whose orders the house was subsequently destroyed, making their return to the premises impossible. Having argued that she and the second applicant had been unlawfully evicted from the flat, the first applicant sought restoration of the house to the state it had been in before the destruction, and compensation for damages, including expenses for the applicants' stay in a hotel following their eviction.

7. On 25 July 2012 the Anapa Town Court allowed the action in part, ordering that Ms A. should provide the applicants, within ten days of the judgment becoming final, with a two-room flat "suitable for permanent residence". Ms A. was also ordered to pay 126,000 Russian roubles (RUB) in compensation for the cost of the applicants' stay in the hotel after their eviction.

8. By a judgment issued on 9 October 2012 the Krasnodar Regional Court upheld the Town Court's decision to award a flat, but dismissed the claim regarding compensation for damages, as the applicants had failed to prove that it had been necessary for them to take up residence in a hotel.

9. The first applicant applied to the Anapa Town Court seeking an interpretation of the judgment of 25 July 2012, as upheld on appeal on 9 October 2012. In particular, she asked the court to explain how the judgment could be enforced and to provide a clearer definition of the type of flat Ms A. was obliged to provide.

10. On 5 March 2013 the Town Court issued a decision in which it stated that Ms A. was under an obligation to provide, within ten days of the judgment becoming final, for the applicants' use "a two-room flat [on condition] that the two rooms in the flat were isolated, the flat was connected to all communal supply systems and [that its] condition corresponded to public health norms and regulations". The court refused to provide any other explanations as to the method of enforcement.

11. Two weeks later the town court supplemented the decision of 5 March 2013, adding that the flat should be in Anapa.

THE LAW

12. 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

1. Pecuniary damage

(a) The applicants' submissions

13. The applicants claimed RUB 6,275,614 (approximately 150,000 euros (EUR)) representing the current market price of a flat of the same size and in the same district of Anapa which they had occupied prior to their eviction. They arrived at that amount by calculating an average value between the expert valuation of their former accommodation performed in the course of the domestic proceedings (RUB 4,740,000) and estate agents' prices for similar properties which the applicants consulted on the Internet (RUB 7,207,297).

14. The applicants further claimed RUB 707,517 (approximately EUR 16,850) representing the cost of construction, maintenance and repair works carried out by them in their former accommodation upon the authorisation of the former owner of the house and the housing maintenance authorities. They supported their claim with a report issued by a technical construction expert bureau and submitted copies of invoices for the purchase of construction materials and repair works. The applicants explained that they were unable to provide invoices for every purchase they had made or service they had commanded as those documents had been lost or misplaced during their forced eviction.

15. The applicants also sought compensation of RUB 126,000 (approximately EUR 3,000), representing the cost of a room in a hotel they had rented following their eviction. The applicants linked the cost of the room (RUB 200 per day) to the consumer price index in the Krasnodar Region. They provided the Court with documents issued by the hotel administrator showing that they had stayed in the hotel from 28 December 2010 to 21 May 2011 and from 2 September 2011 to 31 May 2012, and that they had paid for their stay in full. While the cost of the stay for the first period was not indicated, the documents show that the applicants paid RUB 54,000 (EUR 1,350) for their stay during the second period.

16. Finally, the applicants claimed RUB 791,440.45 (approximately EUR 20,000). The sum amounted to the aggregated costs of stress relief medication, installation of a telephone line and Internet services and

personal belongings damaged or lost during the applicants' eviction. As regards the latter claim, the applicants provided the Court with copies of bailiffs' reports containing a long list of personal belongings, including furniture, clothes, books, technical equipment and electrical appliances, taken from their home on the day of the eviction and left in the yard near the building. The applicants also produced photographs depicting the outcome of the eviction proceedings. As can be seen in the photographs, the applicants were forced to live in the street with their furniture and personal belongings scattered all over the street in front of the building from which they had been evicted. Signs declaring the applicants' ownership and warning off possible thieves were posted on the scattered belongings. The applicants assessed that the cost of the items listed in the bailiffs' reports was RUB 677,300 (approximately EUR 17,000). They also argued that the bailiffs had omitted to list every item of their property they had lost as a result of the eviction. The estimated cost of those items was RUB 79,830 (approximately EUR 2,000). The applicants explained that for three months following the eviction their property had been left outside the house, until representatives of the Anapa Town Council had agreed to move it to a garage in the Town Council building. Since then they have had no access to their belongings. They submitted a copy of a letter sent to the mayor of Anapa in March 2013 in which they requested access to their property. The Court also received a copy of a letter sent by a deputy mayor in response and informing the applicants that the matter had been re-addressed to the bailiff. According to the applicants, no response followed and no access to their property was granted.

(b) The Government's submissions

17. The Government argued that the applicants' central claim for compensation in the amount of the cost of a flat in Anapa was based on a court judgment which was no longer in force. They further stressed that the applicants had neither provided documents to support their method of calculation of the cost of similar accommodation in Anapa, nor had they submitted any evidence to corroborate their assessment of the size of their former accommodation. Relying on a document issued by an inter-agency commission on 30 May 2001, the Government noted that the applicants had occupied an 80.7-square-metre property, and not 110.23 sq. m as they had argued.

18. The Government also pointed out that the final judgment of 21 November 2001 which, according to the Court's findings in the principal judgment, the bailiffs had failed to enforce, was issued against a private company (hereinafter "the company"). The Government reminded the Court that the Russian authorities could not be held liable for debts incurred by private individuals. Continuing that line of argument, the Government informed the Court that on 25 July 2012 the Anapa Town Court had held

that Ms A. should provide the applicants with a two-room flat "suitable for full-time occupation". That judgment became final on 9 October 2012. The Government noted that no enforcement action had been taken, as the applicants had not submitted a writ of execution to the local bailiffs' service.

19. As regards the applicants' remaining claims in respect of pecuniary damage, the Government considered them to be entirely unsubstantiated and devoid of any causal link to the merits of the case at hand.

20. In their further observations received on 24 May 2013, the Government submitted additional arguments opposing the applicants' claims. The Government reminded the Court that the judgment ordering Ms A. to provide the applicants with a two-room flat was final and binding, and remained unenforced solely because of the applicants' failure to apply to a court for a writ of execution. The Government reiterated that Ms A. had expressed her intention of providing the applicants with a flat, but she had been unable to do so as the first applicant was unhappy with the terms of the judgment of 25 July 2012. They insisted that the Court could only order the enforcement of the judgment of 25 July 2012 by the Russian authorities, but it could not levy on the State an obligation to provide the applicants with a flat or to cover its cost. In the Government's opinion, if the Court followed the latter line the applicants would unlawfully receive two flats – one from the State and another from Ms A.

21. The Government supported their submissions with a copy of an explanatory note handwritten by Ms A. The relevant part of the note read as follows:

> «At the material time I do not place any obstacles in the way of [the applicants'] moving into the administrative building. However, [the administrative] building [the applicants] are to move into is not suitable for living in: there are no doors, no windows, no [electricity, gas and water supply systems], and the roof is partly destroyed.
>
> As regards the question pertaining to the provision of a two-room flat, I can explain the following:
>
> On a number of occasions I have offered, through a representative, to sign a lease agreement for a two-room flat. However, [the applicants] have refused. I do not refuse to enforce the judgment issued by the Anapa Town Court on 25 July 2012. If [the applicants] seek execution of the judgment, I will be ready to examine the question of the enforcement of the judgment in the way prescribed by law."

22. Furthermore, the Government reiterated that the applicants had never had title to the flat from which they had been evicted and that the Court had not examined the facts of the present case from the point of view of a possible violation of Article 1 of Protocol No. 1. The Government interpreted those circumstances as an additional argument in favour of the Court refusing to award a flat to the applicants. In the alternative, the

Government disputed the method of calculation of the cost of a two-room flat used by the applicants.

23. The Government proceeded to an analysis of the applicants' remaining claims in respect of pecuniary damage. In particular, they supported their previous view that the applicants' claims for compensation for medical expenses and installation of telephone and Internet lines had no connection to the merits of the present case. They also stressed that the applicants had failed to provide any evidence in support of their claims related to their stay in the hotel. Having relied on the Court's findings in the case of *Magomadova and Others v. Russia* ((dec.), no. 3526/04, 11 December 2012), the Government further stated that the applicants' personal belongings taken by the bailiffs from the flat on the day of their eviction had been safely stored by the Anapa Town Council, which had repeatedly offered the applicants the opportunity to remove their possessions from the storage premises. The Government insisted that there was no evidence that the applicants' belongings had been damaged or destroyed.

24. Finally, the Government addressed the applicants' claim related to compensation for their expenses for construction, renovation and repair works they had performed in the old flat. The Government concluded that given that the house had been destroyed on Ms A.'s order, it was for her to compensate the applicants for those expenses.

(c) The Court's assessment

25. The Court reiterates that a judgment in which it finds a breach of the Convention imposes on the respondent State a legal obligation to put an end to that breach and make reparation for its consequences in such a way as to restore as far as possible the situation existing before the breach. The Contracting States are in principle free to choose the means by which they comply with a judgment in which the Court has found a breach. If the nature of the breach allows *restitutio in integrum*, it is for the respondent State to effect it. If, on the other hand, national law does not allow – or allows only partial – reparation to be made for the consequences of the breach, Article 41 empowers the Court to afford the injured party such satisfaction as appears to it to be appropriate (see *Papamichalopoulos and Others v. Greece* (Article 50), 31 October 1995, § 34, Series A no. 330-B; *Brumărescu v. Romania* (just satisfaction) [GC], no. 28342/95, §§ 19-20, ECHR 2001-I; and *Mutishev and Others v. Bulgaria* (just satisfaction), no. 18967/03, § 23, 28 February 2012).

26. The applicants sought, *inter alia*, payment of the full market value of a two-room flat in Anapa (see paragraph 13 above). The Court reiterates that in the principal judgment it found that an extremely longstanding failure by the Russian bailiffs to take adequate and effective measures to secure compliance with the enforceable judgment under the terms of which

the company had to provide the applicants with a flat stripped them of any reasonable expectation of having the judgment executed (see *Pelipenko*, cited above, §§ 53-56). In this respect the Court notes that it is undoubtedly often difficult to assess the likelihood of an applicant being able to recover the full payment of a judgment award due to him or her by "private debtors". However, it has never been argued by the parties, and there was no indication in the materials of the case file, that the judgment of 21 November 2001 made in the applicants' favour *a priori* had no prospect of being executed, which could have been possible, for instance, in a case of *ab initio* financial insolvency of the company. In fact, in the Court's eyes it was the bailiffs' lack of action which deprived the guarantees of the Convention of all useful effect and denied the applicants the right to receive a flat. In reaching that conclusion the Court took into account that for almost seven years, while the enforcement proceedings were pending and the company was in full operation, the bailiffs had done nothing to enforce the judgment. The Court also reiterates that through possible negligence on the bailiffs' part the applicants were never included in the list of the company's creditors and that the company then ceased to exist (ibid, § 55). The Court therefore finds it established that there is a direct causal link between the violation found in the principal judgment and the pecuniary damage alleged by the applicants under this head (see, for similar reasoning, *Kunashko v. Russia*, no. 36337/03, § 57, 17 December 2009).

27. In similar cases, when the Court has established that there has been a failure on the part of a State to ensure the effective enforcement of a judgment against a private party, it has ordered that State to step in and repay an applicant the judgment award in the private debtor's stead (see *Kunashko*, cited above, § 57, and paragraph 5 of the operative part of the judgment). However, the present case is different. The Court cannot overlook the existence of the final judgment of 25 July 2012 against Ms A., who, following a number of transactions, had become the owner of the company's property, including the house where the applicants had lived, and who was ordered by the Anapa Town Court to provide the applicants with a flat. It appears that the Russian courts transferred the company's debt to the applicants to Ms A.

28. The Government submitted that Ms A. is ready to execute the judgment. Relying on Ms A.'s handwritten statement, the Government argued that the Court could only order the enforcement of the judgment of 25 July 2012. In this respect, the Court notes that the issue of the enforcement of the judgment of 25 July 2012 has never been the cause of its examination. While not being entirely convinced by the Government's argument about Ms A.'s readiness to enforce the judgment of 25 July 2012 as soon as the applicants submit a writ for execution, the Court nevertheless is not prepared to speculate on the execution that would be given to the judgment of 25 July 2012. It therefore does not find that the applicants are

entitled to an award of compensation in the amount of the market value of a flat.

29. The Court is of the opinion that the State's main responsibility in the present case is to take all necessary steps to secure, as soon as possible, the enforcement of the judgment of 25 July 2012 by Ms A. That responsibility is inherent in Article 6 of the Convention. By employing all appropriate measures to obtain enforcement of the judgment of 25 July 2012, that is to make sure that Ms A. complies with the judgment and provides the applicants with a flat, the State would restore the applicants' rights and return them to the position in which they had found themselves prior to their eviction (see *Kesyan v. Russia*, no. 36496/02, § 87, 19 October 2006, with further references).

30. At the same time, given the fact that following their eviction in violation of the requirements of Article 8 of the Convention (see the principal judgment, § 67) the applicants do not have any other place of residence and that the enforcement of the judgment by Ms A. will require additional time, the Court considers that the State should bear the costs of the applicants' accommodation, be it a hotel or a rented flat, for the period the judgment of 25 July 2012 remains unenforced. The Court once again draws the State's attention to its obligation to secure the enforcement of the judgment of 25 July 2012 in the shortest period possible.

31. The applicant has also claimed compensation for certain expenses as specified above. Taking them in order, the Court finds as follows:

(i) the expenses incurred during the reconstruction, renovation and maintenance works in the flat from which the applicants had been evicted have no causal link to the conduct found by the Court to have caused the violations of the Convention in the present case;

(ii) despite the Government's argument to the contrary, the costs of the applicants' stay in the hotel were substantiated by the documents issued by the hotel showing that the applicants had paid the bills for the two periods of their stay. While the hotel did not indicate the cost of the stay in the first period, the documents confirm the applicants' calculation on the basis of the cost of a room per day for the entire period. The applicants also adjusted the sum in line with consumer price inflation in the Krasnodar Region, supporting their calculation with a copy of relevant documents issued by the Krasnodar regional authorities. With the Government not disputing the method of the calculation chosen by the applicants, the Court accepts their claim made under this heading in full;

(iii) there is no direct connection between the expenses for purchase of medicines and installation of the telephone and Internet cables and the State's failure to enforce the final judgment in the applicants' favour or their unlawful eviction from the flat, the only two violations imputable to the respondent State under the Convention in the present case;

(iv) as regards the costs of the applicants' eviction, in particular the loss of or damage to the personal belongings, the Court notes that it has found that the eviction took place without any legal basis in violation of Article 8 and that the applicants are therefore entitled to reimbursement of costs in this respect. The applicants submitted a list of items taken from their home on the day of the eviction and placed by bailiffs in the yard outside. Having drawn up an inventory of the items, the bailiffs had failed to indicate their approximate value or condition. The applicants had, however, made their own assessment of the property cost. They had also provided photographs depicting damaged and dirty items of furniture, technical appliances, clothing and so on, scattered outside the house, and showing the applicants' futile attempts to shield the property from sun and rain with plastic coverings. The Government did not dispute that it was not until three months later that the property was taken to the town council garage, where it has remained ever since. There is also a serious doubt as to whether the applicants in fact have access to their property. Taking these circumstances into consideration, the Court concludes that the applicants sustained some pecuniary damage under this head, although not in the amount they have claimed. Considering that that damage cannot be sufficiently compensated by the finding of a violation of the Convention, and deciding on an equitable basis, the Court awards the applicants the sum of EUR 10,000 under this head.

32. Thus, making an overall assessment on the considerations laid down in paragraph 31 above, the Court finds it appropriate to award the applicants jointly, in compensation for pecuniary damage, the sum of EUR 13,000, plus any tax that may be chargeable on that amount.

2. Non-pecuniary damage

33. The applicants claimed RUB 7,000,000 (approximately EUR 170,000) in compensation for non-pecuniary damage.

34. The Government submitted that each of the applicants should be awarded no more than 7,000 euros under this head. Citing a number of the Court's judgments, against Ukraine, Croatia, Romania and Slovakia, they argued that such award would be in line with the Court's practice in similar cases.

35. The Court is of the view that the applicants must have suffered considerable non-pecuniary damage, in particular feelings of anxiety, helplessness and distress, as a result of the State's failure for years to secure the enforcement of the final judgment in their favour and the eviction from their home. It therefore awards each of the applicants EUR 10,000, plus any tax that may be chargeable on that amount.

B. Costs and expenses

36. The applicants claimed RUB 193,837.56 (approximately EUR 4,600) in compensation for costs and expenses incurred in the proceedings before Russian courts and the Court. That amount comprised the following sums:

- travel expenses – RUB 17,487.80;
- fees for legal services – RUB 145,500;
- other pertinent costs related to the national proceedings (postage, fax charges, and so on) – RUB 11,338.49;
- expenses related to correspondence with the Court (postage and services of an interpreter) – RUB 19,511.27.

The applicants provided certificates, copies of invoices, tickets and other documents in support of their claims for travel and other pertinent costs related both to the domestic and the Strasbourg proceedings.

37. The applicants further claimed RUB 2,650,958.50 for loss of profit which, in their view, should have included loss of salary through the years of litigation and the loss of a plot of land. In addition, they claimed RUB 122,400 in compensation for rehabilitation and stress-relieving medical procedures.

38. Without indicating a sum, the applicants finally asked the Court to make an award for their legal work in stating their case before it.

39. The Government noted that the expenses claimed by the applicants in relation to the domestic proceedings had no connection to the case before the Court. In addition, the Government noted that the applicants had not submitted any documentary evidence in support of their claim for reimbursement of fees paid to the lawyers and interpreters. .

40. The Government had no objection to the applicants' claim for reimbursement of costs in the amount of RUB 7,011.27 incurred in the proceedings before the Court, as that claim was fully supported by copies of receipts and invoices.

41. As regards the remaining claims, the Government considered them to have no connection to the Court's findings in the principal judgment.

42. The Court accepts the applicants' claims in respect of travel expenses and other pertinent costs related to the national proceedings. The applicants, who supported their claims with invoices, copies of travel documents, and other documentary evidence, incurred those expenses in their attempts to obtain enforcement of the judgment award which the State was found to have failed to secure. The Court therefore considers it reasonable to allow the applicants' claims in this respect.

43. The Court further finds that the costs and expenses incurred by the applicants during the proceedings before the Court, including translation costs, were actually and necessarily incurred and are reasonable as to quantum, and awards them in full. In addition, given the complexity of the

case, involving the review of a certain amount of factual and documentary evidence and a fair amount of preparation and research from the applicants to state their case before the Court, it is reasonable to award EUR 500 for the work performed by the applicants for the representation of their interests.

44. As regards the remaining claims, they either have no relation to the case or it has not been shown that the applicants actually incurred those costs and expenses. The Court therefore rejects them.

45. To sum up, regard being had to the supporting documents submitted by the applicants, the Court decides to award them EUR 1,700 in respect of costs and expenses incurred before the domestic and Strasbourg proceedings.

C. Default interest

46. 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. *Holds* that within three months from the date on which the judgment becomes final in accordance with Article 44 § 2 of the Convention, the respondent State shall secure, by appropriate means, the enforcement of the judgment of 25 July 2012 made by the Anapa Town Court in the applicants' favour, and to bear the costs of the applicants' accommodation, pending the enforcement of that judgment;

2. *Holds* that
   (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 the national currency of the respondent State at the rate applicable at the date of settlement:
      (i) EUR 13,000 (thirteen thousand euros) jointly to the applicants in respect of pecuniary damage;
      (ii) EUR 10,000 (ten thousand euros) to each of the applicants in respect of non-pecuniary damage;
      (iii) EUR 1,700 (one thousand seven hundred euros) jointly to the applicants in respect of costs and expenses;
      (iv) any tax that may be chargeable to the applicants on the above amounts;

(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;

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

Done in English, and notified in writing on 16 January 2014, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Søren Nielsen
Registrar

Isabelle Berro-Lefèvre
President