

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

THIRD SECTION

DECISION

Application no. 6983/06 and 32489/06
Vladimir Petrovich OGUREYEV against Russia
and Tatyana Aleksandrovna MAKHANOVA against Russia
(see appended table)

The European Court of Human Rights (Third Section), sitting on 9 November 2017 as a Committee composed of:

Luis López Guerra, *President,*
Dmitry Dedov,
Jolien Schukking, *judges,*

and Liv Tigerstedt, *Acting Deputy Section Registrar,*

Having regard to the above applications lodged on the dates indicated in the appended table,

Having regard to the observations submitted by the respondent Government and the observations in reply submitted by the applicants,

Having deliberated, decides as follows:

FACTS AND PROCEDURE

The list of applicants and the relevant details of the applications are set out in the appended table.

The applicants were represented by Ms S. Mukhambetova, a lawyer practising in Yekaterinburg.

The applicants' complaints under Articles 6 § 1 and 13 of the Convention and Article 1 of Protocol No. 1 concerning the non-enforcement or delayed enforcement of domestic decisions given against unitary enterprises (GUPs, MUPs) and the lack of any effective remedy in domestic law were communicated to the Russian Government ("the Government").

A. The circumstances of the cases

The facts of the cases, as submitted by the parties, may be summarised as follows.

On 26 March 2003 and 30 May 2005 Justice of the Peace of the 30th Judicial Circuit of the Shchuchanskiy District of the Kurgan Region ordered the federal unitary enterprise (FGUP – "*Shchuchanskiy zavod protivopozharnogo mashinostroeniya*") to pay the applicants certain amounts in salary arrears and other benefits. The judgments came into force on 7 April 2003 and 9 June 2005 respectively.

On 28 July 2005 the federal unitary enterprise was liquidated.

According to the applicants, the judgments in their favour remained unenforced.

B. Relevant domestic law

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 *Samsonov v. Russia* (dec.) (no. 2880/10, 16 September 2014).

THE LAW

A. Joinder of the applications

Having regard to the similar subject matter of the applications, the Court finds it appropriate to examine them jointly in a single decision.

B. Complaints under Articles 6 § 1 and 13 of the Convention and Article 1 of Protocol No. 1

The applicants complained of the non-enforcement of domestic decisions given in their favour and of the lack of any effective remedy in domestic law. They relied on Article 6 § 1 and Article 13 of the Convention and on 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 13

"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."

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."

The Government submitted that the judgments in the applicants' favour had been fully enforced. They further submitted that the liquidation of the company had not been caused by the acts of its founder, the owner of its assets, or of any other body authorised to issue instructions binding for the company.

The applicants maintained their complaints.

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, and the decision of *Samsonov,* cited above. The Court held that, in order to decide on the operational and institutional independence of a given municipal unitary enterprise with the right of economic control, the Court had to assess the nature of the enterprise's functions and the degree of actual State or municipal authorities' involvement in the management of the enterprise's assets.

Turning to the present case, the Court notes that the company was incorporated as a federal state unitary enterprise under domestic law. The Court further notes that the parties did not provide any evidence that the company had exercised any public functions or provided services of vital importance. Nor did they maintain that the State had interfered with the company's activities, either by issuing compulsory instructions or ordering the transfer of its assets to other companies (see, by contrast, *Liseytseva and Maslov*, cited above, §§ 208-19; for a similar case, see *Stupin and Others v. Russia* (dec.), no. 43121/05, 22 September 2015).

In the light of the above, the Court finds that the company enjoyed sufficient institutional and operational independence from the authorities. Accordingly, the decisions in the applicants' favour should be regarded as having been issued against a private company (see *Samsonov*, cited above, § 76).

The Court further notes that the applicants did not argue that the alleged non-enforcement was due to any defects on behalf of the enforcement authorities.

In view of the above, the Court finds that these complaints are manifestly ill-founded and must be rejected in accordance with Article 35 §§ 3 and 4 of the Convention.

For these reasons, the Court, unanimously,

Decides to join the applications;

Declares the applications inadmissible.

Done in English and notified in writing on 30 November 2017.

Liv Tigerstedt
Action Deputy Registrar

Luis López Guerra
President

APPENDIX

No.	Application no. Date of introduction	Applicant name Date of birth
1.	6983/06 29/12/2005	**Vladimir Petrovich Ogureyev** 28/03/1946
2.	32489/06 13/01/2006	**Tatyana Aleksandrovna Makhanova** 14/12/1951