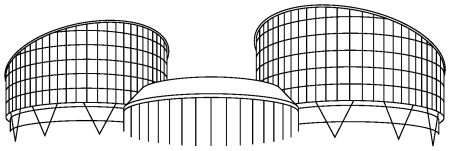

EUROPEAN COURT OF HUMAN RIGHTS
COUR EUROPÉENNE DES DROITS DE L'HOMME

FIRST SECTION

CASE OF BESEDA v. RUSSIA

(Application no. 45497/04)

JUDGMENT

STRASBOURG

10 July 2014

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

In the case of Beseda v. Russia,

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

Mirjana Lazarova Trajkovska, *President,*
Paulo Pinto de Albuquerque,
Linos-Alexandre Sicilianos, *judges,*
and André Wampach, *Deputy Section Registrar,*

Having deliberated in private on 17 June 2014,

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

PROCEDURE

1. The case originated in an application (no. 45497/04) 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 Vladislav Vasilyevich Beseda ("the applicant"), on 25 November 2004.

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

3. On 12 October 2009 the application was communicated to the Government.

THE FACTS

I. THE CIRCUMSTANCES OF THE CASE

A. Judgment of 13 December 2000 and its execution

4. The applicant was born in 1957 and lives in Rostov-on-Don.

5. The applicant, an army officer at the material time, sued the military unit in which he had served.

6. On 13 December 2000 the Pyatigorsk Garrison Military Court (hereinafter "the Garrison Court") granted the applicant's claims. The court awarded the applicant nine various monetary allowances overdue and pecuniary indemnities, 500 Russian roubles (RUB) of non-pecuniary damage and ordered the military unit to remove from his personal record his character reference made by his superior in February 1998, to provide him with some information on his alimony payments and on whether his name had been put on the list of persons eligible for housing.

7. This judgment had not been appealed against and became final.

8. The allowances and indemnities awarded by the judgment of 13 December 2000 were paid to the applicant on 21 December 2000, on 29 August 2001 and the remaining debt in July 2004.

9. On an unspecified date the applicant's name was put on the list of persons eligible for housing.

10. On 11 February 2004 bailiff opened enforcement proceedings. The applicant's military unit was invited to remove his character reference of February 1998 from his personal record and to provide him with information on the payment of alimony.

11. On 12 March and 11 June 2004 the Head of the military unit informed the bailiff that the execution of these parts of the judgment of 13 December 2000 was outside of his competence.

12. On 23 December 2005 the Garrison Court rejected the bailiff's request for clarification of the judgment of 13 December 2000 as regards the obligation to remove the applicant's character reference from his personal record. It considered that the bailiff failed to indicate what exactly in the judgment was unclear and to demonstrate the existence of obstacles to the execution of this part of the judgment. The court also indicated a possible way to comply with the judgment by sending a request to the Military Commissariat where the applicant's personal file was kept.

13. On 23 December 2009 the Head of the social department of the Military Commissariat of the Rostov Region confirmed that the applicant's record did not contain his character reference made in February 1998. It was however impossible to establish when it had been removed from the record.

14. The authorities' obligation to provide the applicant with information on the payment of alimony has never been executed.

B. Judgment of 30 September 2004 and its execution

15. On 30 September 2004 the Garrison Court adjusted the sums paid to the applicant in July 2004 under the judgment of 13 December 2000 in accordance with the inflation rate and awarded the applicant RUB 1,716.72.

16. This sum was paid to the applicant in February 2005.

C. Judgment of 5 December 2005 and its execution

17. On 5 December 2005 the Garrison Court adjusted the sums paid to the applicant in February 2005 under the judgment of 30 September 2004 in accordance with the inflation rate and awarded him RUB 1,700.

18. On 1 October 2006 the applicant's military unit was disbanded and Military Unit 89 UNR became its successor.

19. On 21 November 2006 the Garrison Court substituted the original defendant in the judgment of 5 December 2005 for Military Unit 89 UNR.

20. On 23 November 2006 the new writ of execution was sent directly to the Krasnodar Regional Department of the Federal Treasury.

21. On 12 December 2006 the Krasnodar Regional Department of the Federal Treasury informed the Garrison Court that the new defendant had no bank account.

22. On 9 January 2007 the Garrison Court named FGUP "Construction Directorate for Northern Caucasus Military District of the Ministry of Defense" as the new defendant under the judgment of 5 December 2005.

23. On the same day the writ of execution was sent to the Rostov Regional Department of the Federal Treasury.

24. On 11 April 2007 the Garrison Court rectified the name of the new defendant.

25. On 16 April 2007 the rectified writ of execution was forwarded again to the Federal Treasury.

26. On 18 October 2007 the judgment of 5 December 2005, as rectified on 21 November 2006, was enforced.

II. RELEVANT DOMESTIC LAW AND PRACTICE

27. Domestic law and practice on execution of the judgments delivered against the State and its entities are summarised in *Burdov v. Russia (no. 2)* (no. 33509/04, §§ 23-24, ECHR 2009-...).

28. The 2010 legislation introducing a new domestic remedy in respect of an alleged violation of one's right to enforcement of a judgment within reasonable time is summarised in *Nagovitsyn and Nalgiyev v. Russia* (dec.), nos. 27451/09 and 60650/09, §§ 15-20, 23 September 2010, and *Balagurov v. Russia* (dec.), no. 9610/05, 2 December 2010.

29. On 23 December 2010 the Joint Plenary of the Supreme Court of the Russian Federation and the Supreme Commercial Court of the Russian Federation adopted a resolution interpreting the above-mentioned legislative provisions. It is reiterated in the resolution that the legislation in question is applicable only in respect of the monetary awards payable from the public funds pursuant to a contractual or legal provision (see paragraph 1 above).

THE LAW

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

30. The applicant complained under Article 6 § 1 of the Convention and Article 1 of Protocol No. 1 about delays in the execution of the judgments

of 13 December 2000, of 30 September 2004 and of 5 December 2005. Insofar as relevant, these Articles 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.

The preceding provisions shall not, however, in any way impair the right of a State to enforce such laws as it deems necessary to control the use of property in accordance with the general interest or to secure the payment of taxes or other contributions or penalties."

A. Admissibility

31. The Government submitted that the applicant's complaints regarding lengthy non-enforcement of judgments of 30 September 2004 and of 5 December 2005, as amended on 21 November 2006, were inadmissible as their execution lasted less than a year which in accordance with the Court's case-law cannot be considered as excessive. In this respect, they referred to *Grishchenko v. Russia*, no. 75907/01, 8 July 2004; *Klishina v. Russia*, no. 36074/04, 24 April 2008; *Presnyakov v. Russia*, no. 41145/02, 10 November 2005; and *Inozemtsev v. Russia*, no. 874/03, 31 August 2006.

32. As regards the Garrison Court judgment of 30 September 2004, the Court notes that it was enforced in February 2005. The overall period during which the court award in question remained without enforcement was thus approximately five months. The Court agrees with the Government that this period as such does not appear to raise an issue under the Convention. It follows that this part of the application is manifestly ill-founded and must be rejected pursuant to Article 35 §§ 3 and 4 of the Convention.

33. As regards the judgment of 5 December 2005, the Government argued that the delay in the enforcement of this judgment was due to the fact that the applicant's military unit had been disbanded and consequently there was a need to find its successor. They underlined that once the appropriate successor was established on 21 November 2006, the judgment was executed on 18 October 2007, which was within one year.

34. The Court observes that before the applicant's military unit was disbanded on 1 October 2006 the judgment at issue remained unenforced for almost nine months (see paragraph 18 above). No explanation was provided by the Government for this delay. Consequently the Court does not see any reason to exclude this period from the overall duration of its execution. But

even excluding two months necessary to find the appropriate successor of the applicant's military unit, it took the authorities one year and eight months to enforce the judgment delivered in the applicant's favour (see *Kosheleva and Others v. Russia*, no. 9046/07, § 19, 17 January 2012). It consequently rejects the Government's interpretation of the overall duration of the execution proceedings and cannot agree that this complaint could be dismissed as manifestly ill-founded.

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

B. Merits

1. Judgment of 13 December 2000

36. The Government submitted that the remaining debt under the judgment of 13 December 2000 was transferred to the applicant's bank account in July 2004. The delay was due to financial problems. They further indicated that it was not possible to establish the precise date when the applicant's character reference had been removed from his file. Finally, they admitted that the applicant has never been provided with information on the payment of alimony.

37. As regards the authorities' obligations in kind, the Court notes that under the judgment of 13 December 2000, they should have removed the applicant's character reference from his record and provided him with information on the payment of alimony. As regards the first obligation, while it appears impossible to ascertain the exact date of its execution, the Court notes that it took the authorities almost nine years to obtain a confirmation thereof and required a separate set of judicial proceedings (see paragraphs 10-13 above). As regards the authorities' second obligation, it is not disputed by the parties that it has never been complied with.

38. As regards the authorities' monetary obligations, the Court notes that the delay in the execution of the binding and enforceable judgment of the Garrison Court of 13 December 2000 amounted to three years and six months. The Court further reiterates that it is not open to a State authority to cite the lack of funds or other resources (such as housing) as an excuse for not honouring a judgment debt (see *Burdov v. Russia (no. 2)*, cited above, § 70).

39. The foregoing considerations are sufficient to enable the Court to conclude that there was a violation of Article 6 § 1 of the Convention and Article 1 of Protocol No. 1 on account of unreasonable length of enforcement proceedings.

2. Judgment of 5 December 2005

40. The Court notes that it took the authorities one year and ten months to enforce the judgment delivered in the applicant's favour. In the light of the Court's established case-law, such a delay appears incompatible with the requirement to enforce the judgments within a reasonable time (see *Burdov v. Russia (no. 2)*, cited above, and *Shilov and Baykova*, no. 703/02, §§ 27-30, 29 June 2006). Consequently, there was a violation of Article 6 § 1 of the Convention and Article 1 of Protocol No. 1.

II. ALLEGED VIOLATION OF ARTICLE 13 OF THE CONVENTION

41. The applicant complained under Article 13 that he had not had an effective remedy in respect of the length of the proceedings in his case. The relevant provision 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."

42. As regards the delay in enforcement of the authorities' monetary obligations (paragraphs 37 and 39 above), the Court notes that a new domestic remedy was introduced by the federal laws № 68-ФЗ and № 69-ФЗ in the wake of the *Burdov (no. 2)* pilot judgment and that it was available to all applicants, whose applications were brought before the Court by that time. Given those special circumstances, the Court decided in a number of cases involving violations on account of lengthy non-enforcement of judgments that it was not necessary to proceed to a separate examination of the applicants' complains under Article 13 (see *Krasnov v. Russia*, no. 18892/04, §§ 32-35, 22 November 2011). The Court will follow the same approach in the present case.

43. The situation is however different with regard to the authorities' obligations in kind (paragraph 38 above), the Court has already found that the non-enforcement or delayed enforcement of judgments providing for the authorities' obligations of this type do not fall within the scope of the Compensation Act, nor there is any other domestic remedy capable of providing redress to the applicant in such situation (see *Kalinkin and Others*, nos. 16967/10 et al., §§ 37-38, 17 April 2012, and *Ilyushkin and Others*, nos. 5734/08 et al., §§ 43-44, 17 April 2012).

44. Consequently, the Court is bound to conclude that the applicant did not have an effective domestic remedy at his disposal as regards the execution of two specific obligations in kind ordered by the judgment of 13 December 2000.

III. OTHER ALLEGED VIOLATION OF THE CONVENTION

45. Lastly, the Court has examined the other complaints submitted by the applicant, and, having regard to all the material in its possession and in so far as they fall within the Court's competence, it finds that these complaints do not disclose any appearance of a violation of the rights and freedoms set out in the Convention or its Protocols. It follows that this part of the applications must be rejected as manifestly ill-founded, pursuant to Article 35 §§ 3 (a) and 4 of the Convention.

IV. APPLICATION OF ARTICLE 41 OF THE CONVENTION

46. 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

47. The applicant claimed 4,900 euros (EUR) in respect of non-pecuniary damage.

48. The Government submitted that the claim was excessive and was not supported by any documents.

49. The Court accepts that the applicant suffered distress and frustration owing to the authorities' failure for many years to enforce the judgments in his favour. This situation was further aggravated by the absence of effective domestic remedies, in particular as regards two specific obligations in kind provided by the judgment of 13 December 2000.

50. The Court finds it reasonable to award the applicant EUR 4,500.

B. Costs and expenses

51. The applicant did not submit any claim for costs and expenses. The Court will therefore make no award under this head.

C. Default interest

52. 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 resulting from the lengthy non-enforcement of the judgments of 13 December 2000 and of 5 December 2005 and the lack of an effective remedy in this respect *admissible* and the remainder of the application *inadmissible*;

2. *Holds* that there has been a violation of Article 6 § 1 of the Convention and Article 1 of Protocol No. 1;

3. *Holds* that there has been a violation of Article 13 of the Convention, in conjunction with Article 6 § 1;

4. *Holds*
   (a) that the respondent State is to pay the applicant, within three months, EUR 4,500 (four thousand five hundred euros), plus any tax that may be chargeable, in respect of non-pecuniary damage, to be converted into national currency at the rate applicable at the date of settlement;
   (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 10 July 2014, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

André Wampach
Deputy Registrar

Mirjana Lazarova Trajkovska
President