



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

FIRST SECTION

Application no. 13684/06
Aleksy Vladimirovich BABURIN against Russia
and 6 other applications
(see list appended)

STATEMENT OF FACTS

1. A list of the applicants is set out in the appendix.

A. The circumstances of the case

2. The facts of the case, as submitted by the applicants, may be summarised as follows.

1. 13684/06 Baburin (II) v. Russia, lodged on 14 March 2006

3. On 27 May 2005 the Kuybyshevskiy Court of Tsentralniy District of Saint Petersburg ruled in favour of the applicant and awarded 30,380 United States dollars (USD) in damages from Yu. Ltd. On 10 August 2005 the judgment was upheld on appeal by the Saint Petersburg City Court.

4. The applicant submitted the writ of execution to the Bailiffs' Service and the enforcement proceedings were initiated on 7 June 2005. The bailiff sent the inquiries and attached certain property of the debtor for the sum of 8,560 Russian roubles (RUB). However, on 18 July 2005 the proceedings were terminated because the debtor had no property from which the debt could be recovered.

5. The applicant challenged the bailiff's decision in court. On 9 December 2005 the Oktyabrskiy District Court of Saint Petersburg ruled in his favour. The District Court established that while the bailiff performed certain actions aimed at enforcement of the judgment she failed to seize at least RUB 1,058,218, which were transferred through the debtor's bank accounts. The bailiff's decision to terminate the proceedings was recognized unlawful.

6. It appears from the materials in the Court's possession that the enforcement proceedings were re-initiated and lasted until 7 June 2007, when Yu. Ltd. was declared bankrupt by the judgment of the Commercial Court of Saint Petersburg.

7. The applicant initiated civil proceedings aimed at recovery of RUB 2,050,000 in damages (almost three times the sum of the main debt) and RUB 100,000 in compensation for psychological distress caused by inaction of the Bailiffs' Service. On 4 September 2007 the Oktyabrskiy District Court of Saint Petersburg ruled in his favour in part and awarded RUB 777,412.04 in damages.

8. The District Court reasoned that in 2005-06 several million roubles were transferred through the debtor's bank accounts, but lack of necessary bailiffs' actions prevented enforcement of the judgment in the applicant's favour. The bankruptcy of Yu. Ltd. precluded any reasonable possibility of enforcement. At the same time the district court refused to award damages in the amount claimed by the applicant as excessive and the award was limited to the sum equal to the main debt. Finally, no compensation for psychological distress caused by inaction of the Bailiffs' Service was awarded as having no basis in the domestic law.

9. On 7 November 2007 the judgment was upheld on appeal by the Saint Petersburg City Court.

2. 11589/09 Ignatenko v. Russia, lodged on 26 January 2009

10. The applicant is a former employee of a private entrepreneur Mr I. In 2003 he brought a civil action aimed at recovery of arrears, compensations for psychological distress, change of employment records, and issuance of employment and termination orders.

11. On 3 November 2004 the Justice of the Peace for the 27th Circuit of Yuzhno-Sakhalinsk, Sakhalin Region ruled in his favour in part, awarded RUB 12,310 in arrears on salary, RUB 3,537.16 in compensation for the unused leave, RUB 1,000 in compensation for psychological distress, and ordered issuance of employment and termination orders.

12. The applicant submitted the writ of execution to the Bailiffs' Service and the enforcement proceedings were initiated on 4 March 2005. The bailiff sent inquiries and after locating the debtor's monthly income ordered deduction of 50% from it. On 16 March 2005 the enforcement proceedings were closed and by June 2006 the judgment was gradually enforced in part concerning the payments. As regards issuance of employment and termination orders the judgment remained unenforced.

13. The applicant initiated civil proceedings challenging failure of the bailiffs to enforce the judgment in full. On 16 November 2006 the Justice of the Peace for the 27th Circuit of Yuzhno-Sakhalinsk, Sakhalin Region ruled in his favour in part.

14. The Justice of the Peace established that the enforcement proceedings as regards monetary payments were complete, but no actions to compel issuance of employment and termination orders were taken by the bailiffs. The Bailiffs' Service was ordered to enforce the remainder of the judgment.

15. The applicant initiated another set of civil proceedings seeking to obtain compensation for psychological distress caused by the debtor, Mr I.,

for failing to issue employment and termination orders. On 8 June 2007 the Yuzhno-Sakhalinskiy Town Court, Sakhalin Region ruled in his favour and awarded RUB 2,000 from the debtor. The sum was increased on appeal to RUB 5,000 by the Sakhalin Regional Court on 28 August 2007.

16. In 2008 the applicant lodged a lawsuit against the Bailiffs' Service seeking RUB 833,040 in pecuniary damages and RUB 1,000,000 in compensation for psychological distress for the failure to enforce the judgment of 3 November 2004 as regards issuance of employment and termination orders. On 10 July 2008 the Yuzhno-Sakhalinskiy Town Court, Sakhalin Region ruled in his favour in part, awarded RUB 10,000 in compensation for psychological distress, and dismissed the applicant's claims of pecuniary damages as wholly ill-founded.

17. The Town Court reasoned that persistent failure of the bailiffs to enforce the judgment of 3 November 2004 as regards issuance of orders violates the applicant's right to fair trial under Article 6 of the Convention. On 21 October 2008 the Sakhalin Regional Court upheld the judgment, but increased the sum of compensation to RUB 20,000.

18. The judgment of 3 November 2004 appears to remain unenforced in part concerning issuance of employment and termination orders.

3. 18550/09 Gulidov v. Russia, lodged on 1 March 2009

19. The applicant is a former employee of O. Ltd. In 2003 and 2005 he brought two civil actions aimed at recovery of arrears on salary, compensations for psychological distress, change of employment records.

20. On 21 January 2004 and 22 July 2005 the Kuybyshevskiy District Court of Omsk ruled in his favour, awarded RUB 70,087.17 in arrears on salary, RUB 1,300 in compensation for psychological distress, ordered to alter the employment records to termination of contract upon initiative of an employee, and to inform the Pension Fund about pension payments of the applicant in 2001-03.

21. The applicant submitted the writs of execution to the Bailiffs' Service and the enforcement proceedings were initiated on 13 May 2004 and 3 August 2005 respectively. The bailiff sent inquiries and after locating certain property seized and transferred to the applicant RUB 31,298.01. On 2 July 2004 the employment records were altered in line with the judgment.

22. The applicant discontent with the progress of the enforcement proceedings repeatedly challenged the bailiffs' inaction. On 1 February and 4 April 2005 the Tsentralniy District Court of Omsk ruled in his favour and recognized the inaction unlawful.

23. On 20 January 2006 the bailiffs returned the writs of execution to the applicant and terminated the enforcement proceedings due to absence of the debtor's property.

24. In 2006 and 2007 the applicant instituted civil proceedings challenging the actions of the bailiffs. On 19 April 2006 and 8 October 2007 the Tsentralniy District Court of Omsk ruled in his favour. The District Court established that the bailiffs terminated the proceedings without sufficient reasons and failing to take all steps compelling the debtor to comply with the judgments.

25. On 19 July 2006 by the judgment of the Commercial Court of Omsk Region bankruptcy proceedings were initiated against O. Ltd.

26. On 3 July 2007 the bailiff forwarded the applicant's writs of execution to the bankruptcy administrator, but they were not included in the list of creditors' claims because two days later, on 5 July 2007, the bankruptcy administrator closed the proceedings and the debtor was liquidated. On 6 August 2007 the debtor, O. Ltd., was taken off the register of legal persons.

27. In 2007 and 2008 the applicant initiated civil proceedings aimed at recovery from the State of damages and compensation for psychological distress caused by lengthy inaction and unlawful actions of the Bailiffs' Service. On 6 February 2007 and 3 June 2008 the Tsentralniy District Court of Omsk dismissed the applicant's claims. The District Court reasoned that while certain actions of the bailiffs were unlawful there is no causal link between them and failure of the debtor to pay. The Omsk Regional Court upheld the judgments on 2 May 2007 and 3 September 2008 respectively.

28. In 2009 the applicant brought a civil action against the bailiff challenging his failure to transfer the writs of execution to the bankruptcy administrator in time. On 31 March 2009 the Tsentralniy District Court of Omsk dismissed the applicant's action. However, on 13 May 2009 the Omsk Regional Court reversed the lower court's judgment in part and found for the applicant in part. The appellate court reasoned that the bailiff was aware of the bankruptcy proceedings against the debtor and thus he should have transferred the writs of execution in due time.

29. On 6 May 2009 the enforcement proceedings were definitively terminated by the Omsk Regional Court due to bankruptcy of the debtor.

30. The applicant did not lodge any lawsuits aimed at compensation for the failure to transfer the writs of execution to the bankruptcy administrator.

31. The judgments appear to remain unenforced except for the sum of RUB 31,298.01.

4. 40618/10 Markova v. Russia, lodged on 10 July 2010

32. On 31 January 2005 the Primorskiy District Court of Saint Petersburg ruled in favour of the applicant in a consumer dispute with E. Ltd and awarded her RUB 28,282.35.

33. The applicant submitted the writ of execution to the Bailiffs' Service and the enforcement proceedings were initiated on 23 May 2005.

34. On 25 August 2008 in absence of information on enforcement of the judgment the applicant requested the prosecutor's office to review the proceedings. On 31 October 2008 she was informed by the prosecutor that the review had been conducted and a warning was issued to the Bailiffs' Service. The review established that the bailiff responsible for the applicant's file left his office in 2007 and did not transfer the file to any other bailiff, and the enforcement proceedings were effectively lost.

35. On 20 February 2009 the applicant received a copy of the writ of execution and repeatedly submitted it to the Bailiffs' Service. On 18 March 2009 the enforcement proceedings were initiated.

36. On 10 and 20 June and 12 October 2009 the bailiffs attempted to visit E. Ltd. at its business address, but the debtor was absent from the premises. The inquiries sent to responsible authorities and registers showed that E. Ltd. had no immovable property or vehicles, had not submitted tax

declarations since 2004, and closed four bank accounts between 2006 and 2008.

37. The applicant initiated civil proceedings aimed at recovery of RUB 28,282.35 in damages (equal to the sum of the main debt), RUB 10,000 in compensation for psychological distress caused by lengthy inaction of the Bailiffs' Service, and RUB 575 in costs and legal fees. On 25 November 2009 the Oktyabrskiy District Court of Saint Petersburg dismissed her action in part related to damages, but awarded her RUB 2,000 in compensation for psychological distress and RUB 875 in costs, legal and court fees.

38. The District Court reasoned that while the fact of the loss of enforcement proceedings was proven by the applicant she still retained the possibility to have the judgment enforced, because the bailiffs did not perform all the possible actions under the legislation in force. On the other hand the loss of the enforcement proceedings and the delay caused by it violated the applicant's right to trial within a reasonable time and thus compensation should be awarded. On 2 February 2010 the judgment was upheld on appeal by the Saint Petersburg City Court.

39. The judgment appears to remain unenforced.

5. 54805/10 Mironov v. Russia, lodged on 19 August 2010

40. The applicant is a victim of a traffic accident caused by Mr Ch. On 30 May 2005 Mr Ch. was convicted of causing grave injuries by negligence and sentenced to three months' correctional labour.

41. On 15 June 2006 the Leninskiy District Court of Chelyabinsk awarded from Mr Ch. in favour of the applicant RUB 100,000 in compensation for psychological distress caused by the accident.

42. The applicant submitted the writ of execution to the Bailiffs' Service and the enforcement proceedings were initiated on 6 October 2006. The bailiff sent inquiries, attached and sold movable property of the debtor (TV, video-player, microwave oven). The proceeds of RUB 700 were paid to the applicant.

43. Further, the bailiff located a vehicle belonging to Mr Ch. and ordered him to submit it for attachment and sale. Since the debtor failed to comply with the order he was administratively fined on 2 February 2007 by the Justice of the Peace for the 3rd Circuit of the Leninskiy District of Chelyabinsk. After the search the vehicle was located, however it was heavily damaged.

44. On 14 March 2007, 5 May 2008, and 22 January 2010 the Leninskiy District Court of Chelyabinsk indexed the sum awarded to the applicant by RUB 3,614.52, RUB 14,001.30, and RUB 17,477 respectively.

45. The applicant initiated civil proceedings seeking recovery of lost earnings due to his injuries. On 11 September 2007 the Leninskiy District Court of Chelyabinsk awarded from Mr Ch. RUB 122,498.02 in compensation for sick leaves and lost earnings.

46. On 31 January 2008 the applicant requested a comprehensive search of the debtor and his property; however the search rendered no results.

47. On 28 December 2009 the Leninskiy District Court of Chelyabinsk indexed the sum awarded by the judgment of 11 September 2007 to the applicant by RUB 35,156.93.

48. Following lengthy non-enforcement of the judgment the applicant brought a civil action against the bailiff challenging his inaction. On 5 May 2010 the Leninskiy District Court of Chelyabinsk ruled in his favour.

49. The District Court established that the bailiff failed to send the inquiries about the applicant's property to all responsible authorities and registers and also failed to do so in a timely manner, failed to question relatives and neighbours of the debtor, and failed to organize the search of the debtor and his property without the applicant's request. The bailiff's inaction was recognized unlawful.

50. Relying on the abovementioned judgment the applicant brought a civil action aimed at recovery of RUB 52,633 in damages from lengthy inaction of the Bailiffs' Service. On 6 July 2010 the Leninskiy District Court of Chelyabinsk dismissed his action.

51. The District Court reasoned that under the civil legislation in force the damages could be recovered from the Bailiffs' Service only if damages in fact, unlawfulness of the action, guilt, and the causal link could be established. In the present case the unlawfulness of the action (inaction) was established by the earlier judgment against the bailiff, while no damages in fact or causal link between the inaction of the bailiff and the loss were demonstrated by the applicant.

52. On 13 August 2010 the judgment was upheld on appeal by the Chelyabinsk Regional Court.

53. All the judgments appear to remain unenforced except for the sum of RUB 700.

6. 18831/11 Yesaulkova v. Russia, lodged on 16 March 2011

54. On 24 June 2008 the Krasnoturyinskiy Town Court of Sverdlovsk Region ruled in favour of the applicant in a consumer dispute with Mr A. and awarded her RUB 114,840.

55. The applicant submitted the writ of execution to the Bailiffs' Service and the enforcement proceedings were initiated on 10 July 2008. The bailiff sent inquiries and attachment orders to the tax authorities, vehicle and immovable property registers, banks, but no property of the debtor could be located. Further, the bailiff tried to visit Mr A.'s residence, but was not allowed to enter the apartment. In July 2009 the debtor was summoned for interview by the bailiff.

56. Following lengthy non-enforcement of the judgment the applicant brought a civil action against challenging the bailiff's inaction. On 15 January 2010 the Krasnoturyinskiy Town Court of Sverdlovsk Region ruled in her favour.

57. The Town Court established that the bailiff failed to send the inquiry to the Pension Fund, re-send inquiries to the tax authorities, vehicle and immovable property registers, banks, and further failed to establish whether the debtor had any non-severed common marital property with his former wife. The bailiff's inaction was recognized unlawful and she was ordered to remedy the established defects of the enforcement proceedings.

58. On 18 June 2010 the Bailiffs' Service terminated the proceedings due to impossibility to recover the debt.

59. In June 2010 a prosecutor brought in the name of the applicant essentially similar civil action against the bailiff's inaction. On 28 June

2010 the Krasnoturyinskiy Town Court of Sverdlovsk Region ruled in his favour. The Town Court established that the bailiff remained inactive and did not comply with its judgment of 15 January 2010. Further, it highlighted that since the debtor Mr A. paid alimonies he had property and that the bailiff did not use any of the legally available means to compel enforcement of the judgment.

60. On 27 August 2010 the Krasnoturyinskiy Town Court of Sverdlovsk Region indexed the sum awarded to the applicant by RUB 21,265.81.

61. The applicant initiated civil proceedings aimed at recovery of RUB 136,105.81 in damages (equal to the sum of the main debt) and RUB 100,000 in compensation for psychological distress caused by lengthy inaction of the Bailiffs' Service. On 29 November 2010 the Krasnoturyinskiy Town Court of Sverdlovsk Region dismissed her action.

62. The Town Court reasoned that under the civil legislation in force the damages could be recovered from the Bailiffs' Service only if damages in fact, unlawfulness of the action, guilt, and the causal link could be established. In the present case the unlawfulness of the action (inaction) was established by the earlier judgment against the bailiff, while the damages were caused by the debtor, and no causal link between the inaction of the bailiff and the loss was proven by the applicant. Further, the court reasoned that since no damages caused by the bailiff were proven, no compensation for psychological distress could be awarded.

63. On 1 February 2011 the judgment was upheld on appeal by the Sverdlovsk Regional Court.

64. On 18 February and 3 June 2011 the Krasnoturyinskiy Town Court of Sverdlovsk Region further indexed the sums awarded to the applicant by RUB 5,526.43 and RUB 6,165.60 respectively.

65. All the judgments appear to remain unenforced.

7. 75416/11 Lopatina v. Russia, lodged on 30 November 2011

66. The applicant is a former employee of M. Ltd. In 2009-11 she initiated several civil actions regarding reinstatement at work, recovery of arrears, compensation for psychological distress and other related matters.

67. The Nizhegorodskiy District Court gave the following judgments in the applicant's favour and issued the writs of execution:

- on 13 November 2009: reinstatement at work and RUB 10,000 in compensation for psychological distress;
- on 21 April 2010: RUB 99,252.20 in arrears on salary;
- on 8 June 2010: reinstatement at work, change of employment records, RUB 233,054 in arrears on salary, and RUB 15,000 in compensation for psychological distress;
- on 30 June 2010: RUB 115,000 in arrears on salary, RUB 14,285.76 for unused leave, RUB 2,399.19 of interest on late payment of salary, and RUB 10,000 in compensation for psychological distress;
- on 25 October 2010: RUB 179,800 in arrears on salary, RUB 53,689.47 of interest on late payment of salary, and RUB 15,000 in compensation for psychological distress;
- on 25 February 2011: RUB 131,053.45 in arrears on salary, RUB 1,950.43 of interest on late payment of salary, and RUB 15,000 in compensation for psychological distress;

- on 18 April 2011: to terminate the labour contract on the employee's initiative and to provide her with respective employment records.

68. The applicant submitted the writs of execution to the Bailiffs' Service and the respective enforcement proceedings were initiated. Later eight applicant's writs of execution for the sum of RUB 895,485 were included in the joint enforcement proceedings against M. Ltd with 60 writs of execution for the overall sum of RUB 16,235,000.

69. Following lengthy non-enforcement of judgments the applicant brought a civil action for lengthy non-enforcement of judgments against the Ministry of Finance and Federal Treasury under the scheme designed to compensate non-enforcement of judgments against the State. On 2 May 2011 her action was dismissed by the Nizhniy Novgorod Regional Court as falling outside of the compensation scheme, because the judgments in the applicant's favour were against a private party. She did not appeal against the dismissal.

70. The applicant initiated another set of civil proceedings and challenged inaction of the bailiffs. On 6 June 2011 the Sormovskiy District Court of Nizhniy Novgorod ruled in her favour. The District Court established that the enforcement proceedings were essentially limited to inquiries about the property of M. Ltd. without any follow-up on these inquiries or attempts to compel payments by the debtor.

71. The applicant did not lodge any lawsuit seeking compensation for failure of the bailiffs to assist her in enforcement of judgments in her favour.

72. All the judgments appear to remain unenforced.

B. Relevant domestic law and practice

Constitutional and statutory provisions

73. The Constitution of the Russian Federation of 1993 in Articles 53 provides that everyone is entitled to compensation of damages caused by unlawful actions (inaction) of State bodies and their officials. Article 52 secures the abovementioned right with a constitutional obligation of the State to ensure access to court and compensation of damages in cases when public power bodies and their officials infringe the rights protected by law.

74. The Code of Civil Procedure of the Russian Federation of 2002 (CCP), which entered into force on 1 February 2003, establishes the framework for challenging the decisions, actions (inaction) of any State or local self-government body or official.

75. Chapter 25 of the Code in the relevant part provides as follows:

Chapter 25. Proceedings on challenging decisions, actions (inaction) of State authorities, local self-government authorities, officials, State or municipal servants

Article 254. Submission of application challenging decision, action (inaction) of State authority, local self-government authority, official, State or municipal servant

“1. A citizen, a legal person may challenge in court decision, action (inaction) of State authority, local self-government authority, official, State or municipal servant if they consider that their rights and freedoms were violated. A citizen, a legal person

may bring an application directly to court or to superior in order of subordination State authority, local self-government authority, official, State or municipal servant. ...

4. The court may suspend enforcement of the challenged decision until entry of the judicial decision in force.”

Article 255. Decisions, actions (inaction) of State authorities, local self-government authorities, officials, State or municipal servants which may be challenged in civil proceedings

“The decisions, actions (inaction) of State authorities, local self-government authorities, officials, State or municipal servants which may be challenged in civil proceedings are collective and independent decisions, actions (inaction) resulting in:

- violation of a citizen’s rights and freedoms,
- restriction on exercise by a citizen of his rights and freedoms,
- obligation or legal responsibility of a citizen devoid of lawful basis.”

Article 258. Judicial decision and its enforcement

“1. If the court shall establish that an application is well-founded it adopts a decision ordering respective State authority, local self-government authority, official, State or municipal servant to remedy in full violation of the rights and freedoms or restriction on exercise by a citizen of his rights and freedoms. ...

4. The court shall dismiss an application if it establishes that the challenged decision or action was adopted or performed within the scope of powers of a State authority, local self-government authority, official, State or municipal servant and the rights and freedoms of a citizen were not violated.”

76. The Code of Commercial Procedure of the Russian Federation of 2002 (CCmP), which entered into force on 1 September 2003, in Chapter 24 establishes essentially similar framework for challenging the decisions, actions (inaction) of any State or local self-government body or official in cases falling within the jurisdiction of commercial courts (disputes of legal entities and persons involved in entrepreneurial activities).

77. Title II of the Civil Code of the Russian Federation of 1995 (CC), which entered into force on 1 March 1996, establishes that any damages caused by a State or local self-government authority or official shall be compensated.

78. Article 1069 of the Code provides as follows:

Article 1069 Responsibility for damages caused by State authorities, local self-government authorities and their officials

“Damages caused to an individual or a legal entity as a result of unlawful actions (inaction) of State authorities, local self-government authorities or their officials, including damages resulting from the issuance of an act of a State authority or local self-government authority contrary to a law or other legal act, shall be subject to compensation. The damages shall be compensated at the expense of the Treasury of the Russian Federation, a treasury of the subject of the Russian Federation, or a treasury of a municipal authority, respectively.”

Jurisprudence of the Constitutional Court of the Russian Federation

79. The Constitutional Court in its judgments and decisions provided the constitutional interpretation of Article 1069 of the Civil Code in conjunction with Articles 52 and 53 of the Russian Constitution (see *Judgments No. 1-P of 4 June 2009, No. 9-P of 16 June 2009, and Decisions No. 22-O of 20 February 2002, No. 1005-O-O of 4 June 2009*), including the following principles.

- a. Article 1069 of the Civil Code in its constitutional meaning ensures the full and effective restoration of rights, which presumes award of damages even if a specific type of damage is not explicitly mentioned in a legal provision.
- b. The State assumes responsibility for the unlawful actions (inaction) of its bodies and officials and compensates damages caused by their actions (inaction), but only if all elements of legal responsibility (unlawfulness of an action or inaction, damages in fact, guilt, and the causal link between them) are present. Responsibility without guilt is possible only if explicitly prescribed by law.
- c. The exercise of the right to compensation presumes not only formal review of an action (inaction) as falling within or outside of powers of a specific body or official, but also assessment of its reasonableness as defined by the constitutional requirements of fairness, proportionality, and legal security.

80. In the decision of 4 October 2005 No. 338-O the Constitutional Court emphasized with reference to the case-law of the Court that enforcement of a judgment is an integral part of the judicial protection of rights and that review of bailiffs' actions (inaction) shall be performed by the superiors and the courts.

Jurisprudence of the Supreme Court of the Russian Federation and the Supreme Commercial Court of the Russian Federation

81. Both the Supreme Court and the Supreme Commercial Court of the Russian Federation issued case-law reviews and guidelines clarifying various procedural and substantive aspects of the right to receive compensation under Article 1069 of the Civil Code as established in practice of Russian courts.

82. In the Decree of the Plenum of the Supreme Commercial Court No. 23 of 2006 it was stressed that the defendant in lawsuits under Article 1069 should always be a public entity, but not its structural unit or official in personal capacity. The compensation, accordingly, shall be recovered only from the public entity.

83. In the joint Decree of the Plenum of the Supreme Court and the Plenum of the Supreme Commercial Court No. 30 / 64 of 23 December 2010 the courts highlighted that while the post-*Burdov 2* legislative scheme only guarantees compensation for non-enforcement of judgments against the State, nothing precludes lawsuits to be brought in other disputes concerning non-enforcement of judgments under Articles 151 and 1069 of the Civil Code.

84. Information Letter of the Presidium of the Supreme Commercial Court No. 145 of 31 May 2011 in particular mentioned the following points:

- a. if unlawfulness of an action (inaction) has been previously established by a court, then in compensation proceedings this conclusion may not be re-examined and stays on *res judicata* grounds;
- b. nothing prevents a court from considering a compensation claim if no previous judicial decision established unlawfulness of an action (inaction), because this issue may well be considered in compensation proceedings;
- c. the burden of proof regarding unlawfulness of an action (inaction) rests with the plaintiff, while the burden of proof regarding reasonableness of an action (inaction) rests with the defendant;
- d. if enforcement of a judgment is precluded by the actions (inaction) of the bailiffs the damages shall be recovered, while they should be limited to the amount that would have been recoverable in enforcement proceedings unhindered by the bailiffs.

COMPLAINTS

85. The applicants complain under Article 6 § 1 of the Convention about failure of the State to provide them adequate and efficient legal assistance in enforcement of judgments against private parties. Mr Baburin, Ms Yesaulkova, and Ms Lopatina also complain under Article 1 of Protocol No. 1 that failure of the State to assist them in enforcement of the judgments resulted in violation of their property rights. The applicants also submit other complaints under Articles 6 and 13 of the Convention.

QUESTIONS TO THE PARTIES

1. Have the judgments given in the applicants' favour been fully enforced? If yes, what is the date of the full enforcement of each judgment?

2. Did the State authorities duly assist the applicants in enforcement of the judgments against private parties, as required by Article 6 § 1 of the Convention? (see *Kunashko v. Russia*, no. 36337/03, §§ 38-39, 17 December 2009)

3. Did the applicants exhaust the available domestic remedies, as required by Article 35 § 1 of the Convention, in respect of their complaints concerning the State's assistance in enforcement of judgments in their favour? If yes, were they provided with an appropriate redress?

4. Did the actions or inaction of the State authorities in enforcement proceedings against private parties preclude further enforcement of judgments and thus result in a violation of Article 1 of Protocol No. 1 rights of Mr Baburin, Ms Yesaulkova, and Ms Lopatina? (see *Krivotogova v. Russia* (dec.), no. 74694/01, 1 April 2004)

APPENDIX

No	Application No	Lodged on	Applicant Date of birth Place of residence
1.	13684/06	13/03/2006	Aleksey Vladimirovich BABURIN 24/12/1968 Saint Petersburg
2.	11589/09	26/01/2009	Anatoliy Fedorovich IGNATENKO 22/04/1952 Yuzhno-Sakhalinsk
3.	18550/09	01/03/2009	Yuriy Pavlovich GULIDOV 03/02/1951 Omsk
4.	40618/10	10/07/2010	Tatyana Nikolayevna MARKOVA 15/07/1950 Saint Petersburg
5.	54805/10	19/08/2010	Andrey Vladimirovich MIRONOV 15/01/1964 Chelyabinsk
6.	18831/11	16/03/2011	Irina Aleksandrovna YESAULKOVA 06/06/1980 Krasnoturyinsk
7.	75416/11	30/11/2011	Larisa Nikolayevna LOPATINA 20/12/1957 Nizhniy Novgorod