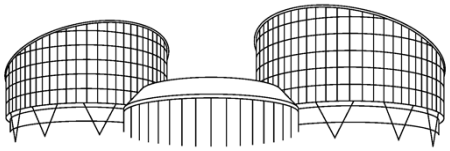

EUROPEAN COURT OF HUMAN RIGHTS
COUR EUROPÉENNE DES DROITS DE L'HOMME

FIRST SECTION

CASE OF PANCHISHIN v. RUSSIA

(Application no. 45291/05)

JUDGMENT

STRASBOURG

27 November 2014

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

COUNCIL OF EUROPE
CONSEIL DE L'EUROPE

In the case of Panchishin v. Russia,

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

Khanlar Hajiyev, *President,*
Julia Laffranque,
Dmitry Dedov, *judges,*

and Søren Prebensen, *Acting Deputy Section Registrar,*

Having deliberated in private on 4 November 2014,

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

PROCEDURE

1. The case originated in an application (no. 45291/05) 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 Andrey Igorevich Panchishin ("the applicant"), on 3 November 2005.

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

3. On 14 December 2011 the President of the First Section decided to give notice of the application to the Government. It was also decided to rule on the admissibility and merits of the application at the same time (Article 29 § 1). In accordance with the pilot judgment *Burdov v. Russia (no. 2)* (no. 33509/04, ECHR 2009), the application was adjourned pending its resolution at the domestic level.

4. The Government refused to settle the case arguing that the applicant had lost his victim status. The Court therefore decided to resume examination of the present case.

THE FACTS

I. THE CIRCUMSTANCES OF THE CASE

5. The applicant was born in 1957 and lives in Pskov.

6. From 5 January 2000 to 22 March 2001 the applicant worked at the Pskov Department of the Federal Debt Centre. On 22 March 2001 the Debt Centre terminated his employment due to its liquidation, failing to pay him certain compensation amounts. On various dates the domestic courts granted the applicant's claims and awarded him compensation of salary arrears,

indexation amounts, non-pecuniary damage and postal expenses. The particulars of the respective judgments may be summarized as follows:

Domestic court	**Date of the judgment**	**Final on**	**Awarded amount, Russian roubles (RUB)**
Justice of the Peace, Court Circuit no. 28 of Pskov	27 June 2003	15 July 2003	20,634.50
Justice of the Peace, Court Circuit no. 28 of Pskov	15 September 2003	15 October 2003	2,421
Pskov Town Court, Pskov Region	13 September 2004	28 September 2004	3,470
Pskov Town Court, Pskov Region	12 May 2005	24 May 2005	1,529.42

7. The applicant submitted writs of execution in respect of the above judgments to the Ministry of Finance in 2003–2005. The writs were returned to him in September 2005. The applicant sought before the courts the clarifications as to the enforcement of the four judgments, but his claims were refused. He filed the writs anew with the Ministry of Finance in December 2006 and September 2009 and they were sent back to him without execution in June 2007 and December 2009 respectively.

8. In 2010 the applicant claimed compensation for the lengthy non-enforcement of the judgment of 27 June 2003 under the Federal Law no. 68-ФЗ "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" ("the Compensation Act", see paragraph 12 below). On 10 December 2010 the Pskov Regional Court granted his claim and awarded the applicant RUB 30,000 (approximately 730 euros (EUR)) for non-enforcement of the judgment, and RUB 200 for legal expenses. These amounts were fully paid to him on 16 March 2011. The judgment of 27 June 2003 remained unenforced.

9. In February 2012 the applicant again sent the writs of execution to the Ministry of Finance. The latter brought court proceedings seeking clarifications and amendment of the judgments, in the part related to the way of execution and rectification of calculation errors. By separate rulings of 29 March 2012 the Pskov Town Court and the Justice of the Peace of Court Circuit no. 28 of Pskov amended the initial judgments as claimed.

10. On 18 April 2012 the four initial judgments in the applicant's favour were enforced in full.

II. RELEVANT DOMESTIC LAW

A. Law on Enforcement Proceedings

11. For the relevant provisions of the execution proceedings, which were in force at the material time, see *Burdov (no. 2)*, cited above, §§ 22-24.

B. The new domestic remedy

12. On 30 April 2010 Russian Parliament adopted the Compensation Act, which entered into force on 4 May 2010. For the relevant provisions of the Compensation Act see *Nagovitsyn and Nalgiyev v. Russia (dec.)*, nos. 27451/09 and 60650/09, §§ 29-30, 23 September 2010.

THE LAW

I. ALLEGED VIOLATION OF ARTICLE 6 OF THE CONVENTION AND ARTICLE 1 OF PROTOCOL No. 1 ON ACCOUNT OF NON-ENFORCEMENT

13. The applicant complained about the non-enforcement of the four judgments in his favour listed in paragraph 6 above. He relied on Article 6 of the Convention and Article 1 of Protocol No. 1, which, in so far as relevant, provide 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

14. The Government submitted that the applicant had lost his victim status as a result of the judgment delivered on 10 December 2010 by the Pskov Regional Court in the applicant's favour (see paragraph 8 above). In the Government's view, the judgment acknowledged the violation of the applicant's rights and granted him adequate redress. They asked the Court to declare the application inadmissible.

15. The applicant argued, first, that on 10 December 2010 he had been awarded compensation for non-enforcement of only one of the four judgments in his favour. Second, he pointed out that the four judgments had in any event remained unenforced for a considerable period of time even after the payment of the compensation awarded under the Compensation Act. Finally, he claimed that the compensation was not adequate and sufficient.

16. The Court reiterates that for an applicant to be able to claim to be the victim of a violation, within the meaning of Article 34 of the Convention, not only must he have the status of victim at the time the application is introduced, but such status must continue to remain at all stages of the proceedings. A decision or measure favourable to an applicant is not in principle sufficient to deprive him of his status as a "victim" unless the national authorities have acknowledged, either expressly or in substance, and then afforded redress for, the breach of the Convention (see *Amuur v. France,* 25 June 1996, § 36, Reports of Judgments and Decisions 1996-III, and *Dalban v. Romania* [GC], no. 28114/95, § 44, ECHR 1999-VI).

17. The Court notes at the outset that, as rightly pointed out by the applicant, the award of 27 December 2010 constituted a compensation for non-enforcement of only one of the four domestic judicial decisions, namely the judgment of 27 June 2003. The Court further notes that the applicant made use of the procedure provided by the Compensation Act. In a number of earlier cases the Court has found the Compensation Act to be capable of resolving the issue of lengthy failure to enforce domestic judgments, where the following conditions were met: the domestic courts duly considered the cases in line with the Convention criteria, found a violation of the right to enforcement of a judgment within a reasonable time and awarded a compensation comparable with the Court's awards under Article 41 in similar cases, which in its turn was rapidly paid to the applicants as required by the Convention (see *Zabotin v. Russia* (dec.), no. 39185/09, § 19, 13 March 2012, *Khalin v. Russia* (dec.), no. 24169/05, 2 December 2010; see also, *mutatis mutandis*, *Balagurov v. Russia* (dec.), no. 9610/05, 2 December 2010).

18. The present case is different in two aspects. First, it is not disputed between the parties that the initial judgment in the applicant's favour of

27 June 2003 remained unenforced until April 2012, that is for more than a year after the compensation for non-enforcement had been paid to him. Accordingly, the monetary compensation in his case did not in any event secure adequate redress, given the defendant authority's persistent failure to honour the initial judgment for more than one year after payment of the compensation for non-enforcement (see, mutatis mutandis, *Nagovitsyn and Nalgiyev* (dec.), cited above, § 35).

19. Second, in any event, the adequacy of the monetary amount set by the domestic court in compensation is open to doubt: the sum awarded is less than half of the Court's awards in the similar cases involving comparable enforcement delays (see, for example, *Azaryev v. Russia,* no. 18338/05, § 28, 14 November 2008).

20. The Court accordingly concludes that the applicant was not granted adequate and sufficient redress in respect of the non-enforcement of the judgment of 27 June 2003 and, thus, can still claim to be a victim under Article 34 of the Convention. The Court considers that the proceedings under the Compensation Act brought by the applicant in respect of delayed enforcement of the aforementioned domestic judgment did not prove to be capable of resolving the issue of a lengthy failure to enforce a domestic judgment in the specific circumstances of the applicant's case.

21. The Government's objection in respect of the judgment of 27 June 2003 must therefore be dismissed.

22. The Court further notes that the Government did not advance any specific arguments regarding the alleged loss of the victim status – and they did not raise any other objections - as regards the non-enforcement of the three remaining judgments in the applicant's favour.

23. The Court accordingly notes that this the complaint about the non-enforcement of the four domestic judgments referred to in paragraph 6 above is not manifestly ill-founded within the meaning of Article 35 § 3 (a) of the Convention and that it is not inadmissible on any other grounds. It must therefore be declared admissible.

B. Merits

24. The Government argued that the judgments were executed within the time limits established by the domestic legislation. Namely, on the most recent occasion the judgments had been received for execution on 24 February 2012 and should have been executed no later than 24 May 2012. The Government also stated that the enforcement documents related to the recovery of the judicial debt had been received by the Ministry of Finance several times before 24 February 2012 and had been returned without payment, which was in compliance with the provisions of domestic law. In order to proceed with the execution of the judgments following their receipt by the Ministry of Finance on 24 February 2012, the latter had had

to seek in courts some clarifications of the four judgments, changing the procedure and method of execution, and correction of calculation errors.

25. The applicant maintained that the four judgments had remained unenforced during more than eight years. He also stated that the Ministry of Finance returned the writs of execution to him on formal grounds and that the Ministry had not taken any actions in order to comply with the four binding judgments. His attempts to obtain clarifications as to the enforcement of the four judgments had been unsuccessful as his claims had been rejected by national courts.

1. General principles

26. 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, § 37, ECHR 2002-III). The reasonableness of such delay is to be determined having regard in particular to the complexity of the enforcement proceedings, the applicant's own behaviour and that of the competent authorities, and the amount and nature of the court award (see *Raylyan v. Russia*, no. 22000/03, § 31, 15 February 2007).While the Court has due regard to the domestic statutory time-limits set for enforcement proceedings, their non-respect does not automatically amount to a breach of the Convention. Some delay may be justified in particular circumstances but it may not, in any event, be such as to impair the essence of the right protected under Article 6 § 1 (see *Burdov*, cited above, § 35).

27. 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). In such cases, the defendant State authority must be duly notified of the judgment 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 execution. 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 (see *Burdov (no. 2)*, cited above, § 70).

2. Application of these principles to the present case

28. Turning to the present case, the Court notes the Government's argument that, after the enforcement documents had been received by the Ministry of Finance in 2012, the judicial awards had been paid to the applicant without any delay. In so far as they may be understood to submit that the delay of execution was to be calculated as from the date of the latest submission of the writs to the Ministry of Finance in early 2012, the Court is unable to accept that argument. It is uncontested between the parties that the four judgments, once they had become final and binding, had remained

without execution for the periods ranging between eight years and nine months and six years and eleven months. Moreover, in 2003-2009 the applicant had on several occasions submitted the writs to that very Ministry. However, each time the enforcement documents had been returned to him (see paragraph 7 above).

29. Furthermore, the Court cannot agree with the Government's argument that the delays in execution of the judgments were justified by the need to lodge requests with the domestic courts for clarifications as to the enforcement modalities. The authorities only sought those clarifications in 2012, that is several years after the judgment's having become final, and the Government did not refer to any reason as to why such proceedings could not have been brought at an earlier stage after the four judgments had been adopted.

30. Taking into account these considerations, and also having regard to the fact that the violation on account of the non-enforcement of the judgment of 27 June 2003 has already been acknowledged at the national level by a domestic court (see paragraph 8 above), the Court concludes that the authorities failed to enforce the four judgments in a timely manner and thus breached the applicant's right to a court. There was accordingly a violation of Article 6 of the Convention.

31. Given that the binding and enforceable judgments created an established right to payment in the applicant's favour, which should be considered as a "possession" within the meaning of Article 1 of Protocol No. 1 (see *Vasilopoulou v. Greece*, no. 47541/99, § 22, 21 March 2002), the authorities' prolonged failure to comply with these judgments prevented him from receiving the awarded amounts and therefore violated his right to peaceful enjoyment of his possessions (see *Burdov*, cited above, § 41). There was accordingly also a violation of Article 1 of Protocol No. 1.

II. OTHER ALLEGED VIOLATIONS OF THE CONVENTION

32. The applicant also raised other unrelated complaints under Articles 6 and 13 of the Convention and Article 1 of Protocol No. 1.

33. However, in the light of all the material in its possession, and in so far as the matters complained of are within its competence, the Court finds that they do not disclose any appearance of a violation of the rights and freedoms set out in the Convention or its Protocols.

34. It follows that this part of the application is manifestly ill-founded and must be rejected in accordance with Article 35 §§ 3 (a) and 4 of the Convention.

III. 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."

A. Damage

36. The applicant claimed 15,000 euros (EUR) in respect of non-pecuniary damage.

37. The Government contested the claim arguing that the applicant had lost the status of the victim (see paragraph 14 above).

38. The Court accepts that the applicant suffered distress and frustration due to the authorities' lengthy failure to honor the State's debt to him. Deciding on an equitable basis and having regard to all relevant factors (see *Burdov (no. 2)*, cited above, §§ 154-57), and taking into account the amount awarded to the applicant by national courts for the delayed enforcement, the Court awards the applicant EUR 5,270 in respect of non-pecuniary damage, plus any tax that may be chargeable on it, and rejects the remainder of his claims under this head.

B. Costs and expenses

39. The applicant did not seek reimbursement of his costs and expenses incurred before the domestic authorities and the Court. Accordingly, the Court does not make any award under this head.

C. Default interest

40. 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 under Article 6 of the Convention and Article 1 of Protocol No. 1 concerning lengthy non-enforcement of the four judgments in the applicant's favour 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 on account of lengthy non-enforcement of the four judgments in the applicant's favour;

3. *Holds*

(a) that the respondent State is to pay the applicant, within three months, EUR 5,270 (five thousand two hundred and seventy euros), in respect of non-pecuniary damage, plus any tax that may be chargeable to the applicant, to be converted into the currency of the respondent State 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;

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

Done in English, and notified in writing on 27 November 2014, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Søren Prebensen	Khanlar Hajiyev
Acting Deputy Registrar	President