



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

FIRST SECTION

CASE OF YERSHOVA v. RUSSIA

(Application no. 1387/04)

JUDGMENT

STRASBOURG

8 April 2010

FINAL

04/10/2010

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

In the case of Yershova v. Russia,

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

Christos Rozakis, *President*,

Anatoly Kovler,

Elisabeth Steiner,

Dean Spielmann,

Sverre Erik Jebens,

Giorgio Malinverni,

George Nicolaou, *judges*,

and Søren Nielsen, *Section Registrar*,

Having deliberated in private on 18 March 2010,

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

PROCEDURE

1. The case originated in an application (no. 1387/04) against the Russian Federation lodged with the Court under Article 34 of the Convention for the Protection of Human Rights and Fundamental Freedoms (“the Convention”) by a Russian national, Mrs Mariya Grigoryevna Yershova (“the applicant”), on 8 December 2003.

2. The Russian Government (“the Government”) were represented by Ms V. Milinchuk, former Representative of the Russian Federation at the European Court of Human Rights.

3. On 12 July 2007 the President of the First Section decided to give notice of the application to the Government. It was also decided to examine the merits of the application at the same time as its admissibility (Article 29 § 3).

THE FACTS

I. THE CIRCUMSTANCES OF THE CASE

4. The applicant was born in 1954 and lives in Yakutsk.

5. She was an employee of the municipal company, Yakutskgorteploset (the Yakutsk Town Heating Supply Municipal Company, “the company”).

A. Legal status of the Yakutskgorteploset municipal company

6. The company was founded by a decision of the Municipal Property Management Committee of Yakutsk Town Council of 30 June 1992. Sections 3 and 4 of the company's statute stipulated that the company's main objective was to provide uninterrupted heating supply to all the people of Yakutsk, with maintenance work and transportation services, as well as commercial activity. The town of Yakutsk retained ownership of the company's property, while the company exercised the right of economic control in respect of it. Any change to the company's statutory capital was a prerogative of the founder committee. The company could not sell or in any other way alienate or dispose of the property under its economic control without the consent of the founder. The founder received 10% of the company's net income. In accordance with section 7 of the statute, the higher management body of the company was its founder. Only the founder committee could liquidate or reorganise the company, appoint a liquidation commission or approve a liquidation balance sheet in respect of the company.

7. The company was under an obligation to use its assets in accordance with the statutory objectives. Section 5 of the statute stipulated that the company could independently undertake a wide range of economic activities, make contracts and plan its commercial activity. It could also decide on the salary scales for the company's employees and determine the amount of funds to be allocated for salaries.

B. Judgments in the applicant's favour and the company's liquidation

1. First judgment in the applicant's favour

8. In August 2000 the applicant was dismissed from the company.

9. On 7 December 2000 the Yakutsk Town Court of the Sakha (Yakutiya) Republic reinstated the applicant and ordered the company to pay her 16,632.32 Russian roubles (RUB) in arrears. The judgment was not appealed against and became enforceable on 17 December 2000. The applicant was immediately reinstated at the company.

10. According to the Government, the company paid the applicant RUB 16,632.32 between October 2000 [*sic*] and February 2001, thus voluntarily completing the enforcement of the award. They have not submitted any documents in this respect.

2. Liquidation order in respect of the company

11. At some point the Municipal Property Management Committee of Yakutsk Town Council withdrew a major part of its assets from the company and transferred it to a newly-created municipal unitary enterprise called the Yakutsk Municipal Unitary Enterprise, MUP Teploenergiya «МУП Теплоэнергия») (“MUP Teploenergiya”). It appears that the newly-created enterprise had the same designated goal, that is, the supply of heating, assumed the same functions and was registered at the same address in Yakutsk as the company. The exact date of the transfer is unclear.

12. On 16 January 2001 the head of Yakutsk Town Council ordered the liquidation of the company, because it had become unprofitable, and appointed a liquidation commission.

13. According to a letter from the head of the Supreme Commercial Court of the Russian Federation of 11 October 2007, the applicant had not forwarded the writs of execution in respect of the judgment of 7 December 2000 to the company’s insolvency manager.

3. Second judgment in the applicant’s favour

14. On 14 June 2001 the applicant was again dismissed. She brought a court action challenging the dismissal.

15. On 3 December 2001 the Yakutsk Town Court allowed the applicant’s action against the employer and awarded her compensation of RUB 50,357 payable by the liquidation commission of the company.

4. Enforcement proceedings in respect of two judgments

16. On 1 March 2001 the bailiff sent the writ of execution in respect of the first judgment to the head of the liquidation commission.

17. In January 2002 the applicant forwarded the writs of execution in respect of the second judgment to the insolvency manager.

18. She was listed in the list of creditors. The global amount of her claims was RUB 95,339.46, of which RUB 66,999.46 constituted the judgment debt and RUB 28,350 unpaid severance benefits.

19. By letters of 28 January and 27 May 2002 the insolvency manager of the company confirmed that the applicant’s claims arising from the judgments of both 7 December 2000 and 3 December 2001 were included in the registry of the company creditors’ claims.

5. Further developments in the insolvency proceedings

20. On 16 May 2001 the Yakutsk Town Court, on a complaint by a private individual, quashed the Municipal Property Management Committee’s decision on the transfer of the company’s assets’ to MUP Teploenergiya and the decision by the head of Yakutsk Town Council to liquidate the company stating that it was unlawful. It appears that at some

point this decision was upheld on appeal by the Supreme Court of the Sakha (Yakutiya) Republic. The parties have not submitted copies of the respective judicial decisions.

21. On 9 November 2001 the Commercial Court of the Sakha (Yakutiya) Republic declared the company insolvent and ordered the liquidation commission to start payments in respect of the creditors' claims.

22. On 29 November 2002 a local prosecutor's office opened criminal proceedings against Yakutsk Town Council on suspicion of the deliberate creation of the insolvency of the enterprise in relation to the transfer of a major part of the company's assets to the newly-created municipal company, MUP Teploenergiya.

23. On 16 May 2002 the Presidium of the Supreme Court of Sakha (Yakutiya) quashed the judgment of 16 May 2001 on a supervisory review and confirmed the lawfulness of the Town Council's decision to transfer the municipal company's property to MUP Teploenergiya. With reference to section 104 of the Federal Insolvency Act (see paragraph 42 below), the court found that the transferred property in question had been withdrawn from circulation, that it constituted an exempt asset because of its vital importance for the region and the authorities had lawfully transferred the property in question to a different company.

24. On 11 June 2002 the criminal proceedings were discontinued, owing to the absence of a criminal act in the actions of the town administration.

25. On 26 November 2002 the Commercial Court of the Sakha (Yakutiya) Republic declared the enterprise insolvent and discharged it from all obligations and debts, including those before the applicant.

26. By a letter of 16 January 2003 the prosecutor informed the applicant about the intention of the prosecutor's office to challenge the judgment of 16 May 2002 by the Presidium of the Supreme Court of Sakha (Yakutiya) by way of the supervisory-review proceedings. The parties have not submitted any information on the outcome of the proceedings.

C. The applicant's action against the liquidation commission

27. On 25 February 2003 the applicant brought new court proceedings, claiming that the local authorities should be held vicariously liable for the company's debts.

28. On 24 March 2003 the Yakutsk Town Court dismissed the applicant's claim as having no basis in domestic law.

29. On 23 April 2003 the Supreme Court of the Sakha (Yakutiya) Republic quashed the decision and remitted the case for re-examination to the first-instance court. The Supreme Court noted, in particular, that Yakutsk Town Council had handed a significant part of the company's assets over to a newly created municipal enterprise. The court considered that the company's inability to satisfy its creditors' claims was closely

linked to the transfer. The court considered that the lower court had not examined these circumstances when deciding on the local administration's liability for the company's debts.

30. On 10 June 2003 the Yakutsk Town Court examined the case afresh. With reference to the decision to discontinue the criminal proceedings in respect of suspicion of deliberate creation of insolvency, the court found that the removal and transfer of the company's assets had been lawful and dismissed the applicant's claims.

31. On 9 July 2003 the Supreme Court of the Sakha (Yakutiya) Republic upheld that decision.

D. Proceedings before the Constitutional Court

32. The applicant applied to the Constitutional Court, claiming that the provisions of the Federal Insolvency Act, which stipulated that, where there was a lack of assets, the debtor was to be released from claims that were unsatisfied in the insolvency proceedings, were incompatible with the Constitution.

33. On 8 June 2004 the Constitutional Court of the Russian Federation rejected her complaint.

E. Current enforcement status of the judgments in the applicant's favour

34. According to the Government, the debtor company enforced the judgment of 7 December 2000 between October 2000 and February 2001. According to the applicant, the judgment of 7 December 2000, in the part concerning the payment of RUB 16,632.32, and the award of 3 December 2001 remain unenforced to date.

II. RELEVANT DOMESTIC LAW AND PRACTICE

A. Municipal unitary enterprises

35. The Civil Code of the Russian Federation defines State and municipal unitary enterprises as special forms of legal entity that do not exercise a right of ownership in respect of a property allocated to them by its owner (Article 113 § 1). The State or municipal authority retains ownership of the property but the enterprise may exercise in respect of that property the right of economic control (*«право хозяйственного ведения»*) or operational management (*«право оперативного управления»*)

(Article 113 § 2). The name of the unitary enterprise must indicate the owner of its property (Article 113 § 3).

36. The unitary enterprise, based on the right of economic control, is set up by a decision of the State or the local self-government body authorised for this purpose (Article 114).

37. The constituent document of the enterprise, based on the right of economic control, is called The Rules and is approved by the State body or by the local self-government body. If, at the end of the fiscal year, the cost of the net assets of the enterprise, based on the right of economic control, proves to be less than the size of its authorised fund, the founder of the enterprise is under obligation to effect a reduction of the statutory capital in conformity with the procedure established by law. If the cost of the net assets falls below the amount fixed under domestic law, the enterprise may be liquidated by a court decision (Article 114).

38. The owner has the right to establish the enterprise and to decide on the goals of the enterprise and the scope of its designated activities. The owner exercises control over the use of property in accordance with the designated purpose, has the right to reorganise or liquidate the unitary enterprise and receives a part of the enterprise's profit (Article 295 § 1).

39. The manager of a unitary enterprise is appointed by, and reports to, the property owner (Article 113 § 4).

40. The owner's consent must be obtained for any transaction that may lead to the encumbrance or alienation of the real estate. The enterprise independently disposes of the rest of the property under its economic control, with the exception of the cases established by law or by other legal acts (Article 295 § 2).

B. Insolvency of unitary enterprises with the right of economic control

41. Unitary enterprises, with the right of economic control over a property, may be declared insolvent in accordance with the insolvency procedure applicable to private companies. The State or municipal owner of a property is not liable for debts of unitary enterprises with the right of economic control over that property unless the owner has caused the enterprise to become insolvent or violated the procedure for its liquidation (Article 114 § 7 and 56 of the Civil Code and section 184 of the Federal Insolvency Act, Federal Law no. 6-FZ of 8 January 1998, in force at the material time). The State or municipal owner of the property may pay, but is not obliged to pay, debts of a unitary enterprise in the framework of insolvency proceedings (sections 1 and 89 of the Insolvency Act).

C. Specific provisions concerning transfer of communal infrastructure facilities of vital importance

1. Federal Insolvency Act

42. If the debtor's assets include assets which have been withdrawn from circulation, the owner should accept the assets from the insolvency manager or transfer them to other persons (section 104 § 2). Such assets as, *inter alia*, communal infrastructure facilities of vital importance for a region are to be transferred to a municipal authority. The authority accepts responsibility for the designated use of the facilities within one month of receipt of the respective notification from the insolvency manager (section 104 § 4). Transfer of the facilities to the municipal authorities is conducted as is ("*no фактическому состоянию*") without further conditions. The facilities are financed from the respective budgets (Article 104 § 5).

2. Ruling no. 8-II of 16 May 2000 by the Constitutional Court

43. By Ruling no. 8-II of 16 May 2000 the Constitutional Court of the Russian Federation verified the compatibility of Article 104 § 4 of the Federal Insolvency Act with the Russian Constitution. The Court held, in particular:

"4. [...] Communal infrastructure having vital importance for a region constituting a debtor's estate is being used not only in the owner's private interests but also in the public interests protected by the State. Therefore, the relations concerning its functioning and use for a designated purpose are public in nature. In regulating this area, the legislator may decide, with regard to public purposes, that certain objects necessary for the survival of the population may be transferred to the relevant municipal authority in the course of the insolvency proceedings. [This ... serves the purpose of] redistribution of social functions between public authorities at different levels".

The Constitutional Court decided that the provisions allowing the transfer of various objects of special importance to society, including communal infrastructure objects, to local authorities were put in place in order to ensure that their designated use complied with the Constitution of the Russian Federation. However, the practical interpretation of these provisions by the domestic courts might have contradicted their constitutional meaning. The Constitutional Court found that these provisions could not be interpreted as allowing for the transfer of such facilities to local authorities without payment to creditors during insolvency proceedings, of reasonable and fair compensation which is able to secure a fair balance between the demands of the general interest of the community and the requirements of the protection of the individual's fundamental rights. The court further held the said provision to be unconstitutional in so far as it allowed the property transfer without effective judicial control.

THE LAW

I. ALLEGED VIOLATION OF ARTICLE 6 OF THE CONVENTION AND ARTICLE 1 OF PROTOCOL No. 1

44. The applicant complained, under Article 1 of Protocol No. 1 to the Convention, that the judgments of 7 December 2000 and 3 December 2001 had not been enforced. The Court will examine this complaint under Article 6 of the Convention and Article 1 of Protocol No. 1 thereto. These provisions, in so far as relevant, read as follows:

Article 6

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

Article 1 of Protocol No. 1

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

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

A. Admissibility

1. Alleged abuse of the right of petition

45. The Government submitted that the amount awarded by the judgment of 7 December 2000 had been paid to the applicant by the debtor company between October 2000 [*sic*] and February 2001. They considered that the applicant had abused her right of petition because she had not informed the Court that the judgment in question had already been enforced. They claimed that her application should be struck out of the list of cases.

46. The applicant disagreed. She pointed out that, contrary to the Government’s submission, the execution of the judgment could not have started in October 2000, that is, two months before that very judicial decision had been issued. In any event, the Government had failed to substantiate their argument with any evidence of an actual payment made to her pursuant to the judgment.

47. The Court reiterates that, except in extraordinary cases, an application may only be rejected as abusive if it is knowingly based on factual errors (see *Akdivar and Others v. Turkey*, 16 September 1996, §§ 53-54, *Reports of Judgments and Decisions* 1996-IV,; *I.S. v. Bulgaria* (dec.), no. 32438/96, 6 April 2000; and *Varbanov v. Bulgaria*, no. 31365/96, § 36, ECHR 2000-X). It notes that the parties did not submit any documents, such as bank documents, confirming that the applicant had actually received the money transfers referred to by the Government or that these payments had indeed been made pursuant to the judgment of 7 December 2000. In the absence of any documentary evidence of the payments, the Court is unable to conclude that the applicant's submissions are knowingly based on factual errors. The objection must accordingly be dismissed.

2. *Compatibility ratione personae (responsibility of the State)*

a. **The parties' submissions**

48. The Government submitted that the State could not be held liable for the continued non-enforcement of the judgments. Firstly, the company was not a State body. Furthermore, in accordance with Articles 113 and 114 of the Civil Code, the debtor company, a municipal unitary enterprise, was a separate legal entity having the right of economic control over the property allocated to it. Even though the company had been founded by a decision of the local authorities and could not, in accordance with Article 295 of the Civil Code, conduct any transaction leading to encumbrance or alienation of the real estate, it enjoyed sufficient independence in the wide range of its activities. With reference to Article 114 § 7 of the Civil Code, the Government argued that the State was not answerable for the company's debts.

49. Furthermore, in Russian law the owner could be held liable for unpaid debts of a municipal unitary enterprise only where the owner had caused the enterprise's insolvency. The Government argued that this was not the case. The authorities ordered the company to be liquidated, because it had become unprofitable. The Town Council had transferred the company's property to MUP Teploenergiya, a municipal unitary enterprise, in order to ensure the continued heating supply of the town. The company's assets were withdrawn from circulation and their transfer to a different company by the authorities' decision was justified by a vital public interest. As regards the manner of the transfer, the criminal proceedings against the authorities had been discontinued. Therefore, the transfer of the company's asset was lawful, and it could not be said that the owner caused the company's insolvency.

50. Finally, they submitted that, by contrast with the case of *Mykhaylenky and Others v. Ukraine* (nos. 35091/02, 35196/02, 35201/02,

35204/02, 35945/02, 35949/02, 35953/02, 36800/02, 38296/02 and 42814/02, § 46, ECHR 2004-XII), the company enjoyed sufficient institutional and operational independence from the State to absolve the State from responsibility under the Convention for its acts and omissions. Indeed, there was nothing in the present case to suggest that the State either was a principal debtor of the company or that its control extended to the applicant's terms of employment. The State had not prohibited the seizure of the company's property. On the contrary, the debtor company was an independent entity and was not, as such, controlled by any State body.

51. The Government concluded, accordingly, that the judgment was given against a private debtor. To this extent, the case was similar to the cases of *Reynbakh v. Russia* and *Bobrova v. Russia*, in which the Court found that the principle that judgments must be executed cannot be interpreted as compelling the State to substitute itself for a private defendant in the case of the latter's insolvency (see *Reynbakh v. Russia*, no. 23405/03, § 18, 29 September 2005, and *Bobrova v. Russia*, no. 24654/03, § 16, 17 November 2005). They maintained that the judgments against the company could not be enforced owing to the company's lack of funds, and in these circumstances the State could not be held responsible for the continued non-enforcement of the judgments. The measures applied by the authorities were adequate and sufficient and they acted diligently in order to assist the creditor in execution of a judgment (see *Fociac v. Romania*, no. 2577/02, §§ 69–70, 3 February 2005). They invited the Court to reject the complaint as incompatible *ratione personae*.

52. The applicant maintained that the debtor company was, in fact, a State-run enterprise controlled by Yakutsk Town Council and financed from the town budget. Its liquidation was ordered by the authorities. Moreover, the Town Council had transferred the company's property to a newly-created company MUP Teploenergiya. The latter had the same customers and suppliers, performed exactly the same functions and was registered at the same address as its predecessor. The debtor enterprise could not have been regarded as private, since it supplied heating to all premises in Yakutsk, in accordance with pre-established tariffs. In these circumstances the Town Council was liable for the debts of the company if the latter lacked funds to honour its obligations, as decided by the judgment of 7 December 2000 in the applicant's favour.

b. The Court's assessment

53. The Court reiterates at the outset that, where an applicant complains of an inability to enforce a court award in his or her favour, the extent of the State's obligations under Article 6 and Article 1 of Protocol No. 1 varies depending on whether the debtor is the High Contracting Party within the meaning of Article 34 of the Convention or a private individual (see *Anokhin v. Russia* (dec.), no. 25867/02, 31 May 2007). Where a judgment is

against the State, the latter must take the initiative to enforce it fully and in due time (see *Akashev v. Russia*, no. 30616/05, §§ 21–23, 12 June 2008, and *Burdov v. Russia*, no. 59498/00, §§ 33–42, ECHR 2002-III). When the debtor is a private individual or company, the position is different, since the State is not, as a general rule, directly liable for debts of private individuals or companies and its obligations under the Convention are limited to providing the necessary assistance to the creditor in the enforcement of the respective court awards, for example, through a bailiff service or insolvency procedures (see, for example, *Kesyanyan v. Russia*, no. 36496/02, 19 October 2006, and *Fociac*, cited above, § 70).

54. Given the special status of municipal unitary enterprises under Russian law (see paragraphs 35–40 above), they can be qualified neither as State authorities, such as the local administration, nor placed in the same category as ordinary private companies. On the one hand, a municipal unitary enterprise is set up by a public authority, which remains the owner of the property, retains control over the use of property in accordance with the designated purpose, receives part of the enterprise's profit and has the right to reorganise or liquidate the enterprise and to transfer its assets to another legal person. On the other hand, a municipal unitary enterprise enjoys independence in its operational activities and the authorities are not responsible for its debts under domestic law.

55. In deciding whether the municipal company's acts or omissions are attributable under the Convention to the municipal authority concerned, the Court will have regard to such factors as the company's legal status, the rights that such status gives it, the nature of the activity it carries out and the context in which it is carried out, and the degree of its independence from the authorities (see, *mutatis mutandis*, *Radio France and Others v. France* (dec.), no. 53984/00, ECHR 2003-X (extracts), with further references). The Court will notably have to consider whether the company enjoyed sufficient institutional and operational independence from the State to absolve the latter from its responsibility under the Convention for its acts and omissions (see *Mykhaylenky and Others*, cited above, § 44, and, *mutatis mutandis*, *Shlepkin v. Russia*, no. 3046/03, § 24, 1 February 2007).

56. As regards the company's legal status, the Government argued that municipal enterprises are incorporated under the domestic law as separate legal entities and that the State is absolved from the responsibility for its debts, save in a limited number of cases specified in Article 56 of the Civil Code. In the Court's view, the company's legal status under the domestic law, however important, is not decisive for the determination of the State's responsibility for the company's acts or omissions under the Convention. Indeed, on several occasions, the Court has held the State liable for companies' debts regardless of their formal classification under domestic law (see, among others, *mutatis mutandis*, *Mykhaylenky and Others*, cited above, § 45; *Lisyanskiy v. Ukraine*, no. 17899/02, § 19, 4 April 2006;

Cooperativa Agricola Slobozia-Hanesei v. Moldova, no. 39745/02, §§ 18-19, 3 April 2007; *Grigoryev and Kakaurova v. Russia*, no. 13820/04, § 35, 12 April 2007; and *R. Kačapor and Others v. Serbia*, nos. 2269/06, 3041/06, 3042/06, 3043/06, 3045/06 and 3046/06, § 98, 15 January 2008). Accordingly, the applicant company's domestic legal status as a separate legal entity does not, on its own, absolve the State from its responsibility under the Convention for the company's debts.

57. As regards the company's institutional and operational independence from the State, the Court notes the Government's argument that the degree of the State's involvement in the company's activities cannot be equated with that in the *Mykhaylenky and Others* case (cited above). At the same time, the Court notes that the company's independence was limited by the existence of strong institutional links with the municipality and by the constraints attached to the use of the assets and property. The Court notes in this respect that the city of Yakutsk was the company's owner in accordance with domestic law and retained ownership of the property conferred to the company. The Town Council approved all transactions with that property, controlled the company's management and decided whether the company should have continued its activity or been liquidated.

58. The company's institutional links with the public administration were particularly strengthened in the instant case by the special nature of its activities. As one of the main heating suppliers in the city of Yakutsk, the company provided a public service of vital importance to the city's population. The company's assets were withdrawn from circulation and enjoyed special status under the domestic law.

59. The Court notes that the relations arising from the management of communal infrastructure of vital importance were qualified by the Constitutional Court of the Russian Federation as public in nature (see judgment of 16 May 2000, cited above). Accordingly, the Constitutional Court concluded that the legislator may decide, having regard to the public purposes, that certain objects necessary for the survival of the population, may be transferred to the respective municipal authority in the course of insolvency proceedings. The Government itself noted that the Town Council transferred the company's property lawfully and in the public interest.

60. The public nature of the municipal company's functions and its ensuing dependence on the municipal authorities were amply demonstrated by the process of the company's liquidation. The Administration decided to wind up the company and, furthermore, disposed of the company's assets as it saw fit: they were transferred to MUP Teploenergiya, a newly-created unitary enterprise performing the same functions as the debtor company (compare, *mutatis mutandis*, *Lisyanskiy*, cited above, § 19).

61. The Court notes the Government's argument that the municipality was not the company's main debtor and should thus not be considered to

have caused the company's insolvency. However, this fact does not in itself obviate the company's institutional and operational dependence on the municipal authorities as demonstrated above.

62. In view of the foregoing, and given in particular the public nature of the company's functions, the significant control over its assets by the municipal authority and the latter's decisions resulting in the transfer of these assets and the company's subsequent liquidation, the Court concludes that the company did not enjoy sufficient institutional and operational independence from the municipal authority. Accordingly, notwithstanding the company's status as a separate legal entity, the municipal authority, and hence the State, is to be held responsible under the Convention for its acts and omissions (see *Mykhaylenky and Others*, cited above, § 44; *Lisyanskiy*, cited above, § 20; *Shlepkina*, cited above, § 24; *Grigoryev and Kakaurova*, cited above, §§ 35-36; and *R. Kačapor and Others*, cited above, § 98).

63. The Government's objection must therefore be dismissed.

3. Non-exhaustion

64. The Government argued that the applicant had failed to exhaust the domestic remedies available to her, because she had not complained to the court about the bailiffs' and the insolvency manager's shortcomings. The applicant disagreed, having pointed out that she had raised her problem before various domestic authorities, but to no avail.

65. The Court reiterates that it is incumbent on the Government claiming non-exhaustion to satisfy the Court that the remedy was an effective one available in theory and in practice at the relevant time (see *Akdivar and Others*, cited above, § 68). In the present case, the Government have not shown how the suggested remedies would have met these requirements (compare, for example, *John Sammut and Visa Investments Limited v. Malta* (dec.), no. 27023/03, §§ 39-46, 16 October 2007). The Court notes, in particular, that insolvency proceedings in respect of the company started in 2001, the applicant had been placed on the list of the company's creditors and notified thereof by the insolvency manager. By the time the insolvency proceedings commenced, the debtor company had already been unable to meet the creditors' claims for some time. The Court concludes that, in these circumstances, any civil action against the authorities would not bring the applicant closer to her goal, that is the payment of the judgment debt (see *Grigoryev and Kakaurova*, cited above, § 29).

The Court finally notes that, insofar as the judgments given in the applicant's favour were apparently not enforced owing to the alleged lack of funds on the part of the debtor company, this deficit was caused, to a large extent, by the transfer of the main funds to a newly created municipal enterprise by the decision of the Town Council, which the applicant was not even able to contest before the courts. In such circumstances, the Court finds that the applicant was absolved from lodging complaints against the

bailiffs' conduct since the reasons for the non-enforcement of the judgment were beyond the bailiffs' influence (see, *mutatis mutandis*, *Mykhaylenky and Others*, cited above, § 39). The Court accordingly dismisses the Government's objection.

4. Conclusion

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

B. Merits

67. The Government submitted that the judgment of 7 December 2000 was fully enforced between October 2000 and February 2001, that is, within a reasonable time. The applicant did not submit the writ of execution to the liquidation commission and did not make a complaint against the insolvency manager to a court. The insolvency manager in her letters informed the applicant that her claims under the judgment had been included in the registry of the creditor's claims by mistake.

68. The applicant maintained her claims. She submitted that she had not and could not have received payments under the first judgment in her favour between October 2000 and February 2001, because the judgment itself was not issued until 7 December 2000 and the writ of execution was not forwarded to the debtor company until March 2001.

69. The Court reiterates at the outset that an unreasonably long delay in the enforcement of a binding judgment may breach the Convention. To decide if the delay was reasonable, the Court will look at how complex the enforcement proceedings were, how the applicant and the authorities behaved, and what the nature of the award was (see *Raylyan v. Russia*, no. 22000/03, § 31, 15 February 2007).

70. Turning to the present case, the Court notes that the judgment of 3 December 2001 has not yet been enforced. The delay of enforcement has thus lasted over seven years. As regards the judgment of 7 December 2000, the Court is not persuaded that the execution of the court award could have started in October 2000, that is, two months earlier than the judgment in the applicant's favour was delivered. In any event, it is not in possession of any documents showing that the payments referred to by the Government had actually been made. The Court considers that the judgment of 7 December 2000 has accordingly remained unenforced for more than eight years to date.

71. The periods of seven and eight years are *prima facie* incompatible with the Convention. The Government justify the delay mainly with regard to the respective liquidation and disbandment of the defendants, but the

Court has previously rejected this excuse in similar circumstances (see *Shlepkin*, cited above, § 25).

72. The Court reiterates that, having previously rejected such a justification in similar circumstances (see *Shlepkin*, cited above, §§ 24-25) it does not see any reason to reach a different conclusion in the present case. Indeed, the company's debts were found to be imputable to the State authorities, which had thus to ensure that the judgment debt was paid in a timely and appropriate manner. While liquidation proceedings may objectively justify some limited delays in enforcement, the continuing non-enforcement of the judgments in the applicant's favour for seven or eight years could hardly be justified in any circumstances. The facts of the present case would rather suggest that the municipal authorities did not consider themselves bound by the obligation to honour the judgment debt after they had decided to liquidate the debtor company and to create a new one in its place.

73. The foregoing considerations are sufficient to enable the Court to conclude that there has been a violation of Article 6 § 1 of the Convention and Article 1 of Protocol No. 1.

II. OTHER ALLEGED VIOLATIONS OF THE CONVENTION

74. The applicant further complained under Article 4 of the Convention that she did not receive payment for her work at the municipal enterprise and, under Article 6 of the Convention, that the proceedings in her case had been unfair.

75. The Court has examined these complaints as submitted by the applicant. However, having regard to all the material in its possession, it finds that these complaints do not disclose any appearance of a violation of the rights and freedoms set out in the Convention or its Protocols. It follows that this part of the application must be rejected as being manifestly ill-founded, pursuant to Article 35 §§ 3 and 4 of the Convention.

III. APPLICATION OF ARTICLE 41 OF THE CONVENTION

76. 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

77. The applicant claimed 355,840.98 Russian roubles (RUB) in respect of pecuniary damage. Of this sum, RUB 16,632.32 and RUB 50,367.14 represented the debt owed by the enterprise pursuant to the judgments in the applicant's favour, RUB 28,350 was for unpaid severance benefits and RUB 260,504.52 was for inflation losses. In support of her claims, she submitted a detailed calculation of the inflation losses based on the refinancing rate of the Central Bank of Russia. She further claimed 3,000 euros (EUR) in respect of non-pecuniary damage.

78. The Government submitted that no just satisfaction should be awarded to the applicant because her rights under the Convention had not been violated. Alternatively, they argued that the finding of a violation would constitute sufficient just satisfaction.

79. As regards the claim for pecuniary damage, the Court does not discern any causal link between the claim of unpaid severance and the applicant's non-enforcement complaint; it therefore rejects this claim. At the same time, the Court notes that the judgments of 7 December 2000 and 3 December 2001 have remained unenforced. It further notes that the Government did not comment on the applicant's claims for pecuniary damage and did not object to the method of calculation suggested. Making its estimate on the basis of the information at its disposal, the Court awards her EUR 1,837 under this head, plus any tax that may be chargeable, and dismisses the remainder of her claims under this head.

80. As regards the claim for non-pecuniary damage, the Court considers it reasonable to award the applicant EUR 3,000 plus any tax that may be chargeable in respect of non-pecuniary damage.

B. Costs and expenses

81. The applicant also claimed RUB 567.68 for postal expenses. The Government submitted that the applicant's claim should be rejected because the applicant had failed to substantiate it with any documents.

82. 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. In the present case, regard being had to the information in its possession and the above criteria, the Court considers it reasonable to award the sum of EUR 16 under this head.

C. Default interest

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

FOR THESE REASONS, THE COURT UNANIMOUSLY

1. *Declares* the non-enforcement complaint under Article 6 of the Convention and Article 1 of Protocol No. 1 admissible and the remainder of the application inadmissible;
2. *Holds* that there has been a violation of Article 6 of the Convention and Article 1 of Protocol No. 1;
3. *Holds*
 - (a) that the respondent State is to pay the applicant, within three months of the date on which the judgment becomes final in accordance with Article 44 § 2 of the Convention, the following amounts, plus any tax that may be chargeable, to be converted into Russian roubles at the rate applicable on the date of the settlement:
 - (i) EUR 1,837 (one thousand eight hundred and thirty-seven euros) in respect of pecuniary damage;
 - (ii) EUR 3,000 (three thousand euros) in respect of non-pecuniary damage;
 - (iii) EUR 16 (sixteen euros) 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;
4. *Dismisses* the remainder of the applicant's claim for just satisfaction.

Done in English, and notified in writing on 8 April 2010, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Søren Nielsen
Registrar

Christos Rozakis
President