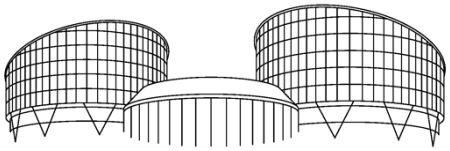

EUROPEAN COURT OF HUMAN RIGHTS
COUR EUROPÉENNE DES DROITS DE L'HOMME

THIRD SECTION

CASE OF AGAPOV v. RUSSIA

(Application no. 52464/15)

JUDGMENT

Art 6 § 2 • Presumption of innocence • Statement by domestic courts in civil proceedings for non-payment of taxes, relating to applicant's criminal guilt for tax evasion, and for which he had not been convicted given that the prosecution was time-barred • Statement went beyond determining facts and encompassed judicial authorities' opinion on the applicant's *mens rea* • Imputation of criminal guilt, inconsistent with right to presumption of innocence
Art 1 P1 • Peaceful enjoyment of possessions • By piercing the corporate veil, court imposed a duty on applicant to pay tax arrears, penalty and fine owed by limited liability company, for which he had been managing director • Duty based on allegation of criminal conduct of applicant, for which he had not been convicted • Court decision unlawful

STRASBOURG

6 October 2020

This judgment will become final in the circumstances set out in Article 44 § 2 of the Convention. It may be subject to editorial revision.

In the case of Agapov v. Russia,

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

Paul Lemmens, *President,*
Georgios A. Serghides,
Helen Keller,
Dmitry Dedov,
María Elósegui,
Gilberto Felici,
Erik Wennerström, *judges,*
and Milan Blaško, *Section Registrar,*

Having regard to:

the application (no. 52464/15) 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 Anatoliy Anatolyevich Agapov ("the applicant"), on 6 October 2015;

the decision to give notice to the Russian Government ("the Government") of the application;

the parties' observations;

Having deliberated in private on 15 September 2020,

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

INTRODUCTION

1. The case concerns the applicant's complaints under Article 6 § 2 of the Convention (presumption of innocence) and Article 1 of Protocol No. 1 (the applicant's obligation to pay damages as a consequence of the failure to pay taxes by a legal entity of which he was the sole executive body).

THE FACTS

2. The applicant was born in 1967 and lives in Krasnodar. He was represented by Mr A. Zekoshev, a lawyer practising in Krasnodar.

3. The Russian Government ("the Government") were represented initially by Mr G. Matyushkin, then Representative of the Russian Federation to the European Court of Human Rights, subsequently by Mr A. Fedorov, Head of the Office of the Representative of the Russian Federation to the European Court of Human Rights, and most recently by Mr M. Galperin, Representative of the Russian Federation to the European Court of Human Rights.

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

I. TAX PROCEEDINGS AGAINST THE LIMITED LIABILITY COMPANY

5. From 1 January 2011 the applicant was the managing director of Argo-RusCom Limited Liablity Company ("the LLC").

6. On an unspecified date in 2013, the inter-district tax inspectorate conducted an audit of the LLC. According to the audit report, in the years 2010 and 2011 the LLC had evaded payment of value-added tax (VAT) in breach of the Tax Code. In particular, the tax inspectorate established that the LLC had failed to submit in good time the documents justifying the application of zero rate VAT to its transactions. The LLC's allegations that the relevant documents had been stolen were dismissed as unsubstantiated. The inspectorate recalculated the taxes owed by the LLC and ordered that the latter pay the tax arrears, the interest on that amount and a penalty totalling 14,948,778.61 Russian roubles (RUB). The case was referred to the commercial courts for consideration. The commercial courts confirmed the lawfulness of the inspectorate's claims. The final decision on the matter was taken by the North Caucasus Circuit Commercial Court on 3 June 2015.

7. The LLC was unable to pay the amount indicated and on 3 December 2013 the Krasnodar Regional Commercial Court declared the LLC insolvent and opened bankruptcy proceedings in respect of it.

8. On 2 June 2015 the Regional Commercial Court ordered the company's liquidation.

9. On 16 July 2015 the LLC was deregistered.

II. CRIMINAL PROCEEDINGS AGAINST THE APPLICANT

10. On an unspecified date the inter-district investigative committee opened an inquiry concerning the tax evasion allegedly committed by the applicant.

11. The investigator with the investigative committee studied the audit report prepared by the tax inspectorate and repeatedly questioned the applicant and the LLC's chief accountant.

12. On 2 June 2014 an investigator ruled that the audit report of the tax inspectorate confirmed that the applicant had evaded payment of VAT owed by the LLC. The investigator refused, however, to institute criminal proceedings, noting that the events in question had taken place more than two years before and that the criminal prosecution was time-barred. The applicant did not appeal.

III. CIVIL PROCEEDINGS AGAINST THE APPLICANT

13. On 4 March 2015 the inter-district tax inspectorate brought a civil action against the applicant, seeking compensation for damage caused by

the criminal offence of tax evasion committed by him in the amount of RUB 14,948,778.61. Relying on Ruling no. 64 of the Plenary of the Supreme Court of the Russian Federation on practice in the application of the law on tax crimes, the rules of criminal procedure and Article 199 of the Criminal Code of the Russian Federation, the inspectorate argued that the tax authorities had a right to recover damages caused by a criminal offence of evasion of taxes. They further referred to the general provisions of the Civil Code of the Russian Federation providing for a right to claim damages from a tortfeasor (Article 1064 of the Civil Code of the Russian Federation (the "CC") and an employer's vicarious liability in respect of the damage caused by its employee (Article 1068 of the CC). Lastly, they submitted that the damage incurred by the State had been caused by the applicant who had been the managing director of the LLC.

14. On 6 April 2015 the Leninskiy District Court of Krasnodar granted the claims in full. It relied on the audit report establishing that the LLC had evaded payment of taxes and on Ruling no. 64, noting as follows:

> "As the court has established and as is apparent from the material in the case file, from 1 January to 31 December 2011 [the applicant] was the managing director of the [LLC]. He had the right to sign financial documents and to submit tax declarations.
>
> The [LLC] failed to comply with its duty to pay value-added tax and tax on profits ...
>
> [The applicant], who was managing director of the LLC, committed illegal acts with a criminal intent to evade the payment of taxes and caused pecuniary damage to the budget of the Russian Federation, which fact was established by the decision on the refusal to open a criminal investigation of 2 June 2014.
>
> According to the said decision, the audit conducted [by the tax inspectorate] established that [the LLC] had failed to pay taxes in the amount of RUB 11,487,367 in respect of the first quarter of 2010 and the first and second quarters of 2011. These violations are documented in the [audit report] dated 13 May 2013.
>
> On 2 June 2014 the senior investigator [of the inter-district investigative department of the regional investigative committee] refused to institute a criminal investigation [on the charge of tax evasion] in respect of [the applicant] in view of [the fact that it was time-barred].
>
> The relevant decision came into force.
>
> The court cannot accept the [applicant's] argument that his guilt has not been proved given that the criminal proceedings in his case were discontinued on non-exonerating grounds."

15. On 9 June 2015 the Krasnodar Regional Court upheld the judgment of 6 April 2015 on appeal.

16. The applicant lodged a cassation appeal, alleging that the courts had erred in (1) application of substantive law and rules of civil procedure and (2) calculation of the damages. Relying on Article 6 § 2 of the Convention, the applicant argued that, in the absence of a conviction, the courts had

wrongfully reasoned that he had committed a crime resulting in damage to the State.

17. On 30 July 2015 the Regional Court concluded that the lower courts had applied the laws correctly and rejected the applicant's cassation appeal.

18. Reiterating his earlier arguments, the applicant lodged another cassation appeal.

19. On 11 November 2015 the Supreme Court of the Russian Federation referred to the findings of the lower courts and rejected the cassation appeal lodged by the applicant.

20. According to the Government, the judgment of 6 April 2015 was enforced in part. The bailiff's service recovered RUB 15,871.06 from the applicant. According to the applicant, as at 27 February 2019, RUB 51,571.45 had been recovered from him.

RELEVANT LEGAL FRAMEWORK

I. PRESUMPTION OF INNOCENCE

21. The Constitution of the Russian Federation (Article 49) and the Russian Code of Criminal Procedure (Article 14 § 1) provide that everyone charged with a criminal offence is to be presumed innocent until proved guilty according to law and declared guilty by an effective court judgment.

II. NON-COMPLIANCE WITH TAXATION LAWS

22. Under Article 122 of the Tax Code, non-payment or underpayment of taxes by a taxpayer gives rise to financial liability (penalty).

23. Article 199 of the Criminal Code provides for criminal liability in respect of tax evasion.

24. In Ruling no. 64 on practice in the application of the law on tax crimes (adopted on 28 December 2006, in force at the relevant time), the Plenary of the Supreme Court of the Russian Federation construed tax evasion (Article 199 of the Criminal Code) as a wilful (deliberate) act aimed at the non-payment of taxes resulting in the relevant taxes not being paid into the State budget (point 3). As regards the non-payment of taxes by a legal entity, its managing director, chief accountant or any other person responsible for tax reporting on behalf of the legal entity could be held criminally liable (point 7).

III. INQUIRY PRECEDING INSTITUTION OF CRIMINAL PROCEEDINGS

25. It is incumbent on the investigator to conduct an inquiry if he or she receives information that a crime has been committed. In the course of the

inquiry, the investigator may question the parties concerned, collect evidence, commission forensic expert assessments or audits, and so on. He or she is to advise the parties questioned as to their rights, including the right against self-incrimination and the right to legal assistance. The information obtained in the course of the inquiry may be admitted as evidence (Article 144 of the Code of Criminal Procedure).

IV. CIVIL LIABILITY AS REGARDS PAYMENT OF DAMAGES

26. The Civil Code of the Russian Federation provides for an obligation of a tortfeasor to compensate for the damage caused to a person or property in full. The law may impose responsibility to compensate for the damage on a person other than a tortfeasor (Article 1064). The CC also establishes that the employer is vicariously liable for the damage caused by an employee (Article 1068).

V. LIABILITY OF LIMITED LIABILITY COMPANIES (LLC)

27. Pursuant to the Federal Law on Limited Liability Companies (Article 3), the LLC is liable for its obligations. If, as a result of dishonest or unreasonable actions of a person who is competent to manage the LLC's activities, the LLC is declared bankrupt and its assets are insufficient to satisfy its obligations vis-à-vis its creditors, this person may be found subsidiarily liable for the LLC's obligations.

28. When interpreting the relevant provisions of the national legislation on the bankruptcy proceedings in respect of LLCs, the Supreme Court of the Russian Federation considered that, in order to find a person subsidiarily liable in respect of the LLC's obligations, it is incumbent to establish a cause and effect link between his or her actions and the LLC's activities resulting in the latter's bankruptcy (Overview of the judicial practice no. 2 (2016) adopted by the Presidium of the Supreme Court of the Russian Federation on 6 July 2016).

THE LAW

I. ALLEGED VIOLATION OF ARTICLE 6 § 2 OF THE CONVENTION

29. The applicant complained that, in the course of the civil proceedings, the national judicial authorities had pronounced him guilty in breach of Article 6 § 2 of the Convention, which reads as follows:

> "Everyone charged with a criminal offence shall be presumed innocent until proved guilty according to law."

A. Admissibility

30. The Court notes from the outset that it has to satisfy itself that it has jurisdiction in any case brought before it, and is therefore obliged to examine the question of its jurisdiction at every stage of the proceedings (see *Blečić v. Croatia* [GC], no. 59532/00, § 67, ECHR 2006-III). Accordingly, even though the Government in their observations raised no plea of inadmissibility concerning lack of jurisdiction *ratione materiae*, the Court nevertheless has to examine, of its own motion, whether the applicant may claim that Article 6 § 2 of the Convention is applicable to the judicial proceedings in his case.

31. In this connection, the Court reiterates that, as expressly stated in the terms of that provision, Article 6 § 2 applies where a person is "charged with a criminal offence" within the autonomous Convention meaning (see *Allen v. the United Kingdom* [GC], no. 25424/09, § 95, ECHR 2013). It further reiterates that there are two aspects of the protection afforded by Article 6 § 2 of the Convention. Firstly, Article 6 § 2 protects the right of any person to be "presumed innocent until proved guilty according to law". Regarded as a procedural safeguard in the context of the criminal trial itself, the presumption of innocence also has another aspect. Its general aim, in this second aspect, is to protect individuals who have been acquitted of a criminal charge, or in respect of whom criminal proceedings have been discontinued, from being treated by public officials and authorities as though they are in fact guilty of the offence charged. In these cases, the presumption of innocence has already operated, through the application at trial of the various requirements inherent in the procedural guarantee it affords, to prevent an unfair criminal conviction being imposed. Without protection to ensure respect for the acquittal or the discontinuance decision in any other proceedings, the fair-trial guarantees of Article 6 § 2 could risk becoming theoretical and illusory. What is also at stake once the criminal proceedings have concluded is the person's reputation and the way in which that person is perceived by the public (see *Allen*, cited above, §§ 93-94, and *G.I.E.M. S.R.L. and Others v. Italy* [GC], nos. 1828/06 and 2 others, §§ 314-15, 28 June 2018, with further references).

32. In view of the above, the first question for the Court is whether the applicant was a person "charged with a criminal offence" within the autonomous meaning of Article 6 § 2 of the Convention. The Court answers this question in the affirmative. It accepts that the applicant's situation was "substantially affected" by the inquiry conducted by the investigative authorities into his alleged tax evasion, during which he was repeatedly questioned as a *de facto* suspect (see paragraph 11 above). The Court therefore considers that the applicant can be regarded as having been "charged with a criminal offence", within the autonomous Convention meaning, and can claim the protection of Article 6 of the Convention

(compare *Aleksandr Zaichenko v. Russia*, no. 39660/02, §§ 41-43, 18 February 2010, and *Stirmanov v. Russia*, no. 31816/08, §§ 37-40, 29 January 2019).

33. As to the subsequent civil proceedings, the Court also accepts that there was a direct link between the concluded criminal proceedings and the civil proceedings for damages brought against the applicant by the tax authorities. The claims in question were based on the materials collected by the investigator in the course of the inquiry and were classified by the tax authorities as damage resulting from the criminal offence committed by the applicant (see paragraph 13 above).

34. Regard being had to the above, the Court considers that the complaint cannot therefore be rejected under Article 35 § 3 (a) of the Convention as incompatible *ratione materiae* with the provisions of the Convention. It notes that this complaint is neither manifestly ill-founded nor inadmissible on any other grounds listed in Article 35 of the Convention. It must therefore be declared admissible (see, by contrast, *Larrañaga Arando and Others v. Spain* (dec.), nos. 73911/16 and 3 others, 25 June 2019).

B. Merits

1. Submissions by the parties

35. The applicant argued that, in the civil proceedings, his right to be presumed innocent had been breached.

36. The Government discerned no violation of the applicant's right set out in Article 6 § 2 of the Convention. They pointed out that, although the criminal prosecution on the charge of tax evasion in the applicant's case had been time-barred, he had not been exonerated. The applicant had not challenged the relevant decision of the investigator, a fact which should be construed as an admission of guilt on his part. He could have opted for a criminal trial to obtain an acquittal. However, he had chosen not to do so.

2. The Court's assessment

(a) General principles

37. The general principles concerning observance of the presumption of innocence are well established in the Court's case-law and have been summarised as follows (see *Allen*, cited above):

> "119. ... [O]nce it has been established that there is a link between the two sets of proceedings, the Court must determine whether, in all the circumstances of the case, the presumption of innocence has been respected. It is convenient, therefore, to begin by reviewing the Court's approach to its examination of the merits in previous comparable cases.
>
> (a) The Court's approach in previous comparable cases
>
> ...

120. In cases involving civil compensation claims lodged by victims, regardless of whether the criminal proceedings ended in discontinuation or acquittal, the Court has emphasised that while exoneration from criminal liability ought to be respected in the civil compensation proceedings, it should not preclude the establishment of civil liability to pay compensation arising out of the same facts on the basis of a less strict burden of proof. However, if the national decision on compensation were to contain a statement imputing criminal liability to the respondent party, this would raise an issue falling within the ambit of Article 6 § 2 of the Convention ... . This approach has also been followed in cases concerning civil claims lodged by acquitted applicants against insurers ... .

...

125. It emerges from the above examination of the Court's case-law under Article 6 § 2 that there is no single approach to ascertaining the circumstances in which that Article will be violated in the context of proceedings which follow the conclusion of criminal proceedings. As illustrated by the Court's existing case-law, much will depend on the nature and context of the proceedings in which the impugned decision was adopted.

126. In all cases and no matter what the approach applied, the language used by the decision-maker will be of critical importance in assessing the compatibility of the decision and its reasoning with Article 6 § 2 ... . Thus, in a case where the domestic court held that it was 'clearly probable' that the applicant had 'committed the offences ... with which he was charged', the Court found that it had overstepped the bounds of the civil forum and had thereby cast doubt on the correctness of the acquittal ... . Similarly, where the domestic court indicated that the criminal file contained enough evidence to establish that a criminal offence had been committed, the language used was found to have violated the presumption of innocence ... . In cases where the Court's judgment expressly referred to the failure to dispel the suspicion of criminal guilt, a violation of Article 6 § 2 was established ... . However, when regard is had to the nature and context of the particular proceedings, even the use of some unfortunate language may not be decisive ... . The Court's case-law provides some examples of instances where no violation of Article 6 § 2 has been found even though the language used by domestic authorities and courts was criticised ..."

(b) Whether the applicant's right to be presumed innocent was respected in the present case

38. Turning to the circumstances of the present case, the Court observes that on 2 June 2014 the investigator refused to institute criminal proceedings against the applicant on the charge of tax evasion as prosecution of the offence was time-barred. In other words, the applicant was never tried or convicted of that offence by a court competent to determine questions of guilt under criminal law.

39. The Court further observes that, in the subsequent civil proceedings, the national courts granted the claims lodged by the tax authorities to recover damages as a result of the LLC's failure to pay taxes. The courts found the applicant liable for the LLC's debt, stating that he had committed "illegal acts with a criminal intent to evade the payment of taxes". They considered that fact established by the investigator's finding that the applicant had evaded payment of VAT (see paragraph 13 above).

40. The question for the Court in the present case is whether the above wording used by the civil courts should be construed as imputing criminal liability to the applicant. The Court will look at the context of the proceedings as a whole and their special features in order to determine whether by using such a statement the civil courts breached Article 6 § 2 of the Convention (compare *Fleischner v. Germany*, no. 61985/12, § 65, 3 October 2019).

41. As regards the language used by domestic civil courts, the Court considers that it did constitute a statement about the applicant's criminal guilt. The judicial authorities did not limit their analysis to the establishment of facts. They claimed that the applicant had committed the illegal acts with a criminal intent: the domestic courts did not only determine the *actus reus*, which would have been permissible, under the circumstances, (see, for example, *Fleischner*, cited above, § 63). They went further and stated that the applicant's acts were made with the requisite *mens rea*.

42. Having examined the context of the proceedings, the Court discerns nothing in the materials submitted that would justify the impugned choice of words made by the domestic courts.

43. Firstly, the Court takes into account the fact that, when suing the applicant for damages, the tax authorities claimed that the damage had resulted from a criminal offence committed by him. The civil courts did not invite the plaintiff to recharacterise the claims. Nor did they do so of their own motion. The Court further notes that the civil courts based their decision to grant the claims against the applicant exclusively on the findings as to his criminal liability as set out in the investigator's decision of 2 June 2014. They did not evaluate any evidence or assess the facts or conclusions made by the investigator or the tax inspectorate. Instead, they simply referred to a mere existence of the investigator's decision and the audit report confirming the LLC's obligations to pay taxes. They construed the absence of an acquittal in the applicant's criminal case as an automatic and sufficient ground to hold him liable for the damage resulting from the non-payment of taxes by the LLC.

44. Against such a background, the Court considers that the wording used by the civil courts was not merely unfortunate. It reflected those courts' unequivocal opinion that a criminal offence had been committed and that the applicant was guilty of that offence, even though he had never been convicted of that offence and had never had the opportunity to exercise his rights of defence in a criminal trial. In the Court's view, the civil courts' statement was inconsistent with the discontinuation of the criminal proceedings against the applicant and amounted to a pronouncement that the applicant had committed a criminal offence. Having examined the material before it, the Court finds no justification for such a statement imputing criminal liability to the applicant (compare *Farzaliyev v. Azerbaijan*,

no. 29620/07, §§ 65-69, 28 May 2020, and, by contrast, *Fleischner*, cited above, §§ 61-69).

45. Regard being had to the above, the Court concludes that the applicant was treated in a manner inconsistent with his right to be presumed innocent and holds that there has been a violation of Article 6 § 2 of the Convention.

II. ALLEGED VIOLATION OF ARTICLE 1 OF PROTOCOL No. 1

46. The applicant complained that the domestic courts' decision to impose on him the duty to pay the tax arrears, penalty and a fine owed by the limited liability company of which he had been the managing director constituted an interference with his right to the peaceful enjoyment of his possessions, in contravention of Article 1 of Protocol No. 1, which reads as follows:

> "Every natural or legal person is entitled to the peaceful enjoyment of his possessions. No one shall be deprived of his possessions except in the public interest and subject to the conditions provided for by law and by the general principles of international law.
>
> The preceding provisions shall not, however, in any way impair the right of a State to enforce such laws as it deems necessary to control the use of property in accordance with the general interest or to secure the payment of taxes or other contributions or penalties."

A. Admissibility

47. The Government submitted that the obligation imposed on the applicant to pay damages had not amounted to an interference with his possessions. The money owed by the applicant had not constituted his possessions.

48. The applicant submitted that the duty to pay damages imposed on him had constituted an interference with his possessions.

49. The Court notes that the civil proceedings which lie at the core of the applicant's complaint concerned compensation for damage allegedly caused to the State budget by his actions. As a result, he was ordered to pay a certain amount in pecuniary damages. The Court considers that such an obligation imposed on the applicant constituted an interference with his property rights as guaranteed by Article 1 of Protocol No. 1 and dismisses the Government's argument to the contrary.

50. The Court notes that this complaint is neither manifestly ill-founded nor inadmissible on any other grounds listed in Article 35 of the Convention. It must therefore be declared admissible.

B. Merits

1. *Submissions by the parties*

51. The applicant submitted that the interference with his possessions had failed to strike a fair balance between the general interest of the community and the protection of his rights.

52. The Government argued that, as the legal representative of the LLC, the applicant had failed to pay taxes on behalf of the LLC. The national tax and judicial authorities had established correctly that the applicant had been guilty of tax offences and that he had been liable for the damage caused by his actions.

2. *The Court's assessment*

(a) General principles

53. The Court's principles as regards the application of Article 1 of Protocol No. 1 have been summarised by the Grand Chamber in *G.I.E.M. S.R.L. and Others* (see *G.I.E.M. S.R.L. and Others*, cited above) as follows:

> "292. The Court reiterates that Article 1 of Protocol No. 1 above all requires that any interference by a public authority with the enjoyment of possessions be in accordance with the law: under the second sentence of the first paragraph of this Article, any deprivation of possessions must be 'subject to the conditions provided for by law'; the second paragraph entitles the States to control the use of property by enforcing 'laws'. Moreover, the rule of law, which is one of the fundamental principles of a democratic society, is inherent in all the Articles of the Convention (see *Amuur v. France*, 25 June 1996, § 50, *Reports* 1996-III, and *Iatridis*, cited above, § 58)."

(b) Application to the present case

54. The Court will examine the situation complained of in the light of the general rule set forth in the first sentence of the first paragraph of Article 1 of Protocol No. 1 (compare *Beyeler v. Italy* [GC], no. 33202/96, § 106, ECHR 2000-I).

55. The first and most important requirement of Article 1 of Protocol No. 1 is that any interference by a public authority with the peaceful enjoyment of one's possessions should be lawful and not arbitrary (see *Iatridis v. Greece* [GC], no. 31107/96, § 58, ECHR 1999-II). When speaking of "law", Article 1 of Protocol No. 1 alludes to the same concept to be found elsewhere in the Convention, a concept which comprises statutory law as well as case-law. It refers to the quality of the law in question, requiring that it be accessible to the persons concerned, precise and foreseeable in its application (see *Carbonara and Ventura v. Italy*, no. 24638/94, § 64, ECHR 2000-VI).

56. It is in the first place for the national authorities to interpret and apply the domestic law. Nevertheless, the Court is required to establish

whether the way in which the domestic law was interpreted and applied produced consequences that are consistent with the principles of the Convention (see, for example, *Mullai and Others v. Albania*, no. 9074/07, § 114, 23 March 2010).

57. In this connection, the Court reiterates that a procedural termination of the criminal proceedings, as occurred in the case under consideration, should not preclude the establishment of civil liability to pay compensation arising out of the same facts on the basis of a less strict burden of proof (see the general principles cited in paragraph 37 above). In such circumstances the injured party should be able to submit a claim for compensation for damage under the general principles on the law of torts. Nor can the Court rule out the possibility that the piercing of the corporate veil may be an appropriate solution for defending the rights of a company's creditors, including the State (see *Khodorkovskiy and Lebedev v. Russia*, nos. 11082/06 and 13772/05, § 877, 25 July 2013).

58. Nevertheless, having examined the material submitted by the parties, the Court considers that, in the circumstances of the present case, for the reasons set out below, that the impugned decisions of the civil courts were devoid of any legal basis, contrary to the requirements of Article 1 of Protocol No. 1.

59. The Court notes at the outset that the tax authorities and subsequently the commercial courts established that the LLC had failed to comply with its tax obligations and, as a result, caused damage to the State budget (see paragraph 6 above). When the LLC was unable to fulfil its obligations and was subsequently declared insolvent (see paragraph 7 above), the tax authorities chose to bring the relevant claims against the applicant, alleging that the damage had resulted from a crime committed by him (see paragraph 13 above).

60. In this connection, the Court observes that, pursuant to Russian law, a person can be declared guilty only in an effective judgment delivered in the course of a procedure established by law (see paragraph 21 above). In the present case, no such judgment was delivered against the applicant. The investigator refused to institute criminal proceedings against him. Nevertheless, the national courts granted the tax authorities' claims and considered it sufficient to conclude that the applicant was liable for the damage resulting from the LLC's failure to pay taxes merely by referring to the investigator's finding that the applicant had evaded payment of VAT, without examining any evidence or making independent findings of their own under the applicable provisions of civil law that the applicant was in fact responsible for non-payment of taxes. Furthermore, none of the facts cited by the investigator in the relevant decision and relied upon by the civil courts was scrutinised or validated in any adversarial manner either in the criminal or civil proceedings.

61. Admittedly, the national courts took into consideration the fact that the applicant had been the managing director of the LLC which had failed to pay taxes. However, the national courts did not refer to any existing laws or judicial practice that would have allowed them to pierce the corporate veil and to hold the applicant responsible for the LLC's failure to pay taxes while the LLC was not yet deregistered (see, by contrast, *Lekić v. Slovenia* [GC], no. 36480/07, §§ 96-104, 11 December 2018, in which the Court analysed the quality of domestic laws underlying the piercing of the corporate veil in respect of the applicant).

62. Lastly, contrary to the Government's argument made in the context of Article 6 § 2 of the Convention (see paragraph 36 above), the Court finds it irrelevant that the applicant did not appeal against the investigator's decision of 2 June 2014 refusing to open a criminal investigation. There is no indication in the Government's submissions that domestic law allowed such a failure to appeal to be construed as proof of guilt or a ground for civil liability.

63. Regard being had to the above, the Court considers that the order for the applicant to pay damages to the tax authorities was made in an arbitrary fashion and was therefore contrary to the requirement of lawfulness under Article 1 of Protocol No. 1.

The Court thus concludes that there has been a violation of that provision. This finding makes it unnecessary for the Court to establish whether or not a fair balance was struck.

III. APPLICATION OF ARTICLE 41 OF THE CONVENTION

64. Article 41 of the Convention provides as follows:

> "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

65. The applicant claimed 51,571.45 Russian roubles (RUB) in respect of pecuniary damage corresponding to the amount recovered from him by the bailiff's service as repayment of the judgment debt. He also claimed 15,000 euros (EUR) in respect of non-pecuniary damage.

66. The Government submitted that no award should be made to the applicant, discerning no interference with the applicant's possessions.

67. As regards the applicant's claims in respect of pecuniary damage, the Court reiterates that the priority under Article 41 of the Convention is *restitutio in integrum*, as the respondent State is expected to make all feasible reparation for the consequences of the violation in such a manner as to restore as far as possible the situation existing before the breach (see,

among other authorities, *Piersack v. Belgium* (Article 50), 26 October 1984, § 12, Series A no. 85; *Tchitchinadze v. Georgia*, no. 18156/05, § 69, 27 May 2010; *Fener Rum Patrikliği (Ecumenical Patriarchy) v. Turkey* (just satisfaction), no. 14340/05, § 35, 15 June 2010; and *Stoycheva v. Bulgaria*, no. 43590/04, § 74, 19 July 2011). Consequently, having due regard to its findings in the instant case, the Court considers that the most appropriate form of redress would be the repayment of the amount recovered by the bailiff's service to the applicant. Thus, the applicant would be put as far as possible in a situation equivalent to the one in which he would have been had there not been a breach of Article 1 of Protocol No. 1. Accordingly, the Court decides to award the applicant 688 euros (EUR) in respect of the pecuniary damage corresponding to the amount recovered by the bailiff's service from him as repayment of the judgment debt. As for the remainder of the amount which the applicant has been ordered to pay, the Court notes that a finding of a violation of the Convention or its Protocols by the Court is a ground for reopening civil proceedings under Article 392 of the Code of Civil Procedure and for the review of domestic judgments in the light of the Convention principles established by the Court.

68. Furthermore, the Court has no doubt that the applicant suffered distress and frustration on account of the violation of his rights set out in Article 6 § 2 of the Convention and Article 1 of Protocol No. 1. Making its assessment on an equitable basis, the Court awards the applicant EUR 7,800 in respect of non-pecuniary damage, plus any tax that may be chargeable on that amount.

B. Costs and expenses

69. The applicant did not submit a claim for costs and expenses. Accordingly, the Court considers that there is no call to award him any sum on that account.

C. Default interest

70. 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 application admissible;

2. *Holds* that there has been a violation of Article 6 § 2 of the Convention;

3. *Holds* that there has been a violation of Article 1 of Protocol No. 1;

4. *Holds*

(a) that the respondent State is to pay the applicant, within three months from the date on which the judgment becomes final in accordance with Article 44 § 2 of the Convention, the following amounts, to be converted into the currency of the respondent State at the rate applicable at the date of settlement:

(i) EUR 688 (six hundred and eighty-eight euros), plus any tax that may be chargeable, in respect of pecuniary damage;

(ii) EUR 7,800 (seven thousand eight hundred 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 6 October 2020, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Milan Blaško	Paul Lemmens
Registrar	President