



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

THIRD SECTION

CASE OF KUZHELEV AND OTHERS v. RUSSIA

(Applications nos. 64098/09 and 6 others – see appended list)

JUDGMENT

STRASBOURG

15 October 2019

FINAL

15/01/2020

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

In the case of Kuzhelev and Others v. Russia,

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

Paul Lemmens, *President*,
Paulo Pinto de Albuquerque,
Helen Keller,
Dmitry Dedov,
Alena Poláčková,
Gilberto Felici,
Erik Wennerström, *judges*,

and Stephen Phillips, *Section Registrar*,

Having deliberated in private on 24 September 2019,

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

PROCEDURE

1. The case originated in seven applications (nos. 64098/09, 64891/09, 65418/09, 66035/09, 67406/09, 67697/09 and 1504/10) 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 seven Russian nationals.

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

3. On various dates the Government were given notice of the complaints concerning the non-enforcement of the judgments given against the federal unitary enterprise. In 2017 they were given additional notice of the part of four applications concerning the non-enforcement of the judgments issued against the joint-stock company. The remainder of applications nos. 64098/09, 64891/09, 66035/09, 67406/09, 67697/09 and 1504/10 was declared inadmissible pursuant to Rule 54 § 3 of the Rules of Court.

THE FACTS

I. THE CIRCUMSTANCES OF THE CASE

4. The applicants are seven Russian nationals living in St Petersburg. Their personal details are set out in Appendix I.

A. Information on the applicants' former employer and creation of an open joint-stock company in 2007

1. The employer unitary enterprise

5. The applicants are former employees of the Kronstadt Marine Plant (*Kronshtadtskiy morskoy zavod* – “the Marine Plant”), one of the oldest and largest shipyards in Russia, incorporated between 1997 and 2015 as a State unitary enterprise (“the FGUP” or “the enterprise”) of the Russian Ministry of Defence. It primarily provided various services to the Ministry, such as maintaining and repairing military ships and their weaponry, and shipbuilding for the Russian Navy. The FGUP’s assets were federal property (Paragraph 3.1 of the FGUP’s rules). The FGUP had a “right of economic control” (*право хозяйственного ведения*) over the assets allocated to it in order to carry out its statutory activities (*ibid.*; for further details on the legal status of unitary enterprises in Russia, see, in so far as relevant, *Liseytseva and Maslov v. Russia*, nos. 39483/05 and 40527/10, §§ 55-75, 9 October 2014). It was apparently the main employer in the town of Kronstadt.

6. The enterprise was set up as a separate legal entity, a commercial organisation liable for its obligations with its entire assets (Paragraphs 1.3, 1.5 and 1.6 of the rules). It was subordinate (*в ведомственном подчинении*) to the Ministry of Defence of the Russian Federation. Its founders were the Ministry of Property Relations¹ and the Ministry of Defence of the Russian Federation (Paragraph 1.4 of the rules).

7. It was created with the aim of producing goods and providing services to meet the needs of the Ministry of Defence and other public needs (*общественных потребностей*) and for extracting profit (Paragraph 2.1 of the rules). To achieve that aim, the enterprise carried out, in particular, the following activities: repair and docking of military ships of the executive power of the Russian Federation; repair of their weaponry and production of component parts of military ships and military equipment; exportation of products, works and services for military purposes, other military assets for ships and onshore assets under contracts with the Ministry of Defence or legal entities specialising in those types of activities; repair of ships under the flag of the Russian Federation; recycling of military equipment systems; provision of industrial and non-industrial services to individuals and legal entities, including transportation and provision of services involving the use of docks, service roads, railway lines, and storage facilities on the FGUP’s territory, as well as utility sales; engineering, technical reviews, exploitation and modernisation of property of the State technical authority (*объектов гостехнадзора*) for common and military use; education services, transportation services, medical activities, rent of vacant areas and quays;

1. Between March 2004 and May 2008, “the Federal State Assets Management Agency”.

maintenance and servicing of cars; production of consumer goods, as well as research, development and technological works (Paragraph 2.2 of the rules).

8. The enterprise could sell, rent and loan its real property, transfer it as a capital contribution to the authorised capital of companies and partnerships, or otherwise dispose of such property, only with the prior approval of the Ministry of Property Relations (its regional department) and the Ministry of Defence (Paragraph 3.8 of the rules). The enterprise could pledge or rent the assets acquired as a result of its economic activity, or transfer such assets as a capital contribution to the authorised capital of companies and partnerships, in the manner and within the limits established by the rules and national law. The transfer of assets was by deed, in accordance with Paragraph 3.8 of the rules (cited above) and the procedure defined by the Ministry of Defence (Paragraph 5.1 of the rules). The Ministry of Defence determined the annual amount of benefits to be transferred by the enterprise to the federal budget (Paragraph 3.10 of the rules), as well as the rules for the setting of draft wholesale prices for State Defence order production in co-ordination and agreement (*согласование*) with State clients. Contracts with ordering parties of the Ministry of Defence were performed as a matter of priority (Paragraph 4.1 of the rules). The enterprise was obliged, in particular, to meet its financial performance targets and fulfil the State Defence order, provide information to the State bodies in the cases and within the procedure determined by the Ministry of Defence, and comply with secrecy and access requirements in the manner defined by the Ministry of Defence (Paragraph 4.7).

9. Owing to the enterprise's difficult financial situation, from 2000 onwards several attempts to set insolvency proceedings in motion took place. In early 2005 the company's committee of creditors lodged an application with a commercial court requesting to place the FGUP in "external administration" (*внешнее управление*), a measure aimed at restoring the company's solvency by applying special measures under an external administration plan.

10. On 14 March 2005 the Commercial Court of St Petersburg and the Leningrad Region placed the FGUP in external administration for a period of eighteen months and approved an external manager (*внешний управляющий*), who replaced the debtor's management. On 26 June 2006 the same court extended the administration for a further six months.

2. Creation of a joint-stock company, transfer of assets and the applicants' employment

11. The external manager prepared an external administration plan to restore the FGUP's solvency. The plan included, *inter alia*, a "substitution of assets" ("*замещение активов*", see paragraph 74 below), to be achieved

by creating an open joint-stock company (“the OAO”) and transferring the entirety of the FGUP’s assets thereto as a capital contribution.

12. On 16 May 2005 the plan was approved by the creditors’ committee.

13. It appears from the relevant domestic court decision (see paragraph 21 below) that by letter no. CC-08/14269 of 28 June 2005 the Federal State Assets Management Agency informed an unspecified recipient (apparently the OAO) of its decision to approve the major provisions of the external administration plan and, in particular, the substitution of assets involving a transfer of the debtor’s assets to the newly created joint-stock company as a capital contribution, as a measure to restore the debtor’s solvency. The letter indicated that transactions with the newly created company’s shares and immovable property effected in accordance with the external administration plan required an expert examination by the Federal State Assets Management Agency.

14. On 1 September 2006 an independent market valuation of the company’s assets was conducted.

15. By a decision of 25 December 2006 the external manager (acting on behalf of the FGUP) created the open joint-stock company Kronstadt Marine Plant Awarded the Order of Lenin (*Kronshtadtskiy morskoy ordena Lenina zavod* – “the OAO”) and transferred the major assets allocated under the FGUP’s economic control (a total of 184 items, including buildings and watercraft) to the OAO as a capital contribution, with effect from 1 March 2007.

16. The FGUP was the company’s only founder.

17. The FGUP employees, including the applicants, were accordingly registered as working for the OAO from that later date.

18. On 9 February 2007 the FGUP’s assets were transferred to the OAO in accordance with a transfer deed signed on that date.

3. Annulment of the creation of the OAO and transfer of assets

19. By Decree no. 394 of 21 March 2007 the President of the Russian Federation ordered that the Kronstadt Marine Plant be included in the United Shipbuilding Corporation, which had been created to unite the major shipbuilding companies, ship repair yards and maintenance companies across Russia, to streamline and consolidate civilian shipbuilding using military facilities.

20. The military prosecutor, acting in the interests of the Russian Federation, the Federal State Assets Management Agency and the Ministry of Defence, lodged a court action against the FGUP challenging the decisions to create the OAO and transfer the assets, claiming that they were unlawful and void *ab initio*. The prosecutor argued, in particular, that, contrary to the requirements of the Insolvency Act, the external manager had failed to obtain a mandatory expert examination of the market valuation report by the Federal State Assets Management Agency, and that the value

contained in the report was too low. The OAO objected, referring, *inter alia*, to the owner's approval of the main provisions of the external administration plan, including the substitution of assets (see paragraph 13 above).

21. On 19 October 2007 the Commercial Court of St Petersburg and the Leningrad Region allowed the prosecutor's action. It held that a substitution of assets was possible in respect of unitary enterprises. However, under sections 94(2) and 115(2) of the Insolvency Act, this way of restoring a company's solvency could only be included in the external administration plan or submitted for the committee of creditors' consideration if there was a decision by the managerial body of the debtor entitled to decide on the debtor's concluding such transactions by the company's constituent documents. The FGUP's assets were State property allocated to the FGUP's economic control. The enterprise could not enter into any transactions leading to the encumbrance or alienation of immovable property without the owner's consent (Article 295 § 2 of the Civil Code). The court established that the interests of the owner of the assets of the debtor unitary enterprise in the context of the insolvency proceedings were represented by the Federal State Assets Management Agency. The court rejected the OAO's reference to the Agency's letter of 28 June 2005, as it indicated that transactions involving immovable property and shares of the newly created joint-stock company were subject to a mandatory expert examination by the Federal State Assets Management Agency. However, according to the court, the market valuation report (see paragraph 14 above) had not been subject to the mandatory expert examination by that Agency. The court concluded that the decision of 25 December 2006 had been taken in violation of domestic law, and accordingly declared the creation of the OAO and transfer of assets invalid. It further ordered the assets to be returned to the FGUP, pursuant to Article 167 § 2 of the Civil Code (see paragraph 66 below).

22. On 11 February 2008 the 13th Commercial Appeal Court quashed the judgment of 19 October 2007 on appeal.

23. On 29 April 2008 the Commercial Court of the North-West Circuit quashed the appeal judgment of 11 February 2008 and upheld the judgment of 19 October 2007 at final instance. The court established that, in accordance with section 94(1) of the Insolvency Act, as of the date of the institution of external administration, the powers of the managerial bodies of the debtor, as well as those of the owner of property of the debtor incorporated as a unitary enterprise, had to be terminated, and the powers of the head of the debtor and other managerial bodies of the debtor were transferred to the administrator. However, that rule was subject to the exceptions set out in section 94(2) of the Insolvency Act (see paragraph 71 below). In particular, within the limits of the competences provided for by federal law, the managerial bodies of the debtor were entitled to take decisions on substitution of the debtor's assets. Even though the rights of

the owner of the assets of the unitary enterprise were not set out directly in the Insolvency Act, section 94(2) thereof was to be applied by analogy. The court concluded that in the absence of any decision by the owner of the FGUP's assets, a substitution of assets could not be included in the external administration plan. The court, however, found no evidence that such a decision had ever been taken by the owner of the assets. Accordingly, the external manager's decision to create the OAO was invalid, as it had been taken in violation of the Insolvency Act. The appellate court further confirmed that the first-instance court had correctly applied the consequences of the invalid transaction and had rightly ordered the OAO to return the assets to the FGUP.

24. In May 2008 the OAO advised the applicants of their potential dismissal and on 21 August 2008 dismissed them from their jobs.

25. According to the applicants, between August and November 2008 the FGUP refused to reinstate them in their jobs and allow them access to their workplace.

B. Proceedings against the OAO and its insolvency

1. The prosecutor's claims against the OAO on the applicants' behalf and subsequent proceedings

26. Shortly after the annulment of the above-mentioned transaction, a local prosecutor brought proceedings against the OAO on behalf of the applicants.

(a) Case of Mr Smirnov

27. In the case of Mr Smirnov, the prosecutor claimed unpaid salary for April 2008 and compensation for delayed payment of salary. He further amended the claim, dropping the part concerning unpaid wages. By a judgment of 23 September 2008 the justice of the peace of the 110th Court Circuit of St Petersburg allowed the remaining claim in part and ordered the OAO to pay Mr Smirnov 445 Russian roubles ((RUB) – approximately 11 euros (EUR)) in compensation for delayed payment of salary in early 2008 (see Appendix II). The judgment entered into force ten days later. A writ of execution was issued. On 16 March 2009 the applicant forwarded it to the OAO's insolvency manager. The judgment has not been enforced.

(b) Cases of the six other applicants

(i) Court orders in the applicants' favour against the OAO

28. In the cases of the six other applicants, the prosecutor brought proceedings against the OAO on their behalf seeking unpaid wages for June to August 2008 and in some cases, severance pay. On the dates listed in

Appendix II the justice of the peace of the 110th Court Circuit of St Petersburg awarded the applicants the amounts claimed in separate court orders (*судебные приказы*).

29. They took effect immediately but have never been enforced.

(ii) Application for the FGUP to substitute the debtor

30. In 2008 the applicants applied to have the debtor in the domestic proceedings (the OAO) substituted. They argued that, since the creation of the OAO had been declared invalid and all the assets were to be returned to the FGUP, the latter was liable to pay the judgment debts made against the OAO.

31. On the dates specified in Appendix I the justice of the peace of the 110th Court Circuit of St Petersburg allowed the application at first instance. She held that as the transaction had been voided, no transfer of rights or obligations to the OAO had taken place, and therefore the transfer of the employer's rights and obligations to the OAO had also been unlawful. The justice of the peace further cited, without giving further details, Article 44 of the Code of the Civil Procedure on legal succession (see paragraph 67. below) and ordered that the OAO, the debtor under the court orders, be replaced by the FGUP.

32. On the various dates in 2009 listed in Appendix I the Kronstadt District Court of St Petersburg quashed the above-mentioned decisions. Firstly, it found that the annulment of the unlawful decisions to create the OAO and transfer assets had not given rise to legal succession. The court considered that the transfer of assets from the OAO to the FGUP had not automatically resulted in the obligations being transferred. Indeed, the judgment of 19 October 2007 had not contained an order to that effect (see paragraph 21 above). Otherwise, there were no grounds for such a transfer, as a result of either the OAO's reorganisation, or a "singular succession", as, for instance, in the event of assignment or transfer of the debt. Secondly, the court found that the decision on legal succession had been issued in the absence of the respondent's representatives, in violation of its procedural rights.

(iii) Adjustment proceedings

33. It is apparent from the parties' observations received in 2011 that on various dates in 2010 the same justice of the peace adjusted the compensation by applying the consumer price index. The amounts are specified in Column 5 of Appendix II. The relevant judgments have not been enforced. According to the Government, Mr Kuzhelev and Ms Pavlova have never requested the original orders from the judicial authority and they remain in their respective case files.

2. Insolvency proceedings in respect of the open joint-stock company

34. On 6 October 2008 the FGUP, as the only founder of the OAO, decided to liquidate the company.

35. On 13 February 2009 the St Petersburg Commercial Court observed that the OAO had been created by a decision of the FGUP. By a final judgment of 29 April 2008 that decision had been declared invalid, and the OAO had been ordered to return the assets to the FGUP. On the date of the insolvency petition the OAO had been transferring assets to the FGUP and had discontinued production activities. According to the liquidation committee, the OAO's debts not challenged by the company exceeded RUB 305 million, whilst the aggregate value of the company's assets was RUB 25.2 million, including RUB 53,564 in recoverable accounts receivable. The court declared the OAO insolvent, and the liquidation process began.

36. On 13 October 2009 the bailiffs service discontinued the enforcement proceedings and forwarded the relevant writs to the insolvency manager.

37. Some applicants' attempts to challenge the court orders against the OAO in their favour (see paragraph 28 above) on account of newly discovered circumstances, namely the decision to discontinue the enforcement proceedings and the insolvency procedure opened in respect of the OAO, proved unsuccessful. In particular, such request lodged by Mr Kuzhelev was rejected in the final instance by the St Petersburg City Court on 7 April 2010.

38. According to the stock inventory by the liquidator, as of 1 June 2009 the company had fixed assets of RUB 16,000, resources of RUB 369,000 and a total of accounts receivable of RUB 727,657,000. On an unspecified date the market value of the assets was assessed by an independent expert as follows: no fixed assets determined; resources of RUB 369,000; and accounts receivable of RUB 10,600,000².

39. According to the Government, at some point the OAO's assets were offered for sale at auction but were not sold, whereupon the relevant documents were compiled.

40. On various dates between 9 and 15 December 2009 Mr Khuzhelev, Ms Kudryashova, Ms Petrova, Ms Pavlova, Ms Lebedeva and Mr Tomilin requested the insolvency manager representing the OAO to inform them whether their claims were included in the second line of the creditors' claims. On 28 January 2010 a group of OAO creditors under the court orders, including the six applicants, complained to the prosecutor's office that the insolvency manager had failed to reply.

41. On 25 February 2010 the prosecutor's office of the Kronstadt District of St Petersburg advised Ms Kudryashova that all employees who

2. As summarised in the judgment of 29 March 2012 (see paragraph 44).

had lodged a request with the insolvency manager of the OAO were included in the second priority line to be repaid. The prosecutor's office informed the applicants that the claims were to be satisfied in accordance with the Insolvency Act. As the insolvency proceedings were ongoing, the prosecutor's office did not see any reason to intervene.

42. On 12 April 2010 the Oktyabrskiy District Court of St Petersburg rejected Mr Tomilin's challenge of the bailiffs' decision to discontinue the enforcement proceedings (see paragraph 36 above). The court found that the bailiffs service had lawfully discontinued the proceedings and had forwarded the writs to the insolvency manager, as the debtor OAO was undergoing insolvency proceedings. The applicant's appeal was disallowed by the St Petersburg City Court on 18 August 2010 for non-compliance with the necessary formal requirements, namely failure to specify the claim and pay the court fee.

43. At some point the claims of 648 second priority line creditors were included in the registry of the creditors' claims.

44. On 29 March 2012 the St Petersburg Commercial Court discontinued the insolvency proceedings and ordered the OAO's liquidation. The claims which had not been satisfied during the liquidation process, including the applicants' claims, were considered settled.

45. On 31 May 2012 the OAO's liquidation was recorded in the Register of Legal Entities, and it ceased to exist.

C. Judgments in the applicants' favour against the FGUP and their enforcement

1. Proceedings concerning reinstatement and unpaid wages

46. In 2008 the applicants brought proceedings against the FGUP challenging their dismissal, requesting to be allowed to work as of 21 August 2008, the date of their actual dismissal (see paragraph 24 above). They also claimed unpaid wages and other work-related payments from 1 March 2007.

(a) Case of Mr Smirnov (application no. 65418/09)

47. The applicant sued both the OAO and the FGUP for reinstatement in his job and unpaid wages as of 21 August 2008. He further supplemented his claims by challenging the orders of the external manager and the OAO director for his transfer from the FGUP to the OAO, requesting reinstatement in his job at the FGUP as of 21 August 2008 and asking for his employment record to be updated accordingly. He further dropped his claims against the OAO. The Kronstadt District Court decided that the claim for unpaid wages would be dealt with in a separate set of proceedings.

(i) Proceedings for reinstatement of employment

48. On 20 November 2008 the Kronstadt District Court allowed his claim in part. The court found that, in accordance with section 115(4) of the Insolvency Act and Article 75 of the Labour Code (see paragraphs 68 and 77 below), the transfer of an employer's rights and obligations to a newly created joint-stock company was conditioned only by a change in ownership of the company's assets, which meant, by operation of law, a transfer of title to the assets. As the transfer in the present case had been declared invalid and without legal effect, a change in ownership of the assets had not taken place. Accordingly, the court declared the transfer of the employer's rights and obligations to the OAO unlawful, and the respective orders of the external manager and OAO director invalid. The court concluded that the applicant's employment with the FGUP had not been terminated lawfully and ordered his reinstatement as of 1 March 2007 and his employment record to be updated accordingly.

49. On 24 December 2008 the St Petersburg Regional Court upheld the lower court's findings on appeal. It noted in addition, in reply to the FGUP's appeal, that the applicant's reinstatement to work for the OAO in March 2007 was not *per se* a ground to discontinue his employment relationship with the FGUP, as this was not one of the grounds for termination of a contract of employment set out in the Labour Code.

(ii) Proceedings for unpaid wages for August to November 2008

50. On 28 November 2008 the Kronstadt District Court allowed the applicant's claims for unpaid wages for July to November 2008. As in the earlier set of proceedings (see paragraph 48 above), it found that, as the transfer of title to the FGUP's assets had not taken place as a result of the invalidity of the transaction, the OAO had not acquired the employer's rights and obligations under the applicant's contract of employment. Accordingly, his employment with the FGUP had not been discontinued, and the FGUP was liable to pay him wages. The court further held as follows:

"The court further rejects the [respondent FGUP's] argument about the [OAO's] responsibility to pay [the applicant] wages and allowances, as, [given] the unlawfulness of the transfer of duties and obligations from the FGUP to the OAO, there are no grounds for the latter to calculate and pay the above amounts to [the applicant]".

51. The court also noted that the justice of the peace of the 110th Court Circuit had not issued a court order in the applicant's favour against the FGUP³. The court ordered the FGUP to pay the applicant RUB 82,583.45 in respect of salary for "July and August 2008 and the period between

3. As in the text of the judgment. In fact, in the six other applicants' cases, the orders were issued against the OAO, see paragraph 28 above.

21 August and 28 November 2008” and dismissed the remainder of his claims.

52. On 21 January 2009 the St Petersburg Regional Court upheld the judgment on appeal for the same reasons as in the first-instance judgment. The court stressed, in particular, that under Article 77 §§ 1, 2 and 3 of the Labour Code, a change in ownership of assets was not grounds to discontinue an employment relationship. Domestic law attached importance to an employer’s link with an enterprise as an asset complex, irrespective of ownership. Therefore, in the absence of an employee’s intention, a change in ownership of assets was not a reason to discontinue an employment relationship at the employer’s initiative. The appellate court concluded that the transfer of assets from the FGUP to the OAO and, subsequently, back to the State enterprise, was not grounds for the applicant’s dismissal within the meaning of the Labour Code.

(b) Cases of the six other applicants

(i) Proceedings for reinstatement of employment

53. In November 2008, pursuant to the annulment of the decisions to create the OAO and transfer the FGUP’s assets, the applicants obtained separate judgments reinstating them in their jobs with the FGUP from 21 August 2008, the date of their dismissal from the OAO.

(ii) Proceedings for unpaid wages for August to November 2008

54. On the dates specified in Appendix I the Kronstadt District Court examined the claims of the six applicants for unpaid wages and in separate judgments allowed them in part for the same reasons as in the case of Mr Smirnov (see paragraph 50 above). The court awarded them their unpaid wages from 21 August 2008 to the dates of the relevant judgments, and dismissed the remainder of the claims. In particular, it refused to order the FGUP to pay severance pay and unpaid wages for June to August 2008, as those claims had already been allowed by the justice of the peace of the 110th Court Circuit in the proceedings against the OAO (see paragraph 28 above). The judgments were subsequently upheld on appeal and entered into force on the dates specified in Appendix I.

(c) Index-linking proceedings in all cases

55. On 7 April 2009 the Kronstadt District Court found that the FGUP had failed to comply with the judgment in favour of Mr Smirnov and awarded him a total of RUB 8,056 (EUR 183). That amount represented the index-linking of the award, compensation for delayed payment of the amounts awarded by the court and compensation in respect of non-pecuniary damage for the non-enforcement. On 13 May 2009 the St Petersburg Regional Court upheld the decision.

56. The Government submitted in their observations that at some point the unpaid wages had been index-linked and the applicants had received compensation for non-pecuniary damage. The parties did not submit any further details or documents in that regard.

2. The applicants' dismissal in March 2009 and subsequent proceedings for damages

57. In early March 2009 the applicants were dismissed from the FGUP. After three to four weeks they received severance pay and various other payments related to their previous employment. Six of the applicants brought separate sets of proceedings claiming unpaid wages, severance pay and index-linking on those amounts. On various dates their claims were allowed in so far as they concerned the delay in payment of their severance package. They were awarded default interest and compensation for non-pecuniary damage for that period, in the amounts specified in Appendix I. The court dismissed the remainder of their claims.

3. Enforcement of the above-mentioned judgments

58. In December 2009 the FGUP started paying the amounts awarded in both sets of proceedings, in several instalments. By 24 November 2010 they were paid in full. On 30 November 2010 the enforcement proceedings in respect of the judgments were discontinued because they had all been enforced.

4. Index-linking of the awards against the FGUP

(a) Case of Mr Smirnov

59. According to the applicant's observations, on 11 April 2011 the Kronstadt District Court ordered that the award in favour of Mr Smirnov for the period of non-enforcement be index-linked and obliged the FGUP to pay him RUB 12,825 under that head. The decision became final ten days later.

60. According to the Government's observations of 19 October 2011, the applicant received the writ of execution in respect of that judgment but did not submit it to the bailiffs.

61. It is unclear whether the decision was enforced.

(b) Cases of Ms Kudryashova and Mr Tomilin

62. The Government submitted copies of claims by Ms Kudryashova and Mr Tomilin for the index-linking of the initial awards against the FGUP, which appear to have been lodged with the domestic court in January 2011 and late December 2010 respectively. The parties did not provide copies of the subsequent court decisions or information on enforcement of the relevant court awards, if any.

5. Decision to discontinue insolvency proceedings in respect of the FGUP and subsequent developments

63. By a letter of 16 July 2009 the Commander-in-Chief of the Russian Navy advised the FGUP's employees' representatives that the Marine Plant was included in a list of organisations of strategic importance entitled to receive a subsidy from the federal budget between 2008 and 2010 in order to resolve the FGUP's financial difficulties. The Ministry of Defence was taking all possible measures to discontinue the insolvency proceedings in respect of the FGUP, including those aimed at payment of the enterprise's debts and restoring its solvability.

64. In 2010 the insolvency proceedings in respect of the FGUP were discontinued owing to a settlement between the FGUP and its creditors. The owner of the debtor's assets approved of the settlement. On 25 February 2010 the Commercial Court of St Petersburg and the Leningrad Region approved the friendly settlement.

65. It further appears that the Marine Plant was in operation until 2015, when it was restructured and transformed into a different legal entity (a newly created joint-stock company). On 20 April 2015 the restructuring of the company was recorded in the Register of Legal Entities, and the FGUP ceased to exist.

II. RELEVANT DOMESTIC LAW

A. Invalid transactions

66. Article 167 of the Civil Code (General Provisions on the Consequences of the Invalidity of a Transaction) provides as follows:

“1. An invalid transaction shall not entail legal consequences, with the exception of those connected with its invalidity, and shall be invalid from the moment of its conclusion.

2. If a transaction has been recognised as invalid, each of the parties shall be obliged to return to the other party all it has received as part of the transaction, and if return is impossible in kind (including where the transaction concerns the use of property, work performed or services rendered), its cost shall be reimbursed in money – unless other consequences of the invalidity of the transactions have been stipulated by law.

3. If it follows from the content of the disputed transaction that it may only be terminated for the future, the court, while recognising the transaction as invalid, shall terminate its operation for the future.”

B. Provisions on procedural succession applied by the domestic courts

67. Under Article 44 § 1 of the Code of Civil Procedure, in the event of withdrawal (*выбытие*) of one of the parties in a disputed legal relationship or that established by a court (*в спорном или установленном решением суда правоотношении*) (in the event of death, restructuring of the legal entity, assignment of the debt, cession and in other cases of a change of the person in the obligations), the court allows (*допускает*) the replacement of this party by its legal successor. Procedural succession is possible at any stage of the civil proceedings. All actions taken before the legal successor's entry into the proceedings are obligatory for him to the extent they would have been obligatory for the person whom the legal successor has replaced (Article 44 § 2).

C. Relevant provisions of the Labour Code

68. Article 75 of the Labour Code of the Russian Federation provides that a change in ownership of an organisation may not serve as grounds to discontinue employment contracts with other employees of the organisation. If an employee refuses to continue to work because of a change in ownership of an organisation, the employment contract is discontinued in compliance with the Code. A change in jurisdiction (subordination) of an organisation or restructuring (merger, accession, division, separation or transformation) of an organisation is not deemed grounds for rescission of the employment contracts concluded with the organisation's employees.

D. Relevant provisions of the Insolvency Act

1. External administration

69. "External administration" is a procedure applied in a bankruptcy case to the debtor for the purpose of restoring its solvency (section 2 of the Act). Section 93 of the Insolvency Act provides that external administration is instituted by a commercial court on the basis of a decision of a creditors' meeting, except in the cases specified by the Act. It is put in place for a period not exceeding eighteen months. This period can be extended in the manner specified by the Act for up to a further six months, unless otherwise provided for by the Act. The external administration term can be reduced at the request of the creditors' meeting or the external manager. The decision to put the external administration procedure in place takes effect immediately. It may be appealed against.

70. Section 94(1) of the Insolvency Act (“Consequences of the Institution of External Administration”) provides that once external administration is instituted:

- the powers of the head of the debtor are terminated, and the duty to manage the affairs of the debtor is vested in the external manager;
- the external manager is entitled to issue an order of dismissal of the head of the debtor or ask him or her to leave his or her office for another position in the manner and on the terms provided for by employment legislation;

- the powers of the managerial bodies of the debtor and owner of property of the debtor unitary enterprise are terminated, and the powers of the head of the debtor and other managerial bodies of the debtor are transferred to the external manager, except for the powers of the debtor’s managerial bodies and owner of the property of the debtor unitary enterprise specified in section 94(2). The managerial bodies of the debtor, interim receiver and administrative receiver must, within three days of the approval of the external manager, ensure that the debtor’s accounting and other documentation, seals and rubber stamps, material and other valuables are transferred to the external manager;

- a moratorium on meeting creditors’ claims relating to monetary obligations and mandatory payments may be imposed, except in the cases specified by the Act, and creditors’ claims for monetary obligations and compulsory payments, except for the current payments that may be presented to the debtor only in the observance of the procedure for presenting claims to a debtor provided for by the Act.

71. Section 94(2) of the Insolvency Act stipulates that the managerial bodies of the debtor, within the limits of the competences provided for by federal law, are entitled to make decisions:

- on designating the number and face value of shares;
- on increasing the joint-stock company’s authorised capital by means of issuing additional ordinary shares;

- on addressing a petition to a creditors’ meeting to include the possibility of an additional issue of shares in the external administration plan;

- on establishing the procedure for conducting a general meeting of shareholders;

- on filing a petition for the sale of the debtor’s enterprise;
- on replacing the debtor’s assets;
- on electing a representative of the debtor’s founders (stockholders);
- on concluding an agreement on the terms for the provision of funds for discharging the debtor’s obligations between a third party or third parties and the managerial bodies of the debtor authorised by the constituent documents to adopt decisions on concluding large transactions.

72. Section 94(3) of the Insolvency Act, introduced on 30 December 2008, deals specifically with the rights of the owner of the property of a debtor unitary enterprise. In particular, it stipulates that, within the limits of the competences provided for by federal law, the owner of the property of a debtor unitary enterprise is entitled to decide on replacing (substituting) the debtor's assets.

73. The external manager is approved by the commercial court at the same time as the institution of external administration, except in the cases specified by the Act (section 96(1)). Before the date of approval of an external manager the commercial court vests the duties and rights of an external manager stipulated by the Act in the person who executed the duties of the interim receiver, administrative receiver or winding-up receiver of the debtor, except for the drawing up of an external administration plan (section 96(2)). The commercial court issues a ruling on the approval of the external manager. The ruling takes effect immediately and is amenable to appeal (section 96(2) to (4)).

2. Substitution (replacement) of the debtor's assets

74. Section 115 of the Insolvency Act provides that substitution of a debtor's assets (*замещение активов должника*) is effected by means of forming one public joint-stock company or several public joint-stock companies on the basis of the debtor's property. If one public joint-stock company is formed, its authorised capital must incorporate the property (including property rights) included in the enterprise and intended for the pursuit of entrepreneurial activity.

75. Substitution of a debtor's assets by means of forming one public joint-stock company on the basis of the debtor's property may be included in the external administration plan based on a decision by the debtor's managerial body authorised by the constituent documents to adopt decisions on concluding the relevant transactions of the debtor (section 115(2)). The ability to substitute a debtor's assets may be included in the external administration plan, on the condition that all creditors whose obligations are secured by a pledge/mortgage of the debtor's property have voted in favour of the decision.

76. When the debtor's assets are substituted, the debtor is the sole founder of the joint-stock company or several public joint-stock companies. The participation of other founders in the formation of a public joint-stock company or several public joint-stock companies is not permitted (section 115(3)(1)). The amount of authorised capital of the newly formed public joint-stock companies is determined by a decision of the meeting of creditors or creditors' committee and set at the amount defined in the report on the market value of the property contributed as payment for the authorised capital of the newly formed public joint-stock companies (section 115(3)(2)). The valuation of the property contributed as payment

for the authorised capital of the newly formed public joint-stock companies must be carried out in accordance with the procedure provided for by the Act (*ibid.*).

77. In the event of substitution of a debtor's assets, all the employment contracts effective when the decision was made to substitute the debtor's assets remain in effect, with the employer's rights and duties being transferred to the newly formed public joint-stock company (companies) (section 115(4)).

78. The document confirming the availability of a licence to carry out specific types of activities is subject to the issuing of a document confirming the fact that the newly formed public joint-stock company (companies) holds (hold) the relevant licence in accordance with the procedure provided for by federal law (*ibid.*)

79. The shares of the public joint-stock company or public joint-stock companies formed on the basis of the debtor's property are included in the debtor's estate and may be sold at public auction (section 115(5)). The sale of shares of the public joint-stock company or the public joint-stock companies formed on the basis of the debtor's property must ensure an accumulation of funds for restoration of the debtor's solvency (*ibid.*)

80. By a Ruling of 15 December 2004 No. 29 the Presidium of the Supreme Commercial Court of Russia clarified that, as the authorised capital of a company created by substitution of assets is paid with the debtor's property, the debtor is the only shareholder of that company when the latter is established (§ 44 of the Ruling).

E. Provisions on joint-stock companies referred to by the Government

81. In accordance with Article 96 § 1 of the Civil Code, as in force at the material time, and section 2 of the Joint-Stock Companies Act (Law no. 208-FZ of 26 December 1995), as in force at the material time, a joint-stock company is a commercial organisation whose authorised capital is divided into a definite number of shares of stock certifying the rights and obligations of the members (shareholders) vis-à-vis the company. Shareholders are not liable for the obligations of the company and bear the risk of losses associated with its activity only to the extent of the value of the shares owned by them.

82. The authorised capital of a joint-stock company is comprised of the face value of the company's shares acquired by the shareholders. The company's authorised capital defines the minimum amount of the company's property guaranteeing the interests of its creditors (Article 99 of the Civil Code).

83. A company is liable to the extent of its assets. It is not liable for the obligations of its shareholders. If the insolvency (bankruptcy) of a company

is caused by the actions (omissions) of its shareholders or other persons vested with the right to issue instructions binding upon the company or otherwise having the power to determine its actions, then such shareholders or other persons may, if the company lacks sufficient assets, be held vicariously liable for its obligations. The insolvency (or bankruptcy) of a company is considered to be caused by the actions (or failure to act) of its shareholders or other persons vested with the right to issue instructions binding upon the company or otherwise having the power to determine its actions, only where they have exercised such right and/or power in the furtherance of the company's carrying out of its actions, knowing in advance that the consequences of carrying out those actions would be insolvency (bankruptcy) of the company (section 3(1) to (3) of the Joint-Stock Companies Act).

84. The State is not liable for the debts of the company, and the company is not liable for the obligations of the State and its bodies (section 3(4) of the Joint-Stock Companies Act).

85. The founders of the company are citizens or and (or) legal entities which have taken the decision to found it. Public and local authorities cannot act as the founders of the company, unless otherwise provided for by federal law (section 10(1) of the Joint-Stock Companies Act).

F. Legal status of unitary enterprises

86. 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. The property of the unitary enterprise is indivisible. Only State-run and municipal enterprises can be set up in the form of unitary enterprises (Article 113 § 1 of the Civil Code). 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). The director of a unitary enterprise is appointed by, and reports to, the property owner (Article 113 § 4 of the Civil Code, as in force at the material time).

87. Other domestic provisions relevant to cases on the legal status of State and municipal unitary enterprises with the right of economic control are summarised in *Liseytseva and Maslov* (cited above, §§ 54-127).

88. Section 2 of the Insolvency Act provides that a “representative of the owner of the assets of a debtor unitary enterprise” is a person empowered by the owner of the assets of the debtor unitary enterprise to represent its lawful interests when the procedures applied in a bankruptcy case are being implemented.

THE LAW

I. JOINDER OF THE APPLICATIONS

89. The Court considers that, in accordance with Rule 42 § 1 of the Rules of Court, the applications should be joined, given their similar factual and legal background.

II. ALLEGED VIOLATION OF ARTICLE 6 § 1 OF THE CONVENTION AND ARTICLE 1 OF PROTOCOL No. 1 ON ACCOUNT OF NON-ENFORCEMENT AGAINST THE UNITARY ENTERPRISE

90. The applicants complained about the non-enforcement of the judgments against the FGUP. They referred to Article 6 § 1 of the Convention and Article 1 of Protocol No. 1, which read as follows:

Article 6 § 1

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

Article 1 of Protocol No. 1

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

The preceding provisions shall not, however, in any way impair the right of a State to enforce such laws as it deems necessary to control the use of property in accordance with the general interest or to secure the payment of taxes or other contributions or penalties.”

91. The Government contested the complaint on the same grounds as those set out in *Liseytseva and Maslov* (cited above, §§ 137-41). In particular, they submitted that the applicants had failed to exhaust the domestic remedies available to them, such as 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. They argued that the debts of the State unitary enterprise – a separate legal entity under domestic law – could not be attributed to the State, for exactly the same reasons as those summarised in *Liseytseva and Maslov* (cited above, §§ 136-42). The company had not performed any public functions. Its activities had been commercial, performed at the FGUP’s own risk. The subsidiary liability of the State could not be engaged since the owner had not caused the company’s insolvency. It had not given any binding instructions or otherwise defined the company’s actions. The authorities had provided the requisite assistance to the applicants in their efforts to have the court orders

enforced. Furthermore, the State had not been responsible for the FGUP's debts as since 2005 it had been placed in "external administration"; the owner's powers had accordingly terminated in accordance with the Insolvency Act as in force at the material time (see paragraphs 70-71), and the owners' rights defined in Article 113 §§ 1, 2 and 4 of the Civil Code (see paragraph 86 above) had been discontinued. They argued that since the external manager was not a "public official", his actions could not be directly attributed to the State (see *Katsyuk v. Ukraine*, no. 58928/00, § 39, 5 April 2005). Furthermore, the awards in the applicants' favour against the FGUP had been fully recovered and the delay in enforcement of one year and ten months had been justified by the complexity of the insolvency procedure involving numerous creditors. Lastly, as regards Mr Tomilin and Ms Kudryashova, they argued that the applicants' rights had been restored at the domestic level as the awards in the applicants' favour had been index-linked and each applicant had received RUB 1,000 (EUR 22) in respect of non-pecuniary damage.

92. The applicants maintained their claims. They argued that the Marine Plant had been a State enterprise of strategic importance, both in terms of the tasks it performed and employment in the town, and that the authorities had been heavily involved in its management at the time of the events, by way of, *inter alia*, the provision of subsidies.

A. Admissibility

1. *Compatibility ratione personae – the State's responsibility for the FGUP's debts*

93. The debtor was incorporated as a State unitary enterprise under the domestic law in force at the material time. The Court has already dealt with the Government's argument concerning the company's legal status under domestic law in the above-mentioned case of *Liseytseva and Maslov*. Having examined the Government's respective objection in detail, the Court held that the existing legal framework in Russia did not provide unitary enterprises with the degree of institutional and operational independence that would absolve the State from any responsibility under the Convention for any such companies' debts (see *Liseytseva and Maslov*, cited above, §§ 193-204). The Court held that, in order to decide on the operational and institutional independence of a given unitary enterprise having the right of economic control, it had to assess the nature of the enterprise's functions and the degree of the State authorities' actual involvement in the management of the enterprise's assets. 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 by

domestic law were actually exercised by the authorities in a given case (*ibid.*, §§ 183-92 and 204-06).

94. The Court has no reason to doubt that the core activities of the enterprise – one of the leading shipyards in Russia which maintained and repaired military ships and their weaponry, as well as built ships for the Russian Navy (see, for a list of the FGUP's main tasks, paragraph 7 above) – constituted public duties, and that the FGUP had strategic importance for the Russian Navy (see, for instance, paragraph 63 above). It operated in a heavily regulated area of State defence and was clearly placed, by virtue of its functions and the aims and specific tasks it performed, under the strict control of the authorities, namely the Ministry of Defence (see *Liseytseva and Maslov*, cited above, §§ 208-10, and *Yershova v. Russia*, no. 1387/04, § 58, 8 April 2010). The assets allocated to the enterprise accordingly enjoyed special treatment under domestic law, as evidenced, *inter alia*, by the FGUP's rules (see paragraph 8 above, and compare *Liseytseva and Maslov*, cited above, § 209).

95. As regards the actual control exercised by the authorities, the Court notes the Government's submissions concerning the scope of the owner's powers in the context of the external administration put in place between 2005 and February 2010 in respect of the FGUP. However, in the Court's view, it cannot be said that the State's involvement in the external administration procedure in this particular case "resulted only from its role in establishing the legislative framework for [such] procedures" and "in overseeing observance of the rules" (contrast *Kotov v. Russia* [GC], no. 54522/00, § 107, 3 April 2012). On the contrary, in the Court's view, the State, as the owner of its assets placed under the FGUP's economic control, took decisions of paramount importance for the future of the unitary enterprise, as follows.

96. Firstly, the authorities decided on the FGUP's inclusion into the United Shipbuilding Corporation (see paragraph 19 above).

97. Secondly, the authorities approved of the substitution of assets involving a transfer of the debtor's assets to the newly created joint-stock company as a capital contribution, as a part of the external administration plan (see, for the contents of the relevant letter, paragraph 13 above). With respect to the external administration procedure, the Court cannot but agree with the Government that, in accordance with section 94(1) of the Insolvency Act, as of the date of the institution of external administration, the powers of the managerial bodies of the debtor, as well as those of the owner of property of the debtor incorporated as a unitary enterprise, had to be terminated, and the powers of the head of the debtor and other managerial bodies of the debtor were transferred to the administrator (see paragraph 70 above). However, as it follows from the relevant provisions of domestic law – and as specifically established by the domestic courts in the proceedings concerning the validity of the OAO's creation in the present

case – that rule was subject to the exceptions set out in section 94(2) of the Insolvency Act – notably, in so far as the approval of the substitution of assets was concerned (see paragraph 71 for the relevant domestic law and paragraph 23 above for the courts’ reasoning). Furthermore, the newly created company’s transactions remained subject to the authorities’ mandatory approval (see paragraph 23 above). This lack of approval was precisely the crux of the court action which the prosecutor brought in the interests of the Ministry of Defence and the Federal State Assets Management Agency, claiming to declare the substitution of assets invalid (see paragraph 20 above). Having applied section 94(2) of the Insolvency Act by analogy, the courts confirmed that the debtor had been entitled to decide on the substitution of the debtor’s assets (*ibid.*) – a crucial element of the case at hand. The courts concluded that in the absence of a relevant decision by the owner of the FGUP’s property, a substitution of assets could not have been included in the external administration plan (paragraph 23 above). As a result, the creation of the OAO was declared invalid, and at the time of the judgments in the applicants’ favour (late 2008 to early 2009, see Column 3 of Appendix I) the assets were being returned under the FGUP’s economic control.

98. Finally, in 2009 the FGUP was included in a list of organisations of strategic importance entitled to State subsidies in order to resolve its financial difficulties, and the authorities actively took measures to discontinue the insolvency proceedings in respect of it, including those aimed at payment of the enterprise’s debts and restoring its solvability (see paragraph 63 above). Therefore, the State can be assumed to have accepted a certain degree of responsibility for the debts of the FGUP (see, *mutatis mutandis*, *Khachatryan v. Armenia*, no. 31761/04, § 53, 1 December 2009).

99. In the Court’s view, these factors are sufficient for a finding that a strong degree of State control was actually exercised by the authorities over the debtor unitary enterprise at the time of the events, that is, during the non-enforcement period.

100. The Court concludes that the FGUP did not enjoy sufficient institutional and operational independence from the State at the time of the events and rejects the Government’s *ratione personae* objection. Accordingly, the State is to be held responsible under the Convention for the judgment debts in the applicants’ favour (see *Liseytseva and Maslov*, cited above, § 214).

2. Exhaustion

101. The Court has already examined the exhaustion issue in detail in *Liseytseva and Maslov* (cited above, §§ 156-82 and, in particular, § 165), and does not see a reason to depart from those conclusions in the present case. Accordingly, the Court rejects the Government’s plea as to non-exhaustion.

3. *Victim status of two applicants*

102. With respect to Mr Tomilin and Ms Kudryashova, the Government argued that the applicants' rights had been restored at the domestic level as the awards in their favour had been index-linked and each applicant had received RUB 1,000 (EUR 22) in respect of non-pecuniary damage. However, it is sufficient for the Court to note that no details about the final awards in the index-linking proceedings against the FGUP and their eventual enforcement were provided by the parties (see paragraph 62 above). In any event, the Court reiterates that this remedy alone would not provide sufficient redress as it can only compensate damage resulting from monetary depreciation (see, *mutatis mutandis*, *Burdov v. Russia* (no. 2), no. 33509/04, § 108, ECHR 2009). As regards the award in respect of non-pecuniary damage, and even assuming that the reference to the delayed payment of salary by the FGUP could be regarded as acknowledgment of a violation, the award of EUR 22 was manifestly unreasonable in comparison with the awards made by the Court in similar cases (see, for example, *Voronkov v. Russia*, no. 39678/03, §§ 68-69, 30 July 2015). Accordingly, the Court finds nothing in the case material to suggest that the authorities granted the applicants appropriate and sufficient redress (see *Cocchiarella v. Italy*, no. 64886/01, §§ 70-72, 10 November 2004 with further references), and rejects the respective objection.

4. *Existence of a significant disadvantage in the proceedings concerning compensation for delayed severance pay*

103. As regards the complaint about the delayed enforcement of the domestic awards given in the second set of court proceedings against the FGUP concerning damages for the delay in payment of severance packages in the case of four of the applicants (see Column no. 4 of Appendix I)⁴, the Court notes that the awards ranged from EUR 3 to EUR 29 and were enforced with a maximum delay of one year and four months. Considering the minor nature of the awards, the Court arrives at the conclusion that the applicants did not suffer a significant disadvantage as a result of the authorities' failure to enforce the awards in good time. The Court further observes that it has already dealt with the issue of the non-enforcement of judgments against unitary enterprises on several occasions (see *Liseytseva and Maslov*, cited above, and numerous follow-ups) and concludes that respect for human rights, as defined in the Convention and the Protocols thereto, does not require examination of the present complaint on its merits. Lastly, it observes that the applicants' case was duly considered by a domestic tribunal within the meaning of Article 35 § 3 (b), as evidenced by

4. Similar complaints by Ms Kudryashova and Mr Tomilin were declared inadmissible at the communication stage.

the judgments referred to in the relevant part of Appendix I (see *Vasilchenko v. Russia*, no. 34784/02, § 49, 23 September 2010).

104. In view of the foregoing, the Court finds that the applications in this part must be declared inadmissible under Article 35 §§ 3 (b) and 4 of the Convention.

5. Complaint concerning the award in favour of Mr Smirnov in the index-linking proceedings of 11 April 2011

105. In his observations the applicant mentioned, for the first time, that the judgment of 11 April 2011 awarding him the index-linking of the initial award against the FGUP remained unenforced.

106. This complaint falls outside the scope of his initial complaint of which the Government were given notice. Even assuming that it may be understood as a development of the initial grievance, the Court notes from the Government's submissions that the applicant received the writ of enforcement in respect of the award from the court but did not forward it to the bailiffs service (see paragraph 60 above). The Court has already found that if an applicant for any reason obtains the writ of enforcement from the trial court himself, it would appear logical to require that he submits it to the competent authority with a view to enforcement of the judgment (see, *mutatis mutandis*, *Gadzhikhanov and Saukov v. Russia*, nos. 10511/08 and 5866/09, § 26, 31 January 2012). In the absence of any explanation from the parties, the authorities cannot be held responsible for the applicant's unexplained failure to follow the domestic enforcement procedure and, notably, for his deliberate refusal to provide the writ of enforcement (see, *mutatis mutandis*, *Gadzhikhanov and Saukov*, cited above, §§ 27-31). Accordingly, the delay up to 19 October 2011, which in itself was not unreasonable, is not attributable to the authorities. The Court further notes that it is not in possession of any information as to either the enforcement status of that award or further developments, such as the applicant's having forwarded the writ to the competent authorities.

107. It follows that this part of the complaint is manifestly ill-founded and must be rejected under Article 35 §§ 1 and 3 (a) of the Convention.

6. Conclusion regarding other judicial awards against the FGUP

108. On the other hand, the Court notes that the applicants' complaint about the FGUP's failure to comply with the decisions given in the proceedings concerning unpaid wages (see Appendix I) is not manifestly ill-founded within the meaning of Article 35 § 3 (a) of the Convention. It further notes that it is not inadmissible on any other grounds. It must therefore be declared admissible.

B. Merits

109. The Court notes that the judgments given in the applicants' favour were enforced with a delay of one year and ten months.

110. The Court reiterates that a delay of less than one year in payment of a monetary judicial award was in principle compatible with the Convention, while any longer delay is *prima facie* unreasonable (see, among many others, *Gerasimov and Others v. Russia*, nos. 29920/05 and 10 others, § 169, 1 July 2014). While the complex insolvency proceedings involving several creditors may objectively justify some limited delays in enforcement, the overall delay is, in the Court's view, incompatible with the Convention requirements, especially given the nature of the awards – salary arrears accrued as a result of the transfer of the company's assets to the OAO and back to the FGUP. By failing for a considerable period of time 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 useful effect and also prevented the applicants from receiving the money to which they were entitled in good time, which amounted to a disproportionate interference with their peaceful enjoyment of possessions (see, among other authorities, *Khachatryan*, cited above, § 69; *Liseytseva and Maslov*, cited above, § 224, with references contained therein; and *Vladimirova v. Russia*, no. 21863/05, §§ 56-57, 10 April 2018).

111. 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 judgments against the FGUP in the applicants' favour in the present seven cases.

III. ALLEGED VIOLATION OF ARTICLE 6 § 1 OF THE CONVENTION AND ARTICLE 1 OF PROTOCOL No. 1 ON ACCOUNT OF NON-ENFORCEMENT AGAINST THE OPEN JOINT-STOCK COMPANY

112. The applicants complained about the non-enforcement of the court orders against the OAO in respect of salaries from June to July 2008 (see paragraph 28 and Appendix II), as subsequently index-linked (see paragraph 33 above). They relied on Article 6 § 1 of the Convention and Article 1 of Protocol No. 1 to the Convention, both cited above.

113. The Government argued that the proceedings against the open joint-stock company, which had resulted in various sums being awarded to the applicants, were irrelevant for the present case as they had not concerned the State unitary enterprise. In their initial observations in 2011 they submitted that the insolvency proceedings in relation to the open joint-stock company were ongoing and that the debts could still be recovered. They further argued that the applicants had not exhausted

domestic remedies, namely, court action under Article 1070 of the Civil Code, complaint against the bailiffs or the liquidator and a claim for index-linking. In their additional observations after the recommunication of the case they argued (with reference to the provisions of domestic law cited in paragraphs 81 to 85 above) that the State was not liable for the debts of the OAO. Lastly, they submitted that the applicants had failed to request that their claims be included in the register of the creditors' claims and given second priority.

114. The applicants maintained their claims. They stressed that the OAO had been declared non-existent *de jure* in terms of domestic law. While the State had taken effective measures to return the assets to the FGUP, the debt in respect of the salaries had remained in the "empty" OAO, without any prospect of recovery prior to its formal liquidation.

A. Admissibility

1. Complaints by six of the applicants

(a) Compatibility *ratione personae*- the State's responsibility for the OAO's debts

115. The Court notes at the outset that the insolvency proceedings in respect of the OAO were terminated on 29 March 2012 and that the claims which were not satisfied during the liquidation process were considered settled (see paragraph 44 above). Accordingly, it appears that, contrary to the Government's initial submissions, the debts could no longer be recovered from the OAO.

116. The Court further notes the Government's argument that the applicants failed to request to include their claims in the list of the creditors' claims. However, it transpires from both the applicants' inquiry lodged with the prosecutor's office and the prosecutor's respective reply that their claims were included in the second priority line to be repaid (see paragraphs 40 and 41 above). Accordingly, this argument is to be rejected.

117. The Court further 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 (see, among many other authorities, *Mykhaylenko and Others v. Ukraine*, nos. 35091/02 and 9 others, §§ 43-46, ECHR 2004-XII; *Cooperativa Agricola Slobozia-Hanesei v. Moldova*, no. 39745/02, §§ 17-19, 3 April 2007; *Yershova*, cited above, §§ 54-63; and *Kotov* [GC], cited above, §§ 92-107). The key criteria used in the above-mentioned cases 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 v. Bosnia and Herzegovina, Croatia, Serbia, Slovenia and the former Yugoslav Republic of Macedonia* [GC], no. 60642/08, § 114, ECHR 2014). Additional factors to be taken into consideration are whether 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 keep an arm's-length relationship with the company or otherwise acted in abuse of the corporate form (see *Ališić and Others*, cited above, § 115, and the references to *Anokhin v. Russia* (dec.), no. 25867/02, 31 May 2007, and *Khachatryan*, cited above, §§ 51-55, contained therein).

118. It is true that the debtor OAO was incorporated under domestic law as a joint-stock entity with separate legal personality, which had the ability to own assets distinct from the property of its shareholders and had delegated management. While such legal entities enjoyed under domestic law a certain degree of legal and economic independence from the State, the Court considers that the OAO's assets in the present case were to a decisive extent controlled and managed by the State at the material time (see *Khachatryan*, cited above, § 51).

119. The Court notes at the outset that the OAO was formed in a specific procedure of replacing (substitution of) the debtor's assets on the basis of the debtor's property. Even though the decision to replace the assets was taken within the external administration procedure, it is crucial that the State, as the owner of the property of the debtor unitary enterprise, was entitled to decide on replacing (substituting) the debtor's assets (see paragraphs 13 and 71, as well as the Court's analysis in paragraph 97 above).

120. In accordance with domestic law, the debtor FGUP was the sole founder of the joint-stock company and the entirety of the OAO's shares were to be initially transferred to the FGUP (see paragraph 80 above). Nothing in the parties' submissions indicates that the shares were subsequently sold on the open market or otherwise prior to the decision to annul the OAO's creation, and it appears accordingly that the substitution of assets procedure has not been completed. Furthermore, no information on the OAO's pursuit of independent entrepreneurial activity at the material time was submitted by the parties. Indeed, as early as in April 2008, that is, several months before the court orders in the applicants' favour, the domestic court in the final instance had declared invalid the decision to create the OAO pursuant to the State authorities' court action. The Court can only discern from the documents submitted by the parties that the OAO was required to return all assets to the FGUP and was proceeding with the

transfer at the material time, having “discontinued production activities” (see paragraph 35 above).

121. However, while the assets were returned under the FGUP’s economic control – and, accordingly, State ownership – without delay, the debt accumulated in respect of the unpaid salaries remained in the OAO created as a result of an invalid transaction, stripped of all property as a result of the order for the return of the assets and awaiting inevitable liquidation at the material time (see, *mutatis mutandis*, *Liseytseva and Maslov*, cited above, §§ 211 and 217).

122. Furthermore, the FGUP, as the OAO’s only founder – and, consequently, the State (see the findings in paragraph 100 above) – took the decision to liquidate the OAO (see paragraph 34 above), which no longer had any assets but continued to accumulate debts towards its creditors, including the six applicants (see, *mutatis mutandis*, *Liseytseva and Maslov*, cited above, § 211). The OAO proved unable to satisfy the applicants’ claims in the insolvency proceedings, for lack of assets.

123. Despite the above, the FGUP had never accepted responsibility for the OAO’s debts towards its ex-employees. The domestic courts rejected the applicants’ request for the FGUP to substitute the debtor, finding that the transfer of assets had not automatically resulted in the obligations being transferred and had not given rise to a singular succession (see paragraph 32 above). At the same time, the Court cannot but note that the argument about the lack of any link between the FGUP and the seven applicants during their “employment” with the OAO was considered and rejected by the domestic courts in a parallel set of proceedings against the FGUP concerning reinstatement of their employment and unpaid wages (see paragraphs 48, 49, 50, 52 and 54 above). The Court finds it significant that in each set of those proceedings, the courts had no reason to doubt that, as the transfer of title to the FGUP’s assets had taken place as a result of the invalid transaction, the OAO had not acquired the rights and obligations under the applicants’ contracts of employment during the impugned period (*ibid.*). Accordingly, in the courts’ view, all applicants’ employment with the FGUP had not been discontinued for the period of their formal registration as working for the OAO in terms of the domestic labour law (*ibid.*).

124. In view of the above factors taken cumulatively, the Court considers that at least by the dates of the court orders in the applicants’ favour and during the ensuing period until the company’s liquidation the OAO’s assets and activities were, as a matter of fact, controlled and managed by the State to a decisive extent (see, *mutatis mutandis*, *Khachatryan*, cited above, § 51, and contrast *Anokhin*, cited above). Therefore, the OAO did not enjoy sufficient institutional and operational independence from the State to absolve the latter from its responsibility under the Convention for the OAO’s debts in respect of the salary arrears in the applicants’ favour (see *Khachatryan*, cited above, § 54, with further

references). Consequently, in the specific circumstances of this case, the State is to be held responsible for the OAO's debts in respect of the salary arrears as established by the court orders and decisions set out in Appendix II.

125. The Court therefore concludes that the applicants' complaints are compatible *ratione personae* with the provisions of the Convention and dismisses the Government's objection in this regard.

(b) Non-exhaustion

126. 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 a 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. It was not contested by the Government that at no point had the fault of the authorities been established in the cases at hand. In sum, it has not been demonstrated that such action would have had any prospects of success in the present cases (see *Liseytseva and Maslov*, cited above, § 165).

127. As regards a complaint to the bailiffs service and a court action concerning the bailiffs' inaction, the Court notes that the judicial awards in the applicants' favour were made when liquidation in respect of the debtor enterprise was underway. In that situation, the bailiffs' duty was confined to forwarding the writs of enforcement to the liquidator in due time (see, *mutatis mutandis*, *Liseytseva and Maslov*, cited above, § 161). That was precisely the conclusion of the first-instance court in the case of Mr Tomilin (see paragraph 42 above). Otherwise, 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 otherwise failed to carry out their duties properly. The crux of the applicants' grievance is rather the debtor's inability to satisfy their respective claims. 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, payment of the judgment debt (*ibid.*).

128. Similarly, in so far as a complaint against the liquidator is concerned, at no point did the applicants refer to specific actions or omissions on the part of the liquidator which could have delayed or prevented enforcement. Furthermore, the Government have not provided any information on the due procedure and, indeed, its availability to the

applicants (see, *mutatis mutandis*, *Liseytseva and Maslov*, cited above, § 163). Nor have they demonstrated that its eventual use would have brought the applicants closer to their goal, that is, recovery of the debts established by the courts from the OAO, where the debtor clearly lacked assets.

129. Lastly, as regards the index-linking, five of six of the applicants made use of this opportunity and obtained domestic decisions ordering that the awards be increased (see Column 5 of Appendix II). While the Government submitted that two of the applicants, Mr Kuzhelev and Ms Pavlova, had failed to collect the original orders from the court (see paragraph 33 above), no such argument was advanced in respect of the three remaining applicants. However, the decisions in the adjustment proceedings in favour of those three remaining applicants have, in turn, remained unenforced. Accordingly, the proceedings for index-linking were not an effective remedy in the circumstances of the present case (see, *mutatis mutandis*, *Burdov (no. 2)*, cited above, § 108), as they were clearly unable to provide the applicants with adequate and sufficient redress in respect of the alleged violations.

130. The Government's non-exhaustion argument should therefore be rejected.

(c) Complaints by Mr Kuzhelev and Ms Pavlova

131. The Court further notes from the Government's submissions not disputed by the applicants that Mr Kuzhelev and Ms Pavlova failed to collect the original orders in respect of the awards made in the index-linking proceedings from the domestic court (see paragraph 33 above and Column 5 of Appendix II). Having regard to its case-law concerning the minimum requirement of creditors' cooperation (see, *mutatis mutandis*, *Gadzhikhanov and Saukov*, cited above, § 26-31) the Court considers that the authorities cannot be held responsible for the applicants' unexplained refusal to collect the writs of enforcement. It follows that this part of the complaint is manifestly ill-founded and must be rejected under Article 35 §§ 1 and 3 (a) of the Convention.

(d) Conclusion

132. The Court further notes that the complaints (a) by Mr Kuzhelev, Ms Pavlova, Ms Lebedeva, Ms Petrova, Ms Kudryashova and Mr Tomilin about the non-enforcement of the court orders and decisions in respect of salaries for June to July 2008 against the OAO; and (b) by Ms Petrova, Ms Lebedeva and Mr Tomilin about the index-linking of those awards (all listed in the relevant column of Appendix II) are not manifestly ill-founded within the meaning of Article 35 § 3 (a) of the Convention. It further notes that they are not inadmissible on any other grounds. They must therefore be declared admissible.

2. Complaint by Mr Smirnov

133. The Court notes that Mr Smirnov complained about the non-enforcement of the judicial decision of 23 September 2008 ordering the OAO to pay him EUR 11 (see Column no. 6 of Appendix II). Considering the minor nature of the award, the Court arrives at the conclusion that the applicant did not suffer a significant disadvantage as a result of the failure to enforce the award in good time. The Court has already dealt with an issue similar to that at stake in the present case on several occasions (see *Anokhin and Khachatryan*, both cited above) and concludes that respect for human rights, as defined in the Convention and the Protocols thereto, does not require examination of the present complaint on its merits. Lastly, it observes that the applicant's case was duly considered by a domestic tribunal within the meaning of Article 35 § 3 (b).

134. In view of the foregoing, the Court finds that the application in this part must be declared inadmissible under Article 35 §§ 3 (b) and 4 of the Convention.

B. Merits

135. The awards made by the justice of the peace in the applicants' favour have not been enforced to date. Given the finding of State liability for the OAO's debts owed to the applicants in the present case, the period of non-enforcement should include the period of debt recovery in the course of the liquidation proceedings (see *Mykhaylenko and Others*, cited above, § 53). It is sufficient for the Court to note that in the instant cases the judgments issued in late 2008 in favour of six of the applicants had remained unenforced for more than three years by the date of the debtor company's liquidation in 2012.

136. Such delays are *prima facie* incompatible with the Convention (see, among many other authorities, *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 authorities did not consider themselves bound by the obligation to honour the judgment debts towards the employees related to their salaries after the FGUP had decided to liquidate the debtor company (see, *mutatis mutandis*, *Yershova*, cited above, § 72).

137. By failing for years to take the necessary measures to comply with the final judgment given in favour of the applicants, the authorities impaired the essence of their "right to a court" and for a considerable period prevented the applicants from receiving the money which they were entitled to in full, which amounted to a disproportionate interference with the

peaceful enjoyment of their possessions (see *Khachatryan*, cited above, § 69).

138. Accordingly, the Court finds, in respect of Mr Kuzhelev, Ms Pavlova, Ms Kudryashova, Ms Petrova, Ms Lebedeva and Mr Tomilin, that there has been a violation of Article 6 § 1 of the Convention and Article 1 of Protocol No. 1 on account of the non-enforcement of the court orders and decisions in the applicant's favour in respect of salaries for June to July 2008 against the OAO, as listed in Column 3 of Appendix II. It further finds, in respect of Ms Petrova, Ms Lebedeva and Mr Tomilin, that there has been a violation of Article 6 § 1 of the Convention and Article 1 of Protocol No. 1 on account of the non-enforcement of the awards in the index-linking proceedings against the OAO, listed in Column 5 of Appendix II.

IV. ALLEGED VIOLATION OF ARTICLE 13 OF THE CONVENTION

139. The applicants further complained under Article 13 of the Convention that they had no effective remedies at their disposal in respect of the non-enforcement complaints against both the FGUP and the OAO.

140. Having regard to the findings in paragraphs 101 and 126–130 above, the Court considers that it is not necessary to examine separately the admissibility and merits of this complaint.

V. OTHER ALLEGED VIOLATIONS OF THE CONVENTION

141. Lastly, Mr Smirnov raised other complaints under Articles 6 and 14 of the Convention.

142. The Court considers that, in the light of all the material in its possession and in so far as the matter complained of is within its competence, the complaints do not disclose any appearance of a violation of the rights and freedoms enshrined in the Convention or the Protocols thereto.

143. It follows that this part of the application must be rejected in accordance with Article 35 §§ 3 (a) and 4 of the Convention.

VI. APPLICATION OF ARTICLE 41 OF THE CONVENTION

144. 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

1. *Pecuniary damage*

145. The applicants claimed the amounts indicated in the relevant column of Appendix III in respect of pecuniary damage. Those amounts represented the unpaid judgment debts, compensation for inflationary losses arising from delays in payment of the judicial awards, compensation for forced absence (unemployment) between 21 August 2008 and various dates in late 2008, and other payments allegedly due to them for different periods in 2009, as specified in Appendix III.

146. The Government considered the claims unreasonable and unsubstantiated, as the State was not responsible for the debts of either the FGUP or the OAO.

(a) **Mr Smirnov’s claim for unpaid salary for July and August 2008**

147. As regards Mr Smirnov’s claim in respect of 15,129.12 Russian roubles (RUB) and RUB 45,955.48 for unpaid salary for July and August 2008, the Court notes from the documents submitted that those arrears were already included in the judgment of 28 November 2008 delivered by the Kronstadt District Court and subsequently paid in full by the FGUP. The Court accordingly rejects Mr Smirnov’s claim under this head.

(b) **The six other applicants’ claims for unpaid judgment debts and index-linking**

148. As regards the other applicants, the Court considers it reasonable to award the applicants the amounts of the unpaid judicial awards against the OAO in respect of salaries from June to July 2008 against the OAO (see Column 3 of Appendix II), as converted into euros at the rate applicable on the date of the respective court orders in respect of which a violation of the Convention has been found (see paragraphs 135-138 above and Appendix II).

149. The Court further points out its consistent approach that the adequacy of compensation would be diminished if it were to be paid without reference to various circumstances liable to reduce its value (see, *mutatis mutandis*, *Gizzatova v. Russia*, no. 5124/03, § 28, 13 January 2005). The Court accordingly accepts the applicants’ claims relating to the loss of

value of the domestic awards since the delivery of the judgments in their favour and finds it appropriate to award additional sums in this respect, where they were requested. The Court further notes that the Government did not challenge the method of calculation of the inflationary losses chosen by the applicants. However, the Court notes that the applicants' respective calculations of the inflationary losses "up to 31 July 2017" (the date of submission of their claims for just satisfaction) lack detail and are not substantiated with documents. It accordingly accepts the claim in so far as it was confirmed by the calculation of the domestic courts in the respective proceedings (see Column 5 of Appendix II, "*Claim to have the initial award index-linked*"), and rejects it in the remaining part.

150. The Court accordingly awards the six applicants the amounts specified in the relevant column of Appendix III, plus any tax that may be chargeable, in respect of pecuniary damage.

(c) Remainder of the claims by all applicants

151. As regards the remainder of the claims, the Court agrees with the Government that there is no causal link between the violation found and the pecuniary damage alleged; it therefore rejects the remainder of the applicant's claims under this head.

2. Non-pecuniary damage

152. Mr Smirnov claimed RUB 287,688 (approximately 7,276 euros (EUR)) in respect of non-pecuniary damage. The other applicants submitted in their initial claims for just satisfaction that they had suffered non-pecuniary damage and maintained their claims in the amounts indicated in their initial application forms, that is, EUR 50,000 to each applicant. After the Government were given further notice of their complaint concerning the non-enforcement by the OAO, Mr Kuzhelev, Ms Pavlova, Ms Petrova and Ms Lebedeva maintained in their additional claims for just satisfaction that they had suffered non-pecuniary damage.

153. The Government contested the claims as unfounded and noted, in respect of all applicants except Mr Smirnov, that the applicants had failed to specify the amounts under that head in their claims for just satisfaction. As regards the amounts indicated by the applicants in the initial application forms, the Government considered them ill-founded, as the applicants' Convention rights had not been violated, and, in any event, excessive.

154. The Court notes that the applicants clearly maintain the claims in the amounts indicated in the observations and application forms. The Court awards each applicant EUR 2,000 in respect of non-pecuniary damage, plus any tax that may be chargeable, and rejects the remainder of their claims under this head.

B. Costs and expenses

155. Mr Kuzhelev claimed RUB 812.35 for postal and other expenses incurred in the domestic proceedings. Mr Smirnov claimed RUB 10,000 for postal and travel expenses. The Government did not dispute that amount. He did not submit any documents confirming his expenses in support of his claims. The other applicants did not claim for costs and expenses.

156. The Government accepted that the postal expenses in the amount of RUB 368 could be reimbursed to Mr Kuzhelev and disputed the remainder of the amount claimed as unsubstantiated. They did not comment on Mr Smirnov's claims.

157. 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.

158. Regard being had to the documents in its possession and the above criteria, the Court awards Mr Kuzhelev EUR 21, plus any tax that may be chargeable to the applicant. The Court rejects the remainder of his claims under this head.

159. The Court further rejects Mr Smirnov's claims under this head, as it was not demonstrated that they had been actually and necessarily incurred.

160. As regards the other applicants, the Court considers that, in the absence of a relevant claim, there is no call to make an award in respect of costs and expenses to the five other applicants.

C. Default interest

161. 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. *Declares* admissible, in respect of all applicants, a complaint under Article 6 § 1 of the Convention and Article 1 of Protocol No. 1 about the delayed enforcement of the judgments listed in Column 3 of Appendix I ("Proceedings concerning unpaid wages in 2008") against the FGUP;
3. *Declares* admissible, in respect of Mr Kuzhelev, Ms Pavlova, Ms Kudryashova, Ms Petrova, Ms Lebedeva and Mr Tomilin, the

complaints under Article 6 § 1 of the Convention and Article 1 of Protocol No. 1 on account of the non-enforcement of the court orders and decisions in the applicant's favour in respect of salaries for June to July 2008 against the OAO and, in respect of Ms Petrova, Ms Lebedeva and Mr Tomilin, the index-linking of those awards listed in the relevant column of Appendix II;

4. *Holds*, in respect of all applications, that there has been a violation of Article 6 § 1 of the Convention and Article 1 of Protocol No. 1 to the Convention on account of the delayed enforcement of the judgments listed in Appendix I ("Proceedings concerning unpaid wages in 2008") against the FGUP;
5. *Holds*, in respect of Mr Kuzhelev, Ms Lebedeva, Ms Petrova, Ms Pavlova, Ms Kudryashova and Mr Tomilin, that there has been a violation of Article 6 § 1 of the Convention and Article 1 of Protocol No. 1 to the Convention on account of the non-enforcement of the court orders in the applicant's favour in respect of salaries for June to July 2008 against the OAO listed in Column 3 of Appendix II;
6. *Holds*, in respect of Ms Petrova, Ms Lebedeva and Mr Tomilin, that there has been a violation of Article 6 § 1 of the Convention and Article 1 of Protocol No. 1 to the Convention on account of the non-enforcement of the awards against the OAO in the index-linking proceedings listed in Column 5 of Appendix II;
7. *Holds*, in respect of all applications, that there is no need to examine the admissibility and merits of the complaint under Article 13 of the Convention;
8. *Declares* the remainder of the applications inadmissible;
9. *Holds*
 - (a) that the respondent State is to pay the applicants, within three months, the following amounts, to be converted into the currency of the respondent State at the rate applicable at the date of settlement:
 - (i) the amounts in euros specified in Appendix III, plus any tax that may be chargeable, in respect of pecuniary damage;
 - (ii) EUR 2,000 (two thousand euros) to each applicant, plus any tax that may be chargeable, in respect of non-pecuniary damage;
 - (iii) EUR 21 (twenty-one euros) to Mr Kuzhelev, 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;

10. *Dismisses* the remainder of the applicants' claim for just satisfaction.

Done in English, and notified in writing on 15 October 2019, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Stephen Phillips
Registrar

Paul Lemmens
President

APPENDIX I

Proceedings against the FGUP

No.	Column no. 1 Application No. Lodged on	Column no. 2 Applicant Date of birth Place of residence	Column no. 3 Proceedings concerning the unpaid wages in 2008		Column no. 4 Proceedings for damages for delay in payment of severance package	
			Domestic court Nature of the award Date of judgment, Date of the judgment's entry into force	Domestic award	Domestic court Date of judgment, Date of the judgment's entry into force	Domestic award
1.	64098/09 16/11/2009	Viktor Ivanovich KUZHELEV 01/09/1946 St Petersburg	Kronstadt District Court of St Petersburg Unpaid wages between 21 August 2008 and the date of the domestic decision 28/11/2008 21/01/2009	RUB 30,582 (EUR 864)	Kronstadt District Court, as amended on appeal by the St Petersburg City Court 22/06/2009 22/07/2009	RUB 1,194 (EUR 27)
2.	64891/09 27/11/2009	Yelena Feodosyevna PAVLOVA 29/03/1953 St Petersburg	Kronstadt District Court Unpaid wages since August 2008 01/12/2008 21/01/2009	RUB 25,504 (EUR 720)	Kronstadt District Court, as amended on appeal by the St Petersburg City Court 19/06/2009 22/07/2009	RUB 1,280 (EUR 29)
3.	65418/09 23/11/2009	Valeriy Mikhaylovich SMIRNOV 20/03/1940 St Petersburg	Kronstadt District Court Unpaid wages for July and August 2008 and the period between 21 August 2008 and the date of the domestic decision 28/11/2008 21/01/2009 Kronstadt District Court Index-linking of the award of 28/11/2008, compensation for delayed payment, non-pecuniary damage 07/04/2009 13/05/2009	RUB 82,583 (EUR 1,181) RUB 8,056 (EUR 183)	n/a	

No.	Column no. 1 Application No.	Column no. 2 Applicant Date of birth	Column no. 3 Proceedings concerning the unpaid wages in 2008		Column no. 4 Proceedings for damages for delay in payment of severance package	
4.	66035/09 30/11/2009	Galina Yevgenyevna KUDRYASHOVA 17/09/1954 St Petersburg	Unpaid salary between 21/08/ 2008 and 05/12/2008 Kronstadt District Court of St Petersburg 05/12/2008 21/01/2009	RUB 26,912 (EUR 634)	Kronstadt District Court 04/08/2009 02/09/2009	RUB 1,000 (EUR 22)
5.	67406/09 18/11/2009	Vera Alekseyevna PETROVA 20/01/1947 St Petersburg	Kronstadt District Court Unpaid wages since August 2008 28/11/2008 21/01/2009	RUB 25,196 (EUR 712)	Kronstadt District Court 23/06/2009 22/07/2009	RUB 122 (EUR 3)
6.	67697/09 25/11/2009	Natalya Leonidovna LEBEDEVA 24/10/1957 St Petersburg	Kronstadt District Court Unpaid wages since August 2008 02/12/2008 21/01/2009	RUB 30.924 (EUR 873)	Kronstadt District Court 03/08/2009 02/09/2009	RUB 1,000 (EUR 22)
7.	1504/10 08/12/2009	Valeriy Mikhaylovich TOMILIN 08/01/1946 St Petersburg	Kronstadt District Court of St Petersburg 05/12/2008 21/01/2009	RUB 41,981 (EUR 971)	Kronstadt District Court 03/08/2009 02/09/2009	RUB 1,000 (EUR 22)

APPENDIX II

Proceedings against the OAO

No.	Column no.1 Application	Column no.2 Applicant	Column no.3 Court orders in the applicants' favour against the OAO in respect of salaries for June to July 2008		Column no.4 Application for the FGUP to substitute the debtor (the OAO)	Column no. 5 Claim to have the initial award index-linked: Date Initial award increased by	Column no.6 Compensation for delayed payment of salary in February-April 2008	
			Date of the court order	Domestic award (RUB) Equivalent in EUR			Date	Domestic award (RUB, EUR)
1.	64098/09	Viktor Ivanovich KUZHELEV	09/10/2008	RUB 34,916 (EUR 981)	25/12/08 granted (first instance) 29/05/09 quashed on appeal, request disallowed	17/06/2010 RUB 6,213 (EUR 162)	n/a	n/a
2.	64891/09	Yelena Feodosyevna PAVLOVA	24/10/2008	RUB 30,856 (EUR 892)	11/01/09 granted (first instance) 29/05/09 quashed on appeal, request disallowed	22/06/2010 RUB 5,981 (EUR 156)	n/a	n/a
3.	65418/09	Valeriy Mikhaylovich SMIRNOV	n/a	n/a	n/a	n/a	23/09/2008 03/10/2008	RUB 445 (EUR 11)
4.	66035/09	Galina Yevgenyevna KUDRYASHOVA	23/10/2008	RUB 21,784 (EUR 634)	25/12/2008 granted (first instance) 11/06/2009 quashed on appeal, request disallowed	n/a	n/a	n/a
5.	67406/09	Vera Alekseyevna PETROVA	30/10/2008	RUB 35,197 (EUR 1,020)	29/12/08 granted (first instance) 18/05/09 quashed on appeal, request disallowed	18/06/2010 RUB 6,932 (EUR 181)	n/a	n/a
6.	67697/09	Natalya Leonidovna LEBEDEVA	25/11/2008	RUB 35,874 (EUR 1,028)	11/01/09 granted (first instance) 26/05/09 quashed on appeal, request disallowed	06/08/2010 RUB 7,045 (EUR 179)	n/a	n/a
7.	1504/10	Valeriy Mikhaylovich TOMILIN	09/10/2008	RUB 40,026 (EUR 1,124)	25/12/2008 granted (first instance) 09/06/2009 quashed on appeal, request disallowed	17/06/2010 RUB 6,947 (EUR 182)	n/a	n/a

APPENDIX III

The applicants' claims in respect of pecuniary damage and the Court's award under this head

No.	<u>Column no.1</u> Application	<u>Column no.2</u> Applicant	<u>Column no.3</u> The applicant's claims in respect of pecuniary damage (RUB)/(EUR)	<u>Column no.4</u> The Court's award in respect of pecuniary damage, plus any tax that may be chargeable (EUR)
1.	64098/09	Viktor Ivanovich KUZHELEV	- RUB 34,916(EUR 981¹) unpaid debt under the court order of 09/10/2008; - RUB 6,213 (EUR 162²) index-linking of the above debt as ordered by the court; "index-linking up to 31/07/2017"; - RUB 11,753 (EUR 260³) compensation for forced absence.	1,143
2.	64891/09	Yelena Feodosyevna PAVLOVA	- RUB 30,856(EUR 892) unpaid debt under the court order of 24/10/2008; - RUB 5,981 (EUR 156) index-linking of the above debt as ordered by the court; "index-linking up to 31/07/2017"; - Unspecified amount, fair compensation for forced absence.	1,048
3.	65418/09	Valeriy Mikhaylovich SMIRNOV	- RUB 15,128 of salary arrears in respect of July 2008, paid in late 2010; - RUB 41,955 of salary arrears in respect of August 2008, paid in late 2010; - RUB 51,000 in compensation for his registration with a local employment center; - RUB 112,983 of compensation for forced absence; - RUB 12,825 (EUR 206) in respect of index-linking as ordered by the decision of 11/04/2011.	0

1. In this and in subsequent cases, the amount claimed in respect of the unpaid debt under the court orders was converted into euros at the rate applicable on the date of the orders.

2. In this and in subsequent cases, the amount claimed in respect of the index-linking awarded by the domestic courts was converted into euros at the rate applicable on the date of the relevant court decisions.

3. In this and subsequent cases, the amounts claimed and not established by the domestic courts were converted into euros on the date of the submission of the claims.

No.	<u>Column no.1</u> Application	<u>Column no.2</u> Applicant	<u>Column no.3</u> The applicant's claims in respect of pecuniary damage (RUB)/(EUR)	<u>Column no.4</u> The Court's award in respect of pecuniary damage, plus any tax that may be chargeable (EUR)
4.	66035/09	Galina Yevgenyevna KUDRYASHOVA	• RUB 25,993.65(EUR 634) unpaid debt under the court order of 23/10/2008; • RUB 5,440 (EUR 79⁴) index-linking up to 31/07/2017, as calculated by the applicant; • RUB 12,390 (EUR 181) compensation for forced absence; • RUB 14,479 (EUR 211) of payments for January-April 2009.	634
5.	67406/09	Vera Alekseyevna PETROVA	• RUB 35,197(EUR 1,020) unpaid debt under the court order of 30/10/2008; • RUB 6,932 (EUR 181) index-linking of the above debt as ordered by the court; "index-linking up to 31/07/2017"; • RUB 51,845 (EUR 1,502) compensation for forced absence.	1,201
6.	67697/09	Natalya Leonidovna LEBEDEVA	• RUB 35,874(EUR 1,028) unpaid debt under the court order of 25/11/2008; • RUB 7,045 (EUR 178) index-linking of the debt as ordered by the court; "index-linking up to 31/07/2017"; • RUB 12,390 (EUR 177) compensation for forced unemployment; • RUB 14,474 (EUR 206) of payments for January-April 2009.	1,207
7.	1504/10	Valeriy Mikhaylovich TOMILIN	• RUB 40.026 (EUR 1,124) unpaid debt under the court order of 09/10/2008; • RUB 6,947 (EUR 182) index-linking of the debt as ordered by the court; • RUB 9,832 (EUR 144⁵) further index-linking up to 31/07/2017, as calculated by the applicant; • RUB 20,179 (EUR 295) compensation for forced absence; • RUB 14,473 (EUR 211) payments for January-April 2009.	1,206

4. This claim and subsequent claims by Ms Kudryashova were converted into euros on the date of the submission of the claims.

5. This and subsequent claims by Mr Tomilin were converted into euros on the date of the submission of the claims.