THIRD SECTION

**CASE OF VAKHITOV v. RUSSIA**

*(Application no. 42932/11)*

JUDGMENT

STRASBOURG

9 July 2019

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

In the case of Vakhitov v. Russia,

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

 Georgios A. Serghides, *President,* Branko Lubarda, Erik Wennerström, *judges,*
and Fatoş Aracı, *Deputy Section Registrar,*

Having deliberated in private on 18 June 2019,

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

PROCEDURE

1.  The case originated in an application (no. 42932/11) 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 Ildar Dinarovich Vakhitov (“the applicant”), on 16 June 2011.

2.  The Russian Government (“the Government”) were represented initially by Mr G. Matyushkin, the Representative of the Russian Federation to the European Court of Human Rights, and then by his successor in that office, Mr M. Galperin.

3.  In the wake of the pilot judgment in the case of *Gerasimov and Others v. Russia*, on 24 November 2014 the non-enforcement complaint and the lack of effective remedies’ issue were communicated to the Government for settlement or resolution (see *Gerasimov and Others* *v. Russia*, nos. 29920/05 and 10 others, §§ 230-31 and point 13 of the operative part, 1 July 2014). The Court adjourned for two years, that is until 1 October 2016, the proceedings in all cases concerning non-enforcement or delayed enforcement of domestic judgments imposing obligations in kind on the State authorities (ibid., § 232 and point 14 of the operative part). The remainder of the application was declared inadmissible pursuant to Rule 54 § 3 of the Rules of Court.

4.  On 29 September 2016 the Government advised the Court that they were unable to settle the present application within the above time-limit, as the domestic judgment in the applicant’s favour had remained unenforced.

5.  Having regard to the expiry of the above-mentioned adjournment period, the Court has decided to resume the examination of the application. The Court informed the parties at the communication stage that the case, subject to settled case-law, would be allocated to the Committee.

THE FACTS

I.  THE CIRCUMSTANCES OF THE CASE

6.  The applicant was born in 1964 and lives in Shchemilovo, the Noginskiy District of the Moscow Region. He is a former military serviceman.

A.  A service flat provided to the applicant in 2003

7.  On 22 December 2003 the Ministry of Defence provided the applicant and his family with a flat of 78.8 sq.m. in Shchemilovo. The flat was granted as “service housing” (служебное жилое помещение), in connection with, and for the period of the applicant’s military service in a closed military settlement (закрытый военный городок).

8.  On 23 August 2004 he was put on a list of servicemen in need of better housing.

B.  Judgment in the applicant’s favour

9.  On 17 February 2010 the Moscow Garrison Military Court ordered the commander of the applicant’s military unit and the housing commission to provide the applicant’s family of four with housing in Moscow on a priority basis, in accordance with housing norms and in line with the domestic legislation, in accordance with a priority order depending on the date of placement on the list of those entitled to housing on priority basis within the same category of servicemen. The court further ordered to dismiss him from service on health grounds after provision of the housing.

10.  On 10 March 2010 the judgment entered into force.

11.  On 11 March 2011 the same court replaced the defendant by the Housing Provision Department of the Ministry of Defence.

C.  Legal status of the flat in Shchemilovo in 2003-2016

12.  At some point the applicant started performing his military service in Moscow but continued living in the service flat in Shchemilovo (see paragraph 7 above), for the lack of available housing in Moscow. The flat’s “service housing” status was confirmed by the military unit officers in various documents dated 2005-2012, including a local housing exploitation unit’s documents and utility bills.

13.  During the same period the applicant on several occasions undertook to vacate the flat once provided with State housing in Moscow.

14.  In 2012 E., the applicant’s mother-in-law, moved into the flat to live together with the applicant’s family.

15.  In 2014 the administration of the Staraya Kupavna settlement of the Noginskiy District and the head of a newly-created flat owners’ association at a special meeting informed the settlement population including the applicant that on 13 February 2009 the Ministry of Defence had transferred a major part of the housing fund in Shchemilovo, including the applicant’s flat, to the municipality. The flat allocated to the applicant had become municipal property.With reference to numerous documents issued by the housing and exploitation unit until 2013 and designating the flat as service housing, the applicant submits that he had been unaware of the title transfer until 2014.

16.  On 18 December 2014 the applicant concluded a social tenancy agreement in respect of the flat with the administration of Staraya Kupavna settlement of the Noginskiy District.

17.  On 29 December 2015 E. privatised the flat and became its owner. In October 2016 E. offered the flat to P., her another daughter. The applicant’s family have been living in the flat to date.

D.  Removal from the housing list, the applicant’s dismissal from military service an subsequent proceedings

18.  On 11 April 2016 the Housing Provision Department of the Ministry of Defence refused to provide the applicant with a flat at a specific address in Moscow and decided that the applicant’s name be removed from the list of persons in need of housing. The authority reiterated that military servicemen were entitled to receive free State housing only once, with the condition that they vacate their existing housing (see paragraph 38 above). However, the applicant had not done so: in 2015 his mother-in-law had privatised the flat provided to the applicant in 2003, and he was still living in that flat with his family at the time of the events. A total size of housing per family member exceeded the local housing norm. Accordingly, the grounds for the applicant’s family’s entitlement to receive housing under Article 29 § 1 of the Housing Code had ceased to exist.

19.  On 14 January 2017 the applicant was dismissed from military service without being provided with housing. On 16 January 2017 he received the dismissal order.

20.  On 10 July 2017 he complained to a court about his unlawful removal from the housing list and his subsequent dismissal without housing provision.

21.  On 27 July 2017 the Moscow Garrison Military Court rejected his claim as lodged in breach of the three-month time-limit set out in Article 219 of the Code of Administrative Proceedings in respect of both issues. The court noted that the applicant had been aware of the decision to exclude him from the housing list as early as in May 2016 and had studied the dismissal order on 16 January 2017, but only lodged his complaint in July 2017. The court informed the applicant that the full text of the judgment would be available on 2 August 2017.

22.  The applicant received the judgment on 4 August 2017. On 7 September 2017 he appealed against it.

23.  On 11 September 2017 the Moscow Garrison Military Court returned the applicant’s appeal against the above judgment without examination as he had missed a one-month time-limit for its introduction.

24.  He appealed arguing that he had not missed the time-limit, as from 4 to 6 September 2017 he had been away on business trip.

25.  On 21 December 2017 the Military Court of the Moscow Circuit upheld the decision of 11 September 2017. The court found that the time‑limit for lodging the appeal had expired on 4 September 2017. The applicant had received a full text of the judgment on 4 August 2017 but only appealed on 7 September 2017.

26.  On 20 June 2018 the applicant lodged a single cassation appeal against the decisions of 27 July and 21 December 2017 with the Presidium of the Military Court of the Moscow Circuit. On 22 June 2018 the court returned the appeal without examination owing to various procedural shortcomings, such as the applicant’s failure to formulate his claims as regards the decision of 11 September 2017 and to submit a copy of the decision. The court further noted that under the domestic law it was impossible to lodge a single cassation appeal against several judicial acts.

27.  On 6 July 2018 the applicant corrected the defects and re-introduced his complaint.

28.  On 11 July 2018 the Military Court of the Moscow Circuit returned his request to lodge a cassation appeal without examination, as introduced outside the six-month time-limit.

29.  On 15 August 2018 the applicant lodged a further cassation appeal and a request to reinstate the six-month time-limit with the Supreme Court of Russia. On 28 August 2018 the Supreme Court refused to reinstate the time-limit.

E.  Proceedings concerning the defendant’s requests to terminate the execution of the judgment

30.  At some point in 2017 the debtor authority requested to discontinue the enforcement proceedings in respect of the judgment of 17 February 2010, as the applicant’s name had been removed from the list of persons in need of housing, and there had “no longer been a possibility to enforce the judgment”.

31.  On 21 April 2017 the Presnenskiy District Court of Moscow dismissed the debtor’s request to discontinue the enforcement proceedings. There was no evidence that the judgment in the applicant’s favour could no longer be enforced. It was not quashed or amended. A “loss of a possibility to enforce” should have been “of an objective nature”. The defendant’s arguments were rather indicative of its disagreement with the court’s findings in the judgment of 17 February 2010, but did not constitute a ground for termination of the enforcement proceedings.

32.  On 29 November 2017 a bailiff rejected the debtor’s request to terminate the enforcement proceedings, as the judgment had not been enforced.

33.  On 29 June 2018 the defendant again requested the court to terminate the enforcement proceedings, the application being lodged this time with a military court.

34.  On 11 July 2018 the Moscow Garrison Military Court granted the request and ordered to discontinue the enforcement proceedings. With reference to the judgment of 27 July 2017 (see paragraph 21 above) it found established that as of 11 April 2016 the applicant had no longer been in need of housing, which meant that the possibility to enforce the judgment of 17 February 2010 had ceased to exist.

35.  On 6 September 2018 the Appellate Chamber for Administrative Cases of the Military Court of the Moscow Circuit upheld the decision on appeal. The court observed that in 2003 the applicant had received a flat from the Ministry of Defence. In 2011 he and his family undertook to vacate it, if provided with housing in Moscow. However, in 2014 the applicant concluded a social tenancy agreement in respect of the flat, and in November 2015 it was privatised by his mother-in-law. His family had still been living in the flat. Accordingly, the applicant had no longer been entitled to State housing, and his name had been struck out of the respective lists. Thus, the possibility to enforce the initial judgment had been lost.

36.  It is unclear whether the applicant lodged a cassation appeal against that decision.

37.  At some point before 6 October 2018, date of the applicant’s latest submissions, the bailiffs service discontinued the enforcement of the judgment.

II.  RELEVANT DOMESTIC LAW AND PRACTICE

A.  Rules of provision of housing to military servicemen

38.  Federal Law no. 76-FZ of 27 May 1998 on the Status of Military Servicemen grants them the right to housing (section 15(1)(1)). That provision has been subject to numerous amendments over the years. According to the text in force as from 8 May 2006 (Law no. 66-FZ of 8 May 2006), the State was to ensure that servicemen be provided with housing or monetary funds to allow them to purchase housing in accordance with the procedure and under the conditions set by the federal laws and regulations. Construction and purchase of housing for servicemen was performed by the federal executive authorities at the expense of the federal budget. A right to be provided with State housing is granted to servicemen only once. On receipt of housing at a place of their choosing, servicemen and their family members must submit documents confirming that they have vacated living premises to the Ministry of Defence and discontinued residence registration at their previous places of residence (section 15(14) of the Law).

39.  For a summary of other relevant provisions of the Russian Housing Code of 29 December 2004, the Federal Law on the Status of Military Servicemen, the Enforcement Act and Instruction of the Ministry of Defence of 30 September 2010 No. 1280 setting out rules governing provision of housing to military servicemen under social tenancy agreements, see *Lebedenko v. Russia* (dec.), no. 60432/13, §§ 26-39, 4 December 2018. Annex II to the aforementioned Instruction sets out rules for provision of service housing.

B.  Code of Administrative Procedure

40.  According to Article 359 of the Code of Administrative Procedure, enforcement proceedings are discontinued either by a court which had issued the writ of execution or a court of the bailiff’s location.

C.  Compensation Act

41.  Relevant provisions of the Federal Law No. 450-FZ amending the Compensation Act of 2010, in force as of 1 January 2017 and extending the scope of the Compensation Act to cases of excessive delays in the enforcement of court judgments ordering the domestic authorities to fulfil various obligations in kind are summarised in *Shtolts and Others v. Russia* (dec.), nos. 77056/14 and 2 others, §§ 31‑41, 30 January 2018.

THE LAW

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

42.  The applicant complained of the non‑enforcement of the judgment given in his favour. He relied on Article 6 § 1 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 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.”

43.  The Government initially submitted that the judgment in the applicant’s favour had remained unenforced. They acknowledged their obligations under the *Gerasimov and Others* pilot judgment (cited above) and stated that they would deploy all means to enforce the judgment which had remained without execution or resolve the issues by any appropriate means. In their further observations the Government argued that the judgment could not have been enforced, as the applicant had received the flat from the Ministry of Defense and privatised it.

44.  The applicant maintained his complaint. He stated that the judgment had not been quashed or amended but had remained without execution. The Ministry of Defence had never provided the flat in Shchemilovo to him on a permanent basis, but only as temporary “service housing”. The transfer of the title thereto from the Ministry of Defence to the municipality had been beyond the applicant’s control. The lawfulness of the transfer or of the privatization of the flat by E. had never been reviewed by courts. Once the flat had become municipal property, it no longer had any legal ties with the Ministry of Defence, and could have no longer been regarded as service housing. The privatization of the flat had been in compliance with the privatisation laws. He had not lost entitlement to receive State housing. The domestic courts’ decisions concerning both the dismissal in 2017 and the termination of the enforcement proceedings in 2018 had been unlawful. He had been under no obligation to vacate the flat in Shchemilovo owned by the third person and not belonging to the applicant or his family members.

A.  Admissibility

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

B.  Merits

46.  The Court observes at the outset that the judgment of 17 February 2010 has not been annulled or modified to date.

47.  The Court notes the Government’s argument to the effect that in April 2016 the applicant was struck off the list of persons in need of housing and the judgment became unenforceable. The Court reiterates its settled approach that any dispute concerning the proper method of enforcement and full and appropriate compliance with a judgment must be first foremost examined by domestic courts (see *Gerasimov and Others*, cited above, § 173). However, in the present case the applicant’s appeal against both the removal from the housing list and the dismissal without housing provision was examined by the first-instance court and rejected as belated (see paragraph 21 above). As his subsequent appeals were disallowed owing to his failure to comply with formal requirements, that decision became final. With reference to those proceedings, domestic courts at two instances further ordered to terminate the enforcement proceedings (see paragraph 34 and 35 above). In any event, the Court does not need to examine the issue of either the legal status of the flat in Shchemilovo or the applicant’s entitlement to State housing, for the following reasons.

48.  The Court notes that in any event the Government provided no reasons for the authorities’ failure to enforce the judgment prior to April 2016, when the applicant’s name was struck off the housing list, that is for more than six years. As regards the subsequent period, the Court notes that in 2017 the domestic court confirmed that the possibility to enforce the judgment had not been lost at the material time (see paragraph 31 above). The defendant did not appeal against that decision which accordingly became final. Instead, the debtor authority chose to introduce a new request for termination of the enforcement with military courts, which granted it on 21 April 2018 (see paragraphs 34 and 35 above). Without delving into the issue of an alleged discrepancy between the courts’ conclusions in those two sets of proceedings, the Court finds it sufficient to note that at least by 21 April 2018, when the authority’s request to discontinue the enforcement was granted by the first instance court, the judgment of 17 February 2010 in the applicant’s favour had already remained without execution for more than eight years, and its enforceability was confirmed by the final domestic court’s decision in 2017 (see paragraphs 31 and 32 above; see, *mutatis* *mutandis*, *Kotsar v. Russia*, no. 25971/03, § 28, 29 January 2009, and *Anankin and Others*, no. 79757/12, § 62, 22 January 2019). Accordingly, the period until at least 21 April 2018 is attributable to the authorities and is clearly in breach of the Convention requirements (see *Gerasimov and Others*, cited above, § 171).

49.  Having regard to its case-law on the subject, the Court considers that the authorities did not deploy all necessary efforts to enforce fully and in due time the judicial decision in the applicant’s favour.

50.  His complaint therefore discloses a breach of Article 6 § 1 of the Convention and Article 1 of Protocol No. 1.

II.  ALLEGED VIOLATION OF ARTICLE 13 OF THE CONVENTION

51.  The applicant may be understood to complain about the lack of an effective domestic remedy in respect of the non-enforcement. Relevant Convention provision reads as follows:

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.”

52.  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 by Federal Law No. 450-FZ amending the Compensation Act of 2010. That statute, which entered into force on 1 January 2017, enables those concerned to seek compensation for damage sustained as a result of excessive delays in the enforcement of court judgments ordering the domestic authorities to fulfil various obligations in kind (see *Kamneva and Others v. Russia* (dec.), nos. 35555/05 and 6 others, 2 May 2017). The Court has found that the amended Compensation Act in principle meets the criteria set out in the *Gerasimov and Others* pilot judgment and provides the applicants with a potentially effective remedy for their non-enforcement complaint (see *Shtolts and Others*, cited above, §§ 87-116 and 123).

53.  Even though the remedy was – and still is – available to the applicant, 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).

54.  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 applicant’s complaint under Article 13 in the present case (see, *mutatis mutandis*, *Korotyayeva and Others*, nos. 13122/11 and 2 others, § 40, 18 July 2017, and *Tkhyegepso and Others v. Russia,* nos. 44387/04 and 11 others, §§ 21-24, 25 October 2011).

III.  OTHER COMPLAINTS RAISED BY THE APPLICANT

55.  The applicant may be understood to complain that his right to a fair hearing within the meaning of Article 6 was violated in the second set of proceedings concerning the debtor’s request to terminate the enforcement, when the military court granted the debtor’s claim despite the existence of a final decision of the district court in the proceedings between the same parties and concerning the same subject‑matter.

56.  Bearing in mind its conclusions above concerning the non‑enforcement issue (see paragraph 48 above), the Court considers that it is not necessary to examine separately the admissibility and merits of this complaint (see *Anankin and Others*, cited above, § 65).

57.  The applicant further raised a number of complaints under Articles 6, 8, 13 and 17 of the Convention in respect of the proceedings concerning both his dismissal and the termination of the enforcement proceedings.

58.  Having regard to all the material in its possession and in so far as the complaint falls within the Court’s competence, it finds that it does 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 application 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

59.  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

60.  The applicant claimed 16,638,979 Russian roubles (approximately 258,811 euros (EUR) in respect of pecuniary damage, that amount representing an average price of a new-build flat in Moscow of 76,5 sq.m. for a family of four, as well as finishing works therein. He further claimed EUR 50,000 in respect of non-pecuniary damage.

61.  The Government considered his claims in respect of pecuniary damage unsubstantiated, as the applicant had already been provided with housing by the Ministry of Defence. They further contested the claims in respect of non-pecuniary damage as manifestly excessive.

62.  The Court does not discern any causal link between the violation found and the pecuniary damage alleged (see paragraph 47 above); it therefore rejects this claim.

63.  On the other hand, it awards the applicant EUR 7,800 in respect of non-pecuniary damage and dismisses the remainder of his claims under this head.

B.  Costs and expenses

64.  The applicant did not claim costs and expenses. Accordingly, there is no call to make an award under this head.

C.  Default interest

65.  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 the non-enforcement admissible;

2.  *Holds* that there has been a violation of Article 6 of the Convention and Article 1 of Protocol No. 1 on account of the non-enforcement of the judgment of 17 February 2010 in the applicant’s favour;

3.  *Holds* that there is no need to examine the admissibility and merits of the complaint under Article 13 of the Convention;

*4.  Decides* that it is not necessary to examine the admissibility and merits of the complaint about the alleged violation of the legal certainty principle in the second set of the court proceedings concerning the termination of the execution of the judgment in his favour;

*5.  Declares* the remainder of the application inadmissible;

6.  *Holds*

(a)  that the respondent State is to pay the applicant, within three months, EUR 7,800 (seven thousand eight hundred euros), plus any tax that may be chargeable, in respect of non-pecuniary damage, 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;

7.  *Dismisses* the remainder of the applicant’s claim for just satisfaction.

Done in English, and notified in writing on 9 July 2019, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

 Fatoş Aracı Georgios A. Serghides
 Deputy Registrar President