



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

FIRST SECTION

CASE OF VORONKOV v. RUSSIA

(Application no. 39678/03)

JUDGMENT

STRASBOURG

30 July 2015

FINAL

30/10/2015

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



In the case of Voronkov v. Russia,

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

Isabelle Berro, *President*,
Julia Laffranque,
Paulo Pinto de Albuquerque,
Linos-Alexandre Sicilianos,
Erik Møse,
Ksenija Turković,
Dmitry Dedov, *judges*,

and Søren Nielsen, *Section Registrar*,

Having deliberated in private on 7 July 2015,

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

PROCEDURE

1. The case originated in an application (no. 39678/03) against the Russian Federation lodged with the Court under Article 34 of the Convention for the Protection of Human Rights and Fundamental Freedoms (“the Convention”) by a Russian national, Mr Valeriy Yakovlevich Voronkov (“the applicant”), on 9 November 2003.

2. The Russian Government (“the Government”) were represented by Mr G. Matuyshkin, Representative at the European Court of Human Rights.

3. The applicant alleged, in particular, that a final domestic judgment in his favour issued against a municipal unitary enterprise had not been enforced.

4. On 11 September 2006 the application was communicated to the Government. On 7 December 2011 additional questions concerning, *inter alia*, the issue of State responsibility were put to the parties.

THE FACTS

I. THE CIRCUMSTANCES OF THE CASE

5. The applicant was born in 1939 and lives in Samara.

6. At the material time the applicant was an employee of a municipal company, Arsenal (“the Arsenal company”, «Муниципальное предприятие «Арсенал») and worked as a store keeper at a car park operated by the company.

A. Available information on the debtor company

7. The company was founded in 1996 by the administration of the Oktyabrskiy District of Samara. It was created as a result of the reorganisation of a “self-supporting enterprise S. at the [local] Department of the Interior” (*«хозрасчетное предприятие ... при УВД ...»*). According to an extract from the company’s articles of association (§§ 1.3 and 1.4) submitted by the Government, the company exercised the right of operational and financial control (*«право хозяйственного ведения»*) in respect of the assets allotted to it. It was responsible for the entirety of its assets. The founder of the company was not liable for the company’s debts, and the company was not liable for the founder’s debts.

8. In reply to a specific request by the Court as regards the functions performed by the company, the Government submitted that, according to its articles of association, the Arsenal company was competent to provide a wide range of services, including the organisation of car pounds and car parks, as well as legal, medical and tourism services. It could operate in the areas of scientific, agricultural or consumer-goods production, and participate in commercial and other activities. It was competent to plan its activities on its own (§§ 2.1 and 7 of the articles of association).

9. According to the applicant, the company only operated a car park at Novo-Vokzalnaya Street in Samara and did not perform any of the other activities mentioned in the articles of association. It had the same legal address as the local Road Traffic Safety Inspectorate (“the Road Inspectorate”). The car park consisted of a car pound – a secure storage area for vehicles that had been stolen, abandoned, or parked illegally or had been involved in an accident or a crime. The company’s only function was to ensure storage of vehicles that had been impounded pursuant to the Road Inspectorate’s orders. The company’s employees registered the cars on arrival using the official forms of the inspectorate. The tariffs for storing the vehicles were determined by the inspectorate. The company could return an impounded vehicle to its owner only if authorised to do so by a road inspector. Free parking spaces could be rented for a daily tariff. The applicant submitted a reorganisation agreement of 1996, a sample of a “vehicle return” form containing a road inspector’s authorisation to return a car, extracts from local authorities’ decisions designating the car park as a pound, extracts from local newspapers and other documents in support of his submissions. According to an information note of 21 February 2002 drawn up by the Samara Committee of the Federal Land Registry Service (*«Федеральная служба земельного кадастра»*), between 1996 and 29 November 2001 the Arsenal company had rented three more car pounds.

B. The owner's decision to liquidate the company and the transfer of assets

10. On 3 December 1998, pursuant to a decision by the head of the town administration, the Committee for the Administration of Property of the Town of Samara ("the Committee") ordered the liquidation of the company. The decision of the head of the town administration was dated 13 November 1998 and concerned several municipal companies operating in Samara. It cited as reasons for the liquidation the "unsatisfactory results of the [companies'] economic activity, inefficient use of the municipal property ... as well as the absence of social importance of the municipal companies ... for the town's population".

11. On 22 June 2000 the Committee decided to withdraw the assets operated by the company, namely the car park where the applicant worked and a VAZ car, and ordered the transfer of those assets to another municipal company, "the Housing Exchange Bureau". By an agreement dated 1 August 2000 that legal entity accepted the transfer of financial responsibility for the car park from the Arsenal company.

C. Judgment of 9 November 2001 in the applicant's favour

12. On 31 July 2000 the applicant was dismissed from his job in view of the liquidation of the company. He brought proceedings against his former employer seeking damages in connection with his dismissal.

13. By a judgment of 9 November 2001 the Oktyabrskiy District Court of Samara ("the District Court") established that the company had still not been wound up and therefore the applicant's dismissal had been unlawful. The court then granted the applicant's claims in part and awarded him 15,644 Russian roubles (RUB). On 22 January 2002 the Samara Regional Court ("the Regional Court") upheld the judgment of 9 November 2001 on appeal, having increased the award in his favour to RUB 18,033.70 (667 euros (EUR)).

D. Liquidation proceedings and the bailiffs' attempts to enforce the judgment

1. Decision to institute liquidation proceedings

14. At some point the local branch of the federal tax office applied to the commercial court with a request to declare the company insolvent. On 24 January 2002 the Commercial Court of the Samara Region declared the Arsenal company insolvent within the special simplified insolvency procedure applicable to the *de facto* absent debtors (see paragraph 29

below). Liquidation proceedings were instituted for a period of six months and a liquidator was appointed.

15. A list of the claims made by the company's creditors was drawn up. It consisted of creditors' claims at the second, fourth and fifth level. The applicant's claims were listed as second-level claims.

2. The bailiffs' attempts to obtain execution of the judgment

16. On 8 February 2002 the enforcement proceedings in respect of the judgment of 9 November 2001, as upheld on 22 January 2002, were commenced. The bailiffs sent several requests to the domestic authorities in order to verify whether the debtor company had any assets and also issued a written warning urging the company to comply with the domestic judgment. In February 2002 they established, after inspection of the premises at the company's legal address, that the company had no assets at that address. On 26 February 2002 the local department of the Road Inspectorate informed the bailiffs that the company did not have any cars in its possession. On 12 March 2002 the bank where the company had set up its business account replied to the bailiffs that the company's balance was RUB 0.

17. On 14 March 2002 the Commercial Court of the Samara Region informed the bailiffs' service of the decision of 24 January 2002 to set the liquidation procedure in motion. On 27 March 2002 the bailiffs forwarded the writs of execution to the liquidator.

3. The applicant's own request for an injunction

18. On 29 March 2002 the applicant requested the District Court to order an injunction of a VAZ car in order to ensure the execution of the judgment in his favour. He argued that in accordance with the decision of 22 June 2000 (see paragraph 11 above) the car should have been transferred to the different company along with the other assets of the Arsenal company. However, the car had not been included in the list of assets accepted on 1 August 2000 by the "Housing Exchange Bureau". Therefore, he concluded, the car should have remained with the Arsenal company and could be subject to an injunction. On 4 April 2002 the District Court accepted the complaint. According to the applicant, no reply followed.

4. The company's liquidation

19. On 12 September 2002 the Commercial Court of the Samara Region established that the liquidation of the Arsenal company had been accomplished. No assets had been revealed. The overall amount of the company's debt totalled RUB 556,648.40. The defendant's assets were insufficient to satisfy the creditors' claims, including the applicant's ones. They were therefore considered as settled.

5. Decision to discontinue the enforcement proceedings and the subsequent court proceedings

20. On 24 October 2002 the District Court, following the bailiffs' request under Article 439 § 4 of the Code of Civil Procedure, as in force at the material time (see paragraph 30 below), ordered that the enforcement proceedings be discontinued. On 25 October 2002 the bailiffs terminated the proceedings. On 4 February 2003 the Regional Court quashed the decision of 24 October 2002 since it had been taken in the applicant's absence and remitted the case for a fresh examination.

21. On 19 March 2003 the District Court took a decision reproducing in essence that of 24 October 2002. In particular, the court observed that on 12 September 2002 the insolvency proceedings in respect of the municipal company had been discontinued, no assets of the company had been revealed and the company had been declared insolvent. Referring to Article 439 § 4 of the Code of Civil Procedure the court again ordered that the enforcement proceedings be discontinued. The parties were present. The bailiffs' maintained their position and the applicant left the issue to the discretion of the first-instance court.

22. The applicant appealed against the decision arguing, in particular, that the Committee (see paragraph 10 above) should be involved in the case as a respondent, and that his request for an injunction had remained unanswered.

23. On 20 May 2003 the Regional Court examined and dismissed the applicant's appeal. The court reiterated that by the decision of 12 September 2002 the Commercial Court had ordered the termination of the insolvency procedure in respect of the company. The court further reproduced the Commercial Court's findings as regards the debtor company's lack of assets and confirmed that in those circumstances the enforcement proceedings were to be discontinued. The court examined the applicant's request to summon the Committee as a respondent and rejected it because the proceedings in question had not concerned the Committee in any way. It accordingly upheld the first-instance decision.

24. According to the applicant, he was only informed of the outcome of his appeal in a letter from the District Court dated 3 November 2003. Enclosed, he found a letter of 21 April 2003 by which he had been notified that the examination of his appeal had been scheduled for 20 May 2003. Allegedly, he did not receive the letter of 21 April 2003 until 3 November 2003.

6. The applicant's enquiry as regards the alleged failure to notify him of the hearing of 20 May 2003

25. From several replies the applicant received from the authorities between 2003 and 2006 to his numerous complaints, it followed that on

21 April 2003 he had been duly notified of the hearing of 20 May 2003 by letter no. 1861. He was also provided with a copy of a handwritten note from the District Court's registry confirming that the summons had been duly sent to him.

26. By letter of 13 June 2006 the District Court acknowledged that on 21 April 2003 the disputed notification had been sent to the applicant by ordinary mail but to the wrong flat and therefore had not been received by the addressee. The court specified that it was not in a position to send notifications by registered mail, due to a shortage of relevant funds.

II. RELEVANT DOMESTIC LAW AND PRACTICE

Municipal unitary enterprises with the right of economic control and their insolvency

1. Relevant provisions on unitary enterprises

27. The relevant domestic provisions on legal status of State and municipal unitary enterprises with the right of economic control are summarised in *Samsonov v. Russia* (dec.), no. 2880/10, 16 September 2014 (see, in particular, §§ 15-27 and 32 of the decision for the summary of provisions of the Civil Code and the Unitary Enterprises Act of 14 November 2002; also see, in so far as relevant, *Liseytseva and Maslov v. Russia*, nos. 39483/05 and 40527/10, §§ 54-127, 9 October 2014).

2. Provisions on the insolvency of unitary enterprises referred to by the parties

28. The Civil Code of the Russian Federation provides that a legal person may be reorganised or liquidated upon a decision of its founders or its management body as authorised in its constitutional documents, or by a competent court in the circumstances provided for by law (Articles 57 and 61). Unitary enterprises with the right of economic control may be declared insolvent in accordance with the insolvency procedure applicable to private companies. In the event of liquidation the legal person ceases to exist without succession (Article 61). In accordance with Article 61 § 4 of the Civil Code, when the assets of a legal entity is not sufficient to satisfy the creditors' claims, it can be liquidated in accordance with Article 65 of the Civil Code, i.e. it may be declared insolvent by a court decision. The State or municipal owner of a property is not liable for debts of unitary enterprises with the right of economic control over that property unless the owner has caused the enterprise to become insolvent or violated the procedure for its liquidation (Article 114 § 7 and 56 of the Civil Code).

29. Section 177 of the Insolvency Act of 8 January 1998, as in force at the material time, provided for a simplified procedure of insolvency in

respect of the *de facto* absent debtors. Where a physical person or a head of a legal entity which had *de facto* discontinued its activity were absent and their whereabouts could not be established, a petition to declare the debtor insolvent could be filed by a creditor, or a tax or another competent authority, irrespective of the extent of the company's debt. That provision was subsequently replaced by section 227 of the 2002 Insolvency (Bankruptcy) Act (Federal Law no. 127-FZ of 26 October 2002), which replaced the 1998 Insolvency Act.

30. Article 439 § 4 of the Code of Civil Procedure of the Russian Federation, as in force at the material time, provided that enforcement proceedings were to be discontinued by a court if a debtor company undergoing insolvency lacked sufficient assets to satisfy the creditors' claims.

THE LAW

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

31. The applicant complained, with reference to Articles 6, 13 and 17 of the Convention, that the judgment of 9 November 2001 had not been enforced. The Court will examine the complaint under Article 6 of the Convention and Article 1 of Protocol No. 1. As far as relevant, those Articles read as follows:

Article 6 § 1

"In the determination of his civil rights and obligations ..., everyone is entitled to a fair ... hearing ... by [a] ... tribunal ..."

Article 1 of Protocol No. 1

"Every natural or legal person is entitled to the peaceful enjoyment of his possessions. No one shall be deprived of his possessions except in the public interest and subject to the conditions provided for by law and by the general principles of international law."

A. The parties' submissions

1. The Government

32. The Government submitted that the debts of the municipal unitary enterprise were not attributable to the State for exactly the same reasons as those summarised in *Samsonov* (cited above, §§ 51-57), and *Liseytseva and*

Maslov (cited above, §§ 137-41). They referred, in particular, to the provisions of the Russian Civil Code and the Federal Unitary Enterprises Act of 14 November 2002 (see *Samsonov*, cited above, §§ 15-27 and 32), arguing that the company was a separate legal entity under the domestic law. They submitted that the debtor company in the present case, which had not performed any public functions and had carried out purely commercial activities, had had to be liquidated because it was unprofitable. State control did not extend to the applicant's terms of employment, and the State could not be compelled under the Convention to provide specific assistance to the company's employees by substituting for the debtor municipal company in the event of its insolvency. The State, which had provided the requisite assistance to the applicant, could not be held responsible for the insolvent private company's failure to honour the judgment.

2. *The applicant*

33. The applicant maintained that the company's debt was attributable to the State. The company had performed a public function, since it had operated a car pound under the strict control of the State authorities, which had determined both its operation procedures and the applicable tariffs. The company had been unable freely to plan its activities, since it had fully depended on the Road Inspectorate's instructions in its day-to-day activities. Furthermore, the town administration had unlawfully registered the company in excess of its competence. The town administration was the company's only founder and owner, controlled the company's activities and gave instructions as to the assets management, namely, it ordered the transfer of property operated by the company to a different company. When the assets were transferred, the company did not have any debts; otherwise, under Articles 61 § 4 and 65 § 1 of the Civil Code (see paragraph 28 above), liquidation would have been possible only pursuant to a court decision, whereas there was no such decision in the present case until 2001. Moreover, after having ordered the transfer, the municipal authorities had not wound the company up. While the other municipal company, "the Housing Exchange Bureau", benefited from having economic control over the transferred assets, the Arsenal company, which formally continued to exist, was supposed to bear the respective expenses for cleaning, maintenance and electricity. As a result, the company accumulated a debt which it was unable to cover, in the absence of available assets. That permitted the Tax Service to apply to the commercial court with a request for the company's liquidation. The applicant further alleged that the enforcement proceedings had been defective and, in particular, his request for an injunction had been dismissed.

B. Admissibility

1. Six-month time-limit

34. The Court notes that the applicant lodged the non-enforcement complaint on 9 November 2003, that is, more than six months after the date of the company's liquidation on 12 September 2002 (see paragraph 19 above) but within the six-month period from the date of the receipt on 3 November 2003 of the final decision to discontinue the enforcement proceedings (see paragraph 24 above). Therefore, the Court considers it necessary to determine whether the applicant complied with the six-month requirement imposed by Article 35 of the Convention.

(a) The Court's case-law

35. The Court reiterates that the primary purpose of the six-month time-limit is to maintain legal certainty by ensuring that cases raising issues under the Convention are examined within a reasonable time, and to prevent the authorities and other persons concerned from being kept in a state of uncertainty for a long period of time. That rule marks out the temporal limit of the supervision exercised by the Court and signals, both to individuals and State authorities, the period beyond which such supervision is no longer possible. As a rule, the six-month period runs from the date of the final decision in the process of exhaustion of domestic remedies. Where it is clear from the outset, however, that no effective remedy is available to the applicant, the period runs from the date of the acts or measures complained of, or from the date of knowledge of that act or its effect on or prejudice to the applicant (see, as a recent authority, *Mocanu and Others v. Romania* [GC], nos. 10865/09, 45886/07 and 32431/08, §§ 258-59, ECHR 2014 (extracts), with further references).

36. Non-enforcement of a judgment is a continuing situation (see, among many others, *Trunov v. Russia*, no. 9769/04, § 15, 6 March 2008). In cases involving a continuing situation, the six-month period runs from the cessation of that situation (see *Seleznev v. Russia*, no. 15591/03, § 34, 26 June 2008, and *Koval v. Ukraine* (dec.), no. 65550/01, 30 March 2004). In a number of cases the Court has rejected non-enforcement complaints in accordance with Article 35 § 1 of the Convention if they were introduced more than six months after the date when the judgment ceased to be binding and enforceable (see, in the context of the quashing of a judgment by way of supervisory-review proceedings, *Kravchenko v. Russia*, no. 34615/02, § 34, 2 April 2009, and *Nikolay Zaytsev v. Russia*, no. 3447/06, § 26, 18 February 2010). In *Babich and Azhogin* the Court rejected the applications as introduced out of time as the applicants lodged their complaints more than six months after they had clearly learned, or ought to have learned, that the judgments in their favour had no longer been enforceable under the domestic law because of the change in the domestic pensions legislation

(see *Babich and Azhogin v. Russia* (dec.), nos. 9457/09 and 9531/09, §§ 47-54 and 57-58, 15 October 2013).

(b) Application of those principles to the non-enforcement of a domestic award against an insolvent municipal unitary enterprise

37. The Court notes that, in contrast to the aforementioned cases of *Kravchenko* and *Babich and Azhogin* (cited above), the judgment in the applicant's favour was not set aside by the domestic courts, and did not otherwise cease to be binding and enforceable. Given that the judicial award has remained unenforced to the present day, the situation complained of still exists.

38. Nevertheless, the Court reiterates that a continuing situation may not postpone the application of the six-month rule indefinitely (see *Sokolov and Others* (dec.), no. 30859/10 et al., § 31, 14 January 2014, with further references). While there are obvious distinctions as regards different continuing situations (*ibid.*), the Court considers that the applicant must, in any event, introduce his or her complaint "without undue delay", once it becomes apparent that there is no realistic hope of a favourable outcome for or progress in his complaints at the domestic level in the foreseeable future (*ibid.*; see also, *mutatis mutandis*, *Sargsyan v. Azerbaijan* (dec.) [GC], no. 40167/06, § 140, 14 December 2011 and, also in so far as relevant, *Mocanu and Others*, cited above, § 262). For instance, in the specific context of complaints concerning non-enforcement of domestic judgments by socially-owned companies in Serbia, the Court considered that the applicants' obligation to introduce their complaints before the Court with reasonable expedition was to be directly linked to the progress of the execution of the relevant judgments at the domestic level (see *Sokolov and Others*, cited above, § 32).

(i) Whether there existed realistic prospects of enforcement after the company's insolvency

39. The Court considers that the above findings are applicable to the present case concerning non-enforcement of pecuniary awards made against companies incorporated under the Russian law as unitary enterprises with the right of economic control. The Court accepts that the applicant may have had a realistic hope of a favourable outcome for or progress in his claims at the domestic level as long as the insolvency proceedings were ongoing (see *Sokolov and Others*, cited above, § 33). However, the insolvency proceedings in respect of the debtor municipal unitary enterprise, which were conducted in accordance with the insolvency procedure applicable to private companies governed by company law in Russia (see *Yershova v. Russia*, no. 1387/04, § 41, 8 April 2010), ended on 12 September 2002 (see paragraph 19 above), and the debtor company was liquidated without any legal successor or bankruptcy estate. The creditors'

claims, which had not been satisfied during the liquidation procedure, including the applicant's claims, were considered as settled (see paragraph 19 above), and there is nothing to suggest that the applicant learned about the liquidation with any delay. In the Court's view, it should have become apparent to him that the debtor company was no longer in a position to honour the relevant judgments in his favour.

(ii) Whether the remedy chosen by the applicant was effective

40. However, the applicant chose to challenge the decision to discontinue the enforcement proceedings before applying to the Court. In the present case, the parties did not comment on the effectiveness of such an avenue of exhaustion. In so far as the Court is competent to delve into this issue of its own motion, it observes that the domestic courts' conclusions were to a decisive extent based on the fact of the company's liquidation on 12 September 2002 (see paragraphs 21 and 23 above). In those circumstances, the scope of the respective court proceedings was rather confined to a somewhat automatic application of the provision of Article 439 § 4 of the Code of Civil Procedure as in force at the material time (see paragraph 30 above).

41. For the sake of clarity, the Court reiterates that, given the special status of municipal unitary enterprises under Russian law, the avenue of exhaustion in question should be assessed in the context of the specific case under consideration (see *Liseytseva and Maslov*, cited above, § 161). For instance, had it been demonstrated that the company had continued to operate and that no insolvency proceedings had been put in place in its respect, it would not be unreasonable to require the applicant to first raise his or her grievances at the domestic level before bringing a complaint to the Court. Although that was exactly the strategy chosen by the applicant, in the present case the domestic courts merely confirmed that the reason for non-enforcement – that is, because the company had been liquidated without an outstanding bankruptcy estate – was beyond the bailiffs' influence. Furthermore, the applicant's attempts to engage the Committee's liability in the proceedings against the bailiffs proved futile because the proceedings in question had not concerned the Committee in any way (see paragraph 23 above).

42. The Court finds that in those circumstances, challenging the court's decision to discontinue the enforcement proceedings did not bring the applicant closer to his goal, which was either the payment of the judgment debt (see albeit in the context of a different domestic procedure, that is a complaint about the bailiffs' inaction in the case of a unitary enterprise's insolvency, *Yershova*, cited above, § 65, and *Liseytseva and Maslov*, cited above, § 161) or engaging the State's responsibility for failure to properly assist him in the enforcement of the judicial award.

(iii) *Whether the applicant was or ought to have been aware of the futility of his action*

43. Be that as it may, it remains to be seen whether there are indications that the applicant, who had no access to legal advice, was aware, or should have become aware, of the futility of that action (see, *mutatis mutandis*, *Norkin v. Russia* (dec.), no. 21056/11, § 20, 5 February 2013).

44. The Court notes that the application was introduced in 2003, long before the Court dealt with either the issue of the State's responsibility for the debts of unitary enterprises and the status of such companies under the domestic law (see, for the Court's first judgment on the matter, *Shlepkin v. Russia*, no. 3046/03, 1 February 2007), or the Government's non-exhaustion objections concerning various complaints against the bailiffs in the context of the progress of the enforcement proceedings (see, for instance, *Shlepkin*, cited above, § 18; *Grigoryev and Kakaurova v. Russia*, no. 13820/04, § 29, 12 April 2007; and *Yershova*, cited above, § 65). Thus, at the time of the events the Court's case-law on the matter had not been sufficiently established. Furthermore, the proceedings under Article 439 § 4 of the Code of Civil Procedure, as in force at the material time, had not been subject to the Court's scrutiny. Otherwise, as mentioned above, there is nothing in the parties' submissions to suggest that the applicant was aware or should have become aware of the futility of challenging the decision to discontinue the enforcement proceedings. Thus, the Court finds it reasonable that the applicant awaited their outcome and that only after receiving a copy of the final decision rejecting his complaint did he bring the complaint to the Court's attention (see, in so far as relevant, *Gladkiy v. Russia*, no. 3242/03, § 62, 21 December 2010).

45. Lastly, the Court notes that, once the applicant was aware of the outcome of those proceedings on 3 November 2003, and having understood that he had no realistic hope of progress in any aspect of his non-enforcement complaint at the domestic level, he acted without undue delay (see paragraph 24 above; see also, by way of contrast, *Sokolov and Others*, cited above, § 32) and submitted his complaint to the Court within a week of the date of receipt of the final decision.

(iv) *Conclusion on the compliance with the six-month time-limit*

46. In view of the above, in the particular circumstances of the present case, the Court accepts that the applicant, who did not benefit from legal assistance, could have reasonably considered in 2002-2003 that litigation concerning the bailiffs' request to discontinue the enforcement proceedings had some prospect of success. Thus, the Court does not find it appropriate to dismiss as belated the present complaint of non-enforcement of the final judgment of 9 November 2001.

2. *Objection as regards compatibility ratione personae*

(a) General principles

47. The Court reiterates that a State may be responsible for debts of a State-owned company, even if the company is a separate legal entity, provided that it does not enjoy sufficient institutional and operational independence from the State to absolve the latter from its responsibility under the Convention. The key criteria to determine whether the State was indeed responsible for such debts are summarized in *Ališić and Others v. Bosnia and Herzegovina, Croatia, Serbia, Slovenia and the former Yugoslav Republic of Macedonia* [GC], no. 60642/08, §§ 114-15, 16 July 2014, with further references; see also, for a summary of the Court's practice on the liability issue, *Liseytseva and Maslov*, cited above, §§ 184-92).

48. As regards the Government's argument concerning the company's legal status under domestic law, the Court notes that they referred to the provisions of the Federal Unitary Enterprises Act (see paragraph 32 above). However, that legislation was enacted on 14 November 2002, that is, more than a month after the debtor company's liquidation. As regards the remainder of the Government's submissions, which were largely based on a thorough analysis of the Civil Code provisions in force at the material time, the Court has recently examined exactly the same argument in detail in the above-cited cases of *Samsonov* (cited above, §§ 67-73) and *Liseytseva and Maslov* (cited above, §§ 193-206) and has concluded in the latter case as follows:

"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 ... the Court has to examine the actual manner in which State control was exercised in a particular case. ...

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 ... 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 ... 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."

49. The Court does not have any reason to depart from that general approach and will now apply the above criteria to the present case.

(b) Application to the present case

50. The applicant argued that certain actions of the company's owner, such as the registration of the company and the transfer of its assets, had been unlawful. The Court reiterates that, contrary to the applicant's submissions, it is not called upon to decide on the lawfulness of the owner's actions under the domestic civil law (see *Liseytseva and Maslov*, cited above, § 212). Instead, the Court will take into account the available information on the relevant authorities' conduct as a core element 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 judgment given in the applicant's favour (*ibid.*).

51. As in the case of *Liseytseva*, the Court observes that the issue whether the debtor enterprise exercised a public function could at first glance be regarded as somewhat borderline (see *Liseytseva and Maslov*, cited above, § 215). According to its articles of association, the Arsenal company was able to provide a wide range of very different services to the local population and, in particular, operated a car park. Even though that activity might have been of some value to the population of Samara, in the absence of further information, the scope of the company's activity as defined by its articles of association could indeed be regarded as commercial, as suggested by the Government.

52. However, first, the applicant managed to convincingly demonstrate, with reference to relevant documents (see paragraph 9 above) – and his submissions were not disputed by the Government – that the company's core activity in the present case consisted in operating a car pound in strict compliance with Road Inspectorate orders. The tariffs for its services were set out by the inspectorate, and so were the core aspects of the company's operation, such as registration of impounded vehicles on arrival and their returns to owners. In the Court's view, the applicant provided sufficient evidence to demonstrate that the company was, by virtue of its function, under the strict control of the authorities (see *Liseytseva and Maslov*, cited above, §§ 208-10 and 216, and by contrast, *Samsonov*, cited above, § 74).

53. Secondly, while it is unclear whether the company's debt started to accumulate before the decision to liquidate it or as a result of it (see, for instance, paragraph 10 above), the Court points out that in any event the decision to wind up the company was taken by the town administration, which further disposed of its property as it 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 Housing Exchange Bureau, whereas the debt that accumulated in respect of

unpaid salaries was not transferred to the new entity. Moreover, the company formally continued to operate for about one year after the transfer in the absence of any assets, thus accumulating a debt towards its creditors, including the applicant (see paragraphs 14-15 above).

54. Those 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 authorities to a decisive extent at the relevant time (see, *mutatis mutandis*, *Khachatryan v. Armenia*, no. 31761/04, § 51, 1 December 2009). Therefore, the Court rejects the *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 owed by the respondent company to the applicant under the judgment in his favour.

3. Conclusion

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

C. Merits

56. The Court reiterates at the outset that an unreasonably long delay in the enforcement of a binding judgment may breach the Convention. Turning to the present case, the Court notes that the judgment of 9 November 2001, which became final on 22 January 2002, has remained unenforced to date. While liquidation proceedings which ended on 12 September 2002 may objectively justify some limited delays in enforcement, the facts of the present case would rather suggest that the municipal authority did not consider itself bound by the obligation to honour the judgment debt towards the employee related to his salary after it had decided to liquidate the debtor company (see, *mutatis mutandis*, *Yershova*, cited above, § 72). Such an attitude is difficult to reconcile with the State's obligations under the Convention to comply with domestic judicial decisions within a reasonable time.

57. By failing for a considerable period of time to take the necessary measures to comply with the final judgment in the instant case, the authorities deprived the provisions of Article 6 § 1 of all useful effect and also prevented the applicant from receiving the money to which he was entitled, which amounted to a disproportionate interference with his peaceful enjoyment of possessions (see, among others, *Khachatryan*, cited above, § 69). Therefore, there has been a violation of Article 6 § 1 of the

Convention and Article 1 of Protocol No. 1 thereto on account of the non-enforcement of the final and binding judgment in his favour.

II. ALLEGED VIOLATION OF ARTICLE 6 § 1 OF THE CONVENTION ON ACCOUNT OF THE APPLICANT'S ABSENCE FROM THE APPEAL HEARING

58. The applicant complained under Articles 6, 13 and 17 of the Convention that he had not been informed in time of the examination of his appeal on 20 May 2003, and had therefore been unable to participate in the court hearing. The Court will examine the complaint under Article 6 § 1, cited in paragraph 31 above.

59. The Government admitted that notification had been sent to the wrong address but argued that the case could be adequately resolved on the basis of the parties' written submissions. The applicant maintained his complaint, arguing that he had wished to request admission of the Committee as a co-defendant, but had been deprived of the opportunity to do so as a result of his absence from the appeal hearing.

60. Even assuming that Article 6 applies to these proceedings, the Court notes that the core issue in the present case is the non-enforcement problem already examined above under Article 6. Having regard to its findings in paragraphs 41-45 and 57 above, the Court considers that, even though the application in this complaint should be declared admissible, it is not necessary to examine it separately.

III. OTHER ALLEGED VIOLATIONS OF THE CONVENTION

61. The applicant complained, with reference to Articles 6, 13 and 17 of the Convention, that the amount awarded to him on 9 November 2001 had been insufficient, that his requests for supervisory review of the decision of 20 May 2003 had been refused and that the unrelated pension proceedings, which had ended on 31 March 2004, had had an unsuccessful outcome.

62. Having regard to all the material in its possession, and in so far as these complaints fall within its competence, the Court finds that there is no appearance of a violation of the rights and freedoms set out in these provisions in this respect. It follows that this part of the application must be rejected as being manifestly ill-founded, pursuant to Article 35 §§ 1, 3 and 4 of the Convention.

IV. APPLICATION OF ARTICLE 41 OF THE CONVENTION

63. 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

64. The applicant claimed 75,377 Russian roubles (RUB) in respect of pecuniary damage, representing the amount of the judgment debt as increased in line with the cost of living index for the period until the date of the submission of the respective claims to the Court. He submitted a letter by the Samara Regional Employment Department containing statistical information on the cost of living in the Samara Region, and a detailed calculation in support of his claim. He further claimed 8,000 euros (EUR) in respect of non-pecuniary damage.

65. The Government argued that no award should be made to the applicant, since his Convention rights had not been violated. In the alternative, they argued that the applicant had failed to substantiate his method of calculating the pecuniary damage and suggested that any index-linking should be conducted in line with the consumer prices index for the Samara Region. They submitted, with reference to the relevant statistical material submitted by the Federal Department of Statistics, that the increased award should not therefore exceed RUB 49,755. As regards non-pecuniary damage, the Government considered that any award made by the Court should not exceed EUR 1,000.

66. In the circumstances of the present case, the Court finds it appropriate to award the applicant the equivalent in euros of the unpaid judgment debt, that is EUR 667 in respect of pecuniary damage.

67. As regards the non-pecuniary damage, the Court accepts that the applicant suffered non-pecuniary damage which cannot be compensated by a finding of a violation only.

68. The Court reiterates that it is an international judicial authority contingent on the consent of the States signatory to the Convention, and that its principal task is to secure respect for human rights, rather than compensate applicants' losses minutely and exhaustively. Unlike in national jurisdictions, the emphasis of the Court's activity is on passing public judgments that set human rights standards across Europe. The Court recalls that in recent cases of *Liseytseva and Maslov* and *Samsonov* (both cited above) it has examined in detail the issue of State responsibility for the debts of the unitary companies having the right of economic control. The Court further notes that the present case is one of many similar Russian cases that concern the respondent State's liability for its failure to enforce final domestic judgments rendered against municipal unitary companies. In cases involving many similarly situated victims a unified approach may be called for. This approach will ensure that the applicants remain aggregated

and that no disparity in the level of the awards will have a divisive effect on the applicants (see, for a similar approach in respect of the non-enforcement cases concerning State-owned companies in Serbia, *Stošić v. Serbia*, no. 64931/10, §§ 66-68, 1 October 2013; see further, for instance, *Moskalenko and Others v. Ukraine* [Committee], nos. 1270/12 et al., § 23, 18 July 2013; *Goncharova and Others and 68 other “Privileged Pensioners” cases v. Russia*, nos. 23113/08 et al., §§ 22-24, 15 October 2009; *Kulkov and Others v. Russia*, nos. 25114/03 et al., § 67, 8 January 2009; and *Tarnopolskaya and Others v. Russia*, nos. 11093/07 et al., § 57, 7 July 2009).

69. In the view of above, the Court considers it reasonable and equitable to award EUR 2,000, plus any tax that may be chargeable, to the applicant in respect of non-pecuniary damage.

70. The Court further rejects the remainder of the claims under this head.

B. Costs and expenses

71. The applicant claimed RUB 3,000 in respect of lawyer’s fees for his representation in the domestic employment proceedings, as well as RUB 2,435.56 for postal and other expenses incurred in the domestic proceedings. The Government initially accepted that, should the Court find a violation of the Convention in the present case, the lawyer’s fee should be reimbursed to the applicant as claimed. In their additional submissions they accepted that the postal expenses in the amount of RUB 920 could be reimbursed to the applicant. They disputed the remainder of the amount claimed, including the claim related to the lawyer’s expenses, as unsubstantiated.

72. According to the Court’s case-law, 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. Regard being had to the documents in its possession and the above criteria, the Court awards him the amount claimed, converted into euros at the rate applicable on the date of submission of the claims, that is, EUR 158, plus any tax that may be chargeable to the applicant.

C. Default interest

73. The Court considers it appropriate that the default interest rate should be based on the marginal lending rate of the European Central Bank, to which should be added three percentage points.

FOR THESE REASONS, THE COURT, UNANIMOUSLY,

1. *Declares* the complaint under Article 6 of the Convention and Article 1 of Protocol No. 1 about the non-enforcement, as well as the complaint under Article 6 about the applicant's absence from the appeal hearing of 20 May 2003, admissible and the remainder of the application inadmissible;
2. *Holds* that there has been a violation of Article 6 of the Convention and Article 1 of Protocol No. 1 on account of the non-enforcement of the judgment in the applicant's favour;
3. *Decides* that there is no need for a separate examination of the complaint under Article 6 of the Convention about the applicant's absence on appeal on 20 May 2003;
4. *Holds*
 - (a) that the respondent State is to pay the applicant, within three months from the date on which the judgment becomes final in accordance with Article 44 § 2 of the Convention, the following amounts to be converted into Russian Roubles at the rate applicable at the date of settlement:
 - (i) EUR 667 (six hundred and sixty-seven euros) in respect of pecuniary damage;
 - (ii) EUR 2,000 (two thousand euros), plus any tax that may be chargeable, in respect of non-pecuniary damage;
 - (iii) EUR 158 (one hundred and fifty-eight euros), plus any tax that may be chargeable to the applicant, in respect of costs and expenses;
 - (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;
5. *Dismisses* the remainder of the applicant's claim for just satisfaction.

Done in English, and notified in writing on 30 July 2015, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Søren Nielsen
Registrar

Isabelle Berro
President