FIRST SECTION

**CASE OF LISEYTSEVA AND MASLOV v. RUSSIA**

*(Applications nos. 39483/05 and 40527/10)*

JUDGMENT

STRASBOURG

9 October 2014

FINAL

09/01/2015

*This judgment has become final under Article 44 § 2 of the Convention. It may be subject to editorial revision.*

In the case of Liseytseva and Maslov v. Russia,

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

 Isabelle Berro-Lefèvre, *President,* Khanlar Hajiyev, Mirjana Lazarova Trajkovska, Julia Laffranque, Erik Møse, Ksenija Turković, Dmitry Dedov, *judges,*
and Søren Nielsen, *Section Registrar,*

Having deliberated in private on 16 September 2014,

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

PROCEDURE

1.  The case originated in two applications (nos. 39783/05 and 40527/10) 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 two Russian nationals, Ms Irya Yakovlevna Liseytseva (“the first applicant”) and Mr Sergey Mikhaylovich Maslov (“the second applicant”), on 8 September 2005 and 28 May 2010 respectively.

2.  The first applicant was not represented by a lawyer before the Court. The second applicant was represented by Ms T.S. Tarasova, a lawyer practising in Arkhangelsk. The Russian Government (“the Government”) were represented by Mr G. Matyushkin, the Representative of the Russian Federation at the European Court of Human Rights.

3.  On various dates the President of the First Section decided to give notice of the applications to the Government. It was also decided to examine the merits of the applications at the same time as their admissibility (former Article 29 § 3).

4.  The Government objected to the joint examination of the admissibility and merits of application no. 39483/05, but the Court rejected this objection.

THE FACTS

I.  THE CIRCUMSTANCES OF THE CASES

5.  The first applicant was born in 1953 and lives in Petrozavodsk, in the Republic of Kareliya. The second applicant was born in 1956 and lives in Mezen, in the Arkhangelsk Region.

A.  Application by Ms Liseytseva (no. 39783/05)

6.  The first applicant was an employee of the municipal unitary enterprise “Avtokolonna 1126” (Auto Transport Column 1126) in Petrozavodsk, the Republic of Kareliya.

1.  Available information on the debtor company

7.  “Avtokolonna 1126” was set up by a decision of the administration of the Town of Petrozavodsk (“the town administration”). It provided public transport services in the town on a commercial basis. The company had “the right of economic control” *(право хозяйственного ведения*) over the assets allocated to it by the town administration in order to carry out its statutory activities. Legal provisions on the status of municipal unitary enterprises and the right of economic control are summarised in paragraphs 55‑75 below.

8.  At the request of the company, on 29 December 2001 the town administration withdrew unspecified assets of an aggregate value in excess of 25,000,000 Russian roubles (RUB) from the company’s economic control and immediately allocated them to the same company for temporary use free of charge under a loan agreement.

9.  Under several agreements between the company and the town administration, including one dated 21 January 2002, the company undertook to provide transport services to certain sections of the population free of charge, and the town administration was to reimburse it for the expenses incurred out of the budget allocated for that purpose by the Ministry of Finance of the Republic of Kareliya or the federal budget. According to a letter from the Committee of Housing and Communal Services of Petrozavodsk dated 19 March 2003, at some point the respective budgets accumulated a considerable debt towards the company owing to a shortage of funds. Consequently, the company was unable to pay its employees in due time. The town administration requested the legislative body of the Republic of Kareliya to consider the allocation of additional funds to cover the company’s debt in 2004, but to no avail.

10.  On an unspecified date the administration ordered the restructuring of the company in the form of a spin-off and transferred the assets mentioned in paragraph 8 above to the newly created municipal unitary enterprise “Avtokolonna 1126 Plus”. The debt accumulated in respect of the unpaid salaries was not transferred and remained with the applicant’s employer.

2.  Decision on the debtor company’s insolvency

11.  On 6 July 2003 the Commercial Court of the Republic of Kareliya declared the respondent company insolvent, and a liquidation procedure commenced.

3.  Final judgments in the applicant’s favour

12.  The applicant sued her employer for salary arrears.

13.  On 20 June 2003 the Petrozavodsk Town Court awarded her RUB 5,421.89 in salary arrears, compensation for non-pecuniary damage and court expenses. The judgment was not appealed against and became final ten days later. On 4 July 2003 the bailiffs’ service received the writ of execution in respect of the award.

14.  On 22 June 2003 the applicant was dismissed from the company in view of its upcoming liquidation (see paragraph 10 above).

15.  By a final judgment of 25 November 2003 the Petrozavodsk Town Court granted her new action and ordered the respondent company to pay her RUB 19,445.53 in salary arrears for a different period of time, severance pay and compensation for non-pecuniary damage. The applicant obtained a writ of execution in respect of the award.

16.  By a final judgment of 16 April 2004 the same court, in separate proceedings, awarded the applicant RUB 4904.95 in compensation for loss of salary, based on the average wage, and compensation for non‑enforcement of the above-mentioned two judgments as well as non‑pecuniary damage. On 17 May 2005 the writ of execution was forwarded to the bailiffs’ service.

4.  Insolvency proceedings in respect of the debtor company

17.  At some point the bailiffs discontinued the enforcement proceedings in respect of at least two judgments (22 June 2003 and 16 April 2004) and forwarded the writs to the liquidator.

18.  By separate judgments of 21 and 24 June 2004 and 12 and 13 August 2004 the Commercial Court of the Republic of Kareliya ordered the Federal Treasury and the Republican Treasury to reimburse the company the cost of the transport services it had provided free of charge under the respective agreements (see paragraph 9 above) and rejected a similar claim against the town administration.

19.  At some point the liquidator received the writ of execution in respect of the judgment of 25 November 2003.

20.  According to the liquidator’s notes on the respective writs of execution, at some point the applicant received RUB 4,358.98 of the amount awarded on 20 June 2003, RUB 8,782.78 of the amount awarded by the judgment of 25 November 2003 and RUB 4,604.95 of the award made on 16 April 2004. The remainder of the judgment debts has not been paid to the applicant.

21.  On 4 October 2006 the Commercial Court of the Republic of Kareliya discontinued the insolvency proceedings and ordered the respondent company’s liquidation. The creditors’ claims, which had not been satisfied during the liquidation procedure, including the remainder of the applicant’s claims, were considered as settled. On 15 October 2006 the liquidation was recorded in the Register of Legal Entities, and the company ceased to exist.

5.  Proceedings for subsidiary liability brought by the applicant

22.  In 2005 the applicant lodged an action against the town administration, claiming that it was liable to repay her the remaining judgment debt plus compensation for the delayed enforcement of the court orders and non-pecuniary damage. She argued that the insolvency of the debtor company had been caused by the actions of the town administration. First, it had failed to reimburse the expenses the company had incurred for providing transport services, as stipulated by the respective agreements (see paragraph 9 above). Second, the company’s inability to meet the creditors’ claims had been caused by the transfer of the assets to a different company carrying out the same functions. As a result, the debtor company had become unable to continue to carry out its activities as defined in its articles of association.

23.  On 21 January 2005 the Petrozavodsk Town Court dismissed the action. The court established that the federal and republican authorities owed the applicant’s former employer RUB 1,883,370 for services provided at a reduced price. However, with reference to the Commercial Court’s findings (see paragraph 18 above) the court concluded that the debt had been accumulated as a result of the federal and republican authorities’ inaction and therefore it could not be attributed to the town administration. As regards the transfer of the assets, the court found as follows:

“The restructuring («реорганизация») of the municipal unitary enterprise ‘Avtokolonna 1126’ in the form of a spin-off and the creation of a separate unitary enterprise, ‘Avtokolonna 1126 Plus’, was within the property owner’s rights. [The applicant] failed to prove the existence of a causal link between the restructuring ... and the enterprise’s insolvency”.

24.  The court further observed that, in any event, the applicant’s claim was premature, since the insolvency proceedings had been underway at the material time. On 22 March 2005 the Supreme Court of the Kareliya Republic upheld the judgment on appeal.

25.  Once the debtor enterprise was liquidated, the applicant lodged a similar claim with the Justice of the Peace of the 10th Court Circuit of Petrozavodsk. In addition to her earlier submissions (see paragraph 22 above) she reiterated that the debtor company had reported to the owner and the latter had been fully aware of its financial difficulties. However, no measures had been taken to remedy the situation.

26.  On 21 May 2007 the Justice of the Peace rejected her claims, largely referring to the findings of the Petrozavodsk Town Court of 21 January 2005 (see paragraph 23 above). She found that even though the liquidation proceedings had been terminated, the applicant had failed to adduce any additional evidence to demonstrate that the owner had caused the company’s insolvency. The Justice of the Peace noted that the company had been a separate legal entity liable for its debts with all its assets, and therefore rejected the applicant’s argument about the town administration’s inaction as irrelevant.

27.  On 12 September 2007 the Petrozavodsk Town Court endorsed those findings as regards both the failure of the authorities to compensate the cost of the transport services and the restructuring of the company. The court noted, in addition, that the withdrawal of the assets on 29 December 2001 had taken place pursuant to the company’s own request and that, moreover, those assets had been returned to it for free temporary use, which had permitted it to continue its activities. The court further found the applicant’s arguments about the authorities’ inaction ill-founded and emphasised that the applicant had failed to submit evidence in support of her claims.

B.  Application by Mr Maslov (no. 40527/10)

28.  The applicant was an employee of the municipal unitary enterprise “Zhilishchno-Kommunalnoye Khozyaystvo of Mezen” (“Housing and Communal Service of the Town of Mezen”, hereafter “the company”) in the Arkhangelsk Region.

1.  Available information on the debtor company and the beginning of the liquidation procedure

(a)  The company’s articles of association and activities

29.  The company was set up by decision of the administration of the Mezen District. It had the right of economic control over the assets allocated to it by the district in order to meet its statutory objectives. In accordance with the company’s articles of association, it was a commercial organisation performing the following activities, among others: renovation and maintenance of the municipal housing stock; heating and water supply; maintenance of the sewage systems in Mezen; cartage and passenger transport; funeral services; maintenance of municipal boiler plants, artesian wells and related infrastructure, as well as heating supply systems; production of fast-moving consumer goods; and disposal of dry waste and household waste,

30.  According to its articles, the assets of the company consisted of the profit generated by its activities, capital investments, and grants from the federal, regional and local budgets and other sources. The company’s financial resources were made up of profits, amortisation charges, loans and other revenues, as well as “grants from the local budget to cover any losses incurred through the provision of housing and communal services”.

31.  The company planned its activities and development itself. It proposed prices and the tariffs for its products and services in accordance with the domestic legislation and submitted them to the district administration for approval. The plans were based on contracts with consumers, including State bodies and suppliers, “concluded on a commercial basis”.

(b)  Employees’ salaries

32.  The basic salaries of the employees of the housing and communal sector for 2005-07 were set by the Sectoral Tariff Agreement for the Housing and Communal Sector of the Russian Federation *(Отраслевое тарифное соглашение по организациям жилищно-коммунального хозяйства Российской Федерации*) concluded between the employees of the “essential public services sector” represented by the trade union, and the employers, represented by the Communal Enterprises Union. The agreement applied to the municipal authorities that empowered the parties to make such an agreement, as well as to all entities operating in the housing and communal sector, unless they explicitly refused to apply it. No such refusal was made by the applicant’s employer.

(c)  Available information on tariffs for heating supply

33.  The district administration was responsible for setting the tariffs of the company’s services and was also a major consumer of its services. The tariffs in place until 2005 were based on 5 per cent profitability. According to the submissions of the director of the company which employed the applicant in the subsidiary liability proceedings brought by the applicant (see paragraph 48 below), as a result of the application of those tariffs the enterprise had become unprofitable; the loss in profits amounted to RUB 300,000 and was not reimbursed by the administration. The administration failed to pay RUB 2,500,000 for the company’s services. According to its director, the company was put in a difficult financial situation as a result of the actions of the owner.

(d)  Restructuring of the company

34.  On 23 December 2005 the Head of the Mezen district administration ordered the restructuring of the company in the form of a spin-off, creating a new municipal unitary enterprise “MUP ‘Mezenskiye Teplovyye Seti’ (Mezen Heating Supply Systems) of the Mezenskiy District” (hereafter, “MUP ‘MTS’”).

35.  On the spin-off balance sheet approved by the Head of the Mezen district administration on 20 April 2006, the unpaid salary debt was not transferred to the newly created company.

36.  On 24 May 2006 the Head of the Mezen district administration ordered the withdrawal of coal and all other assets, except for the company’s authorized capital, from the company’s economic control and their allocation to MUP “MTS”. The director of the company which employed the applicant became director of MUP “MTS”.

37.  On 13 July 2006 the Head of the Mezen district administration ordered the applicant’s employer’s liquidation.

38.  On 29 May 2007 the Commercial Court of the Arkhangelsk Region declared the respondent company insolvent, and the liquidation procedure was set in motion.

2.  Final judgment in the applicant’s favour

39.  The applicant sued his employer for salary arrears, claiming that his salary rate was below that provided for in the respective Sectoral Tariff Agreement (see paragraph 32 above). The liquidator accepted the claims. On 19 June 2007 the Justice of the Peace of the Court Circuit of the Mezen District of the Arkhangelsk Region awarded the applicant RUB 80,892.63 in salary arrears against his employer.

40.  The judgment was not appealed against and became final.

3.  Enforcement of the judgment and liquidation of the company

(a)  Writs of execution and register of creditors

41.  On 16 July 2007 the bailiffs’ service initiated the enforcement proceedings in respect of the judgment. On 19 July 2007 the bailiffs terminated the enforcement proceedings and forwarded the writs of execution to the liquidator.

42.  At some point before 1 February 2009 (date of the liquidator’s report, see paragraph 45 below) the applicant’s claims were included in the second priority line of the register of creditors’ claims.

(b)  Application to the Arkhangelsk Commercial Court

43.  According to the Government, on 1 October 2007 the applicant petitioned the Commercial Court of Arkhangelsk with a request to order the liquidator to enforce the judgment in his favour.

44.  On 4 October 2007 the court returned the petition unexamined, referring to section 60 of the Insolvency Act (see paragraph 120 below). The parties have not submitted a copy of any document produced by the court in that respect, or a copy of the applicant’s petition.

(c)  The company’s liquidation

45.  On 1 February 2009 the liquidator produced a report stating, *inter alia*, that the assets of the debtor company had not been found and the receivables had not been established, “for lack of financial records”.

46.  On 24 February 2009 the Commercial Court of Arkhangelsk terminated the insolvency proceedings and ordered the respondent company’s liquidation. The creditors’ claims which had not been satisfied during the liquidation procedure due to the debtor’s shortage of funds, including the applicant’s claims, were considered as settled. The court further ordered that the enforcement proceedings in respect of that debt be terminated.

4.  Proceedings for subsidiary liability brought by the applicant

47.  The applicant lodged a court action against various respondents claiming, *inter alia*, that the town administration was liable to repay him the unpaid judgment debt, as well as compensation for non-pecuniary and pecuniary damage resulting from the non-enforcement. He argued that the insolvency of the debtor company had been caused by the actions of the district administration.

48.  On 16 September 2009 the Mezenskiy District Court of the Arkhangelsk Region heard the parties, including the applicant, the district administration representative and the head of the liquidated company who was, at the time of the events, employed as the director of MUP “MTS” (see paragraph 34 above) and granted the applicant’s claims in part. The court reiterated that the debtor company had been set up by the district administration, which, as its owner, had been entitled to decide on its restructuring and liquidation under Article 295 § 1 of the Civil Code. The owner could not be held liable for the insolvent company’s debts unless the insolvency had been caused by the owner’s actions. The court established that as a result of the administration’s tariff-setting policy (see paragraph 33 above) the company had been put in a pre-insolvency situation. Furthermore, the court emphasized that the district administration had withdrawn all assets from the company except for its authorized capital, which resulted in the company’s inability to continue its activity in accordance with the goals and objectives assigned to it. With reference to the Court’s case-law (*Shlepkin v. Russia*, no. 3046/03, 1 February 2007; *Grigoryev and Kakaurova v. Russia*, no. 13820/04, 12 April 2007; and *Aleksandrova v. Russia*, no. 28965/02, 6 December 2007) the District Court found that the administration had subsidiary liability for the insolvent company’s debts, ordered that the judgment debt be recovered from the district administration at the expense of the district treasury and rejected the remainder of the applicant’s claims. In particular, the court found that the newly created company was not liable for the debts of the applicant’s employer since they had not been transferred to it in the spin-off procedure.

49.  On 17 December 2009 the Arkhangelsk Regional Court quashed the judgment on appeal and remitted the case for a fresh examination. The regional court found that it was for the applicant to demonstrate that the insolvency had actually been caused by the owner’s actions. However, he had failed to do so. Turning to the tariff-setting issue (see paragraph 33 above), the regional court noted that under the domestic law the owner was not obliged to finance the company directly. The regional court further considered that the assets had not actually been withdrawn from the company which employed the applicant, but that the company itself had transferred them to the newly created company on the spin-off balance sheet after the restructuring. There was nothing in the case to suggest that the lawfulness of the transfer of the assets had at any point been challenged in court. Furthermore, Russian employment law had not contained any provisions on the subsidiary liability of owners for the debts of municipal unitary enterprises. On the other hand, the first-instance court had failed to examine the issue of MUP “MTS”‘s liability for the debts of the restructured company.

50.  On 19 February 2010 the Mezenskiy District Court rejected the applicant’s claims. The court found that, as a result of the withdrawal of all assets from MUP “MTS”, the latter had become unable to continue its activities, which indeed constituted a reason for its insolvency. However, the court went on to find that

“... the insolvency occurred through no fault of the owner, since they [sic] had been bound by the federal law. Therefore, one of the criteria for the application of subsidiary liability, namely, fault on the part of the owner, is missing.”

51.  In so far as the applicant’s claims for compensation for delayed enforcement were concerned, the court noted, in addition, that he had failed to raise that issue before the main debtor, that is, the employer company, and was therefore prevented from making such claims in the subsidiary liability proceedings. Lastly, the claims lodged against the newly created company could not be granted since the debt in respect of the salary arrears had not been transferred to it.

52.  The applicant appealed, arguing, *inter alia*, that the liquidator had not been heard by the first-instance court and the documents on the debtor company’s remaining assets had not been available to him.

53.  By a final judgment of 6 May 2010 the Arkhangelsk Regional Court upheld the lower court’s findings of 19 February 2010 on appeal. The regional court rejected the applicant’s argument regarding the unavailability of the company’s documents as irrelevant, having noted that the claimant had to demonstrate that the insolvency had been caused by the owner’s actions and not by the company’s own management “and, in any event, not *vice versa*”. The court endorsed the remainder of the lower court’s findings.

II.  RELEVANT DOMESTIC LAW AND PRACTICE

A.  General provisions on State and municipal unitary enterprises

54.  Article 49 of the Civil Code of the Russian Federation provides thata legal entity enjoys the civil rights corresponding to the purpose and aims of its activity, stipulated in its constitutional documents, and discharges the duties related to that activity. Commercial organisations, with the exception of, *inter alia*, unitary enterprises, possess the civil rights and discharge the civil duties indispensable for the performance of any kind of activity that is not prohibited by the law.

55.  The Civil Code of the Russian Federation defines State and municipal unitary enterprises as commercial organisations that do not exercise a right of ownership in respect of the property allocated to them by their owners (Article 113 § 1 of the Civil Code and section 2 of Federal Law no. 161-FZ of 14 November 2002 on State and Municipal Unitary Enterprises, hereafter “the Unitary Enterprises Act”). The property of the unitary enterprise is indivisible. Unitary enterprises cannot create subsidiary companies *(дочерние предприятия*) (section 2 of the Unitary Enterprises Act).

56.  Only State-run and municipal enterprises can be set up in the form of unitary enterprises (Article 113 § 1 of the Civil Code). Under section 8(4) of the Unitary Enterprises Act, a State or municipal unitary company may be created in order to:

“- ensure the use of estate the privatization of which is prohibited, including the assets necessary to ensure the security of the Russian Federation;

- conduct activities to carry out social tasks (including the production of specific goods and services for a minimum price) and organise and conduct purchasing and commodity interventions to ensure the national food security;

- conduct activities reserved exclusively for State unitary companies, as defined by federal laws;

- conduct scientific and technical activities related to the security of the Russian Federation;

- design and produce certain types of goods within the sphere of interests of the Russian Federation and which guarantee the security of the Russian Federation;

- produce specific types of goods excluded from circulation or of limited circulation.”

57.  A unitary enterprise may acquire and make use of pecuniary and non‑pecuniary rights and bear responsibilities, and be a claimant and a defendant in courts (section 2 of the Unitary Enterprises Act).

58.  The State or municipal authority retains ownership of the property but the unitary enterprise may exercise the right of economic control *(право хозяйственного ведения*) or operational management *(право оперативного управления*) over it (Article 113 § 2 of the Civil Code and section 2 of the Unitary Enterprises Act).

59.  The following summary of the domestic law provisions concerns only enterprises with the right of economic control over the assets allocated to them.

B.  Unitary enterprises with the right of economic control

60.  A unitary enterprise with the right of economic control over the assets allocated to it is set up by a decision of the State or the competent local self-government body if the law does not stipulate otherwise (Article 114 § 1 of the Civil Code).

1.  Constitutional document, assets and profit

61.  A company’s articles of association are its constitutional documents and are approved by the State body or local self-government body (Article 114 of the Civil Code and section 20 of the Unitary Enterprises Act).

62.  The articles should contain information on the size of the company’s authorised capital, its sources, and the manner in which it was set up (Article 113 § 1 of the Civil Code). The owner sets up the company’s authorised capital and may decide to increase or reduce it (sections 14 and 15 of the Unitary Enterprises Act). If, at the end of the fiscal year, the value of the net assets of the company proves to be less than the size of its authorised capital, the founder is under the obligation to reduce the authorized capital in conformity with the procedure established by law. If the value of the net assets falls below the amount fixed by law, the company may be liquidated pursuant to a court decision (Article 114 of the Civil Code).

63.  The Unitary Enterprises Act stipulates that a company’s assets consist of the property allocated to it and under its economic control, the profit made as a result of its activity and other sources in accordance with the law (section 11 of the Act).

64.  The unitary enterprise creates a reserve fund from the net profit it generates, as well as other funds in accordance with its articles (section 16 of the Unitary Enterprises Act).

65.  The owner has the right to obtain a part of the profit generated by the company (Article 295 § 1 of the Civil Code and section 17(1) of the Unitary Enterprises Act). Unitary enterprises are required to make yearly transfers of part of the profit that remains after the payment of taxes and other compulsory payments to the respective budget in an amount and in accordance with a procedure determined by the respective State or municipal authority (section 17(2) of the Unitary Enterprises Act, as well as Articles 51, 57 and 62 of the Budget Code of the Russian Federation, which define the respective payments as non-tax revenues).

2.  Purpose and aims of the municipal unitary enterprise’s activity and failure to comply with them

(a)  Legal provisions

66.  The owner of the property under the economic control of a unitary enterprise defines the purpose and aims of the company (Article 295 of the Civil Code). The articles of association of the unitary enterprise should contain information on its purpose and aims (Article 113 § 3 of the Civil Code and section 9 of the Unitary Enterprises Act). The State or municipal unitary enterprise may dispose of assets only in a manner which does not prevent it from carrying out its activities in accordance with its statutory purpose and aims. Transactions made in violation of this requirement must be declared void (section 18(3) of the State Unitary Enterprises Act).

67.  The owner oversees the use of the property assigned to the company in conformity with its stipulated purpose and the maintenance of that property (Article 295 § 1 of the Civil Code).

(b)  Binding clarifications by the higher courts

68.  As clarified by § 10 of Ruling no. 10/22 of the Plenary Session of the Supreme Court and the Supreme Commercial Court of Russia adopted at the Plenary session of 29 April 2010, transactions of the type mentioned above must be declared void irrespective of whether the owner consented to them.

3.  Management of assets

(a)  Legal provisions

69.  The owner of the property under the economic control of a unitary enterprise may decide to restructure or liquidate the company (Article 295 of the Civil Code and section 29 of the Unitary Enterprises Act). The restructuring may take the form of consolidation, a merger, split, spin-off or transformation into a different legal entity (sections 29-35 of the Act). In particular, in the cases of a split or spin-off, the owner must approve the balance sheet of the respective operation (sections 32 and 33 of the Unitary Enterprises Act).

70.  The owner’s consent must be obtained for any transaction that may lead to the encumbrance or alienation of real estate (Article 295 § 2 of the Civil Code and section 18(2) of the Unitary Enterprises Act). The unitary enterprise can independently dispose of the rest of the property under its economic control, except in the cases established by law or other normative acts (Article 295 § 2 of the Civil Code and section 18(1) of the Unitary Enterprises Act).

71.  In the absence of the owner’s consent, the unitary enterprise cannot make transactions related to, *inter alia*, the provision of loans and guarantees, the obtaining of bank guarantees or other encumbrance, assignments of claim or debt transfer agreements, or to enter into a “simple partnership” (unincorporated venture) contract (section 18(4) of the Unitary Enterprises Act). The owner must approve any loan agreement (section 24(2)) and any major transaction by the company *(крупная сделка),* which involves assets of a value exceedingten per cent of its authorized capital or 50,000 times the minimum monthly wage established by law (section 23(1) and (3) of the Act).

72.  The company’s financial documents are subject to a compulsory annual audit and must be forwarded to the competent State and municipal authorities (section 26 of the Unitary Enterprises Act).

73.  The owner sets the company’s the economic performance targets and oversees its achievement of those targets (section 20 of the Act).

74.  The gains, products and profits generated by the use of the property under the economic control of a unitary enterprise, as well as property acquired by the enterprise under a contract or on another basis, are placed under the economic control of the enterprise in accordance with the provisions of the Code and other laws (Article 299 § 2 of the Civil Code).

75.  The right of economic control can be terminated on the same grounds and according to the procedure set out in the laws on the termination of property rights, as well as in cases where the owner legitimately seizes assets from the unitary enterprise (Article 299 § 3 of the Civil Code). The company’s right to property may be extinguished, in particular, where the owner renounces that right (Articles 235 § 1 and 236 of the Code).

(b)  Relevant case-law

(i)  Binding clarifications by the Supreme Court and the Supreme Commercial Court of Russia

(α)  Invalidity of certain transactions made by the owner involving the assets placed under the enterprise’s economic control

76.  By Ruling no. 6/8 of 1 July 1996 the Plenary Session of the Supreme Court and the Supreme Commercial Court of Russia reiterated that the owner’s rights in respect of the assets allocated to a state or municipal unitary company under the right of economic control were listed in Article 295 § 2 of the Civil Code and emphasised that the owner was not entitled to seize, lease or otherwise dispose of such assets. Acts of disposal by the State and local authorities of the assets allocated to the unitary enterprise under its economic control had to be declared invalid pursuant to a claim by the respective enterprise (§ 40 of the Ruling). According to Ruling no. 10/22 of 29 April 2010 (cited in paragraph 68 above), the owner cannot dispose of such assets irrespective of the consent of the enterprise (§ 5 of the Ruling).

(β)  The enterprise’s right to bring proceedings against the owner

77.  By Rulings no. 8-O of 25 February 1998 and no. 10/22 of 29 April 2010 the Plenary Supreme Commercial Court emphasised that unitary enterprises enjoyed the same rights as the owners to seek court protection of the assets placed under their economic control, including the right to bring a vindicatory or negatory action (*actio negatoria*) against the owner.

(ii)  Case-law of the commercial courts

(α)  Different approaches to the management of assets acquired as a result of the company’s commercial activity

78.  By judgment no. 6709/97 of 21 April 1998 the Presidium of the Supreme Commercial Court found that where real estate is acquired by a unitary enterprise as a result of its economic activity, the owner’s consent to a transaction involving that real estate is not required.

79.  In case no. Ф08-1332/2002 municipal unitary enterprise O. sold unfinished premises to a private company. The administration of district K., the owner of the company’s property, challenged the validity of the contract since it had not been approved by the owner. The lower courts rejected the action, stating that the company had built the premises at its own expense and could therefore dispose of them irrespective of the owner’s consent. By final judgment no. Ф08-1332/2002 of 30 April 2002 the Federal Commercial Court of the North-Caucasus Circuit quashed the lower court’s findings with reference to Article 299 § 2 of the Civil Code (see paragraph 74 above), having found, *inter alia*, that the gains, products and profits generated by a municipal unitary enterprise as a result of its use of the assets placed under its economic control should, in turn, also be placed under the economic control of that enterprise, and thus are also governed by Article 295 § 2 of the Civil Code, which explicitly prohibits any transactions involving real estate in the absence of the owner’s consent.

(β)  Evolution of the domestic court’s approach to withdrawal and transfer of assets by the owner

80.  On the one hand, until 2008 it had not been uncommon for the domestic commercial courts to accept an enterprise’s renouncement of assets as a lawful ground for their removal. For instance, by final judgment no. Ф‑1893/08-C06 of 25 March 2008 the Federal Commercial Court of the Ural Circuit summarised the lawful grounds for the removal of assets as follows: (a) the liquidation or (b) the restructuring of a unitary enterprise with the right of economic control, (c) the use of the assets in non‑compliance with the unitary enterprise’s statutory purpose and aims or (d) the unitary enterprise’s renouncement of the assets. In that case, the court disallowed the liquidator’s action lodged within the insolvency proceedings in respect of municipal unitary enterprise N. challenging the owner’s decision to restructure the company and to transfer its assets to a different unitary company. The court noted that the company itself had requested the assets to be withdrawn from its economic control, and therefore the owner had lawfully decided to transfer the assets within the meaning of Article 299 of the Civil Code taken in conjunction with Article 236 (see paragraph 75 above). The same test was also applied by the Federal Commercial Court of the East-Siberian Circuit in case no. 69‑576/08-Ф02-847/2009 concerning municipal unitary company “Hotel K.”‘s challenge of a lease agreement concluded by the owner and a private company in respect of property placed under the hotel’s economic control, although in that later case the court found no evidence of the company’s renouncement of the assets, and found that the owner had not been competent to enter into the agreement in question.

81.  Since late 2008 domestic commercial courts took a different approach regarding the validity of the transactions involving the withdrawal and transfer of the assets. First, neither the Civil Code nor the Unitary Enterprises Act provided for the owner’s right to withdraw the assets. Second, section 18(3) of the Unitary Enterprises Act prohibited a unitary enterprise with a right of economic control to renounce title to assets since as a result of such a renouncement and the ensuing removal of the assets the company would no longer be able to perform its statutory activities in compliance with its designated purpose and aims. For instance, in case no. 32-4047/2008-4/99 a liquidator of a municipal unitary company in charge of water supply for the area requested that the owner’s decision of 2006 to withdraw the company’s assets be declared invalid. The first‑instance court rejected the action on the ground that the transfer had taken place pursuant to the company’s own request and had therefore been lawful within the meaning of Article 299 in conjunction with Article 235 § 1 of the Civil Code (see paragraph 75 above). However, the appeal court – and subsequently the Federal Commercial Court of the North Caucasus Circuit acting as a cassation instance – granted the company’s claim and declared the withdrawal unlawful since it precluded the company from a possibility to further perform its statutory activities (cassation judgment no. Ф08-2397/2009 of 9 June 2009). By decision no. ВАС‑11340/09 of 16 September 2009 the Supreme Commercial Court rejected the owner’s application for supervisory review, having found the cassation court’s interpretation to be both correct and consistent with the Supreme Commercial Court’s recent case-law. Similar reasoning was applied by the Supreme Commercial Court in a number of subsequent cases (see, for instance, decisions no. ВАС-6841/11 of 16 June 2011 and no. ВАС-7685/11 of 30 June 2011 rejecting applications for supervisory review, and several other cases).

(iii)  Prosecutor’s complaint

82.  In a limited number of cases, a prosecutor acting on behalf of the employees of a municipal unitary company requested that the owners’ orders to transfer assets and dismiss personnel be declared unlawful. Such an action was granted, for instance, on 13 October 2010 by the Regional Court of the Yevreyskaya Autonomous Region. The case concerned a municipal water supply company. Referring to the company’s financial difficulties, the owner ordered that all its assets be removed for further transfer to a different legal entity, and instructed the head of the enterprise “to prepare orders for the employees’ dismissal”. The court rejected that argument and set aside the owner’s order, since it had not been demonstrated that the company’s management of the assets had not been economically rational, or that it had failed to meet its statutory goals. The withdrawal prevented the company from further performing its statutory activities and resulted in the “mass dismissal” of employees in violation of their employment rights.

C.  The director of a unitary enterprise

1.  Appointment and liability

83.  The director of a unitary enterprise is appointed by, and reports to, the property owner (Article 113 § 4 of the Civil Code and section 21 of the Unitary Enterprises Act). The owner may sue the director for damage caused to the enterprise (section 25 of the Unitary Enterprises Act).

2.  Relevant provisions on the director’s dismissal

84.  Article 278 of the Labour Code of the Russian Federation, as amended on 30 June 2006, provides that the employment contract of a director of an organisation may be terminated by the owner’s decision. A decision to dismiss the director of a unitary enterprise must be taken in accordance with the procedure established by the Government of the Russian Federation.

85.  Decree of the Government of the Russian Federation No. 234 of 16 March 2000, as amended on 4 October 2002, governs the employment contracts and appraisal of the directors of federal state unitary enterprises. Section 2 of the Decree provides for the following specific grounds for dismissal of a director of a State unitary enterprise: failure to meet its economic targets, perform the company audit in a timely manner or comply with the decisions of the Government; making transactions involving the assets under the economic control of the company in violation of the laws or the special legal capacity of the company as established by its articles of association; and failure to pay salaries for a period of more than three months where the fault lies with the director. The specific conditions of employment and appraisal of the directors of municipal unitary companies are defined by the respective municipal authorities.

D.  Insolvency of State and municipal unitary companies with the right of economic control

1.  Insolvency procedure

86.  The unitary enterprises in question may be declared insolvent in accordance with the insolvency procedure applicable to private companies. That procedure is established by the relevant provisions of Federal Law no. 127-FZ of 26 October 2002 On Insolvency (Bankruptcy) (“the Insolvency Act”) which replaced the earlier Insolvency Act of 8 January 1998 (see, for a summary of the provisions of the 2002 Insolvency Act governing the definition of the state of insolvency, an insolvency petition and the various solutions available to a court in resolving a bankruptcy case, *OAO Neftyanaya Kompaniya Yukos v. Russia* (dec.), no. 14902/04, §§ 413, 416 and 419-26, 29 January 2009).

87.  Under section 142(1) of the Insolvency Act, the liquidator or the persons entitled to discharge the debtor’s obligations must settle the claims of creditors in compliance with the register of creditors’ claims. The amount of those claims must be determined in the manner set out in the Act. The register of creditors’ claims should be closed two months after the publication of information on the debtor’s having been declared insolvent and the beginning of the liquidation procedure. Creditors’ claims should be met in accordance with the priority ranking set out in section 134 of the Act.

88.  Section 142(9) of the Act stipulates that creditors’ claims which cannot be settled owing to the insufficiency of the debtor’s assets should be deemed settled. Creditors’ claims which were not acknowledged by the liquidator should also be deemed settled if the creditor has not applied to a commercial court or if such claims have been declared unfounded by the court.

89.  In the event of liquidation the legal person ceases to exist without succession (Article 61 of the Civil Code and section 35(3) of the Unitary Enterprises Act).

2.  Provisions on “current payments”

90.  “Current payments” are monetary obligations and mandatory payments that have occurred after the acceptance of an application to declare a debtor bankrupt and monetary obligations and mandatory payments with a due date which falls after the date of institution of the bankruptcy proceedings (section 5(1) of the Insolvency Act). Creditors’ claims for current payments shall not be included in the register of creditors’ claims. Current payments creditors cannot be parties to the insolvency proceedings (section 5(2) of the Insolvency Act).

91.  Section 134(1) of the Insolvency Act provides that creditors’ claims in respect of current payments should be settled from the insolvency estate as a priority over claims which had arisen before the debtor entity was declared insolvent. Section 134(4) provides for the priority ranking of creditors’ claims in respect of current payments. In particular, claims relating to disbursement of severance benefits and remuneration of persons who are – or have been – employed under a contract are to be satisfied as a second priority.

E.  Liability for the debts of State and municipal unitary companies with the right of economic control

1.  Provisions of the Civil Code and the Unitary Enterprises Act on subsidiary liability

92. Unitary enterprises are liable for their debts, and all the property in their possession may be used to satisfy the creditors’ claims. Unitary enterprises are not liable for the obligations of the owner of the property allocated to them (Article 113 § 5 of the Civil Code and section 7(1) of the State Unitary Enterprises Act).

93.  Article 114 § 7 of the Civil Code provides that an owner of property placed under a unitary enterprise’s control is not liable for the debt of the unitary enterprise except in the cases stipulated by Article 56 § 3 of the Code.

94.  Under Article 56 § 3 of the Code subsidiary liability for the legal entity’s obligations may be imposed upon the owner of the legal entity’s property or by other persons who have the right to issue binding instructions to the given legal entity, or may determine its actions in any other way, if the insolvency of a legal entity has been caused by such persons, in the event that the legal entity’s assets prove to be insufficient. Similarly, section 7(2) of the Unitary Enterprises Act stipulates that the owner of property under the economic control of a unitary enterprise is not liable for the debts of the unitary enterprise unless the insolvency of the enterprise has been caused by the owner’s actions.

2.  Insolvency Act

95.  The State or municipal owner of the property may, but is not obliged to, pay the debts of the unitary enterprise within the framework of insolvency proceedings (sections 113 and 125 of the Insolvency Act).

(a)  Subsidiary liability under the provisions in force until 5 June 2009

(i)  Substantive provisions

96.  Section 10(4) of the Insolvency Act as in force until 5 June 2009 provided that the owner of the assets allocated to a unitary enterprise could be held liable in subsidiary liability proceedings for the debts of the company where the debtor’s funds were insufficient and where the insolvency was “the fault of the owner”.

(ii)  Binding clarifications on elements triggering the application of subsidiary liability, eligible claimants and procedure

97.  According to Ruling no. 6/8 of 1 July 1996 (see paragraph 76 above), it had to be demonstrated that the insolvency had actually been caused by the actions or instructions of the person or persons being sued. Claims for subsidiary liability had to be lodged by the liquidator (§ 22).

98.  By Ruling no. 29 of 15 December 2004 “On Certain Issues Relating to Application of the Federal Law On Insolvency (Bankruptcy),” the Plenary Supreme Commercial Court reiterated that requirement and specified that where such a claim had not been lodged within the liquidation procedure, subsidiary liability proceedings could be brought by any creditor or competent authority under Article 56 § 3 of the Civil Code (§ 7).

(b)  Amendments made to the Insolvency Act in 2009 on “persons controlling the debtor”

99.  On 28 April 2009 the Insolvency Act was amended by Federal Law no. 73-FZ “On Amendment of Certain Legislative Acts of the Russian Federation, in force as of 5 June 2009 (hereinafter, “the 2009 amendments”).

(i)  Provisions on controlling persons

100.  In particular, the amendments extended the scope of subsidiary liability to a new category of “controlling persons” (amended section 10 of the Insolvency Act). A “controlling person” is any person who can, or could within two years prior to the filing of a petition for insolvency, give binding instructions to the debtor or otherwise affect the debtor’s activities (section 2). If damages were inflicted on the creditors’ assets as a result of such instructions being carried out by the debtor, the controlling person bears subsidiary liability for monetary obligations of the debtor if the debtor’s assets are insufficient to satisfy all the creditors’ claims. However, the “controlling person” is not liable if it can prove that it acted reasonably and in good faith in the debtor’s interests (section 10(4) of the Insolvency Act, as in force at the material time.). The head of a legal entity has subsidiary liability for the insolvent entity’s debts if he or she fails in his or her statutory duty to keep financial and other documents containing information on the debtor’s assets and obligations (section 10(5) of the Act, as in force at the material time).

(ii)  Provisions on procedure and eligible claimants

101.  Section 10(6) of the Insolvency Act as amended in 2009 stipulates that an application *(«заявление»)* for subsidiary liability of a controlling person may be lodged by a liquidator on his own initiative or on the initiative of an assembly of creditors or a committee of creditors before the liquidation procedure is terminated. Section 142(12) of the Insolvency Act, as amended in 2009 and as in force at the material time (see paragraph 99 above) provided that where a bankruptcy estate was insufficient to meet the insolvency creditors’ claims, the liquidator, a competent authority or the insolvency creditors could lodge an application for subsidiary liability before the end of the liquidation procedure.

(iii)  Explanatory Note in respect of the above-mentioned amendments

102.  The Explanatory Note justifying the introduction of the above amendments (no. 125066-5, introduced to the State Duma on 12 November 2008) emphasised that the issue of proving fault on the part of directors had been – and remained – a most complex one. Therefore, directors would be presumed to be liable where they failed to keep the required documentation. In fact, the management of a company normally became aware of the legal entity’s financial difficulties long before a petition for insolvency was actually lodged. This contributed to a certain “asymmetry” in so far as creditors’ and managers’ access to information was concerned. The lack of effective measures of protection of creditors’ interests had led to a violation of their rights, and that was why a redistribution of the burden of proof had been proposed.

(iv)  Clarifications on the application of the amendments

103.  By Information letter no. 137 of 24 April 2010 the Presidium of the Supreme Commercial Court of Russia clarified that the above amendments were only applicable where the specific actions triggering the application of the respective substantive provisions (such as the giving of binding instructions or the approval of a transaction) had taken place before the respective amendments’ entry into force. The procedure set out in section 10(6-8) of the Insolvency Act was to be applied to any dispute where the claim was introduced after the amendments’ entry into force.

(c)  Amendments made to the Insolvency Act in 2013

104.  On 28 June 2013 section 10 of the Insolvency Act was further amended by Federal Law no. 134-*FZ* (in force as of 30 June 2013). In particular, amended section 10(4) of the Insolvency Act introduced the presumption that the insolvency of a legal entity can be considered to have been caused by the controlling persons’ actions where a transaction – or the approval of a transaction by the debtor – by such person had impinged upon the creditors’ pecuniary rights. To be absolved of subsidiary liability, the controlling person must demonstrate that the insolvency did not occur through any fault of its own. The controlling person will not be considered at fault if it can demonstrate that it acted reasonably and in good faith in the debtor’s interests.

3.  Case-law

(a)  A debtor company’s unlimited liability in a liquidation procedure (2006)

105.  In case no. Ф08-717/2006 examined by the Federal Commercial Court of the North-Caucasus Circuit a local authority had allocated assets to a State unitary enterprise. The latter became insolvent, and the assets were included in the insolvency estate. The authority requested that the assets owned by it be excluded from the estate, arguing that execution on its property would amount to its *de facto* subsidiary liability. By a final judgment of 15 March 2006 the court reiterated that creditors’ claims in the event of insolvency were to be satisfied at the expense of the company’s assets, including those placed under its economic control. Therefore, execution on the debtor unitary enterprise’s assets was to be made irrespectively of the owner’s consent and did not imply, as such, the owner’s subsidiary liability at that stage (that is, before the end of the liquidation procedure).

(b)  Claimants in subsidiary liability proceedings

106.  By final judgment no. A31-802/20 of 21 January 2005 the Federal Commercial Court of the Volgo-Vyatskiy Circuit found that only the liquidator could bring such an action in the interests of all the creditors, and not the creditors themselves.

(c)  Time-frame for lodging a subsidiary liability action in the light of the 2009 amendments to the Insolvency Act

107.  An insolvency creditor of a bankrupt private company brought a subsidiary liability claim against the company’s founder under Article 56 § 3 of the Civil Code after the debtor’s liquidation. On 15 June 2012 the Federal Commercial Court of the North Caucasus Region in case no. A32-21726/2011 rejected the creditor’s claim, having found, referring to sections 10 and 142(12) of the amended Insolvency Act, that such actions could only be brought during the liquidation procedure. On 19 November 2012 the Supreme Commercial Court rejected an application for supervisory review of that judgment (decision no. ВАС-11459/12).

(d)  Elements to be proven and burden of proof

(i)  As regards the events preceding the entry into force of the 2009 amendments to the Insolvency Act

108.  On 29 October 2007 the Supreme Commercial Court found that it was for the claimant to demonstrate that the respondent had caused the debtor’s insolvency, and, accordingly, rejected the creditor’s claim for failure to produce such evidence (judgment no. ВАС-13052/07). In a more recent case a State unitary enterprise sued the owner of a limited liability company, claiming him to be liable for the company’s debts, referring to a transaction made by the owner before the 2009 amendments’ entry into force. On 12 December 2012 the Federal Commercial Court of the Eastern Siberian Circuit considered that a person claiming damages under section 10 of the Insolvency Act as in force at the material time (see paragraph 96 above), should have proved the following elements: (a) that the respondent’s actions were unlawful; (b) that the damage had actually been caused and in the amount claimed; and (c) a causal link between the respondent’s actions and the damage incurred. The court therefore rejected the company’s claim for lack of evidence that the owner’s actions were unlawful. On 22 February 2013 the Supreme Commercial Court rejected an application for supervisory review of the judgment (case no. ВАС-1900/13).

109.  By a final judgment of 27 December 2012 in case no. A65‑30483/2007 the Federal Commercial Court of the Povolzhskiy Circuit rejected the liquidator’s request to hold the owner of a municipal unitary enterprise’s assets liable within insolvency proceedings. The liquidator argued that in 2006 the owner had withdrawn the assets of the debtor (the enterprise was a heating provider). Referring to Article 56 § 3 of the Civil Code and section 10(4) of the Insolvency Act, the court summarized the factors to be taken into account as follows: (a) whether there was a right to give binding instructions or otherwise determine the debtor’s actions; (b) whether a specific action had been taken in the exercise of that right; (c) whether there was a causal link between the action and the insolvency; and (d) whether the owner was at fault. The claim was rejected for the liquidator’s failure to prove the existence of a causal link. On 22 March 2013 the Supreme Commercial Court rejected an application for supervisory review of that judgment (case no. ВАС-2539/13).

(ii)  As regards events after the entry into force of the 2009 Amendments

110.  A liquidator claimed that the local administration had subsidiary liability for the debts of a municipal unitary enterprise, since in 2010 the administration had withdrawn the enterprise’s assets (in that case, the heating systems of a local public school) and transferred them to the treasury. In the domestic courts’ view, in order to attract the subsidiary liability of the “controlling person”, a claimant had to demonstrate a causal link between that person’s actions and the debtor’s insolvency. However, it transpired from the case materials that the company had accumulated a considerable debt towards its creditors in 2007-2008, that is, before the assets’ withdrawal. The claim was accordingly rejected in the final instance by the Federal Commercial Court of the North-Western Circuit (judgment no. А66-11446/2009 of 14 August 2012). The Supreme Commercial Court rejected an application for supervisory review of the judgment (decision no. ВАС-15302/12 of 21 November 2012).

(e)  The commercial courts’ case-law on subsidiary liability in case of withdrawal of the unitary enterprises’ assets

111.  By judgment of 10 December 2008 no. Ф10-5558/08 of the Federal Commercial Court of the Central Circuit rejected the subsidiary liability claim by a liquidator of a municipal unitary company against the owner. The court found that, although the owner had indeed removed assets from the company and transferred them to a different legal entity, the following elements were to be proved to hold the owner subsidiary liable: a causal link between the removal and the insolvency, and the owner’s fault. The claimant’s argument that the aggregate value of the removed assets would have been be sufficient to pay the company’s debts was rejected by the court, for his failure to demonstrate the causal link between the assets removal and the insolvency. On 2 March 2009 the Supreme Court of Russia rejected an application for supervisory review of that judgment (case no. 2245/09). In a number of domestic judgments and decisions, mostly adopted since late 2010, regional commercial courts were satisfied that there existed a causal link between the removal of the assets and the insolvency of the company and, accordingly, held the owner to have subsidiary liability for the insolvent companies’ debts under Article 56 § 3 of the Civil Code. For instance, by a final judgment of 4 September 2012 the Commercial Court of the Kareliya Republic granted the liquidator’s claim for the subsidiary liability of the municipality, the owner of assets allocated to the municipal unitary company which supplied the heating in the respective district. The court found that though the company was operating in compliance with its purpose and aims, at some point the owner had withdrawn the major assets from its economic control and transferred them to other legal entities. As a result, the company had become unable to perform its statutory functions and had had to dismiss nearly all its personnel (judgment no. A‑26‑4073/2011). On the other hand, where a unitary enterprise had had considerable financial difficulties and the withdrawal of its assets by the owner had not had a decisive impact on its insolvency, the company’s creditor’s claims were rejected by the domestic courts (and upheld on 19 April 2013 by the Supreme Commercial Court’s rejection of an application for supervisory review; case no. ВАС-5058/13).

F.  Enforcement of judgments in the context of insolvency proceedings

1.  Grounds to suspend and discontinue enforcement proceedings set out in the Enforcement Act of 1997

112.  Until 1 February 2008 enforcement proceedings were governed by Federal Law on Enforcement Proceedings no. 119-FZ of 21 July 1997 (“the Enforcement Act of 1997”). Section 22 of that Act provided that enforcement proceedings were to be suspended where a commercial court had initiated the insolvency proceedings before the determination of the respective case by the court. Section 23 stipulated that enforcement proceedings were to be terminated where the assets of an organisation under liquidation were insufficient to satisfy the creditors’ claims. Decisions to suspend or terminate enforcement proceedings were subject to appeal (section 24 of the Enforcement Act of 1997).

2.  Provisions of the Insolvency Act and the Enforcement Act of 2007 concerning the liquidation procedure

(a)  Relevant legal provisions

113.  As of 1 February 2008, the Enforcement Act of 1997 was replaced by Federal Law on Enforcement Proceedings no. 229- FZ of 2 October 2007 (“the Enforcement Act of 2007”).

114.  The Act provides that once a legal entity is declared insolvent and liquidation proceedings *(конкурсное производство)* are initiated, the execution of the writs of execution should be discontinued and the writs of execution transferred to the liquidator *(конкурсный управляющий)*. The enforcement should not be discontinued in respect of writs of execution concerning acknowledgment of property rights, compensation for non‑pecuniary damage, vindication of illegally possessed property, application of the consequences of invalid transactions, and current payments (section 126(1) of the Insolvency Act and section 96(4) and (5) of the Enforcement Act of 2007)*.* A bailiff, acting upon a creditor’s application, is entitled to verify the correctness of the execution of the writs forwarded to the liquidator (section 96(6) of the Enforcement Act of 2007).

(b)  Binding clarifications by the Supreme Commercial Court

115.  By Ruling no. 59 of 23 July 2009 the Plenary Supreme Commercial Court of Russia emphasised that the transfer of the writs of execution to the liquidator does not absolve the insolvency creditors or a competent authority of the responsibility to lodge the respective claims with the courts on the basis of section 142(1) of the Insolvency Act (see paragraph 87 above). A liquidator, acting in the creditors’ interests, is under the obligation to immediately notify the claimants of the receipt of the respective writs of execution. The time-limit for making such a claim starts running from the date of that notification (§ 15 of the Ruling).

G.  Relevant domestic law on the remedies for non‑enforcement referred to by the parties

1.  Applicability of the Federal Compensation Act of 30 April 2010

116.  Section 1 § 1 of Federal Law № 68- *FZ* of 30 April 2010 (in force as of 4 May 2010) on compensation for violation of the right to trial within a reasonable time or the right to enforcement of a judgment within a reasonable time (“the Compensation Act”) entitles a concerned party to bring a court action for compensation for a violation of his or her right to enforcement within a reasonable time of a domestic judgment establishing a debt to be recovered from the State budget.

117.  By Ruling no. 130/64 of 23 December 2010 the Plenary Session of the Supreme Court and the Supreme Commercial Court of Russia jointly decided that the Compensation Act did not apply to claims for compensation for delayed enforcement of judgments against private individuals or organisations not in receipt of budget funds.

118.  Article 6 of the Budget Code of the Russian Federation contains a list of entities “in receipt of budget funds” *(получатели бюджетных средств*). The list includes, in particular, public institutions and does not contain any reference to unitary enterprises.

2.  Challenging the bailiffs’ actions

119.  The decisions of the bailiffs may be challenged in court (section 121 of the Enforcement Act of 2007, section 24 of the Enforcement Act of 1997, and Article 441 of the Code of the Civil Procedure referring to Chapter 25 of the Code). In accordance with Chapter 25 of the Code of Civil Procedure, which deals with challenging State authorities’ acts or inaction in court, where a court finds that the complaint is well founded, it orders the State authority concerned to remedy the breach or unlawfulness found.

3.  Disputes involving the liquidator

120.  Under section 60 of the Insolvency Act the creditors of an insolvent company can make complaints to a commercial court about the liquidator’s acts or omissions within the insolvency proceedings. Applications by persons not entitled to make such complaints, or lodged in violation of the rules of procedure, should be returned to the claimants without examination (section 60(4) of the Act).

4.  Claim for execution upon assets unlawfully acquired by third persons

121.  Section 142(11) of the Insolvency Act provides that where the creditors’ claims have not been satisfied in full within the liquidation procedure, the creditors are entitled to claim execution upon any of the debtor company’s assets which were unlawfully acquired by third persons.

5.  Compensation for damage (Chapter 59 of the Civil Code)

122.  Chapter 59 of the Civil Code (“Liability for damage”) contains provisions on compensation for pecuniary and non‑pecuniary damage. Damage caused by unlawful action or inaction on the part of State or local authorities or their officials is subject to compensation from the Federal Treasury or a federal entity’s treasury (Article 1069 of the Civil Code). Compensation for damage caused to an individual by unlawful conviction, prosecution, detention on remand or prohibition on leaving his or her place of residence pending trial is granted in full regardless of the fault of the State officials concerned and following the procedure provided for by law. Damage caused by the administration of justice is compensated if the fault of the judge is established by a final judicial conviction (Article 1070 §§ 1 and 2 of the Civil Code).

123.  A court may hold the tortfeasor liable for non-pecuniary damage caused to an individual by actions impairing his or her personal non‑property rights or affecting other intangible assets belonging to him or her (Articles 151 and 1099 § 1 of the Civil Code). Compensation for non‑pecuniary damage sustained through an impairment of an individual’s property rights is recoverable only in cases provided for by law (Article 1099 § 2 of the Civil Code). Compensation for non‑pecuniary damage is payable irrespective of the tortfeasor’s fault if damage was caused to an individual’s life or limb, sustained through unlawful criminal prosecution, dissemination of untrue information and in other cases provided for by law (Article 1100 of the Civil Code).

H.  “Socially important” assets

124.  The earlier Insolvency Act of 8 January 1998 contained specific provisions on “objects of communal infrastructure of vital importance to a region”. In the event of a legal entity’s insolvency, such assets were to be transferred to a municipal authority (section 104 § 4) in their current state *(по фактическому состоянию*) without further conditions. Assessing the compatibility of the respective provisions with the Constitution of the Russian Federation, the Constitutional Court observed, in Ruling no. 8-П of 16 May 2000 (see, for a summary of the ruling, *Yershova v. Russia*, no. 1387/04, §§ 42 and 43, 8 April 2010), *inter alia*:

“Communal infrastructure which is of vital importance to a region and which constitutes a debtor’s estate is being used not only in the owner’s private interests but also in the public interests protected by the State. Therefore, the relations concerning its functioning and use for a designated purpose are public in nature”.

125.  The Insolvency Act replaced that concept with that of “socially important assets” (section 132). They include educational and medical institutions and communal infrastructure related to essential public services (*относящиеся к системам жизнеобеспечения*), such as water, heat, gas and energy supply, water and sewage disposal, lighting and provision of urban amenities, which are “vital for the daily needs of citizens” (see section 132(4) of the Insolvency Act as in force until 30 December 2008 and section 129(6) of the Act as amended on 30 December 2008). They are not to be included in the insolvency assets («конкурсная масса») (section 132) and should be sold at auction, provided that the purchaser undertakes to ensure their maintenance and use in accordance with their stipulated purpose (section 132(4)). If they are still not sold at a second auction, they are to be transferred to the municipal property (section 132(5)). The social housing fund (*жилищный фонд социального использования*) is to be transferred to the owner (ibid.)

I.  Changes in approach to unitary enterprises as laid down in the respective “Concepts”

1.  Concept of State Property Management and Privatisation of 1999

126.  According to the Concept of State Property Management and Privatisation in the Russian Federation (“the 1999 Concept”), approved by Government Decree no. 1024 of 9 September 1999, which defines the main directions and principles of reform in the sphere of State property management, at the material time there were 13,786 unitary enterprises in Russia. That number was considered excessive. The right of economic control was criticized in the 1999 Concept as providing the entity enjoying that right with virtually unlimited opportunities for managing the property, whilst the list of the owner’s rights was restricted. The directors of the companies were under no obligation to obtain the owner’s approval, except for transactions concerning real estate. Interference with a company’s activity on the part of an owner was unlawful. The owner was unable either to control the company’s compliance with its performance criteria or to define those criteria; no system of audit existed, and the legal framework defining the purpose and aims of the companies’ activity was insufficient.

2.  Concept of the Development of Civil Legislation of 2009

127.  The Concept of the Development of Civil Legislation of the Russian Federation (“the 2009 Concept”, approved on 7 October 2009 by the Council on the Codification and Development of Civil Legislation advising the President of the Russian Federation,) describes a unitary enterprise as “the only form of commercial company which does not own its assets and enjoys special (purpose-related) legal personality”. It goes on to specify that such companies “cannot make the majority of their transactions without the owner’s approval. Furthermore, unitary enterprises may dispose of their assets only in so far as the respective transactions do not deprive them of the possibility to conduct their activities in accordance with their purpose and aims. Otherwise, the transactions may be declared void (section 18(3) of the Unitary Enterprises Act). As a result, other parties to the contracts [involving the] enterprises are under a constant threat in that any transaction may be challenged by the owner of the assets, whilst the owners themselves are virtually free of liability for the results of their ‘management’. The very notion of the ‘enterprise’ as a subject of law was inherited from the Soviet legal system, [which was] based on the State planning economy. The existence of unitary enterprises is therefore deprived of any future prospect and it would be preferable to replace them with other types of commercial organisation. Federal unitary enterprises with the right of operational management could be kept in certain particularly important economic spheres”.

III.  RELEVANT INTERNATIONAL MATERIAL

128.  The Articles on Responsibility of States for Internationally Wrongful Acts adopted by the International Law Commission (ILC) in 2001 (Yearbook of the International Law Commission, 2001, vol. II, Part Two), and their commentary, are codified principles developed in modern international law in respect of the State’s responsibility for internationally wrongful acts. The relevant provisions of the Articles are as follows:

Article 5

Conduct of persons or entities exercising elements of governmental authority

“The conduct of a person or entity which is not an organ of the State under article 4 but which is empowered by the law of that State to exercise elements of the governmental authority shall be considered an act of the State under international law, provided the person or entity is acting in that capacity in the particular instance.”

Article 8

Conduct directed or controlled by a State

“The conduct of a person or group of persons shall be considered an act of a State under international law if the person or group of persons is in fact acting on the instructions of, or under the direction or control of that State in carrying out the conduct.”

129.  In the commentary to Article 8 the ILC observed:

“More complex issues arise in determining whether conduct was carried out “under the direction or control” of a State. Such conduct will be attributable to the State only if it directed or controlled the specific operation and the conduct complained of was an integral part of that operation. The principle does not extend to conduct which was only incidentally or peripherally associated with an operation and which escaped from the State’s direction or control” [§ 3 of the commentary to Article 8]. ... In any event it is a matter for appreciation in each case whether particular conduct was or was not carried out under the control of a State, to such an extent that the conduct controlled should be attributed to it [§ 5 of commentary to Article 8]. ... Questions arise with respect to the conduct of companies or enterprises which are State-owned and controlled. If such corporations act inconsistently with the international obligations of the State concerned the question arises whether such conduct is attributable to the State. In discussing this issue it is necessary to recall that international law acknowledges the general separateness of corporate entities at the national level, except in those cases where the ‘corporate veil’ is a mere device or a vehicle for fraud or evasion. The fact that the State initially establishes a corporate entity, whether by a special law or otherwise, is not a sufficient basis for the attribution to the State of the subsequent conduct of that entity [§ 6 of commentary to Article 8].”

130.  For a summary of other relevant provisions of the Articles on Responsibility of States for Internationally Wrongful Acts and the ILC Commentary thereto, see *Kotov v. Russia* [GC], no. 54522/00, §§ 30‑32, 3 April 2012).

THE LAW

I.  JOINDER OF THE APPLICATIONS

131.  Given that the two present applications raise similar issues under the Convention, the Court decides join them pursuant to Rule 42 § 1 of the Rules of Court.

II.  ALLEGED VIOLATION OF ARTICLES 6 AND 13 OF THE CONVENTION AND ARTICLE 1 OF PROTOCOL No. 1

132.  The applicants complained under Article 6 of the Convention and Article 1 of Protocol No. 1 about the non-enforcement of the judgments in their favour. These provisions, in so far as relevant, read as follows:

Article 6

“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.”

133.  The applicants further complained that they did not have effective domestic remedies at their disposal in respect of the non-enforcement of the judgments in their favour. Article 13 of the Convention reads as follows:

“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.”

A.  Submissions by the parties

1.  The Government

134.  The Government disagreed with the applicants’ claims on the following grounds.

(a)  As regards compatibility *ratione personae*

135.  The Government argued that the respondent unitary companies were owned by the respective municipalities, which were not “State authorities” within the Convention meaning.

136.  They further submitted that the municipal unitary enterprises’ debts were not attributable to the State. Referring in general terms to the ILC Articles on State Responsibility*,* they noted that the conduct of private actors could not, in principle, be attributed to the State. Referring to the Court’s case-law, they further summarized the applicable criteria for determining State responsibility for a company as follows: (1) ownership of the company by the State; (2) a degree of State control which leaves the company insufficient institutional and operational independence; and (3) a public function, and submitted that municipal unitary enterprises with the right of economic control did not satisfy that criteria for the following reasons.

(i)  Legal status of unitary enterprises with the right of economic control

137.  By contrast to similar legal entities in Europe, State and municipal unitary enterprises in Russia are (a) separate legal entities and (b) are “aimed at producing public goods” in the sphere of manufacturing and services. Municipal unitary enterprises with the right of economic control are not in receipt of budget funds (see paragraph 120 above) and are not subject to strict regulation by the budget laws, by contrast to entities funded from the State budget ("budgetary institutions", *бюджетные учреждения*). They exercise purely commercial activities and are governed by company law. The owner’s right to a part of the company’s profit (see paragraph 65 above) is typical for any commercial company.

138.  Turning to the substance of the right of economic control, the Government argued as follows. Once the assets are placed under a company’s economic control, they are withdrawn from the owner’s actual possession. For instance, execution upon the debtor unitary enterprise’s assets in insolvency proceedings is made irrespectively of the owner’s consent, as confirmed by the domestic judgment of 15 March 2006 (see paragraph 105 above). Even though municipal unitary enterprises cannot, in accordance with Article 295 of the Civil Code, conduct any transaction leading to encumbrance or alienation of real estate, they enjoy sufficient independence across the wide range of their activities. They may possess, use and dispose of movable estate without any restrictions. Furthermore, according to the findings of the Presidium of the Supreme Commercial Court of 21 April 1998, where real estate is acquired by the unitary enterprise as a result of its economic activity, the owner’s consent for a transaction involving such real estate is not required either (see paragraph 78 above). On the other hand, the owner is formally prohibited from disposing of the assets placed under the economic control of a unitary enterprise, and any such transaction should be declared void (see paragraph 76 above). The unitary enterprise has the right to lodge court actions to protect its assets against the owner (see paragraph 77 above).

139.  They concluded, therefore, that the owner was “so alienated from the assets allocated to the enterprise under the right of economic control” that the owner’s power of control, namely, defining the purpose and aims of the company’s activities, restructuring or liquidating it, appointing its director and exercising the right to a part of its profit, constituted “the only means to preserve its title to those assets”.

140.  In view of the aforesaid – and as amply demonstrated by the 1999 Concept (see paragraph 126 above) – municipal unitary enterprises with the right of economic control enjoy nearly complete independence from the State, and so do the directors of such companies in their management of the companies’ assets and finances. In the light of the considerable difficulties involved in controlling such companies’ activities, as early as the 1990s the Government adopted a policy aimed at reducing the number of unitary enterprises.

141.  The independence of unitary enterprises with the right of economic control is further strengthened by the rules on liability. Such companies are liable for their debts with all their assets. The authorised capital of a municipal unitary enterprise is set up to guarantee its creditors’ claims. The company is not answerable for the owner’s debts. Similarly, the owner is not liable for the company’s debts except where it has caused the company’s insolvency, as stipulated in Article 56 § 3 of the Civil Code establishing the rules on subsidiary liability (see paragraphs 92-94 above). According to the Government, subsidiary liability proceedings under that provision could only be instituted by a liquidator within insolvency proceedings (see, for the case‑law they referred to, paragraph 106 above).

(ii)  Arguments concerning the debtor companies in the present two cases

142.  As regards the debtor company in *Liseytseva*, the Government submitted that it had not performed any public functions and its activities were purely commercial. The local administration’s subsidiary liability could not be engaged since the owner had not caused the insolvency of the company. In particular, it “had not given any binding instructions or otherwise defined the company’s actions”.

143.  Similarly, as regards the debtor company in *Maslov*, the Government listed some of its statutory functions, such as transportation, funeral services, production of fast-moving consumer goods and disposal of dry waste, and concluded that the company did not have any State powers. Its insolvency was not caused by the owner, but was the result of external economic factors, including the accumulation of debt by the company.

144.  They concluded that the debts of the unitary enterprises in the present two cases were not attributable to the State. The judgments in the applicants’ favour were issued against private debtors and could not have been enforced owing to the companies’ insolvency. The authorities had provided requisite assistance to the applicants in their efforts to have the court awards enforced.

(b)  As regards exhaustion

145.  The Government further claimed that the applicants had failed to exhaust the domestic remedies available to them. Ms Liseytseva had failed to complain about the bailiffs’ inaction under section 121 of the Enforcement Act and Article 441 of the Code of Civil Procedure, which set out the procedure for challenging the bailiffs’ service’s decisions. They further referred, without further details, to section 142(11) of the Insolvency Act, which provides for the creditor’s right to claim execution upon the debtor’s assets in the unlawful possession of third persons (see paragraph 121 above). Mr Maslov had failed to make use of the enforcement procedure. Even though the enforcement proceedings were to be discontinued once the wind-up procedure commenced, he was not absolved from the obligation to submit his claims to a commercial court for the purposes of section 142(1) of the Insolvency Act (see, for a summary of the relevant part of Supreme Commercial Court Ruling no. 59 of 23 July 2009, paragraph 115 above). However, he had failed to either petition a commercial court for his claims to be included in the register of creditors or to challenge the liquidator’s actions. Further, he could haveclaimed compensation for damage under Articles 1069 and 1070 of the Civil Code, as well as non-pecuniary damage under Article 151 of the Civil Code, or lodge an action against the bailiffs, but had omitted to do so.

146.  In reply to the Court’s specific question they submitted that the Compensation Act (see paragraph 116 above) was not applicable to the cases where a domestic judgment was given against a State or municipal unitary company having the right of economic control.

(c)  Other points raised by the Government

147.  Finally, in case of Ms Liseytseva they argued that two of the judgments in her favour had been issued when the insolvency proceedings had been in progress. Therefore, she had been fully aware of the financial situation of the debtor company and could not have had a legitimate expectation to have the judgments enforced. Further, she had not forwarded the writ of execution in respect of the judgment of 25 November 2003 to the bailiffs.

2.  The applicants

148.  Ms Liseytseva maintained that the debtor company was, in fact, a State‑run enterprise controlled by the local administration. First, by failing to honour its obligations under the agreements existing between the company and various State bodies (see paragraph 9 above), the State had contributed to the company’s insolvency to a decisive extent. Second, the company’s liquidation was ordered by the authorities. Moreover, the administration had transferred the company’s property to the newly created MUP “Avtokolonna 1126 plus”, which performed exactly the same functions, so that the newly created company had obtained the debtor’s assets, whilst the aggregated debt to the employees had remained with her employer. Therefore, the local administration was liable for the debts of the company. She submitted copies of the writs of execution in respect of the three judgments in her favour, each of them containing notes by the liquidator and information on the amounts paid against those documents.

149.  Mr Maslov argued that the district administration had “controlled” the company which employed him within the meaning of section 10(4) of the Insolvency Act (see paragraph 100 above). The administration’s decision to liquidate the company was the only reason for the non‑enforcement of the judgment in his favour. The local authority failed to demonstrate in court that it acted reasonably and in the interests of the debtor enterprise, as required by the same provision. Hence, it was liable for the company’s debts. Regarding the Government’s objection as to his failure to bring a court action to have his claims included in the register of creditors under section 142(1) of the Insolvency Act, he submitted that, first, his claims concerned “current payments” and therefore they could not, in principle, have been included in the respective register and he could not be a party to the liquidation proceedings (see, for the respective provisions of the Insolvency Act, paragraphs 90-91 above). In any event, his claims were at some point included in the register of creditors (see paragraph 42 above).

150.  The applicants further emphasised that the proceedings for subsidiary liability brought by them had proved ineffective. Mr Maslov argued, referring to section 10 of the Insolvency Act as in force at the material time, that he could not have been required to prove the owner’s fault in the subsidiary liability proceedings. According to the applicants, though the relevant facts were established by the domestic courts, in each case they reached the conclusion that the debtors’ insolvency had occurred through no fault of the owners.

B.  Admissibility

1.  Compatibility ratione personae (municipalities as public authorities)

151.  The Court has previously established on several occasions that municipal bodies are “a public authority” within the Convention meaning, and the Court is competent *ratione personae* to examine their actions (see, among others, *Saliyev v. Russia*, no. 35016/03, §§ 69-70, 21 October 2010, and *Dzugayeva v. Russia*, no. 44971/04, § 17, 12 February 2013). The Court does not see any reason to reach a different conclusion in the present two cases and rejects the Government’s objection.

2.  Compatibility ratione personae (whether the debts of the respondent companies can be attributed to the respondent State within the meaning of the Convention)

152.  The Court considers that the issue of whether the judgment debts can be attributed to the State is closely linked to the merits of the applicants’ non‑enforcement complaint. The Court therefore finds it necessary to join the Government’s objection to the merits of the complaint under Article 6 of the Convention and Article 1 of Protocol No. 1.

3.  Exhaustion issue

153.  The Government raised the objection of non-exhaustion of domestic remedies by the applicants. The Court considers that the issue of exhaustion of domestic remedies is closely linked to the merits of the applicants’ complaint that they did not have at their disposal an effective remedy in respect of the non-enforcement complaint. Thus, the Court finds it necessary to join the Government’s objection to the merits of the applicants’ complaint under Article 13 of the Convention (see, *mutatis mutandis*, *Reshetnyak v. Russia*, no. 56027/10, § 54, 8 January 2013, and *Ananyev and Others v. Russia*, nos. 42525/07 and 60800/08, § 70, 10 January 2012).

4.  Conclusion

154.  The Court further notes that the applicants’ complaints under Articles 6 and 13 and Article 1 of Protocol No. 1 are not manifestly ill‑founded within the meaning of Article 35 § 3 (a) of the Convention and they are not inadmissible on any other grounds. They must therefore be declared admissible.

C.  Merits

155.  The Court reiterates that the complaints declared admissible above relate, on the one hand, to the State responsibility for the unitary companies’ debts and, on the other hand, to the question whether the applicants exhausted domestic remedies or whether the remedies used complied with the requirements of Article 13 of the Convention. Whereas a conclusion on either point could to some extent “prejudge” to conclusion of the other, the Court considers it appropriate in the circumstances of the present cases to commence its examination of the issues related to exhaustion and the alleged violation of Article 13 of the Convention.

1.  Exhaustion of domestic remedies and alleged violation of Article 13 of the Convention

(a)  General principles

156.  The Court reiterates that when the existence of domestic remedies under Article 35 § 1 is at issue, it is the Government who bear the burden of proof. The Government must show that the remedy was effective, accessible, capable of providing redress, and that it offered reasonable prospects of success (see, mutatis mutandis, *Selmouni v. France*[GC], no. 25803/94, § 76, ECHR 1999‑V).

157.  The Court further reiterates that Article 13 gives direct expression to the States’ obligation, enshrined in Article 1 of the Convention, to protect human rights first and foremost within their own legal systems. It therefore requires that the States provide a domestic remedy to deal with the substance of an “arguable complaint” under the Convention and to grant appropriate relief (see *Kudła v. Poland* [GC], no. 30210/96, § 152, ECHR 2000‑XI). Article 13 thus requires the provision of a domestic remedy to deal with the substance of an “arguable complaint” under the Convention and to grant appropriate relief, although the Contracting States are afforded some discretion as to the manner in which they conform to their Convention obligations under this provision (see *T.P. and K.M. v. the United Kingdom* [GC], no. 28945/95, § 107, ECHR 2001‑V (extracts)). The scope of the Contracting States’ obligations under Article 13 varies depending on the nature of the applicant’s complaint; the “effectiveness” of a “remedy” within the meaning of Article 13 does not depend on the certainty of a favourable outcome for the applicant. At the same time, the remedy required by Article 13 must be “effective” in practice as well as in law in the sense either of preventing the alleged violation or its continuation, or of providing adequate redress for any violation that has already occurred. Even if a single remedy does not by itself entirely satisfy the requirements of Article 13, the aggregate of remedies provided for under domestic law may do so (see *Burdov v. Russia (no. 2)*, no. 33509/04, §§ 96‑97, ECHR 2009, with further references).

158.  In particular, where a compensatory remedy is available in the domestic legal system, the Court must leave a wider margin of appreciation to the State to allow it to organise the remedy in a manner consistent with its own legal system and traditions and consonant with the standard of living in the country concerned. The Court is nonetheless required to verify whether the way in which the domestic law is interpreted and applied produces consequences that are consistent with the Convention principles, as interpreted in the light of the Court’s case-law (see *Scordino* *v. Italy (no. 1)* [GC], no. 36813/97, §§ 187-91, ECHR 2006‑V). The Court has set key criteria for verification of the effectiveness of a compensatory remedy in respect of the excessive length of judicial proceedings. These criteria, which were applied by the Court, *inter alia*, in non‑enforcement cases against the State (see *Wasserman v. Russia (no. 2)*, no. 21071/05, §§ 49 and 51, 10 April 2008), are as follows:

– an action for compensation must be heard within a reasonable time (see *Scordino*, cited above, § 195 in fine);

– the compensation must be paid promptly and generally no later than six months from the date on which the decision awarding compensation becomes enforceable (ibid., § 198);

– the procedural rules governing an action for compensation must conform to the principle of fairness guaranteed by Article 6 of the Convention (ibid., § 200);

– the rules regarding legal costs must not place an excessive burden on litigants where their action is justified (ibid., § 201);

– the level of compensation must not be unreasonable in comparison with the awards made by the Court in similar cases (ibid., §§ 202-06 and 213).

(b)  Application to the present case

159.  The applicants claimed that the State was responsible for the companies’ debts. By the time the judgments entered into force, the insolvency proceedings had been set in motion in respect of the respondent companies because of their inability to meet the creditors’ claims. Both respondents had been declared insolvent and ceased to exist, whilst the judgments remained unenforced. The Court will now examine whether, in this particular context, any domestic legal avenues were available to the applicants.

(i)  Requirement to submit a writ of execution to the bailiffs (Liseytseva)

160.  The Government pointed out that Ms Liseytseva had failed to submit the writ of execution in respect of the judgment of 25 November 2003 to the bailiffs. In *Gadzhikhanov and Saukov* the Court found that if for any reason an applicant obtained the writ of execution from a court him or herself, it would appear logical to require that he or she submit it to the competent authority. The authorities in that case could not be held responsible for the applicants’ unexplained failure to follow the domestic enforcement procedure and, notably, for their deliberate and persistent refusal to provide the writs of enforcement (see *Gadzhikhanov and Saukov v. Russia*, nos. 10511/08 and 5866/09, §§ 27-31, 31 January 2012). However, the present case is different in two respects: first, when the second award in the applicant’s favour became enforceable the insolvency procedure was already in progress, and, accordingly, the enforcement proceedings had to be suspended, as required by section 22 of the Enforcement Act of 1997 (as in force at the material time, see paragraph 112 above). It therefore appears that it was no longer the bailiffs’ service but the liquidator who was responsible for the execution of the award. Second, as the copy of the writ of execution in respect of the judgment in question clearly shows, at some point the liquidator received it and made a note on it regarding its enforcement status (see paragraphs 19‑20 above). Therefore, the Court considers that the applicant discharged her duty of cooperation by forwarding the writ to a competent person and rejects the Government’s objection.

(ii)  Complaint to the bailiffs’ service (Maslov) and a court action against the bailiffs (Maslov, Liseytseva)

161.  As regards a complaint to the bailiffs’ service and a court action concerning the bailiffs’ inaction as potential remedies for the applicants’ complaints (see paragraphs 112 and 119 above for the relevant domestic law provisions) the Court considers that the effectiveness of the suggested remedies should be assessed in the context of the specific cases under consideration. It notes that the first judgment in favour of Ms Liseytseva entered into force six days before the liquidation procedure in respect of the debtor commenced (see paragraphs 11 and 13 above), and all the other judgments in both applicants’ favour were issued when the liquidation in respect of the debtor enterprises was underway. In that situation, the bailiffs’ duty was confined to forwarding the writs of execution to the liquidator in due time (see paragraphs 17 and 41 above). At no point did the applicants allege in their complaints to the Court that the bailiffs had unduly delayed the transfer of the writs or, for instance, failed to verify the correctness of their execution as they were required to do by virtue of section 96(6) of the Enforcement Act of 2007 (see paragraph 114 above), or otherwise failed to carry out their duty properly. The crux of the applicants’ grievance is rather the debtor companies’ inability to satisfy their respective claims, which were confirmed by the final judgments in their favour. The Court notes that by the time the applicants were placed on the lists of the respective companies’ creditors and notified thereof by the liquidators, the insolvency proceedings in respect of the debtor enterprises had commenced in both cases, and the debtor companies had already been unable to meet the creditors’ claims for some time. The Court concludes that, in these circumstances, a complaint to the bailiffs’ service or a civil action against the bailiffs would not have brought the applicants closer to their goal, that is, the payment of the judgment debt (see *Yershova*, cited above, § 65, and *Grigoryev and Kakaurova*, cited above, § 29).

162.  Accordingly, the Government’s objection in this part should be dismissed.

(iii)  Proceedings against the liquidator (Maslov)

163.  As regards bringing proceedings against the liquidator, the Government themselves submitted that at some point the applicant had lodged such application but it had been returned to him (see paragraph 44 above) on account of his lack of standing to challenge the liquidator’s actions within the meaning of section 60 of the Insolvency Act (see paragraph 120 above). In the absence of any further clarification, a copy of the court’s decision or any minimum explanation by the Government on either the scope of the claim or the proper procedure to be followed by the applicant, the Court does not consider it necessary to assess the suggested remedy *in abstracto*. In the Court’s view, it has not been demonstrated that the purported avenue of exhaustion was, in fact, accessible to the applicant. The Government’s objection must therefore also be rejected.

(iv)  Application to a court under section 142(1) of the Insolvency Act (Maslov)

164.  The Government argued, with reference to the Plenary Supreme Commercial Court’s Ruling of 23 July 2009 (see paragraph 115 above), that Mr Maslov had failed to lodge a claim with the commercial court on the basis of section 142(1) of the Insolvency Act (see paragraph 87 above). In the Court’s view, their submissions are somewhat self-contradictory. First, the Court notes that the clarifications contained in the above‑mentioned ruling concern an application by the insolvency creditors and the competent authorities only (see paragraph 115 above), whilst it appears that the applicant did not belong to either category. In fact, as pointed out by the applicant – and not disputed by the Government at that point – his claims concerned “current payments” and therefore he could not be considered a party to the insolvency proceedings within the meaning of the Insolvency Act (see paragraph 90 above). Secondly, the Government themselves noted that in any event the applicant’s claims had been included in the register of creditors’ claims (see paragraph 42 above). In those circumstances, the Court does not consider that the applicant lodging a separate court action with the aim of having his claims included in that very register would have had any meaningful purpose. The objection in this part should therefore be dismissed.

(v)  Claim for compensation for damage under Chapter 59 of the Civil Code (Liseytseva, Maslov)

165.  The Government submitted that, even though the Compensation Act did not apply to situations where the debtor was a State or municipal unitary enterprise (see paragraphs 116-118 above), the applicants had been able to make use of the Civil Code provisions to claim compensation for damage in the event of non-enforcement of a judicial decision. As regards the Government’s reference to Article 1070 of the Civil Code, the objection is clearly inapplicable, since that provision deals specifically with damage caused by unlawful conviction, prosecution, detention or prohibition on leaving the place of residence, and the case files do not contain any evidence of any such action having been taken in the present two cases. As regards the remaining provisions of Chapter 59, the Court has already found on several occasions – albeit in the context of judgments given against the State authorities – that, while the possibility of such compensation was not totally excluded, this remedy did not offer reasonable prospects of success, notably because it requires the establishment of fault on the part of the authorities (see, among many others and in the context of judgments against the State, *Burdov (no. 2)*, cited above, § 110, and *Moroko v. Russia*, no. 20937/07, §§ 28-29, 12 June 2008). The Government did not contest in the present cases that compensation under Chapter 59 was subject to this condition. The Court notes that the Civil Code lists a very limited number of situations in which compensation for non-pecuniary damage is recoverable irrespective of whether the respondent is at fault (notably, Articles 1070 § 1 and 1100, cited in paragraphs 122-23 above). Delays in the enforcement of judicial decisions against unitary enterprises do not appear on this list (see, *mutatis mutandis*, *Burdov (no. 2)*, cited above, § 112). It was not contested by the Government that at no point had the fault of the authorities been established in the two cases at hand. On the contrary, in both cases the domestic courts – albeit in the subsidiary liability proceedings – summarily assessed the respective local authorities’ actions as having been taken in accordance with the law (see paragraphs 23 and 26‑27 relating to *Liseytseva* and paragraph 50 relating to *Maslov*). In sum, it has not been demonstrated that such an action would have had any prospects of success in the present two cases. The Court accordingly rejects the Government’s objection in the relevant part.

(vi)  Claim of execution on the debtor’s property unlawfully obtained by third persons (Liseytseva)

166.  Turning to the Government’s suggestion that Ms Liseytseva could have claimed execution on the debtor’s property unlawfully acquired by third persons (see paragraph 121 above), the Court notes that the Government have not provided any information on that avenue of exhaustion. They omitted to suggest, for instance, who the respondent in such proceedings would be or to outline, even briefly, the procedure to be followed by the applicant. In the absence of further clarifications from the parties, the Court considers that a claim for execution on the debtor’s property under section 142(11) of the Insolvency Act is – as the wording of the respective provision suggests – conditional on the “unlawfulness” of the third person’s possession (ibid.). As in paragraph 165 above, the Court observes that at no stage of the proceedings did the domestic courts establish that the debtor’s property had been unlawfully acquired by any persons, including the local administration – the founder of the debtor enterprise and the owner of its property. On the contrary, the domestic courts emphasized that the restructuring of the enterprise and the transfer of the assets under its control had been the owner’s right (see paragraphs 23 and 26-27 above). In the light of the above, the Court is not persuaded that the remedy suggested by the Government offered any reasonable prospect of success.

167.  The doubts about the effectiveness of this remedy are corroborated by the Government’s failure to demonstrate to the Court the existence of sufficiently established and consistent case-law proving that it is effective both in theory and in practice (see, mutatis mutandis, *Moroko*, cited above, § 29). The objection should therefore be dismissed.

(vii)  Availability of the remedy set out in the Compensation Act

168.  The Court observes that application of the Compensation Act, in force since 2010, is limited to claims for compensation for delayed enforcement of domestic judgments where the respective judicial award is to be recovered from the State budget (see paragraph 116 above), and it does not apply to final judicial awards against private individuals or entities not in receipt of budget funds (see paragraph 117 above). Municipal unitary enterprises do not receive such funds (see paragraph 118 above). Further, as demonstrated by the Government, municipal unitary enterprises are regarded in the domestic law as private companies, and the responsibility of their founders and owners – that is, the respective municipal authorities at the expense of the respective local budgets – cannot be engaged unless that authority is held liable for the enterprise’s debts in subsidiary liability proceedings. In these circumstances, the Court is unable to conclude that a direct court action under the Compensation Act for compensation for non‑enforcement of a judgment against a municipal unitary enterprise would have offered the applicants a reasonable prospect of success.

(viii)  Subsidiary liability claim under the Insolvency Act

169.  The Court notes at the outset that the domestic law contains two provisions concerning subsidiary liability, namely, section 10 of the Insolvency Act, as in force at the material time, and Article 56 § 3 of the Civil Code. The procedure under section 10 of the Insolvency Act changed in 2009 following the introduction of amendments (see paragraphs 99 and 101 above).

170.  Turning to the Insolvency Act as it stood before being amended in 2009 (and therefore applicable in the *Liseytsev*a case), the Court takes note of the Government’s view that a claim for subsidiary liability could only have been brought by a liquidator. This position was formulated by the Plenary Session of the Supreme Court and the Supreme Commercial Court of 1996 (see paragraph 97 above) and upheld by the domestic courts (see paragraph 106 above). As regards the procedure set out by the 2009 amendments to the Insolvency Act (and, arguably, applicable in the *Maslov* case, see paragraph 103 above), the domestic law clearly stipulates that such proceedings may only be initiated by the liquidator, a competent authority, or the insolvency creditors (see paragraph 101 above). Accordingly, it appears that the applicants – who were not “insolvency creditors” within the meaning of the Insolvency Act – could not bring such a claim since the liquidation proceedings in their cases were already underway. Therefore, the Court considers that subsidiary liability proceedings under the Insolvency Act were not directly accessible to the applicants and did not satisfy the criteria of an “effective remedy” for that reason.

(ix)  Subsidiary liability claim under Article 56 § 3 of the Civil Code

171.  The Court notes that in the present two cases the applicants claimed that the respective municipalities were liable for the employer company’s debts in subsidiary liability proceedings under Article 56 § 3 of the Civil Code. It remains to be ascertained whether those proceedings constituted an effective remedy within the meaning of Article 13 of the Convention.

(α)  As regards the availability of the procedure under the domestic law

172.  The Court is mindful of the clarifications by the Plenary Supreme Court and Supreme Commercial Court of 15 December 2004 providing that where a claim for subsidiary liability has not been lodged within the liquidation procedure, such a claim may be brought by any creditor or competent authority under Article 56 § 3 of the Civil Code (see paragraph 98 above). On the other hand, the Court notes from the recent domestic case-law that claimants may, in principle, be barred from making use of that procedure after the debtor company’s liquidation (see paragraph 107 above), and also takes note of the Government’s submission that such a claim can only be brought by a liquidator (see paragraph 141 above). Therefore, an issue as to the availability of the respective remedy might arise. Be that as it may, in the absence of further clarifications from the parties, the Court does not need to further elaborate on the availability issue, since in both cases the applicants’ claims were examined on their merits by the domestic courts of general jurisdiction.

(β)  As regards the scope of review, burden of proof and access to evidence

173.  The Court notes that, even though the applicants in both cases were unsuccessful in the subsidiary liability proceedings, the “effectiveness” of a “remedy” within the meaning of Article 13 does not depend on the certainty of a favourable outcome for the applicant (see paragraph 157 above). The Court further observes that in the present two cases the domestic courts established the facts in so far as the removal of the companies’ assets by their respective owners was concerned (see paragraphs 23 and 48‑50 above), as well as regarding the debt accumulated by various authorities towards the applicant’s employer in *Liseytseva* (see paragraph 23 above) and the effect of the tariff-setting policy on the company’s activity in *Maslov* (see paragraph 48 above). Furthermore, the courts admitted that the owners’ specific actions had had a certain impact on the debtor enterprises’ financial situation (see paragraphs 23 and 50 above). Therefore, it may be said that the domestic courts addressed the issue of the actual State control over the debtor municipal unitary enterprises in the two present cases, and these findings are highly relevant for the Court’s assessment of the debtor companies’ operational and institutional independence (see paragraphs 187‑92 and 204-19 below).

174.  Nonetheless, the following considerations undermined the efficacy of the suggested remedy.

175.  As the wording of Article 56 § 3 of the Civil Code suggests, the owner of the assets may only be held liable for the company’s debts if the insolvency was caused by its actions. In the two cases at hand the applicants’ claims were rejected for their failure to prove either a causal link between the owner’s actions and the company’s insolvency (as in *Liseytseva*) or, even where such link was established, that the fault lay with the owner (as in *Maslov*).

176.  The Court reiterates its earlier findings that a remedy the use of which is conditional on the debtor’s fault is impracticable in cases of non‑enforcement of judgments by the State (see *Moroko*, cited above, § 29, and *Burdov* (no. 2), cited above, § 106). Without determining at this stage whether the judgment debts in the present cases are attributable to the State, the Court notes the following. The applicants’ arguments as regards the authorities’ fault were, in their turn, rejected for the reason that the authorities’ respective actions had been lawful. In fact, in both *Liseytseva* and *Maslov* the domestic courts rejected the applicants’ arguments, having found that the owners’ disposal of the assets – notably, their removal – had been in compliance with domestic law. The Court notes that at some point the municipal companies, the liquidator or, for instance, a prosecutor, as in the rare case before the Regional Court of the Yevreyskaya Autonomous Region (see paragraph 82 above) – but, in any event, not the applicants themselves – could, in principle, have challenged the removal under the relevant provisions of the Civil Code taken in conjunction with the Unitary Enterprises Act (see, for the respective domestic case-law, paragraphs 80-81 and 111 above). However, the relevant persons’ actions challenging the acts of the local authorities could only result from the exercise of their discretionary powers and could hardly be initiated by the individual applicants. Be that as it may, none of the above-mentioned persons made use of that right in the present two cases, and the domestic courts in the subsequent subsidiary liability proceedings confined their findings to a conclusion that the respective owners had acted lawfully (see paragraphs 23 and 26 above as regards Liseytseva and paragraphs 50 and 53 as regards Maslov). That finding, in its turn, excluded any further consideration by the domestic courts of the question of whether the debtor companies had actually enjoyed sufficient operational and institutional independence in the present cases (see paragraphs 187-92 and 204-19 below); or, even less, whether the delays in execution of the judicial awards in the applicants’ favour had been reasonable, or whether the respective interference with the applicants’ rights to the peaceful enjoyment of possessions had been justified (see paragraphs 220-24 below) – the criteria which lie at the heart of the Court’s analysis of the applicants’ respective complaints (see, in so far as relevant, *Smith and Grady v. the United Kingdom*, nos. 33985/96 and 33986/96, § 138, ECHR 1999‑VI). In the Court’s view, the limited scope of review in the applicants’ cases did not satisfy the requirements of Article 13 of the Convention in conjunction with Article 6 of the Convention and Article 1 of Protocol No. 1.

177.  In addition, the Court notes that the applicants in the present cases faced considerable difficulties in discharging the burden of proving either the existence of a causal link between the owner’s actions and insolvency or the owner’s fault. In fact, the applicants found themselves at a distinct disadvantage *vis-à-vis* the owners in so far as access to information about the company’s assets and financial situation was concerned (see, albeit in the context of the Insolvency Act dealing with the obligation to produce financial documents, the Explanatory Note to Federal Law no. 73‑ FZ, paragraph 102 above; see further, for the requirement of conformity with the principle of fairness, and in so far as relevant, the case-law cited in paragraph 158 above). The complexity of the claimants’ task in discharging the burden of proof in the proceedings under Article 56 § 3 of the Civil Code was amply demonstrated in *Maslov*. In that case, the applicant explicitly submitted that he had not had access to the documents on the debtor company’s assets (see paragraph 52 above). Moreover, it was not contested that, according to the report of 1 February 2009, the company’s financial records had not been produced even to the liquidator (see paragraph 45 above). However, the domestic court summarily rejected the applicant’s argument as irrelevant, having reiterated that the burden of proof remained with the applicant (see paragraph 53 above).

178.  The Court notes that, remarkably, the Mezenskiy District Court in its initial decisiontook a different approach: it examined the claim of Mr Maslov from the standpoint of the actual control exercised by the owner over the debtor company and its effect on the company’s activities, having also relied directly on the Convention provisions and the Court’s case‑law (see paragraph 48 above). However, its decision was reversed on appeal, and the claim was subsequently dismissed for the applicant’s failure to prove the owner’s fault. As a result, the applicant was deprived of a remedy at the domestic level in respect of his complaint.

179.  Finally, the Court has not been provided with examples of cases in which ex-employees of liquidated unitary enterprises having the right of economic control were successful in proceedings brought under Article 56 § 3 of the Civil Code.

180.  For the above reasons the Court is not persuaded that the applicants’ actions under Article 56 § 3 had any reasonable prospect of success. The Court accordingly considers that the remedy the applicants attempted to use was not “effective” within the meaning of Article 13 of the Convention in the two cases at hand.

(γ)  As regards the sufficiency of the redress

181.  In the light of the above, the Court does not consider it necessary to examine the issue of the sufficiency of the redress which could have been granted to the claimants by virtue of the respective procedure.

(x)  Conclusion

182.  Having regard to the above considerations, the Court concludes that none of the remedial avenues put forward by the Government, and none of the remedies employed by the applicants in their attempt to obtain either the execution of the awards made against the municipal unitary enterprises or the compensation of the alleged violations, constituted an effective remedy in the present two cases. As regards the effectiveness of these remedies in the aggregate, the Court notes that the Government have neither alleged nor shown that a combination of two or more of them would satisfy the requirements of Article 13. It is therefore unnecessary to rule on this question (see *Sürmeli v. Germany* [GC], no. 75529/01, § 115, ECHR 2006‑VII). In view of the above, the Court rejects the Government’s non‑exhaustion arguments in the present cases and finds that there has been a breach of Article 13 of the Convention in conjunction with Article 6 and Article 1 of Protocol No. 1 in respect of both applications.

2.  Article 6 of the Convention and Article 1 of Protocol No. 1

(a)  The Court’s case-law

(i)  As regards non-enforcement of the domestic judgments

183.  The Court reiterates at the outset that, where an applicant complains of inability to enforce a court award in his or her favour, the extent of the State’s obligations under Article 6 of the Convention and Article 1 of Protocol No. 1 varies depending on the debtor in the specific case (see *Anokhin v. Russia* (dec.), no. 25867/02, 31 May 2007). Where a judgment is against the State, the latter must take the initiative to enforce it fully and in due time (see *Akashev v. Russia*, no. 30616/05, §§ 21‑23, 12 June 2008, and *Burdov v. Russia*, no. 59498/00, §§ 33-42, ECHR 2002‑III). When the debtor is a private individual or company, the situation is different, since the State is not, as a general rule, directly liable for the debts of private individuals or companies and its obligations under the Convention are limited to providing the necessary assistance to the creditor in the enforcement of the respective court awards, for example, through a bailiff service or bankruptcy procedures (see, for example, *Kunashko v. Russia*, no. 36337/03, §§ 38‑49, 17 December 2009; *Shestakov v. Russia*(dec.),no. 48757/9, 18 June 2002; and *Krivonogova v. Russia* (dec.), no. 74694/01, 1 April 2004.).

(ii)  As regards whether the debts of the State-owned companies are attributable to the State

184.  The Court has already ruled on the question whether a State can be held responsible under the Convention on account of acts by a company or a private person. A first category of cases (to which the present case belongs) concerns the State’s responsibility *ratione personae* for the acts of a body which is not, at least formally, a “public authority”. In the case of *Costello‑Roberts v. the United Kingdom* (25 March 1993, § 27, Series A no. 247), the Court held that a State could not absolve itself from responsibility by delegating its obligations to private bodies or individuals (see also *Storck v. Germany* no. 61603/00, § 103, ECHR 2005-V). A second category of cases concerns the *locus standi* of an applicant entity under Article 34 of the Convention and the notion of “governmental organisation”. In the case of *Radio France and Others v. France*(dec.), no. 53984/00, § 26, ECHR 2003‑X (extracts), the Court noted:

“... The category of ‘governmental organisation’ includes legal entities which participate in the exercise of governmental powers or run a public service under government control. In order to determine whether any given legal person other than a territorial authority falls within that category, account must be taken of its legal status and, where appropriate, the rights that status gives it, the nature of the activity it carries out and the context in which it is carried out, and the degree of its independence from the political authorities.”

185.  As far as the entity Radio France was concerned, the Court noted that although it had been entrusted with public-service tasks and depended to a considerable extent on the State for its financing, the legislature had devised a framework which was plainly designed to guarantee its editorial independence and institutional autonomy. The Court thus concluded that Radio France was a non-governmental organisation for the purposes of Article 34 of the Convention. Similarly, the Court found that the applicant company in *Islamic Republic of Iran Shipping Lines* was a non‑governmental organisation, despite the fact that it was wholly owned by the Iranian State and that a majority of the members of the board of directors were appointed by the State, since the applicant company was legally and financially independent from the State and was run as a commercial business (see *Islamic Republic of Iran Shipping Lines v. Turkey*, no. 40998/98, § 79, ECHR 2007‑V). In *RENFE* the former Commission, in its reasoning leading it to find that the applicant lacked capacity to introduce an application under Article 25, considered that the applicant was a public law corporation, created by the State in order to run the State rail network as an industrial company; its board of directors was answerable to the Government and the applicant was the only undertaking with a licence to manage, direct and administer the State railways, with a certain public‑service role in the way it did so (see *RENFE v. Spain*, no. 35216/97, Commission decision of 8 September 1997, DR 90-B).

186.  Despite the difference between the concept of “governmental organisation” and that of “public authority”, the pattern of analysis used by the Court in these two situations is similar (see *Kotov*, cited above, § 95). Thus, in the case of *Mykhaylenky and Others v. Ukraine* (nos. 35091/02, 35196/02, 35201/02, 35204/02, 35945/02, 35949/02, 35953/02, 36800/02, 38296/02 and 42814/02, §§ 43‑46, ECHR 2004‑XII), which concerned the issue of the State’s liability for the debts of a State-owned company, the Court applied – *mutatis mutandis* and in the context of Article 34 of the Convention – the principles developed in *Radio France* (see paragraph 185 above). In the light of those principles, the Court considered whether the company in question “enjoyed sufficient institutional and operational independence from the State to absolve the latter from its responsibility under the Convention for its acts and omissions” (see *Ališić and Others v. Bosnia and Herzegovina, Croatia, Serbia, Slovenia and the former Yugoslav Republic of Macedonia* [GC], no. 60642/08, § 114, 16 July 2014, and *Mykhaylenky and Others*, cited above, § 44).

187.  In assessing whether a company enjoyed sufficient operational and institutional independence from the State, the Court has taken into account a wide range of factors, none of which is determinative on its own. The key criteria used to determine whether the State was indeed responsible for such debts were as follows: the company’s legal status (under public or private law); the nature of its activity (a public function or an ordinary commercial business); the context of its operation (such as a monopoly or heavily regulated business); its institutional independence (the extent of State ownership); and its operational independence (the extent of State supervision and control) (see *Ališić and Others,* cited above,§ 114).

188.  As regards the company’s legal status under the domestic law, it has been the Court’s constant approach that that status, however important, is not decisive for the determination of the State’s responsibility for the company’s acts or omissions under the Convention. Indeed, on several occasions the Court has held the State liable for companies’ debts regardless of their formal classification under domestic law (see, among others, *Mykhaylenky and Others*, cited above, § 45; *Lisyanskiy v. Ukraine*, no. 17899/02, § 19, 4 April 2006; *Cooperativa Agricola Slobozia-Hanesei v. Moldova*, no. 39745/02, §§ 18-19, 3 April 2007; *Grigoryev and Kakaurova*, cited above, § 35; and *R. Kačapor and Others v. Serbia*, nos. 2269/06, 3041/06, 3042/06, 3043/06, 3045/06 and 3046/06, § 98, 15 January 2008). In *Kotov* the Grand Chamber considered the liquidator’s status in the domestic law, as well as the reality of the liquidation process in Russia at the material time, having regard to the liquidator’s appointment, supervision and accountability, objectives, powers and functions (see *Kotov*, cited above, §§ 99-106).

189.  Factors taken into consideration by the Court include the rights conferred on the company, that is, whether those rights are normally reserved for public authorities (see, for instance, *Cooperativa Agricola*, cited above, §§ 18-19, where some State functions were delegated to the debtor company), the nature of its activity, that is, whether the legal entity exercises a public function or is a typical business, and the context in which it is carried out. For instance, the Court has found that legal entities could be considered “governmental organisations” if they performed specific public duties under the supervision of the State authorities (see *Novoseletskiy v. Ukraine*, no. 47148/99, § 82, ECHR 2005‑II (extracts)), or were public enterprises operating in various areas of State activity, including the mining, energy and transportation sectors (see *Romashov v. Ukraine*, no. 67534/01, §§ 46-47, 27 July 2004; *Kucherenko v. Ukraine*, no. 27347/02, § 25, 15 December 2005; *Lisyanskiy*, cited above, § 19; and *Yershova*, cited above, §§ 57-62). For instance, in *Mykhalenky and Others* the Court observed that the company had operated in the highly regulated sphere of nuclear energy and conducted its activities in the Chernobyl zone of compulsory evacuation, which is placed under strict governmental control, in that case extending, *inter alia*, to the applicants’ terms of employment (see *Mykhaylenky and Others,* cited above, § 45).

190.  The Court further takes into account the extent of State ownership, as well as the extent of State supervision and control. In a number of Ukrainian cases the Court examined whether a majority or all shares belonged to the State, so that the entities were fully dependent on, controlled and managed by the State (see, among others, *Regent Company v. Ukraine*, no. 773/03, § 7, 3 April 2008). In *R. Kačapor and Others* (cited above, § 97) the Court established that the debtor company was owned by a holding company predominantly comprised of social capital and that, as such, it was closely controlled by the Privatisation Agency, a State body, as well as the Government. In the aforementioned *Cooperativa Agricola* (cited above, §§ 18-19) the Court noted that the State exercised significant control over the company’s assets. In *Kotov* the Grand Chamber concluded that liquidators, at the relevant time, enjoyed a considerable amount of operational and institutional independence, as State authorities did not have the power to give instructions to them and therefore could not directly interfere with the liquidation process (see *Kotov*, cited above, § 107).

191.  The Court has also had regard to the role played by the State with respect to the difficult situation in which the company found itself, that is, insolvency. For instance, in *Lisyanskiy* the Court noted that the decision to wind up the company was taken by the Ministry of Fuel and Energy (see *Lisyanskiy*, cited above) and in *Yershova* by the municipal authority (see *Yershova*, cited above, §§ 57-62). In both cases, furthermore, the authorities disposed of the companies’ property as they saw fit, ordering the transfer of their respective assets to different legal entities (ibid.). In *Khachatryan* theCourt observed that while the debtor, a closed joint-stock company, had enjoyed under the law and its statute a certain degree of legal and economic independence from the State, its assets had been to a large extent controlled and managed by the State. The State had disposed of the company’s assets as it saw fit: in particular, the Government had ordered the transfer of the company’s property to the regional administration, allowed the company to sell a large portion of its property and ordered that the proceeds be put towards paying off the company’s debts owed to the State budget (see *Khachatryan v. Armenia,* no. 31761/04, §§ 51-54, 1 December 2009). By contrast, in *Anokhin* the Court found that the debts of a joint‑stock company were not directly imputable to the State. The company owned assets that were distinct from the property of its shareholders and had delegated management. Thus, the State, like any other shareholder, was only liable for the company’s debts in the amount invested in its shares. Further, the Court found nothing in the case materials to suggest that the State was directly responsible for the company’s financial difficulties, siphoned the corporate funds to the detriment of the company and its stakeholders, failed to maintain an arm’s-length relationship with the company or otherwise abused the corporate form. Further, the Court found no indication that the company’s financial difficulties resulted from its poor management rather than from the overall effect of unfavourable conditions in the coal‑mining industry and the market (see *Anokhin*, cited above).

192.  The Court has also considered, in some cases, whether the State could be assumed to have accepted responsibility for the debts of the company fully or in part (see *Khachatryan*, cited above, § 53)

(b)  Application to the present case

(i)  Assessment of the legal status of the State and municipal unitary companies with the right of economic control

193.  The Court notes that the Government have advanced a detailed argument on the legal status of unitary companies with the right of the economic control. Having found on several occasions that the mere fact of a company’s incorporation in the domestic law as a separate legal entity is not a decisive factor for the determination of the State’s responsibility for the company’s acts or omissions under the Convention (see paragraph 188 above), the Court will now have to examine the specific arguments advanced by the parties concerning the particularities of the legal status of State and municipal unitary enterprises with the right of economic control.

194.  The Court accepts, on the one hand, that such enterprises, like any commercial company, are set up with the aim of making a profit. They may create a reserve fund (see paragraph 64 above) and otherwise enjoy a considerable degree of independence in disposing of their profits. Similarly, the Court accepts that such enterprises manage several types of assets other than real estate – and make certain transactions – independently, unless the applicable legislation stipulates otherwise (see paragraphs 70-71 and 74 above). Furthermore, as rightly pointed out by the Government, unitary enterprises, in contrast with budgetary institutions, do not receive budget funds (see paragraph 119 above), although the exceptions may, apparently, be stipulated by the company’s rules (as in *Maslov*, see paragraph 30 above). Further, in the Court’s view, it is significant that unitary enterprises may sue other persons, including their owners, in court, in order to protect the assets allocated to them (see paragraphs 57 and 77 above, as well as the domestic case-law summarised in paragraphs 80-81 and 107 above). The Court agrees that various aspects of such companies’ activity are, in fact, governed by company law, and so is their insolvency (see paragraphs 86‑89 above).

195.  On the other hand, the Court cannot overlook several distinct features of unitary enterprises with the right of economic control. As the Government summarily suggested in their observations, the owner is “so alienated from the assets allocated to the enterprise under the right of economic control” that its power of control constitutes “the only means to preserve its title to those assets”. However, in the Court’s view, it is precisely the scope of the owner’s control which clearly distinguishes unitary enterprises from “classic” private companies and therefore calls for a closer examination. While agreeing with the Government that the State cannot automatically be held liable for those companies’ debts, the Court considers that the authorities’ extensive powers of control over the companies’ activities will weigh heavily in its assessment of the State’s responsibility for such companies’ failure to comply with domestic judgments. Arguing that municipal unitary enterprises have “virtually unlimited” independence, the Government mainly refer to the conclusions reached in the 1999 Concept (see paragraph 126 above). However, the Court notes that various legal provisions adopted since 1999, and above all the Unitary Enterprises Act of 2002, clearly enhanced the scope of the owner’s control in the following areas.

(α)  “Special purpose-related legal capacity”: the owner’s control over the company’s compliance with its statutory purpose and aims

196.  The Court notes that the owner controls the use of the property it has assigned to the company, ensuring such use is in conformity with the company’s stipulated purpose (Article 295 § 1 of the Civil Code). This aspect of control may become, in certain circumstances, particularly important, since unitary enterprises are limited in their activities by the need to comply with the purposes and aims defined by their articles of association (see paragraphs 66-68 above). In fact, they may dispose of the assets allocated to them only in so far as this does not prevent them from conducting their activities in accordance with their statutory purpose and aims, otherwise any transactions may be declared void (see paragraph 68 above). The major consequence is that their transactions may be challenged by their owners on the ground of non-compliance with their statutory purpose and aims (see, for an assessment of that aspect of control, the 2009 Concept, summarised in paragraph 127 above). The Court further observes that the owner itself sets the company’s economic performance targets and oversees its achievement of those targets (see paragraph 73 above); it also approves the financial reports of the company (see paragraph 72 above). Those considerations are further strengthened by the specific provisions on the accountability of the directors of unitary enterprises. They are appointed by, and report to, the owner of the assets (see paragraph 93 above) and may be dismissed for failure to meet the above-mentioned economic performance targets set by the owner, or for making any transaction going beyond the company’s designated purpose and aims (see paragraphs 84-85 above).

197.  Therefore, the Court is bound to note the existence of several instruments which, in principle, allow for the owner’s exercise of a significant degree of control over the activity of the unitary enterprise and its director. Furthermore, those considerations – namely, the owner’s assessment of the enterprise’s economic performance and ability to meet its designated goals – may have further implications on the owner’s actual involvement in the management of the company’s assets, especially where the restructuring and liquidation of the enterprise is at stake, as demonstrated in paragraph 201 below.

(β)  Assets management

198.  Importantly, the Court notes from the 2009 Concept (see paragraph 127 above) that a unitary enterprise in Russia is “the only form of commercial company which does not own its assets”, which implies the following.

199.  First, the Court observes that the owner’s approval must be obtained for any transaction that may lead to the encumbrance or alienation of the company’s real estate (see paragraph 70 above) and it is also indispensable for a considerable number – or, according to the 2009 Concept, “the majority” – of the company’s transactions (see, for the respective legal provisions, paragraphs 70-71 above, and for a summary of the 2009 Concept, paragraph 127 above). It also appears from the domestic courts’ interpretation of Article 299 § 2 of the Civil Code that this legal regime, with all its ensuing restrictions, including the requirement to seek the owner’s approval, applies to the gains, products and profit received as a result of the use of the unitary enterprise’s use of the property under its economic control, as well as the property acquired in the course of its activities (see paragraph 79 above; compare the earlier domestic case‑law cited by the Government, paragraph 78 above).

200.  Second, the Court will turn to the scope of the owner’s right to dispose of the assets placed under the unitary enterprise’s economic control – apparently a recurrent issue in many cases before the domestic commercial courts (see paragraphs 80-81 and 111 above). The Court notes the clear and unambiguous position taken by the higher Russian courts in providing an authoritative interpretation of the provisions of Article 295 of the Civil Code, that is, that the owner is not entitled to withdraw, lease or otherwise dispose of such assets, even with the consent of the enterprise (see paragraph 76 above). The Court accepts the Government’s argument that that interpretation indeed guarantees, to a certain extent, the company’s independence in the management of its assets, even though the domestic courts’ approach to the possibility of the owner’s withdrawal of the assets with the company’s consent until at least 2008 may be assessed as somewhat divergent (compare the case-law cited in paragraphs 80 and 81 above; see also, for the test applied by the domestic courts, paragraph 80 above).

201.  At the same time, the Court notes the domestic courts’ position that a company’s failure to meet its statutory goals also constitutes a legitimate ground for the withdrawal of the assets under its control (see paragraph 80 above) and that the assessment of such compliance remains within the owner’s discretion (see paragraph 67 above). Further, Article 295 of the Civil Code provides that it is the owner who may decide to restructure or liquidate the enterprise. Turning to the abundant existing case-law of the domestic commercial courts on the subsidiary liability of the owners of municipal companies’ assets, the Court notes that in nearly all such cases liability was claimed precisely in connection with various instances of the owners’ actual disposal of the property placed under the debtor enterprise’s economic control (see paragraph 111 above). The domestic courts have consistently accepted the restructuring or liquidation of the company as a legitimate ground for the owner to remove its property and, in case of restructuring, to transfer it to a different legal entity (see paragraph 80 above). This approach was also taken by the domestic courts in the present cases of *Liseytseva* (seeparagraphs 23 and 26-27 above) and *Maslov* (see paragraph 50 above). Furthermore, the owner also decides on the actual manner in which the assets are transferred in any such case (see paragraph 69 above), as amply demonstrated by the facts of the present two cases: by the decision of the local administration the debtor companies’ assets were transferred to the newly created companies, while the debts remained on the balance sheets of the applicants’ employers (see paragraphs 10 and 34-35 above; see also, in a similar context, *Yershova*, cited above, §§ 11 and 60).

(γ)  Further potential for the exercise of State control in the light of the functions performed by unitary enterprises

202.  Lastly, the Court is unable to accept the Government’s general observation that municipal unitary enterprises perform purely commercial activities and do not have any public function. Indeed, this position is difficult to reconcile with the Unitary Enterprises Act, which provides for a list of cases where the unitary enterprises may be created, such as, for instance, the necessity to carry out “social tasks”, use of assets of restricted circulation or which cannot be privatised, or the need to perform activities related to various aspects of State security (see paragraph 56 above). Although the purpose-related restrictions in setting up such companies are not in themselves a sufficient basis on which to decide on the issue of those companies’ independence from the State, the Court cannot overlook the fact that, at least in principle, such companies are supposed to be set up in areas of a certain public importance. The Court further notes that in the late 1990s the Government adopted a policy aimed at reducing the number of the unitary enterprises, so that the legal form in question would be reserved only for State companies operating in spheres of particular importance for the economy (see paragraphs 127 and 128 above).

203.  In practice, the Court observes that the purposes the unitary enterprises are set up for and their statutory activities vary considerably from domain to domain. On the one hand, such enterprises may operate, for instance, in the hotel industry (see paragraph 80 above) – and such activity, in the absence of further information, can hardly be qualified as a “specific public duty” (compare, in so far as relevant, *Radio France and Others*, cited above). On the other hand, municipal unitary enterprises may also be responsible for the heating or water supply in certain areas, as in *Maslov* (see paragraph 29 above; see also *Yershova*, cited above, § 6; and the domestic case-law cited in paragraphs 81-82 and 111 above) or may, for instance, ensure provision of housing and communal services in a town. In such cases, the companies’ institutional links with the public administration are particularly strengthened by the special nature of their activities, since they provide public services of vital importance to the population (see *Yershova*, cited above, § 58). The assets allocated for such purposes accordingly enjoy special status under the domestic law (see paragraph 125 above). Certain services provided by such companies are subject to the application of tariffs set by the owner (see paragraph 33 above). The Court is therefore bound to conclude that the degree of actual State control over municipal unitary enterprises may, in some cases, be further enhanced depending on a particular company’s sphere of operation.

(δ)  Conclusion on unitary enterprises’ legal status and further criteria to be applied in individual cases

204.  In view of the above, the Court accepts that, as suggested by the Government, unitary enterprises with the right of economic control enjoy under the domestic law some degree of legal and economic independence from the State (see paragraph 194 above). On the other hand, the Court has found that the domestic law provides for a wide range of opportunities for the owner of such a company to control the crucial aspects of its activity – ranging from the approval of transactions and appointment of the company director to the right to restructure and liquidate the company – as it sees fit (see paragraphs 200-01 above). Furthermore, the scope of actual State control may be further enhanced in view of the functions performed by a particular company (see paragraph 203 above). Therefore, the Court is unable to conclude that the existing legal framework provides such companies with a degree of institutional and operational independence that would absolve the State from any responsibility under the Convention for any such companies’ debts.

205.  Accordingly, in order to decide on the operational and institutional independence of a given municipal unitary enterprise having the right of economic control, and in line with its earlier case-law (cited in paragraphs 186-92 above) the Court has to examine the actual manner in which State control was exercised in a particular case. In the Court’s view, this approach is consistent with the ILC’s interpretation of the aforementioned Article 8 of the Articles on State Responsibility (see paragraph 130 above).

206.  In doing so, the Court will have regard, *inter alia*, to the nature of the enterprise’s functions and the sphere it operated in (see the case‑law cited in paragraph 189 above), in order to determine whether the company exercised a public duty and was, by virtue of its functions, placed under the actual strict control of the authorities (see *Yershova*, cited above, § 58, and paragraph 203 above). In any event – and especially where the functions performed by the State or municipal unitary enterprise are of a “mixed” nature, either combining specific public duties and elements of commercial activity or are “purely commercial”, as suggested by the Government in many cases – the Court will assess the degree of the State or municipal authorities’ actual involvement in the management of the enterprises’ assets, including – but not limited to – disposal of the assets, the authorities’ conduct in the liquidation and restructuring proceedings, giving binding instructions or other circumstances evidencing the actual degree of State control in a particular case (see *Khachatryan*, cited above, § 51; *Chernobryvko v. Ukraine*, no. 11324/02, §§ 23 and 24, 13 September 2005; and *Yershova*, cited above, § 60). In other words, in order to determine the issue of State responsibility for the debts of unitary enterprises the Court must examine whether and how the extensive powers of control provided for in the domestic law were actually exercised by the authorities in a given case.

(ii)  Whether the respondent enterprises’ debts are attributable to the State in the present two cases

207.  The Court will now apply the above criteria to the present two cases.

(α)  Application by Mr Maslov

208.  As regards the sphere of company’s operation, the Government put special emphasis in their observations on such functions of the debtor company as transportation, funeral services, production of fast‑moving consumer goods or disposal of dry waste (see paragraph 143 above). However, it appears from the domestic courts’ findings and the applicant’s submissions – which were not challenged by the Government at any stage of the proceedings – that the company was, in fact, responsible for water and heating supply in the Mezen District of the Arkhangelsk Region. Its core functions included, first and foremost, heating and water supply, maintenance of sewage systems, boiler plants, artesian wells and related infrastructure, heating supply systems (networks), as well as maintenance of the municipal housing stock (see paragraph 26 above).

209.  Therefore, as in *Yershova* (cited above, § 58), the company’s institutional links with the public administration were strengthened in the instant case by the special nature of its activities. It provided services which were, by their nature, of vital importance to the district population. The property allocated for the above-mentioned purposes accordingly enjoyed special treatment under the domestic law, constituting “socially important assets” within the meaning of the Insolvency Act (see paragraph 125 above). It has not been disputed that the tariffs of the housing and communal services, as well as the heating and water supply services provided by the company, were set by the district administration (see paragraphs 31, 33 and 48 above). It was established in the subsidiary liability proceedings that the tariff‑setting policy adopted by the local administration had considerable effect on the company’s financial situation (see paragraph 48 above). The Court notes that relations arising from the management of communal infrastructure of vital importance were considered by the Constitutional Court of the Russian Federation as public in nature (see paragraph 124 above).

210.  Therefore, in the Court’s view, in the present case the company’s core activities constituted “public duties performed under the control of the authorities” (see paragraph 206 above and the Court’s case-law cited in paragraphs 184 and 189 above).

211.  Furthermore, the actual degree of the State control over the company was amply demonstrated by the events of 2005-2006. The Court observes that the district administration ordered the company’s restructuring in the form of a spin-off (see paragraph 32 above). Further, in the context of the restructuring the owner disposed of the company’s assets as it saw fit: all assets except for the company’s authorized fund, as well as coal, were transferred to MUP “MTS”, a newly created legal entity performing the same functions as the debtor company (see paragraph 34 above; see, in somewhat similar circumstances, *Yershova*, cited above, § 60), whilst the unpaid salary debts had remained with the applicant’s employer (see paragraph 35 above).The district administration further decided to wind up the company (see paragraph 37 above). The latter proved unable to satisfy the applicant’s claims in the insolvency proceedings, for lack of assets.

212.  The Court further observes that the applicant’s attempt to claim the owner’s subsidiary liability proved futile. Remarkably, in the first set of proceedings the Mezenskiy District Court established that the company had become unable to continue its activities as a result of the owner’s actions and concluded that the company’s debts were therefore attributable to the State. However, the appeal court reversed the finding on the State’s liability, and in the second round of the proceedings the domestic courts concluded that the owner authority had acted lawfully and the insolvency had not occurred through any fault on its part (see paragraphs 50 and 53 above). The Court notes that, contrary to the applicant’s submissions, it is not called upon to decide whether the owner’s actions were lawful in terms of the domestic civil law. Instead, the Court will take into account the facts established by the courts in those proceedings as important elements in its assessment of the actual degree of State control exercised over the company in question, as well as the effect of such control on the prospects of the enforcement of the domestic judgments given in the applicant’s favour.

213.  In the Court’s view, the facts described above clearly show that a strong degree of State control was actually exercised by the municipal authority over the debtor company in the present case (see paragraph 206 above).

214.  In view of the foregoing, the Court concludes that the company did not enjoy sufficient institutional and operational independence from the municipal authority and therefore rejects the Government’s *ratione personae* objection. Accordingly, notwithstanding the company’s status as a separate legal entity, the municipal authority, and hence the State, is to be held responsible under the Convention for the judgment debt in the applicant’s favour (see *Yershova,* cited above, § 62, with further references).

(β)  Application by Ms Liseytseva

215.  In so far as the application by Ms Liseytseva is concerned, the issue whether the debtor enterprise exercised a public function is, in the Court’s view, less straightforward than in the *Maslov* case. The Court observes that the company provided various passenger transportation services in the region on a commercial basis (see paragraph 7 above). Admittedly, in the absence of further information such activity could be regarded as purely commercial, as suggested by the Government.

216.  However, the Court firstly observes that the debtor company in the present case undertook to provide public transport services to several groups of individuals free of charge, conditional on the cost of those services being reimbursed from public funds later. However, various public authorities failed to comply with their undertaking in a timely manner, thus triggering the company’s difficult financial situation (see paragraphs 9 and 18 above).

217.  Second, in any event, the municipality – and hence the State – disposed of the company’s property as they saw fit. In fact, the administration ordered the restructuring of the enterprise in the form of a spin‑off and transferred the above-mentioned assets to the newly created municipal unitary enterprise “Avtokolonna 1126 Plus”, whilst the debt accumulated in respect of the unpaid salaries was not transferred to the new entity (see paragraph 10 above).

218.  These elements are sufficient for the Court to conclude that the company’s assets and activities were, as a matter of fact, controlled and managed by the State to a decisive extent at the relevant time (see, *mutatis mutandis*, *Khachatryan*, cited above, § 51)

219.  In view of the above, the Court rejects the Government’s *ratione personae* objection and concludes that the company did not enjoy sufficient institutional and operational independence from the municipal authority. Accordingly, the municipality, and hence the State, is to be held responsible under the Convention for the debts owned by the respondent company to the applicant under the final judgments in her favour (see, *mutatis mutandis*, *Yershova,* cited above, § 62, with further references).

(iii)  Non-enforcement of the judgments in the applicants’ favour

(α)  Article 6 of the Convention

220.  The Court reiterates that execution of a judgment given by any court is an integral part of the “trial” for the purposes of Article 6 of the Convention; an unreasonably long delay in enforcement of a binding judgment may therefore breach the Convention (see *Hornsby v. Greece*, 19 March 1997, § 40, *Reports of Judgments and Decisions* 1997‑II, and *Burdov*, cited above, § 37). 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). The Court reiterates that, in order to decide if the delay in execution of the judgment was reasonable, it will look at how complex the enforcement proceedings were, how the applicants and the authorities behaved, and what the nature of the award was (see *Raylyan* *v. Russia*, no. 22000/03, § 31, 15 February 2007).

221.  The judgments in the applicants’ favour have not been enforced to date. Given the finding of State liability for the debts owed to the applicants in the present case, the period of non-execution should include the period of debt recovery in the course of the liquidation proceedings (see *Mykhaylenky and Others,* cited above, § 53). It is sufficient for the Court to note that in the instant cases the judgment of 19 June 2007 in Mr Maslov’s favour had remained unenforced for slightly more than one year and eight months by the date of the debtor company’s liquidation. Three judgments in favour of Ms Liseytseva issued in 2003-2004 have remained partially unenforced for the periods ranging between two years and six months to more than three years before the company had seized to exist.

222.  Such delays are *prima facie* incompatible with the Convention (see, among many others, *Kosheleva and Others v. Russia*, no. 9046/07, § 19, 17 January 2012). While liquidation proceedings may objectively justify some limited delays in enforcement, the continuing non-execution of the judgments in the applicants’ favour for several years could hardly be justified in any circumstances. The facts of the present cases would rather suggest that the municipal authorities did not consider themselves bound by the obligation to honour the judgment debts towards the employees related to their salaries after they had decided to liquidate the debtor companies and to create the new ones in their places (see, *mutatis mutandis*, *Yershova*, cited above, § 72). Such an attitude (see also, for the Government’s position on that matter, paragraph 147 above) is difficult to reconcile with the State’s obligations under the Convention to comply with domestic judicial decisions within a reasonable time.

223.  By failing for several years to take the necessary measures to comply with the final judgments in the instant case, the authorities deprived the provisions of Article 6 § 1 of all useful effect. Therefore, there has been a violation of Article 6 § 1 of the Convention on account of the non‑enforcement of the final binding judgments in the applicants’ favour.

(β)  Article 1 of Protocol No. 1

224.  The Court further reiterates its case-law to the effect that the impossibility for an applicant to obtain the execution of a judgment making an award in his or her favour constitutes an interference with the right to the peaceful enjoyment of possessions, as set out in the first sentence of the first paragraph of Article 1 of Protocol No. 1 (see, among other authorities, *Burdov*, cited above, § 40, and *Jasiūnienė v. Lithuania*,no. 41510/98, § 45, 6 March 2003). The Court finds that, by failing for years to take the necessary measures to comply with the final judgment given in favour of the applicants, the Russian authorities for a considerable period prevented the applicants from receiving in full the money to which they were entitled, which amounted to a disproportionate interference with their peaceful enjoyment of possessions (see, among many others, *Khachatryan*, cited above, § 69; and, *mutatis mutandis*, *Sharenok v. Ukraine*, no. 35087/02, §§ 35-38, 22 February 2005; and *Grigoryev and Kakaurova*, cited above, § 39.) Accordingly, there has been a violation of Article 1 of Protocol No. 1 on account of the non-enforcement of the final binding judgments in the applicants’ favour.

III.  OTHER COMPLAINTS RAISED BY THE APPLICANTS

225.  In her observations Ms Liseytseva referred to at least one new judgment in her favour which had been issued on 28 March 2005 against the debtor enterprise but had not been enforced to date. As in several previous cases, the Court does not find it appropriate to examine any new matters raised by the applicant after communication of the application to the Government, as long as they do not constitute an elaboration upon the applicant’s original complaints to the Court (see *Yefimova v. Russia*, no. 39786/09, § 177, 19 February 2013, with further references). Given that no complaints in connection with that judgment were raised before the communication of the application and the decision to examine its merits at the same time as its admissibility, the scope of the present case is limited to the facts as they stood at the time of the communication. However, Ms Liseytseva has the opportunity to lodge new applications in respect of any other complaints relating to the subsequent events (see *Rafig Aliyev v. Azerbaijan*, no. 45875/06, § 70, 6 December 2011).

226.  Mr Maslov complained under Article 6 that the domestic law in the subsidiary liability proceedings was not applied correctly. Having regard to all the material in its possession, and in so far as this complaint falls within its competence, the Court 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 and 4 of the Convention.

IV.  ARTICLE 41 OF THE CONVENTION

227.  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

228.  Ms Liseytseva claimed 13,226.67 Russian roubles (RUB) of the unpaid judgment debt under three judgments in her favour and RUB 5,928 in respect of the unenforced court award of 28 March 2005. She further claimed 3,000 euros (EUR) in respect of non-pecuniary damage.

229.  Mr Maslov claimed RUB 80,892.63 of the unpaid judgment debt and RUB 37,029.17 in compensation for the failure to pay him his salary in due time. He also claimed EUR 50,000 in respect of non-pecuniary damage.

230.  The Government argued that the alleged violations were not attributable to the State and, in any event, the claims were unjustified and excessive.

231.  As regards Ms Liseytseva, the Court notes that the complaint about the judgment of 28 March 2005 falls outside the scope of the present case (see paragraph 225 above) and rejects her claim in this part. The Court grants the remainder of her claims and awards her EUR 338, plus any tax that may be chargeable, in respect of pecuniary damage.

232.  As regards the claims by Mr Maslov, the Court notes that the judgment in his favour has remained unenforced. It accordingly awards him EUR 2,020, plus any tax that may be chargeable, in respect of the unpaid judgment debt. As regards the remainder of the claims, the applicant has not substantiated them. He did not provide a calculation of the compensation claimed, nor did he explain his method of calculation. Accordingly, this part of the claim should be rejected.

233.  As regards non-pecuniary damage, the Court considers it reasonable to award EUR 3,000 to Ms Liseytseva and EUR 1,500 to Mr Maslov, plus any tax that may be chargeable, under that head, and rejects the remainder of their claims.

B.  Costs and expenses

234.  Ms Liseytseva claimed RUB 365.80 in respect of postal expenses. She submitted postal receipts in support of her claims. Mr Maslov claimed RUB 20,000 in respect of his lawyer’s fee. He submitted copies of the relevant agreements with the lawyer, as well as two receipts evidencing payment of the above-mentioned sum in two installments.

235.  The Government contested their claims, arguing that the expenses were not attributable to the State.

236.  The Court reiterates that an applicant is entitled to the reimbursement of costs and expenses only in so far as it has been shown that these have been actually and necessarily incurred and are reasonable as to quantum. The Court observes that both applicants substantiated their claims with relevant documents. The Court therefore grants their claims in full and awards Ms Liseytseva EUR 11 and Mr Maslov EUR 477, plus any tax that may be chargeable to the applicants, under that head.

C.  Default interest

237.  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* to join to the merits the Government’s objection as to the alleged non-exhaustion of domestic remedies in respect of the applicants’ non-enforcement complaint to the merits of their complaint under Article 13 of the Convention and *rejects* it;

3.  *Decides* to join the Government’s *ratione personae* objection concerning the attributability of municipal unitary enterprises’ debts to the State to the merits of the applicants’ non-enforcement complaint under Article 6 of the Convention of Article 1 of Protocol No. 1 and *rejects* it;

4.  *Declares* the non‑enforcement complaints under Article 6 of the Convention and Article 1 of Protocol No. 1 and the complaint under Article 13 of the Convention admissible and the remainder of the application inadmissible;

5.  *Holds* that that there has been a violation of Article 13 of the Convention in the present two cases on account of the lack of an effective remedy in respect of the non‑enforcement of the final domestic judgments in their favour;

6.  *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 judgments in the applicants’ favour;

7.  *Holds*

(a)  that the respondent State is to pay the applicants, within three months from the date on which the judgment becomes final in accordance with Article 44 § 2 of the Convention, the following amounts, plus any tax that may be chargeable, to be converted into Russian roubles at the rate applicable at the date of settlement:

(i)  in respect of pecuniary damage:

EUR 338 (three hundred and thirty-eight euros) to Ms Liseytseva,

EUR 2,020 (two thousand and twenty euros) to Mr Maslov;

(ii)  in respect of non-pecuniary damage:

EUR 3,000 (three thousand euros) to Ms Liseytseva,

EUR 1,500 (one thousand five hundred euros) to Mr Maslov;

(iii)  in respect of costs and expenses:

EUR 11 (eleven euros) to Ms Liseytseva,

EUR 477 (four hundred and seventy-seven euros) to Mr Maslov;

(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 9 October 2014, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

 Søren Nielsen Isabelle Berro-Lefèvre
 Registrar President