



Authorities' failure to provide housing and utility services ordered by Russian courts: a new pilot judgment in respect of Russia

In today's Chamber judgment in the case of [Gerasimov and Others v. Russia](#) (application nos. 29920/05, 3553/06, 18876/10, 61186/10, 21176/11, 36112/11, 36426/11, 40841/11, 45381/11, 55929/11 and 60822/11), which is not final¹, the European Court of Human Rights held, unanimously, that there had been a **violation of Articles 6 (right to a fair trial) and 13 (right to an effective remedy)** of the European Convention on Human Rights and a **violation of Article 1 of Protocol No. 1 (protection of property)**.

The case concerned 11 applicants living in various regions of Russia from Vladivostok to Smolensk who were all victims of excessive delays in the enforcement of Russian court decisions granting them various benefits in kind (such as housing, housing maintenance and repair services, provision of a car for a disabled person, delivery of an administrative document, etc.). The Russian domestic law allowed no effective redress in respect of those complaints.

The Court found that the applicants' case showed that major structural problems on those issues persisted in Russia, referring to its previous judgments on more than 150 similar applications. Indeed, the case demonstrated a variety of situations, the vulnerability of the people affected and the vast territory on which the same recurrent problems have occurred for roughly the last 15 years.

The Court concluded that the nature of the underlying problems, the large number of people affected and the urgent need to grant them speedy and appropriate redress at the domestic level justified the application of the pilot judgment procedure.² It therefore held that Russia had to set up, within one year from the date on which the judgment becomes final, an effective domestic remedy securing adequate and sufficient redress for the non-enforcement or delayed enforcement of judgments imposing obligations in kind on the Russian authorities.

As regards 600 other similar cases pending before it, the Court held that Russia had to grant redress, within two years from the date on which the judgment becomes final, to all victims of delayed enforcement of judgments imposing obligations in kind who had lodged their applications with the European Court of Human Rights before today's judgment and whose cases were or will be communicated to the Russian Government. The Court also decided to adjourn, for a maximum of two years, the proceedings in all such cases pending the adoption of the above measures by the State. The applicants in the present case were also awarded a total of 61,292 euros (EUR) for damages and legal costs.

¹ Under Articles 43 and 44 of the Convention, this Chamber judgment is not final. During the three-month period following its delivery, any party may request that the case be referred to the Grand Chamber of the Court. If such a request is made, a panel of five judges considers whether the case deserves further examination. In that event, the Grand Chamber will hear the case and deliver a final judgment. If the referral request is refused, the Chamber judgment will become final on that day. Once a judgment becomes final, it is transmitted to the Committee of Ministers of the Council of Europe for supervision of its execution. Further information about the execution process can be found here: www.coe.int/t/dghl/monitoring/execution

² In response to the large number of cases deriving from systemic or structural problems in certain countries the Court has, since 2004, developed a pilot-judgment procedure. This consists in identifying in a single judgment systemic problems underlying recurrent violations of the Convention and indicating in that judgment the remedial measures required to resolve such situations. The pilot judgments aim at assisting the respondent State in finding the appropriate solutions and the Committee of Ministers in supervising the execution of the judgments.

Principal facts

The applicants are 11 Russian nationals, born between 1927 and 1978 (one applicant died during the proceedings and his widow is pursuing the application on his behalf).

All applicants obtained judicial decisions ordering the State authorities to provide them with housing – in a majority of the cases – or with various services in kind, such as to ensure the repair of water or heating facilities, or to provide a disabled person with a car. The decisions became final between 2002 and 2009, but their enforcement was considerably delayed, some of them remaining unenforced to date.

Six of the applicants brought proceedings before the Russian courts claiming compensation for the delayed enforcement of the judgments in their favour, relying on the 2010 law “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” (“Compensation Act”). The courts declared their cases inadmissible, finding that the Compensation Act was only applicable to delayed enforcement of judgments establishing a monetary debt to be recovered from the State budgets. Those findings were confirmed on appeal by the Supreme Court in a number of decisions handed down in 2010 and 2011.

One applicant, Ms Kostyleva, brought civil proceedings, in May 2011, against the town administration of Syktyvkar, Republic of Komi, for failure to comply with two final judgments, of November 2000 and of August 2009, ordering the administration, respectively, to renovate the building in which Ms Kostyleva inhabited a social tenancy flat, and to provide her and her family with suitable housing. Her action was eventually granted in part by a judgment of September 2011, acknowledging the lengthy non-enforcement. By another judgment of January 2012, she was awarded compensation. Her appeal, stating that the monetary award had not adequately compensated the serious damage sustained, was eventually dismissed in July 2012.

Complaints, procedure and composition of the Court

All the applicants complained that the authorities’ failure to enforce the judgments in their favour within a reasonable time had violated their rights under Article 6 (right to a fair trial). Six applicants also complained under Article 13 (right to an effective remedy) that they lacked effective remedies at national level in respect of their complaints about the prolonged non-enforcement. Finally, seven applicants complained that their rights under Article 1 of Protocol No. 1 (protection of property) were violated.

The case originated in 11 applications, which were lodged with the European Court of Human Rights on various dates between July 2005 and August 2011.

Judgment was given by a Chamber of seven judges, composed as follows:

Isabelle **Berro-Lefèvre** (Monaco), *President*,
Elisabeth **Steiner** (Austria),
Khanlar **Hajiyev** (Azerbaijan),
Mirjana **Lazarova Trajkovska** (“The former Yugoslav Republic of Macedonia”),
Julia **Laffranque** (Estonia),
Ksenija **Turković** (Croatia),
Dmitry **Dedov** (Russia),

and also Søren **Nielsen**, *Section Registrar*.

Decision of the Court

The Russian Government's request for striking out several applications

The Court considered the Russian Government's request to strike nine of the applications out of its list of cases. It observed that the Government had submitted unilateral declarations acknowledging the lengthy enforcement proceedings and had offered to pay the applicants in those cases compensation. However, while two applicants had agreed to the terms of the Government's declarations, the remaining seven applicants had rejected the offers of compensation, stating in particular that the amounts offered were insufficient, and had maintained their complaints.

In any event, the Court was compelled to pursue the examination of the applications, as the Government's declarations had failed to address a key aspect of the case, namely the lack of an effective legal remedy at national level. This issue had been invoked by a majority of the applicants and had been raised by the Court when it communicated the case to the Government in April 2012, raising at the same time the question of the existence of a systemic problem and setting in motion the pilot-judgment procedure. While the Court had already determined similar issues in previous cases, it continued to receive hundreds of applications of that kind from Russia as a result of the deficiencies of the remedies at national level, this situation being at odds with the principle of subsidiarity. The Court therefore rejected the Government's request to strike out the applications concerned.

Articles 13 and 6

The Court found violations of Article 13 and Article 6 in respect of all 11 applicants.

As regards the complaints under Article 13, the Court observed that it had already given thorough consideration to the issue of effective remedies at national level in the context of numerous Russian cases concerning delayed enforcement of judgments, notably in its first pilot judgment concerning Russia in the case of *Burdov (no. 2)*.³

Both that pilot judgment and the Russian legislative proposals tabled with a view to setting up a compensatory mechanism for redress in these types of cases had left little doubt that the Russian civil law remedies did not ensure effective redress in those cases. As the Court had repeatedly held in its judgments, while the possibility of compensation under the Russian Civil Code was not totally excluded – and was indeed granted in certain rare cases – this remedy did not offer reasonable prospects of success, being notably conditional on the establishment of the authorities' fault.

As regards the 2010 Compensation Act, the Government had opted for radically restricting its scope to judgments imposing monetary obligations on the State. As a result, the remedy provided for by the Compensation Act was not available to the 11 applicants in this case, whose complaints concerned the delayed enforcement of judgments imposing obligations in kind. Therefore they did not dispose of any effective remedy at national level in respect of their arguable complaints.

Concerning the complaints under Article 6, the Court observed that it was undisputed between the parties, as the Government had acknowledged, that the delays in the enforcement of the judgments were in breach of the applicants' right to a fair trial. The Court recapitulated the Convention criteria to be applied in the assessment of the reasonable time requirement in all such cases. It noted in particular that, while some of the obligations imposed on the authorities were burdensome and might take longer to be fulfilled, a delay in ensuring basic utility services or renovation exceeding six months after delivery of the final judgment concerned was to be considered unreasonably long.

³ *Burdov v. Russia (no. 2)* (33509/04), Chamber judgment of 15 January 2009.

Article 1 of Protocol No. 1

The Court found a violation of Article 1 of Protocol No. 1 in respect of six of the applicants, who had obtained judgments obliging the authorities to provide them with flats. By virtue of those judgments they had obtained a “legitimate expectation”, within the meaning of the Court’s case-law, to acquire an asset, which was sufficiently established to constitute a possession for the purpose of Article 1 of Protocol No. 1. The prolonged delays in the enforcement of those judgments had thus constituted an unjustified interference with the applicants’ right to peaceful enjoyment of their possessions.

Just satisfaction (Article 41)

The Court held that Russia was to pay the applicants sums between EUR 900 and 9,000 – totalling EUR 59,325 – in respect of non-pecuniary damage, and a total of EUR 1,967 in respect of costs and expenses to two of the applicants.

Binding force and execution of the judgment (Article 46)

The Court observed that the non-enforcement or delayed enforcement of judicial decisions had been a recurrent problem in Russia, which had led to the most frequent violations of the Convention since its ratification by Russia in 1998. While part of the problem had been successfully resolved by the first pilot judgment and the ensuing adoption of the Compensation Act, numerous cases which did not fall within the scope of that law still had little chance of being resolved at national level and thus continued to be lodged with the Court. However, the Court neither had the capacity nor was it appropriate to its function to decide a large number of cases requiring the finding of basic facts or the calculation of monetary compensation, both of which should be the domain of the national courts.

The applicants’ cases as well as many others – the Court having already decided more than 150 applications of this type – left no doubt that Russia was experiencing major structural problems in the enforcement of judgments imposing obligations in kind on the State authorities. The structural nature of the underlying problems was all the more striking when judgments ordering the allocation of housing were concerned. The Court’s numerous judgments suggested that there was a gap between, on the one hand, the State’s social obligation to provide housing to certain individuals and, on the other hand, the authorities’ incapacity to comply with those obligations with reference, most often, to the scarcity of available resources. In that regard, the Court underlined that under its case-law the Convention did not allow a State authority to cite a lack of funds as an excuse for not honouring a judgment debt within a reasonable time.

In this context the bailiffs’ capacity to ensure enforcement in accordance with the law was severely weakened. In the applicants’ case the authorities had either remained deaf to the bailiffs’ insistent summons, or had plainly responded that the enforcement of the judgment was impossible. The situation was largely aggravated by the continuous lack of effective domestic remedies in respect of such obvious and recurrent violations of the Convention. As a result, people affected by the most basic and undisputable violations of the Convention, like those acknowledged by the Government in the present case, still continue to seek redress before the Court in the first instance.

Noting that it was not its task to advise the Government in the complex legal, political and budgetary process, the Court abstained from indicating any specific measures to be taken, leaving it to the authorities to establish the appropriate enforcement mechanisms in line with the Convention requirements. Against this background, the Court’s findings in respect of domestic remedies revealed essentially a legal problem that lent itself to be resolved through an amendment of domestic legislation, as demonstrated by the positive experience of the *Burdov* pilot judgment. The Court therefore held that Russia, in cooperation with the Council of Europe’s Committee of Ministers, had to set up, within one year from the date on which the judgment becomes final, an

effective remedy at national level securing adequate and sufficient redress for the non-enforcement or delayed enforcement of judgments imposing obligations in kind on the authorities.

As regards other pending cases concerning the same issue, the Court held that Russia had to grant redress, within two years from the date on which the judgment becomes final, to all victims of delayed enforcement of judgments imposing obligations in kind who had lodged their applications with the European Court of Human Rights before today's judgment and whose cases were or will be communicated to the Russian Government. It also decided to adjourn, for a maximum of two years, the proceedings in all cases against Russia concerning the non-enforcement or delayed enforcement of such judgments.

The judgment is available only in English.

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The European Court of Human Rights was set up in Strasbourg by the Council of Europe Member States in 1959 to deal with alleged violations of the 1950 European Convention on Human Rights.