

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

THIRD SECTION

CASE OF ANTOSHKIN v. RUSSIA

(Application no. 46686/06)

JUDGMENT

STRASBOURG

4 April 2017

This judgment is final but it may be subject to editorial revision.



In the case of Antoshkin v. Russia,

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

Helen Keller, *President,*
Pere Pastor Vilanova,
Alena Poláčková, *judges,*
and Fatoş Aracı, *Deputy Section Registrar,*

Having deliberated in private on 14 March 2017,

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

PROCEDURE

1. The case originated in an application (no. 46686/06) against the Russian Federation lodged with the Court under Article 34 of the Convention for the Protection of Human Rights and Fundamental Freedoms ("the Convention") by a Russian national, Mr Nikolay Nikolayevich Antoshkin ("the applicant"), on 20 October 2006.

2. The Russian Government ("the Government") were represented by Mr. G. Matyushkin, Representative of the Russian Federation to the European Court of Human Rights.

3. On 9 March 2009 the application was communicated to the Government.

THE FACTS

I. THE CIRCUMSTANCES OF THE CASE

4. The applicant was born in 1949 and lives in Antratsit, Ukraine.

A. The circumstances of the case

5. In 1996 the applicant was dismissed from the State Enterprise Coal Mine "Yur-Shor" («*Государственное предприятие «Шахта «Юр-Шор*», "the coal mine"). According to the Government, the mine was incorporated as a state unitary enterprise. In January 1999 the insolvency proceedings were opened in respect of the mine.

1. First round of the court proceedings and subsequent proceedings for index-linking the awards

6. On 28 October 1999 the Vorkuta Town Court of the Komi Republic (The Town Court) awarded the applicant the equivalent of 1,591 euros (EUR) in salary and allowances' arrears against the coal mine. It appears that the award became final ten days later.

7. The applicant submits, without further details, that the bailiffs did not take measures to execute the judgment.

8. On 27 December 1999 a prosecutor advised the applicant that as from 1 January 1999 the coal mine's own funds had discontinued and the salary arrears were to be paid from the federal budget. He informed the applicant that the judgment in his favour could not be enforced, since no funds had been allocated from the federal budget for these purposes.

9. On 3 April 2001 the Town Court ordered the coal mine to pay the applicant EUR 51 for court expenses.

10. On 24 April 2002 the Town Court allowed the applicant's claim for index-linking of the award of 28 October 1999 and held that the coal mine should pay him EUR 912 under this head.

11. It appears that the awards of 28 October 1999, 3 April 2001 and 24 April 2002 in the applicant's favour have not been enforced to date.

2. Second round of the court proceedings and subsequent proceedings for index-linking the awards

12. The applicant sued various domestic authorities for non-pecuniary damages and index-linking of unpaid salary. On 21 January 2004 the Town Court granted his action in part, having found, *inter alia*, that the coal mine could not claim lack of funds as an excuse for non-enforcement of the earlier judgments in the applicant's favour. The court further found that awards made on 28 October 1999, 3 April 2001 and 24 April 2002 in the amount of EUR 1,966 should be paid to the applicant by the Ministry of Energy, since the latter had been designated by the Government to finance the debts of the coal mine, in so far as the salary arrears and related social payments prior to the decision to wind up the company were concerned. The court specified that the awarded sums should be transferred by a local branch of the State Treasury to the coal mine, with view of their subsequent transfer to the applicant. The payment was to be made via a State-owned Enterprise "Sotsugol" (*«ГП «Соцуголь»*). The judgment became final on 23 September 2004, as upheld by the Supreme Court of the Komi Republic.

13. On 21 January 2004 the Town Court by a separate decision obliged the coal mine to index-link the unpaid court awards and to pay the applicant EUR 527. The decision acquired legal force on 23 September 2004.

14. On 7 December 2004 the Town Court ordered to index-link the awards of 21 January 2004 and held that the Ministry of Energy should pay

the applicant EUR 155 and the coal mine EUR 41 respectively. The judgment entered into force on 20 December 2004.

15. It appears that the judgments of 21 January 2004 and 7 December 2004 and the decision of 21 January 2004 have not been enforced to date.

3. Further developments

16. At some point the applicant claimed modification of the judgment of 21 January 2004, so that the respondent Ministry be replaced in the enforcement proceedings by the Ministry of Industry and Energy of the Russian Federation. On 30 November 2005 his application was rejected by the Town Court as having no grounds in the domestic law. It appears that the decision was not appealed against.

17. On 28 December 2005 the Liquidation Commission of the Ministry of Energy informed the applicant that the Ministry had been liquidated and had no longer been in receipt of the funds from the federal budget and that the execution documents in respect of the Ministry's debts could no longer be accepted by the commission.

18. The applicant further claimed that the respondent Ministry be replaced by "Sotsugol". On 8 June 2006 the Supreme Court of the Komi Republic in the final instance rejected his request.

II. RELEVANT DOMESTIC LAW

19. The relevant provisions and case-law governing unitary companies with the right of economic control are described in the judgments of *Liseytseva and Maslov v. Russia* (nos. 39483/05 and 40527/10, §§ 54-127, 9 October 2014), and of *Samsonov v. Russia* (dec.) (no. 2880/10, 16 September 2014).

THE LAW

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

20. The applicant complained of the non-enforcement of domestic decisions given in his favour. He relied on Article 6 § 1 of the Convention and on Article 1 of Protocol No. 1 to the Convention, 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."

21. The Government argued that the decisions in the applicant's favour were issued against a unitary enterprise, which had been a commercial organisation and had operated independently from the authorities. They accordingly submitted that its debts were not attributable to the State. They further submitted that the applicant had not exhausted domestic remedies. In particular, he had not sought compensation of non-pecuniary damage sustained following the non-enforcement of the judgments. Neither did he challenge, under Chapter 25 of the Code of Civil Procedure, the actions and omissions of state organs responsible for the enforcement of the judgments.

22. The applicant maintained his complaints.

A. Admissibility

1. Compatibility ratione personae

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

2. Exhaustion of domestic remedies

24. As to the complaint under Chapter 25 of the Code of Civil Procedure, the Government specified neither the Article of the Chapter 25 which should have been applied, nor the state organs responsible for the enforcement of the judgments against which the applicant had had to direct his claim. Supposing that those were the bailiffs, in *Liseytseva and Maslov* (cited above, § 161) the Court dismissed a similar objection raised by the Government. There is no reason to reach a different conclusion in the present case.

25. As to compensation of non-pecuniary damage, in *Liseytseva and Maslov* (cited above, § 165) the Court dismissed a similar objection raised by the Government. There is no reason to reach a different conclusion in the present case.

B. Merits

1. General principles

26. The relevant case-law regarding the State's responsibility for the debts of unitary enterprises with the right of economic control is summarised in the judgment of *Liseytseva and Maslov*, cited above, §§ 183-92. The Court held that in order to decide on the operational and institutional independence of a given municipal unitary enterprise having the right of economic control the Court has to assess the nature of the enterprise's functions and the degree of the State or municipal authorities' actual involvement in the management of the enterprises' assets.

27. With regard to the non-enforcement of domestic judgments, the Court has consistently held that in situations where the party liable to pay is a State, the approach of the Court is that the judicial award should be enforced fully and without any unjustified delay (see *Burdov v. Russia*, no. 59498/00, § 35, ECHR 2002-III). In contrast to the obligation of a High Contracting Party to comply expediently with the judgments against it, within the domain of enforcement of a final and binding judicial decision against a private party a State's obligations are limited to providing a creditor with the necessary legal assistance and ensuring the effective operation of the procedure (see *Fuklev v. Ukraine*, no. 71186/01, § 84, 7 June 2005; *Anokhin v. Russia* (dec.), no. 25867/02, 31 May 2007; and *Kunashko v. Russia*, no. 36337/03, § 38, 17 December 2009). In the context of the Russian legal system, the principles cited above are applicable, in the first place, to the bailiffs service, which is required to perform its functions diligently and thoroughly with a view to ensuring effective execution of judgments issued against "private" defendants (*Pelipenko v. Russia*, no. 69037/10, § 50, 2 October 2012).

2. Application to the present case

28. The Court notes that the present case is related to two groups of final judgments in the applicant's favour, namely those against the Ministry of Energy (judgments of 21 January 2004 and of 7 December 2004, see paragraphs 12 and 14 above) and those against the coal mine, which was incorporated as a state unitary enterprise under domestic law (judgments of 28 October 1999, 3 April 2001, 24 April 2002, 21 January 2004 and 7 December 2004, see paragraphs 5, 6, 9, 10, 13 and 14 above). The Court will now examine whether the State could be held responsible for the judgment debts of the Ministry and of the coal mine.

(a) Judgments against the coal mine

29. The Government argued that coal mine's failure to pay the judgment debts was not attributable to the State.

30. The Court has held that the existing legal framework in Russia does not provide unitary companies with a degree of institutional and operational independence that would absolve the State from responsibility under the Convention for the debts of such companies (see *Liseytseva and Maslov*, cited above, §§ 193-204). In order to determine the issue of State responsibility for the debts of unitary companies the Court must examine whether and how the extensive powers of control provided for in domestic law were actually exercised by the authorities in a particular case.

31. In the present case the Government submitted that the coal mine was a commercial organisation which operated independently from the State (see paragraph 20 above). The applicant did not refute that argument. Neither did he maintain that the State had in any manner interfered with the coal mine activity, either by issuing compulsory instructions or by ordering transfer of the mine's assets to other companies (see, by contrast, *Liseytseva and Maslov*, cited above, §§ 208-219).

32. In the light of the above the Court finds that the companies did enjoy sufficient institutional and operational independence from the authorities and upholds the Government's *ratione personae* objection (see *Samsonov*, cited above). Accordingly, the judgments in the applicants' favour should be regarded as issued against a private company.

33. The applicant did not allege, either in domestic proceedings or before the Court, that the assistance which they had received from the Bailiffs' Service had been inadequate. Furthermore, it appears that the impossibility to enforce the judgments was due to the lack of funding, and not to the bailiffs' omissions during the enforcement procedure.

34. The Court concludes that the State cannot be held responsible for the failure to enforce the judgments issued against the coal mine. Accordingly, this part of the application should be dismissed as manifestly ill-founded in accordance with Article 35 §§ 3 and 4 of the Convention.

(b) Judgments against the Ministry of Energy

35. The Court notes that the Ministry of Energy is a State organ and neither of the parties questions the State's responsibility for its debts. Accordingly, the principles established in the judgment of *Burdov*, cited above (see paragraph 27 above) are applicable.

The Court notes that judgments of 21 January 2004 and of 7 December 2004 have remained inoperative to date. No justification was advanced by the Government for these delays. By failing for such substantial periods of time to take the necessary measures to comply with the final judicial decisions in the present case, the Russian authorities deprived the provisions of Article 6 § 1 of the Convention and of Article 1 of Protocol No. 1 to the Convention of their useful effect.

36. Accordingly, there has been a violation of Article 6 § 1 and of the Convention and of Article 1 of Protocol No. 1 to the Convention on account

of the non-enforcement of the final and binding judgments in the applicant's favour.

II. ALLEGED VIOLATION OF ARTICLE 13 OF THE CONVENTION

37. The applicant complained of the lack of affective remedies in domestic law in respect of the non-enforcement of domestic decisions given in his favour. He relied on Article 13 of the Convention, which read as follows:

> "Everyone whose rights and freedoms as set forth in [the] Convention are violated shall have an effective remedy before a national authority notwithstanding that the violation has been committed by persons acting in an official capacity."

38. The Government argued that the applicant could seek compensation of non-pecuniary damage sustained following the non-enforcement of the judgments. He could also challenge, under Chapter 25 of the Code of Civil Procedure, the actions and omissions of state organs responsible for the enforcement of the judgments.

39. The applicant maintained his complaints.

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

41. In view of its analysis under Article 6 and Article 1 of Protocol No. 1 to the Convention and the violation found, the Court considers that in the circumstances of the present case it is not necessary to examine this complaint separately.

III. OTHER ALLEGED VIOLATION OF THE CONVENTION

42. Lastly, the applicant complained that the domestic courts had erred in their assessment of facts and application of law and had refused to replace the respondents in the enforcement proceedings. Having regard to all the evidence in its possession, and to the extent that it has power to examine the allegations, the Court does not find any appearance of a violation of the rights and freedoms guaranteed by those provisions. It follows that this part of the application must be rejected pursuant to Article 35 §§ 3 and 4 of the Convention.

IV. APPLICATION OF ARTICLE 41 OF THE CONVENTION

43. 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

44. The applicant claimed the sums adjudged to him by domestic courts together with pecuniary loss in the sum of 16,225 euros (EUR) in respect of pecuniary damage and EUR 60,000 in respect of non-pecuniary damage.

45. The Government submitted that the amounts claimed were excessive and unreasonable.

46. In view of its findings above the Court finds it appropriate to award the applicant in full the sums that, by virtue of the judgments of 21 January 2004 and of 7 December 2004 had to be paid to him by the Ministry of Energy (EUR 2,121). As to the non-pecuniary damage, the Court considers it reasonable and equitable to award the applicant EUR 2,000, plus any tax that may be chargeable, to in respect of non-pecuniary damage (*Voronkov v. Russia*, no. 39678/03, §§ 68-69, 30 July 2015).

B. Costs and expenses

47. The applicant did not submit any claim in respect of costs and expenses. Accordingly, there is no ground to make an award under this head.

C. Default interest

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

FOR THESE REASONS, THE COURT, UNANIMOUSLY,

1. *Declares* the complaints concerning the non-enforcement of domestic decisions given against the Ministry of Energy and the lack of any effective remedy in domestic law under Article 6 § 1 and Article 13 of the Convention and Article 1 of Protocol No. 1 to the Convention admissible and the remainder of the application inadmissible;

2. *Holds* that there has been a violation of Article 6 § 1 of the Convention and of Article 1 of Protocol No. 1 to the Convention;

3. *Holds* that there is no need to examine separately the complaint under Article 13 of the Convention;

4. *Holds*
   (a) that the respondent State is to pay the applicant, 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) EUR 2,121 (two thousand one hundred and twenty-one euros) in respect of pecuniary damage;
      (ii) EUR 2,000 (two thousand euros), plus any tax that may be chargeable, in respect of non-pecuniary damage;
   (b) that from the expiry of the above-mentioned three months until settlement simple interest shall be payable on the above amounts at a rate equal to the marginal lending rate of the European Central Bank during the default period plus three percentage points;

5. *Dismisses* the remainder of the applicant's claim for just satisfaction.

Done in English, and notified in writing on 4 April 2017, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Fatoş Aracı	Helen Keller
Deputy Registrar	President