

## Astreinte in Russia: a Way to Compel the Debtor to Execute the Judgment on Specific Performance

Newsletter

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Russian legislation and court practice have developed a new method of forcing debtors to execute judgments on specific performance – namely, judicial forfeit, or, how scholars call it – *astreinte*, which is paid to the creditor (claimant).

What is *astreinte*, in which cases can it be requested and what are the real sums that courts tend to award? Please see the answers to these questions in our newsletter below.

### 1. WHAT IS ASTREINTE?

Having originated in France, *astreinte* and its analogues have spread over many countries (e.g., Italy, Portugal, Benelux countries etc.). Since 2014, *astreinte* appeared in Russian judicial practice<sup>1</sup> and since 2015 – in Art. 308.3 of the Civil Code of the Russian Federation (CC RF). The Supreme Court of the Russian Federation clarified certain issues of its application in 2016.<sup>2</sup>

When a court issues a decision on **specific performance**, such as, for example, a decision to compel the debtor to perform works under a contract, or return an item to its owner (as against decisions enforcing obligations to pay a sum of money), at the request of the winning party (the creditor), the court declares that in case of failure to execute the judgment, the losing party (the debtor) will have to pay a judicial forfeit to the creditor.



**Astreinte (in Russia – judicial forfeit) is paid by the losing party (debtor) to the winning party (creditor), in case the former does not execute a judgment on specific performance.**

According to the law, **the court cannot refuse** to appoint such forfeit if the creditor asks for it, but its amount will depend on the judge's discretion.

Paying *astreinte* does not discharge the debtor from executing the decision or from other types of responsibility for non-performance of the obligation – the nature of *astreinte* is **punitive**.

Formally, *astreinte* is not connected with damages the creditor incurred through non-execution of the judgment on specific performance: the creditor does not have to prove that he/she suffers losses from such non-execution; however, in practice, claimants and courts do take such real or possible damages into account.

## 2. WHEN IS ASTREINTE AWARDED?

In practice, astreinte in Russia can be invoked in civil law disputes and cannot be granted in disputes where acts of state authorities are challenged, or where the state authorities are compelled to do something by the court.

According to our statistics,<sup>3</sup> astreinte is often used in cases where the owner of land requests that the defendant stop interfering with the owner's right to the land (≈trespass/nuisance), or demands that the management of the company provide a shareholder with the documents of the company. It is also used in claims on specific performance of contracts (for supply, performance of works). Quite often defendants in cases involving astreinte are monopolists in providing communal services, such as energy: in such cases, claimants demand that the energy supply company connect them to the networks etc.



**Astreinte is most often used in civil law disputes regarding land, provision of corporate documents and connection to power networks.**

Astreinte cannot be used where the court issues a decision on monetary claims, that is if the claimant asks to be paid money under a contract, on claims for damages etc.

Astreinte can be awarded at the same time when the “main” decision is issued (if the claimant requests it during the trial); but the precise amount of forfeit will be calculated only after the decision enters into force and the period for its execution, set by the court, expires. Alternatively, it can be awarded after the debtor fails to execute the decision – in such case the claimant can submit a special application to the court and the court shall appoint the date of a hearing, where the issue of awarding astreinte will be discussed with the participation of the parties.

Since mid-2015, astreinte can be awarded not only in state commercial courts (*arbitrazh* courts), but also in courts of general jurisdiction.

## 3. AMOUNTS AWARDED

Several mechanisms are used by claimants to calculate astreinte – all of them are confirmed by the courts:

- ▶ Fixed amount. Usually awarded for the past period, when the debtor has already failed to execute the decision. The maximum amount that has been awarded so far is RUB 5 mln (approx. EUR 80,000).
- ▶ Recurrent amounts. Can be awarded to calculate astreinte for both past and future periods of non-execution of judgments. For example, RUB 100,000 per week.
- ▶ Progressive astreinte. Recurrent amounts that inflate every day/week/other period of time. Same as recurrent amounts, and can be awarded both for the past and for the future. For example, the biggest progressive sum awarded has been RUB 1 mln for the 1<sup>st</sup> week, RUB 1.5 mln for the 2<sup>nd</sup> week and so forth – for the past, with simultaneous progressive astreinte for the future in the amount of RUB 100,000 for the 1<sup>st</sup> week increasing by RUB

100,000 every next week. Such astreinte was confirmed by all judicial instances. The defendant may ask for reduction of the amount of astreinte requested by the claimant.

The idea of astreinte was clearly defined by the Supreme Court of the RF: as a result of awarding astreinte, execution of judgments will become more beneficial for the debtor than their non-execution.



**The idea of astreinte is to make the execution of judgments more beneficial for the defendant than their non-execution.**

Approx. 80% of the applications of claimants for astreinte are satisfied (in state commercial courts) in full (23%) or in part (57%). Total sums awarded amount to approx. 34% of the sums of astreinte initially claimed.

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<sup>1</sup> Resolution of the Plenum of the Supreme Commercial Court of the Russian Federation No. 22 dated 4 April 2014 “On Certain Issues of Awarding Monetary Relief to the Claimant for Non-Execution of the Judicial Act” (repealed).

<sup>2</sup> Resolution of the Plenum of the Supreme Court of the Russian Federation No. 7 dated 24 March 2016 “On Application by the Courts of Certain Provisions of the Civil Code of the Russian Federation on Liability for Non-Performance of Obligations” (see paras. 28-36).

<sup>3</sup> All statistics are provided according to our research as of 1 February 2017.