



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

THIRD SECTION

CASE OF BEBUTOV AND OTHERS v. RUSSIA

*(Application no. 36325/05 and 5 others -
see appended list)*

JUDGMENT

STRASBOURG

11 January 2018

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

In the case of Bebutov and Others v. Russia,

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

Luis López Guerra, *President*,

Dmitry Dedov,

Jolien Schukking, *judges*,

and Liv Tiggerstedt, *Acting Deputy Section Registrar*,

Having deliberated in private on 7 December 2017,

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

PROCEDURE

1. The case originated in applications against Russia lodged with the Court under Article 34 of the Convention for the Protection of Human Rights and Fundamental Freedoms (“the Convention”) on the various dates indicated in the appended table.

2. The applications were communicated to the Russian Government (“the Government”).

THE FACTS

3. The list of applicants and the relevant details of the applications are set out in the appended table.

4. The applicants complained of the non-enforcement or delayed enforcement of domestic decisions and of the lack of any effective remedy in domestic law.

THE LAW**I. JOINDER OF THE APPLICATIONS**

5. Having regard to the similar subject matter of the applications, the Court finds it appropriate to examine them jointly in a single judgment.

II. THE LOCUS STANDI ISSUE FOR APPLICATION No. 2548/10

6. The applicant, Mr Basteyev, (application no. 2548/10) died while the case was pending before the Court. The applicant’s wife, Ms O. Basteyeva,

expressed her intention to pursue the application. The Government did not object to that request.

7. The Court considers that the applicant's wife has a legitimate interest in obtaining a finding of a breach of her husband's right related to the non-enforcement or delayed enforcement of the final judgment (see *Streltsov and other "Novocherkassk military pensioners" cases v. Russia*, nos. 8549/06 and 86 others, §§ 36-42, 29 July 2010; *Sobelin and Others v. Russia*, nos. 30672/03 and 11 others, §§ 43-45, 3 May 2007; and *Shiryayeva v. Russia*, no. 21417/04, §§ 8-9, 13 July 2006).

8. Accordingly, the Court holds that Ms Basteyeva has standing to continue the proceedings in respect of application no. 2548/10 on behalf of her late husband.

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

9. The applicants complained of the non-enforcement or delayed enforcement of domestic decisions given in their favour and of the lack of any effective remedy in domestic law. They relied, expressly or in substance, on Article 6 § 1 and Article 13 of the Convention and on Article 1 of Protocol No. 1, which 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 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.

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."

10. The Court reiterates that the execution of a judgment given by any court must be regarded as an integral part of a "hearing" for the purposes of Article 6. It also refers to its case-law concerning the non-enforcement or delayed enforcement of final domestic judgments (see *Hornsby v. Greece*, no. 18357/91, § 40, *Reports of Judgments and Decisions* 1997-II).

11. In the leading case of *Gerasimov and Others v. Russia*, no. 29920/05 and 10 others, 1 July 2014, the Court already found a violation in respect of issues similar to those in the present case.

12. Having regard to the nature of the judicial awards in the applicants' favour (see the appended table for details of court orders), the Court considers that the applicants had, by virtue of these judgments, 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.

13. Having examined all the material submitted to it, the Court has not found any fact or argument capable of persuading it to reach a different conclusion on the admissibility and merits of these complaints. Having regard to its case-law on the subject, the Court considers that in the instant case the authorities did not deploy all necessary efforts to enforce fully and in due time the decisions in the applicants' favour.

14. These complaints are therefore admissible and disclose a breach of Article 6 § 1 of the Convention and Article 1 of Protocol No. 1 to the Convention.

15. The applicants also complained under Article 13 of the Convention about the lack of an effective domestic remedy in respect of the non-enforcement. The Court has already noted the existence of a new domestic remedy against the non-enforcement of domestic judgments imposing obligations of a pecuniary and non-pecuniary nature on the Russian authorities, introduced in the wake of the pilot judgment, which enables those concerned to seek compensation for damage sustained as a result of excessive delays in the enforcement of court judgments (see *Kamneva and Others v. Russia* (dec.), no. 35555/05 and 6 others, 2 May 2017). Even though the remedy was – or still is – available to the applicants, the Court reiterates that it would be unfair to request the applicants whose cases have already been pending for many years in the domestic system and who have come to seek relief at the Court, to bring again their claims before domestic tribunals (see *Gerasimov and Others*, cited above, § 230).

16. However, in the light of the adoption of the new domestic remedy, the Court, as in its previous decisions, considers that it is not necessary to examine separately the admissibility and merits of the applicants' complaint under Article 13 in the present cases (see, for a similar approach, *Kamneva and Others*, cited above, and, *mutatis mutandis*, *Tkhyegepso and Others v. Russia*, no. 44387/04 and 11 others, §§ 21-24, 25 October 2011). This ruling is without prejudice to the Court's future assessment of the new remedy.

IV. APPLICATION OF ARTICLE 41 OF THE CONVENTION

17. 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.”

18. Regard being had to the documents in its possession and to its case-law, the Court considers it reasonable to award the sums indicated in the appended table. It rejects any additional claims for just satisfaction raised by the applicants.

19. The Court further notes that the respondent State has an outstanding obligation to enforce the judgments which remain enforceable.

20. 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. *Decides* to join the applications;
2. *Decides* that Ms Basteyeva, the wife of the applicant in application no. 2548/10, has *locus standi* in the proceedings;
3. *Declares* the applications admissible;
4. *Holds* that these complaints disclose a breach of Article 6 § 1 of the Convention and Article 1 of Protocol No. 1 to the Convention concerning the non-enforcement or delayed enforcement of domestic decisions;
5. *Decides* that it is not necessary to examine the admissibility and merits of the applicants' complaint under Article 13 of the Convention;
6. *Holds* that the respondent State shall ensure, by appropriate means, within three months, the enforcement of the pending domestic decisions referred to in the appended table;
7. *Holds*
 - (a) that the respondent State is to pay the applicants, within three months, the amounts indicated in the appended table, 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 amounts at a rate equal to the marginal lending rate of the European Central Bank during the default period plus three percentage points;

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

Done in English, and notified in writing on 11 January 2018, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Liv Tigerstedt
Acting Deputy Registrar

Luis López Guerra
President

APPENDIX

List of applications raising complaints under Article 6 § 1 and Article 13 of the Convention and Article 1 of the Protocol No. 1 (non-enforcement or delayed enforcement of domestic decisions and lack of any effective remedy in domestic law)

No.	Application no. Date of introduction	Applicant name Date of birth	Representative name and location	Relevant domestic decision	Start date of non-enforcement period	End date of non-enforcement period Length of enforcement proceedings	Domestic order	Amount awarded for pecuniary and non-pecuniary damage and costs and expenses (save for cases where a separate sum is awarded under the costs and expenses head) per applicant / household (in euros) ¹	Amount awarded for costs and expenses per application (in euros) ²
1.	36325/05 21/09/2005	Aleksandr Ivanovich Bebutov 26/02/1953		Tsentralniy District Court of Sochi, 21/07/2004	01/08/2004	07/04/2015 10 years and 8 months and 7 days	"... to perform certain actions related to the rehabilitation proceedings"	6,000	
2.	2548/10 23/12/2009	Vladimir Olegovich Basteyev 27/02/1962	Sadovskaya Olga Aleksandrovna Nizhniy Novgorod	Military Court of Mulinskiy Garrison, 01/08/2006	10/11/2006	pending More than 11 years and 9 days	"... [The Ministry of Defence] to provide [the applicant] with [housing] ..."	6,000	1,800
3.	72800/11 08/11/2011	Aleksandr Ivanovich Kondratov 13/10/1936		Orel Regional Court, 14/10/2010	14/10/2010	pending More than 7 years and 1 month and 5 days	"...the Orel Town Administration to build waste treatment facilities to use a sewerage system in the Veselaya Sloboda District of Orel within ten months after the entry of the judgment into force ..."	6,000	

No.	Application no. Date of introduction	Applicant name Date of birth	Representative name and location	Relevant domestic decision	Start date of non-enforcement period	End date of non-enforcement period Length of enforcement proceedings	Domestic order	Amount awarded for pecuniary and non-pecuniary damage and costs and expenses (save for cases where a separate sum is awarded under the costs and expenses head) per applicant / household (in euros) ¹	Amount awarded for costs and expenses per application (in euros) ²
4.	18356/13 02/02/2013 (9 applicants)	Household Nikolay Nikolayevich Koltsov 31/07/1954 Aleksandr Nikolayevich Koltsov 07/01/1981 Andrey Nikolayevich Koltsov 07/09/1979 Igor Nikolayevich Koltsov 16/09/1989 Nikolay Nikolayevich Koltsov 02/11/1983 Nadezhda Nikolayevna Koltsova 28/07/1987 Valentina Anatolyevna Koltsova 29/04/1979 Yelena Vladimirovna Koltsova 17/01/1981 Yuliya Ravilyevna Koltsova 06/05/1988	Aralina Valentina Zakharovna Syktyvkar	Syktyvkar Town Court of the Republic of Komi, 12/08/2009	24/09/2009	03/11/2016 7 years and 1 months and 11 days	to provide [the applicants] with housing	6,000	

No.	Application no. Date of introduction	Applicant name Date of birth	Representative name and location	Relevant domestic decision	Start date of non-enforcement period	End date of non-enforcement period Length of enforcement proceedings	Domestic order	Amount awarded for pecuniary and non-pecuniary damage and costs and expenses (save for cases where a separate sum is awarded under the costs and expenses head) per applicant / household (in euros) ¹	Amount awarded for costs and expenses per application (in euros) ²
5.	6536/14 18/12/2013	Ivan Tikhonovich Maksimov 02/03/1949		Novovoronezh Town Court, 06/08/2007	17/08/2007	pending More than 10 years and 3 months and 2 days	to provide [the applicant] with housing	6,000	
6.	38045/14 07/05/2014	Nikolay Petrovich Kuznetsov 16/11/1961		Moscow Garrison Military Court, 27/06/2013	07/11/2013	07/10/2016 2 years and 11 months and 1 day	" ... the [Ministry of Defence] to amend [their order of the applicant's dismissal] and pay to [the applicant the money due] ... and provide with certain property items... "	2,500	

¹ Plus any tax that may be chargeable to the applicants.

² Plus any tax that may be chargeable to the applicants.