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

FIRST SECTION

DECISION

Applications nos. 9457/09 and 9531/09
Sergey Savelyevich BABICH against Russia
and Aleksey Andreyevich AZHOGIN against Russia

The European Court of Human Rights (First Section), sitting on 15 October 2013 as a Chamber composed of:

Isabelle Berro-Lefèvre, *President,*
Mirjana Lazarova Trajkovska,
Julia Laffranque,
Linos-Alexandre Sicilianos,
Erik Møse,
Ksenija Turković,
Dmitry Dedov, *judges,*

and Søren Nielsen, *Section Registrar,*

Having regard to the above applications lodged on 25 and 27 December 2008, respectively,

Having deliberated, decides as follows:

THE FACTS

1. The applicant in case no. 9457/09 ("the first applicant") is Mr Sergey Savelyevich Babich, born in 1957. The applicant in case no. 9531/09 ("the second applicant") is Mr Aleksey Andreyevich Azhogin, born in 1941. They are Russian nationals and live in the town of Zverevo in the Rostov Region.

A. Background information

2. The present applications belong to a group of 198 similar cases brought before the Court by former employees of the "Obukhovskaya" coal mine living in Zverevo.

B. The circumstances of the case

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

4. The applicants are former employees of the "Obukhovskaya" coal mine, a joint stock limited liability company (*ОАО «Обуховская»* – "the coal mine"). They are receiving an old-age pension as former employees of the coal mining industry. According to the domestic classification, they reside in "comfortable housing" *(«благоустроенное жилое помещение»*).

1. Energy supply allowance

5. In accordance with section 21 § 4 of Federal Law No. 81-FZ of 20 June 1996 ("the Law of 20 June 1996"), former employees of the coal mining industry receiving an old-age pension were entitled to a monthly "coal supply", or "energy supply", allowance. The allowance was either in the form of monthly provision of coal free of charge or in a compensatory form, that is, the right to be exempted from payment for their energy supply. As a general rule, the persons concerned were entitled to receive free of charge a certain quantity of coal to be used for heating their home. If such persons resided in "comfortable housing", the amount of the energy supply allowance was to be deducted from the total amount of their monthly communal charges at the expense of relevant coal mining companies. These companies were under an obligation to allocate funds for this purpose and transfer them to the local budgets.

6. The Zverevo "Managing Company for Housing and Communal Services", a municipal unitary company (*МУП «Управляющая компания ЖКХ» г. Зверево* – "the municipal company") was responsible for collecting communal charges from the applicants. The local authorities retained ownership of the company's property, while the company exercised the right of economic control in respect of it.

2. Initial judgments in the applicants' favour

(a) The first applicant

7. On 13 February 2003 the first applicant sued the coal mine and the municipal company, claiming his entitlement to a monthly energy supply free of charge.

8. On 12 March 2003 the Justice of the Peace of the 1st Court Circuit of Zverevo of the Rostov Region allowed the applicant's claims. The Justice of the Peace confirmed that the applicant, as a former coal mine employee, was entitled to the energy supply allowance in compensatory form as provided for by the Law of 20 June 1996, and therefore was not to be charged for his energy supply. He further observed that communal charges were collectable

by the municipal company. Accordingly, the Justice of the Peace ordered the municipal company

> "... to exempt [the applicant] from payment for energy resources, at the expense of the [coal mine], as from the date of the [applicant's] complaint [to the domestic court]."

(b) The second applicant

9. On 25 November 2002 the same Justice of the Peace allowed similar claims by the second applicant against the coal mine and the municipal company, rejecting the remainder of his claims, which were directed against several other regional companies operating in the energy supply sector. The judge, by a similar decision to that mentioned above, ordered the municipal company to exempt the second applicant from payment for energy resources, at the expense of the coal mine, as from the date of his court action, that is, from 29 October 2002.

(c) Enforcement of the judgments up to 31 December 2004

10. The judgments were not appealed against and entered into force ten days later. The defendant companies complied with them up to 31 December 2004.

3. Amendments to Federal Law No. 81-FZ

11. On 22 August 2004 a new Federal Law, No. 122-FZ ("the new Law") amended several provisions of the Law of 20 June 1996. It entered into force on 1 January 2005.

12. In accordance with section 77 § 23 of the new Law, the social protection of employees of companies operating in the coal mining industry was to be ensured "in accordance with the legislation of the Russian Federation, collective contracts and collective agreements", at the expense of the companies concerned.

13. Section 153 § 1 of the new Law stipulated, as regards continuing situations in respect of persons who had obtained entitlement to allowances either in kind or in compensatory form prior to 1 January 2005, that application of the new Law should not be to the detriment of the exercise of a right to compensation, allowances or guarantees acquired prior to 1 January 2005.

4. Liquidation of the coal mine

14. On an unspecified date insolvency proceedings were initiated in respect of the coal mine.

15. On 3 February 2005 the coal mine was wound up, as confirmed by an entry in the National Register of Legal Entities.

16. It appears that the major part of its assets was transferred to the OAO Mining Management Department "Obukhovskaya" (*ОАО Шахтоуправление «Обуховская»*), a newly created private joint stock limited liability company.

5. Reorganisation of the defendant companies

17. On 31 May 2005 the municipal company concluded an agreement with "Donenergo", a Rostov Region State-owned unitary company (*Государственное предприятие Ростовской области «Донэнерго»* – "the Donenergo company") stipulating that the Donenergo company was to be responsible for the collection of public utility charges. On 1 August 2005 the municipal company was reorganised into the "Payment Processing Centre", a municipal unitary company (*МУП «Расчетно-кассовый центр"* – "the Payment Processing Centre")

6. Available information on the position of the domestic authorities in 2005-2006

18. According to the applicants, from 1 January 2005 the municipal company resumed charging them and several other pensioners for their energy supply, referring to the entry into force of the new Law.

19. On 17 May 2005 the Zverevo prosecutor's office examined a complaint by Sh., a former employee of the coal mine. The prosecutor's office advised him that, in accordance with the newly introduced legislative amendments to the Law of 20 June 1996, employees of the coal mining industry residing in stove-heated premises remained entitled to the allowance in kind, that is, to receive coal on a monthly basis, but pensioners residing in "comfortable housing" were in principle no longer exempted from payment for their energy supply. He observed, however, that the judgments in favour of the pensioners concerned had not been quashed by way of supervisory review. The prosecutor concluded that the judgments remained in force and were to be executed by the respondent municipal company.

20. On 28 September 2005 the Zverevo prosecutor's office advised K., apparently a former employee of the coal mine, that it had conducted an inquiry into several non-enforcement complaints from Zverevo pensioners. According to the inquiry documents, all judgments of the kind delivered in the applicants' favour had been fully and timeously enforced up to 31 December 2004. Accordingly, all the writs of execution in respect of the judgments had been returned to the courts as "enforced". However, it had proved impossible to resume enforcement proceedings after that date, since the municipal companies, including the defendant municipal company, were no longer competent to grant allowances because of the reorganisation of the housing and communal services system in Zverevo (see paragraph 17

above). In the circumstances, the Payment Processing Centre and the Donenergo company could not be ordered to provide the pensioners with the allowance in accordance with the judgments in their favour. Moreover, a court action for further exemption from payment for their energy supply would have no basis in domestic law, because the entitlement to exemption from payment had ceased on 1 January 2005 in accordance with the amendments to the Law of 20 July 1996.

21. On 12 December 2006 the local administration advised the second applicant that he could no longer receive his energy supply free of charge.

7. Ruling of the Constitutional Court of 20 February 2007

22. On 20 February 2007 the Constitutional Court of the Russian Federation rejected a request by three Zverevo pensioners for a review of the constitutionality of section 153 of the new Law (see paragraph 13 above), finding that that provision had not, in fact, been applied by the domestic courts in any proceedings to which the claimants were parties, and therefore their request was incompatible *ratione materiae*. The Constitutional Court observed that, in any event, under section 21 of the Law of 20 June 1996 former employees of the coal mining industry had been exempted from payment for the supply of "energy resources", at the expense of the coal mining companies. The relevant funds had been transferred to the local budgets by the coal mining companies concerned. Section 21 had been amended by the new Law stipulating that as of 1 January 2005 the social protection of employees of companies operating in the coal mining industry was to be ensured in accordance with the legislation of the Russian Federation and collective contracts and agreements, at the expense of the companies (see paragraph 12 above). Furthermore, the claimants' entitlement to the allowance was confirmed by the Sectoral Tariff Agreement applicable to the "Obukhovskaya" coal mine (see paragraph 37 below). Accordingly, the social protection measure initially provided for by section 21 of the Law of 20 June 1996 and constituting by its nature an additional benefit, was, in fact, preserved. The Constitutional Court concluded as follows:

> "Therefore, the [complainants], in fact, remained entitled to the [energy supply allowance] earlier provided for in section 21 of the [Law of 20 June 1996]; accordingly, the amendments introduced to that section by [the new Law] cannot be considered as depriving [the pensioners] of the relevant social benefit until [the respective] employer company operating in the coal mining (processing) industry has been liquidated."

23. The Constitutional Court found, therefore, that in any event there were no grounds to consider that the complainants' constitutional rights had been infringed by the new legislation.

8. Clarifications by the Presidium of the Supreme Court of the Russian Federation of 7 March 2007

24. On 7 March 2007 the Presidium of the Supreme Court of the Russian Federation, in its Overview of the Law and Judicial Practice of the Supreme Court for the 4th Quarter of 2006 (a series of questions and answers on recurrent issues in domestic law and practice), provided clarification on the issue of whether judgments ordering the provision of social benefits under the Law of 20 June 1996 were subject to review or annulment in the light of the subsequent changes to the domestic legislation. The Supreme Court found, with reference to the provisions of the new Law, that as from 1 January 2005 the individuals concerned had no longer been exempted from monthly payment for their energy supply. Accordingly, the organisations in charge of collecting communal charges had no longer been under an obligation to exempt those individuals from the relevant monthly payments. Nor had the new Law established any obligation for the coal mining companies to transfer funds for the social support of their former employees to local budgets. In view of the above, further enforcement of the final judgments in favour of the persons concerned would be in violation of the rights of the companies, as well as those of the municipal authorities.

25. On the other hand, the Supreme Court observed that the Code of Civil Procedure of the Russian Federation did not set out a procedure for the annulment of final judicial decisions in the event of changes in legislation. Bearing in mind that final judgments should not, in any event, be in violation of other persons' rights, and for the purposes of the protection of the rights of the companies and the municipal authorities concerned, the Supreme Court found that the enforcement proceedings in cases concerning social benefits and based on Federal Law No. 81-FZ of 1996 should be discontinued by analogy with section 439 § 1 (5) of the Code of Civil Procedure (that is, after the expiry of the statutory time-limit for the enforcement proceedings in question).

9. The position of the domestic authorities in July-November 2007

26. On 10 July 2007 the Legislative Council of the Rostov Region drew the attention of the head of the Zverevo Town Administration to the contents of the Constitutional Court's ruling of 20 February 2007, emphasising that the social protection of pensioners of the coal mining industry was to be ensured at the expense of the relevant coal mining companies only.

27. On 25 October 2007 the prosecutor's office of the Rostov Region submitted a report on the situation in Zverevo to the deputy head of the Rostov Regional Administration. It appears from an extract from the report submitted by the applicants (pages 6 and 7 of a seven-page document) that the prosecutor reproduced *verbatim* the Supreme Court's findings that

granting the pensioners further exemption from payment for their energy supply would be detrimental to the rights of the companies collecting the communal charges, as well as those of the municipal authorities, and that the Code of Civil Procedure did not set out a procedure for the annulment of final domestic judgments in the event of changes to the legislation in force. He concluded that the company in charge of the collection of public utility charges at the time of the events could not be instructed to discontinue the collection of the charges in issue, since the domestic-law requirement to provide social benefits to pensioners of the coal mining sector could not be enforced at the expense of a company that had been liquidated. The prosecutor's office suggested that the matter could be regulated at the regional level if an appropriate regional law was enacted; however, such a project would be financially burdensome.

28. On 6 November 2007 the Zverevo prosecutor's office rejected the second applicant's non-enforcement complaint, restating the Supreme Court's clarification (see paragraphs 24-25 above), but without any explicit reference to that decision.

10. Agreement of 16 November 2007

29. In 2005-2007 several hundred former employees of the coal mine, as well as employees of Z., another local coal mine, ran a large-scale public campaign against the annulment of the coal supply allowance.

30. As a result of the campaign, on 16 November 2007 the Zverevo Town Administration and the representatives of the pensioners concerned agreed, *inter alia*, that the Town Administration should undertake to implement the following measures: (a) to reach an agreement with the Donenergo company under which it would discontinue the court proceedings against the pensioners (see paragraph 31 below) until the source of finance in respect of the energy supply was determined; (b) to apply to the Administration of the Rostov Region for the writing-off of the pensioners' debt accumulated as a result of the previous non-payment of charges for the supply of energy; (c) to accept applications from the persons concerned for financial assistance; (d) to write off the debt accumulated during the period up to 1 October 2007 and to start calculating the debt in respect of the unpaid compensation for the supply of energy as from 1 November 2007.

11. Proceedings for the recovery of the unpaid sums from the second applicant

31. On 28 December 2007 the Donenergo company was reorganised into a joint stock limited liability company, "the OAO Donenergo". At some point the OAO Donenergo initiated several sets of court proceedings against

former employees of the coal mine, claiming reimbursement of the cost of the supply of coal for the period beginning December 2007.

32. On an unspecified date the Zverevo branch of the OAO Donenergo brought such an action against the second applicant. On 4 December 2008 the Justice of the Peace of the 2nd Court Circuit of Zverevo allowed the claim and ordered the applicant to pay the company 7,981.71 Russian roubles (RUB) in respect of the arrears. The court found that the applicant had not been entitled to the benefit since 1 January 2005, since under the new Law the coal mining companies had no longer been under an obligation to transfer funds to the local budgets in payment for the energy supplied. Without referring to the Supreme Court's clarifications (see paragraphs 24-25 above), the court reproduced *verbatim* the conclusion that the further enforcement of the judgment in the second applicant's favour would be in violation of the companies' and the municipal authorities' rights, and that its enforcement had to be discontinued by analogy with section 439 § 1 (5) of the Code of Civil Procedure (see paragraph 25 above).

33. On 4 February 2009 the Zverevo Town Court upheld the decision on appeal.

34. It appears that no such action was brought against the first applicant.

12. Subsequent developments

35. In an interview of 11 December 2008 published in a local newspaper, the head of the Zverevo Town Administration reiterated that since 1 January 2005 the provision of the social benefits concerned had been the responsibility of the companies operating in the coal mining sector; however, the coal mine in issue had been liquidated, and thus the execution of the judgments in the pensioners' favour had become impossible. He pointed out that the Zverevo pensioners' case had been examined by the Rostov Regional Court, the Supreme Court and the Constitutional Court of the Russian Federation, and that the Constitutional Court had ruled that the entitlement to the social benefit concerned had existed only until the liquidation of the relevant coal mining company. Moreover, it was beyond the local administration's competence to order the OAO Donenergo, a private company, to revoke its court actions for the collection of the arrears in communal charges. He further confirmed that the agreement of 16 November 2007 (see paragraph 30 above) constituted a temporary solution to the pensioners' problem until 1 November 2007 (see paragraph 30 above). Finally, he pointed out that pensioners in financial difficulties were able to apply for assistance to the local social welfare offices. This position was further reiterated in numerous letters from various domestic authorities in 2008-2009.

C. Relevant domestic law and practice

1. Code of Civil Procedure of the Russian Federation

36. According to section 4 § 1 of the Code, in the absence of a procedural norm regulating a situation arising in the course of a civil judicial procedure, the courts must apply the norm regulating similar situations (analogy by law). Where there is no such norm, the courts must act on the basis of the general principles for the administration of justice in the Russian Federation (analogy by right, or inference from general principles of law).

2. Sectoral Tariff Agreement of 6 April 2004

37. On 6 April 2004 a Sectoral Tariff Agreement for the Coal Mining Sector of the Russian Federation for 2004-2006 *(Отраслевое тарифное соглашение по угледобывающему комплексу Российской Федерации на 2004-2006 годы)* was concluded. The agreement applied, *inter alia*, to the coal mine's activities. Section 5.20 of the agreement stipulated that pensioners of the coal mining sector residing in "comfortable housing" were to be exempted from payment for their energy supply at the expense of the respective companies operating in the coal mining sector, notwithstanding the affiliation of the housing in question. However, the amount of the free energy supply could not exceed the norms specified by the respective collective contracts *(коллективные договоры*) and collective agreements (*коллективные соглашения*).

COMPLAINTS

38. The applicants complained under Article 6 of the Convention and Article 1 of Protocol No. 1 thereto of the non-enforcement of the initial judgments in their favour.

THE LAW

A. Joinder of the applications

39. Having regard to the similarity of the facts and the legal issues under the Convention in the above cases, the Court decides to join the applications and consider them in a single decision.

B. Non-enforcement of the judgments in the applicants' favour

40. The applicants complained, with reference to the *Burdov* case (see *Burdov v. Russia*, no. 59498/00, ECHR 2002-III), that by failing to comply with the judgments in their favour (see paragraphs 7-10 above) after 31 December 2004, the authorities have violated their rights 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."

41. The Court reiterates that an unreasonably long delay in the enforcement of a binding judgment may breach the Convention (see *Burdov,* cited above). The Court observes at the outset, however, that, in contrast to the *Burdov* case referred to by the applicants, the judgments in their favour were given against a municipal unitary company and a coal mine, a joint stock limited liability entity with a separate legal personality. In so far as the coal mine is concerned, the State is not, as a general rule, directly liable for the debts of private actors (see, in a similar context, *Anokhin v. Russia* (dec.), no. 25867/02, 31 May 2007). As regards the debts of municipal companies, they may, in principle, be attributable to the State (see, in so far as relevant, *Yershova v. Russia*, no. 1387/04, §§ 53-62, 8 April 2010). It is worth noting that the municipal company in the present case was involved in the case only with respect to its obligation under the Law of 20 June 1996 not to charge the applicants for their energy supply. The Court further notes that the defendant companies no longer exist: the coal mine was liquidated on 3 February 2005, and the municipal company was reorganised in September 2005 (see paragraphs 15 and 17 above).

42. The Court does not consider it necessary to determine the issue of the State's responsibility in the present two cases. In the Court's view, it is in the first place to be ascertained whether the initial judgments in the applicants' favour were still binding and enforceable within six months of the date of their applications to the Court, as required by Article 35 § 1 of the Convention.

1. Whether the judgments remained binding and enforceable

43. The Court notes that, pursuant to the final judgments of 25 November 2002 and 12 March 2003 in the applicants' favour, the municipal company was under an obligation to exempt the applicants from monthly payments for their energy resources, at the expense of the coal mine, under the Law of 20 June 1996 (see paragraphs 8-9 above). The coal mine was under obligation to transfer the relevant funds to the local budget. It is not disputed that the defendant companies complied with the judgments up to the end of 2004 (see paragraph 10 above). However, on 1 January 2005 several amendments to the Law of 20 June 1996 entered into force. The right of pensioners living in "comfortable housing" to exemption from payment for their energy supply was excluded from the amended Law (see paragraphs 11-13 above).

44. The Court reiterates at the outset that that neither Article 6 of the Convention nor Article 1 of Protocol No. 1 guarantees a right to social benefits in a particular amount (see, *mutatis mutandis*, *Aunola v. Finland* (dec.), no. 30517/96, 15 March 2001). The Court has previously taken the view that it is conceivable that a judgment loses its legal force when the legislative framework changes (see *Bulgakova v. Russia*, no. 69524/01, § 41, 18 January 2007; see also, *mutatis mutandis*, *Khoniakina v. Georgia*, no. 17767/08, §§ 74 and 75, 19 June 2012, and *Arras and Others v. Italy*, no. 17972/07, § 42, 14 February 2012). In particular, the Court has stated that domestic pension-law provisions are "liable to change and a judicial decision cannot be relied on as a guarantee against such changes in the future" (see *Sukhobokov v. Russia,* no. 75470/01, § 26, 13 April 2006), even if such changes are to the disadvantage of certain welfare recipients (see *Bulgakova*, cited above, § 41; *Orlov v. Russia* (dec.), no. 49716/08, 15 November 2011; and *Kornev v. Russia* (dec.), no. 31766/05, 22 November 2011).

45. The Court considers these principles to be applicable in the instant case, which concerns an energy supply allowance for pensioners of the coal mining industry. Following the introduction of new statutory provisions, the responsibility for ensuring the social protection of the employees of companies operating in the coal mining industry was transferred directly to the companies themselves, that is, to the coal mine in the applicants' case (see paragraphs 12 and 37 above). Hence, the existence of the social benefit was preserved but became conditional on the company's operation. Accordingly, it existed until the company's liquidation (see the conclusion by the Constitutional Court of Russia, paragraph 22 above). However, the coal mine in question was wound up as early as 3 February 2005. In such circumstances, as clarified by the Supreme Court of Russia (see paragraphs 24-25 above), the enforcement of the final judgments in favour of the persons concerned was no longer possible after that date.

46. The Court cannot discern any reason in the present case to depart from the position taken by the aforementioned Russian courts. Therefore, the Court finds that as a result of (a) the changes in the legislation in force as of 1 January 2005 transferring responsibility for the issue of granting the social benefit to the coal mining companies, and (b) the liquidation of the defendant coal mine on 3 February 2005, the applicants no longer had an enforceable claim under the initial judgments in their favour after the latter date (see *Kornev*, cited above).

2. When did the applicants learn, or ought they to have learned, that the judgments were no longer enforceable

47. It remains to be established, for the purposes of the determination of the six-months' issue, when the applicants knew, or ought to have known, that the judgment in their favour had ceased to be enforceable. In fact, the applicants' argument before the Court is based on the assumption that the judgments in their favour have remained binding and enforceable to date.

48. The Court reiterates that the fundamental purpose of the six-month rule is to ensure legal certainty, avoid stale complaints, and provide for an examination of the Convention issues within a reasonable time (see *Sabri Güneş v. Turkey* [GC], no. 27396/06, §§ 39-40, 29 June 2012). As a rule, the six-month period runs from the date of the final decision in the process of exhaustion of domestic remedies. Where it is clear from the outset that no effective remedy is available to the applicant, the period runs from the date of the acts or measures complained of, or from the date of knowledge of those acts or their effect on or prejudice to the applicant (see, among others, *Valašinas v. Lithuania* (dec.), no. 44558/98, 14 March 2000, and *Dennis and Others v. the United Kingdom* (dec.), no. 76573/01, 2 July 2002). In cases involving a continuing situation, the six-month period runs from the cessation of that situation (see *Seleznev v. Russia*, no. 15591/03, § 34, 26 June 2008, and *Koval v. Ukraine* (dec.), no. 65550/01, 30 March 2004).

49. Non-enforcement of a judgment is a continuing situation (see, among many others, *Trunov v. Russia*, no. 9769/04, § 15, 6 March 2008). However, in a number of cases the Court has rejected non-enforcement complaints in accordance with Article 35 § 1 of the Convention if they were introduced more than six months after the date when the judgment ceased to be binding and enforceable (see, in the context of the quashing of a judgment by way of supervisory-review proceedings, *Kravchenko v. Russia*, no. 34615/02, § 34, 2 April 2009, and *Nikolay Zaytsev v. Russia*, no. 3447/06, § 26, 18 February 2010).

50. Turning to the present case, the Court notes that, in contrast to the aforementioned *Kravchenko*, *Nikolay Zaytsev* and *Sukhobokov* cases (all cited above), the judgments in the applicants' favour were not quashed by way of a supervisory-review procedure or otherwise set aside by the domestic courts, nor have they been amended or interpreted by a competent

court. They ceased to be enforceable in early 2005 when the legislative framework changed and the coal mine was wound up. However, the domestic law did not provide for a procedure for the amendment or setting aside of such judgments in the specific situation of a change in legislation. Furthermore, the authorities' position as regards the prospects of enforcement of similar judgments in favour of Zverevo pensioners immediately after the entry into force of the impugned amendments appears to have been somewhat inconsistent; for instance, on 17 May 2005 the local prosecutor's office took the view that the judgments in favour of the Zverevo pensioners remained in force and should be executed in so far as they had not been quashed by way of supervisory review (see paragraph 19 above). In these circumstances, and in the absence of an authoritative interpretation of the disputed legislative amendments and their effect on the final judgments in favour of the Zverevo pensioners, the Court is prepared to accept that, at least in 2005, the applicants could arguably have believed that the changes in the legislation introduced by Federal Law No. 122-FZ did not affect their right to be exempted from payment for their energy supply conferred by the final judgments in their favour.

51. Be that as it may, in the Court's view any doubts as regards the enforceability of the judgments were clearly dispelled in early 2007 by the domestic courts.

52. First, on 20 February 2007 the Constitutional Court found that the relevant social benefit was preserved in respect of the complainants until the respective company operating in the coal mining industry was wound up (see paragraphs 22-23 above). Thus, the Constitutional Court clearly and unequivocally pronounced on the intrinsic link between the existence of the right to compensation under the new Law and the liquidation of an employer company. The employer company in the applicants' case was liquidated on 3 February 2005, and there is nothing in the applicants' submissions to suggest that the newly created OAO Mining Management Department "Obukhovskaya", a private company, undertook the obligation to provide the social benefit in question to the applicants at its own expense. Thus, the applicants could at that point no longer have expected to receive the social benefit in question. It has not been argued that the applicants were not timeously informed of the contents of the relevant ruling of the Constitutional Court, which was of crucial importance to the former employees of the "Obukhovskaya" coal mine. The text of the ruling was publicly available, and the applicants themselves referred to it in their submissions.

53. Secondly, the Court observes that on 7 March 2007 the Supreme Court of Russia, dealing specifically with the effect of the legislative amendments in question on the final judgments in the pensioners' favour, held that the further enforcement of such judgments would be to the detriment of both the municipal and the coal mining companies' rights, and

that the enforcement proceedings in respect of those judgments should be discontinued (see paragraphs 24-25 above). Even though the case files do not contain a reference to the relevant clarifications, the Supreme Court's reasoning and conclusions were reproduced *verbatim* in various documents submitted by the authorities in reply to the applicants' non-enforcement complaints (see paragraphs 27 and 28 above). In the Court's view, the authorities' position since at least 2007 as regards the impossibility of enforcing the judgments because of the change to the pensions legislation was clear, unambiguous and consistent, and there is nothing to suggest that the applicants, who had been involved in extensive correspondence with the authorities, had any difficulty in accessing that information.

54. These circumstances, taken cumulatively, lead the Court to conclude that the applicants learned, or ought to have learned, as early as in 2007 that the judgments in their favour were no longer enforceable under the domestic law because of the change in the domestic pensions legislation.

3. The effect of the subsequent developments on the Court's above findings

55. In the Court's view, this conclusion cannot be altered by subsequent developments in the applicants' cases. As regards the authorities' attempts to adopt individual measures aimed at resolving the Zverevo pensioners' problem, such as, for instance, the agreement of 16 November 2007 (see paragraph 30 above), the Court observes that the decision to write off the Zverevo pensioners' debts accumulated up to November 2007 constituted a one-off measure of assistance and did not imply any acknowledgment by the State of responsibility for the debts of the liquidated coal mine in a situation where entitlement to the relevant social benefit had ceased to exist under the domestic law.

56. Similarly, with regard to the proceedings of 2009 involving the second applicant (see paragraphs 31-33 above), the Court notes that they were brought against him by the OAO Donenergo, a separate legal entity in charge of the collection of public utility charges at the time of the events. The domestic courts' findings in those proceedings were based on an interpretation of the domestic law provisions which was already available to the applicant at that time (see paragraphs 52-54 above). However, after December 2007 he evaded payment for his energy supply. Courts at two instances confirmed on yet another occasion, in essence, that in the absence of an entitlement in the domestic law, there were no grounds to exempt the applicant from payment of the debt accrued as a result of his failure to pay his energy bills. The Court therefore finds the fact of the second applicant's involvement in these proceedings irrelevant for the determination of the six-month issue in respect of his non-enforcement complaint.

4. Conclusion as regards compliance with the six-month rule

57. The Court has found that (a) the judgments in the applicants' favour were no longer enforceable as from 2005, and (b) the applicants learned, or ought to have learned of that fact at least in 2007. However, it was not until 25 and 27 December 2008, respectively, that the applicants complained to the Court about their inability to obtain execution of their respective judicial awards. Thus, the applications were introduced outside the six-month time-limit set out in Article 35 § 1 of the Convention.

58. It follows that the applications were introduced out of time and must be rejected in accordance with Article 35 §§ 1 and 4 of the Convention.

For these reasons, the Court unanimously

Decides to join the applications;

Declares the applications inadmissible.

Søren Nielsen
Registrar

Isabelle Berro-Lefèvre
President