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

THIRD SECTION

DECISION

Application no. 52454/11
Vladimir Mikhaylovich BORODIN against Russia
and 7 other applications
(see list appended)

The European Court of Human Rights (Third Section), sitting on 13 December 2016 as a Committee composed of:

Helena Jäderblom, *President,*
Dmitry Dedov,
Branko Lubarda, *judges,*
and Fatoş Aracı, *Deputy Section Registrar,*

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

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

Having deliberated, decides as follows:

THE FACTS

1. The applicants are eight Russian nationals living in Pereleshinskiy, the Voronezh Region. Their names and dates of birth are set out in the appendix.

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

A. The circumstances of the case

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

1. Judgments in the applicants' favour and the debtor company's insolvency

4. The applicants are former employees of a municipal unitary enterprise, MPZhKKh "Petrovskoye" *(Муниципальное предприятие жилищно-коммунального хозяйства «Петровское»* – hereinafter "the company"*)*. The company was set up in accordance with a decision of the administration of the Paninskiy District of the Voronezh Region and provided housing and communal services in the area. In order to carry out its statutory activities, the company had "the right of economic control" (*право хозяйственного ведения*) over the assets allocated to it by the town administration (see *Liseytseva and Maslov v. Russia*, nos. 39483/05 and 40527/10, §§ 55-75, 9 October 2014 for further details on the status of such companies). At some point various authorities accumulated considerable debt towards the company. Consequently, the company was unable to pay its employees in due time. In 2001 the the district administration withdrew the company's major assets and transferred them to the administration's balance sheet.

5. The applicants sued the company for salary arrears. On the dates listed in the appendix the Paninskiy District Court of the Voronezh Region ordered the respondent company to pay the applicants various amounts in arrears. The awards became enforceable on the dates listed. Some of the applicants received partial payment of the amounts awarded, while the judicial awards in favour of other applicants were not enforced.

6. In 2006 the company became insolvent and on 23 April 2006 the liquidation procedure was set up.

7. On 22 December 2006 the Commercial Court of the Voronezh Region declared the company insolvent. The creditors' claims which had not been satisfied during the liquidation procedure, including the remainder of the applicants' claims, were considered as settled. On 25 December 2006 the liquidation was recorded in the Register of Legal Entities, and the company ceased to exist.

8. The final judicial decisions in the applicants' favour remain unexecuted to date.

2. The applicants' attempt to make use of the Compensation Act

9. On 4 May 2010 Federal Law no. 68-FZ of 30 April 2010 on compensation for violation of the right to trial within a reasonable time or the right to enforcement of a judgment within a reasonable time ("the Compensation Act") entered into force.

10. On various dates between late December 2010 and early 2011 the applicants brought court actions under the Compensation Act, seeking compensation for a violation of their right to enforcement.

11. On the dates listed in the appendix the domestic courts at two instances refused to examine the actions lodged by the applicants. The courts found that the debtor company had been a separate legal entity and had not received budget funds within the meaning of the Budget Code. The Compensation Act did not apply to claims for compensation for delayed enforcement of judgments against organisations not in receipt of budget funds.

B. Relevant domestic law and practice

1. Applicability of the Compensation Act of 30 April 2010

12. Section 1(1) of the Compensation Act entitles a concerned party to bring a court action for compensation for a violation of his or her right to enforcement within a reasonable time of a domestic judgment establishing a debt to be recovered from the State budget.

13. By Ruling no. 130/64 of 23 December 2010 the Plenary Session of the Supreme Court and the Supreme Commercial Court of Russia jointly decided that the Compensation Act did not apply to claims for compensation for delayed enforcement of judgments against private individuals or organisations not in receipt of budget funds.

14. Article 6 of the Budget Code of the Russian Federation contains a list of entities "in receipt of budget funds" (*получатели бюджетных средств*). The list includes, in particular, public institutions and does not contain any reference to unitary enterprises.

2. Municipal unitary enterprises with the right of economic control

15. For a summary of the relevant domestic law and practice concerning municipal unitary enterprises, see, in so far as relevant, *Liseytseva and Maslov* (cited above, §§ 54-127).

COMPLAINTS

16. The applicants complain under Article 6 of the Convention and Article 1 of Protocol No. 1 thereto that the domestic judicial decisions in their favour were not enforced. They may further be understood to complain of the lack of an effective remedy in respect of the alleged violations within the meaning of Article 13 of the Convention.

THE LAW

A. Joinder of the applications

17. 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. Article 6 of the Convention and Article 1 of Protocol No. 1 to the Convention on account of non-enforcement

18. The applicants complained that by failing to comply with the judgments in their favour, the authorities had 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."

1. The parties' submissions

19. The Government submitted that the applications had been lodged out of time, as the six-month time-limit had started running on the date of the company's liquidation. In the alternative, they maintained that the company's debts were not attributable to the State for the same reasons as in *Liseytseva and Maslov* (cited above, §§ 137-41).

20. The applicants argued that the debtor company had been under the full control of the local administration and that the State was responsible for its debts. They had used the Compensation Act procedure as they believed that the new remedy was applicable to unitary enterprises for which the State should have been responsible. They reiterated that judgments in their favour had remained unenforced, and the situation they complain of still exists.

2. The Court's assessment

21. The Court does not consider it necessary to deal with the State responsibility argument and will examine first the issue of compliance with the six-month time-limit.

22. The Court reiterates that the primary purpose of the six-month time-limit is to maintain legal certainty by ensuring that cases raising issues under the Convention are examined within a reasonable time, and to prevent the authorities and other persons concerned from being kept in a state of uncertainty for a long period of time. That rule marks out the temporal limit of the supervision exercised by the Court and signals, both to individuals and to State authorities, the period beyond which such supervision is no longer possible. 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, however, that no effective remedy is available to the applicant, the period runs from the date of the act or measure complained of, or from the date of knowledge of that act or its effect on or prejudice to the applicant (see *Mocanu and Others v. Romania* [GC], nos. 10865/09, 45886/07 and 32431/08, §§ 258-59, ECHR 2014 (extracts), with further references).

23. The present applications were introduced more than four years after the company's liquidation in 2006, but within six months of the final refusals of the domestic courts to consider the claims under the Compensation Act, enacted in 2010.

(a) Whether the remedy used by the applicants was effective

24. First, the Court has to determine whether a claim under the Compensation Act was a remedy to be exhausted for the purposes of Article 35 § 1 of the Convention in relation to the applicants' non-enforcement complaint.

25. In *Liseytseva and Maslov* (cited above, § 168) the Court found as follows:

> "The Court observes that application of the Compensation Act, in force since 2010, is limited to claims for compensation for delayed enforcement of domestic judgments where the respective judicial award is to be recovered from the State budget (see paragraph 116 above), and it does not apply to final judicial awards against private individuals or entities not in receipt of budget funds. Municipal unitary enterprises do not receive such funds. ... [M]unicipal unitary enterprises are regarded in the domestic law as private companies, and the responsibility of their founders and owners – that is, the respective municipal authorities at the expense of the respective local budgets – cannot be engaged unless that authority is held liable for the enterprise's debts in subsidiary liability proceedings. In these circumstances, the Court is unable to conclude that a direct court action under the Compensation Act for compensation for non-enforcement of a judgment against a municipal unitary enterprise would have offered the applicants a reasonable prospect of success."

26. The facts of the present cases only confirm the Court's above findings, as the domestic courts refused to accept the applicants' claims for examination exactly for the reason that the debtor company was not in receipt of the budgetary funds. Accordingly, the remedy chosen by the applicants was not effective from the standpoint of the Convention.

(b) Whether the applicants still complied with the six-month rule

27. In some cases where the applicants had used remedies not recognised by the Court as effective, the Court was prepared to accept that the applicants, unaware of circumstances which rendered the remedy ineffective, had still complied with the six-month rule by availing themselves of that remedy. In such cases, the Court found no indications that the applicants had been aware, or should have reasonably become aware, of the futility of his or her respective action (see, for instance, *Voronkov v. Russia,* no. 39678/03, §§ 43-46, 30 July 2015, and *Gladkiy v. Russia*, no. 3242/03, § 62, 21 December 2010). Further, the Court has held on a number of occasions that applicants must act with reasonable expedition in bringing their cases before it for examination. They must also have a sufficient explanation, consonant with the purpose of Article 35 § 1 of the Convention and the effective implementation of the Convention guarantees, for long periods of delay (see *Artyomov v. Russia*, no. 14146/02, § 115, 27 May 2010; see further, for instance, *Antipenkov v. Russia* (dec.), no. 28438/07, §§ 16-18, 22 September 2015).

28. The Court is unable to find that the applicants in the present cases acted with reasonable expedition for the following reasons.

29. Turning to the present cases, the Court observes that, in any event, the crux of the applicants' grievance is, first and foremost, the non-enforcement of the judicial awards.

30. As in earlier similar cases, the Court notes that the judgments in the applicants' favour were not set aside by the domestic courts. Given that the judicial awards have remained fully or partially unenforced to the present day, the situation complained of still exists. Nevertheless, the Court reiterates that a continuing situation may not postpone the application of the six-month rule indefinitely (see *Sokolov and Others* (dec.), nos. 30859/10, 54078/10, 54105/10, 54106/10, 54110/10, 54116/10 and 54118/10, § 31, 14 January 2014, with further references). While there are obvious distinctions as regards different continuing situations, the applicant must, in any event, introduce his or her complaint "without undue delay", once it becomes apparent that there is no realistic hope of a favourable outcome for, or progress in, his complaints at the domestic level in the foreseeable future (ibid.; see also *Voronkov,* cited above, § 38, with further references). In so far as the non-enforcement of pecuniary awards made against a company incorporated under Russian law as a unitary enterprise with the right of economic control is concerned, the Court found that the applicant could have had a realistic hope of progress in, or a favourable outcome for, his or her claims at the domestic level as long as the insolvency proceedings were ongoing (see *Bichenok v. Russia* (dec.), no. 13731/08, § 23, 31 March 2015, with further references).

31. The insolvency proceedings in respect of the debtor unitary enterprise in the present case ended in 2006, and the debtor company was

liquidated without any legal successor or remaining bankruptcy estate. The creditors' claims which had not been satisfied during the liquidation procedure, including the applicants' claims, were considered as settled, and there is nothing to suggest that the applicants learned about the liquidation with any delay. As in earlier cases, the Court finds that it should have become apparent to the applicants as early as in 2006 that the debtor company was no longer in a position to honour the relevant judgments in their favour (see *Bichenok,* cited above*,* § 23, and *Voronkov,* cited above, § 39).

32. The Court further observes that following the liquidation of the company the applicants remained completely inactive for the following four years. They did not attempt to initiate any kind of domestic proceedings which could have brought them closer to their goal, that is, either the enforcement of the judgments in their favour, or, alternatively, engaging the authorities' responsibility for the failure to properly assist them in the enforcement of the judicial awards in their favour (see, by contrast, *Voronkov*, cited above, §§ 42-45). It follows from their own submissions that they had no available legal avenue at their disposal, and there is nothing in the case file to suggest otherwise (see, for the analysis of the remedies available at the material time, in the context of Article 13, *Liseytseva and Maslov*, cited above, §§ 159-82). The Court cannot accept that it took the applicants more than four years to become aware of the absence of such remedies and to raise their non-enforcement grievance before the Court (see *Bichenok*, cited above, § 25). No explanation for such a long period of delay was advanced in the present case in respect of the non-enforcement complaint (see *Artyomov*, cited above).

33. The Court notes in addition that, once the Compensation Act was enacted in May 2010 – a development clearly beyond the applicants' control – the applicants chose to wait for at least eight months from the date of the new law's entry into force before bringing their claims to the domestic courts. They did so immediately after the Supreme Court and the Supreme Commercial Court of Russia had jointly clarified, by means of a publicly available ruling (no. 130/64 of 23 December 2010), that the Compensation Act did not apply to claims for compensation against unitary enterprises (see paragraph 13 above and, for the dates of the applicants' respective actions, the appended table).

34. In these circumstances, the Court concludes that the domestic courts' refusals in 2011 to examine the applicants' claims under the Compensation Act did not bring their non-enforcement complaints in the present cases within the six-month time-limit laid down in Article 35 § 1. The Court therefore considers that the non-enforcement complaint was introduced out of time and must be rejected under Article 35 § 4. The Court considers it unnecessary to examine the remainder of the Government's admissibility objections.

C. Article 13 of the Convention

35. In so far as the applicants relied on Article 13 of the Convention, the Court reiterates that it applies only where an individual has an "arguable claim" to be the victim of a violation of a Convention right. In view of its findings above with regard to the non-enforcement complaint, the Court considers that the applicant has no "arguable claim", and that therefore Article 13 is inapplicable to the case.

36. It follows that this part of the applications is incompatible *ratione materiae* with the provisions of the Convention within the meaning of Article 35 § 3 (a) and must be rejected, pursuant to Article 35 § 4 of the Convention.

For these reasons, the Court, unanimously,

Decides to join the applications;

Declares the applications inadmissible.

Done in English and notified in writing on 19 January 2017.

Fatoş Aracı
Deputy Registrar

Helena Jäderblom
President

APPENDIX

No.	Application No. Lodged on	Applicant Date of birth	Date of the final judgment or court writ	Date of the judgment/writ's entry into force	Date of appeal under the Compensation Act	Proceedings under the Compensation Act, domestic courts and dates
1.	52454/11 04/08/2011	**Vladimir Mikhaylovich BORODIN** 02/11/1955	9 February 2001 (court writ)	1 March 2001 (as indicated in the writ)	January 2011	26 January 2011 the Voronezh Regional Court, 18 March 2011 the Supreme Court of the Russian Federation
2.	53022/11 04/08/2011	**Galina Semenovna ISHUTINA** 29/10/195 8	19 November 2001	30 November 2001	January 2011	21 January 2011 the Voronezh Regional Court, 18 March 2011 the Supreme Court
3.	53252/11 04/08/2011	**Sergey Ilyich LYULIN** 17/02/1942	2 March 2001 (court writ)	2 March 2001	January 2011	25 January 2011 the Voronezh Regional Court, 18 March 2011 the Supreme Court
4.	53771/11 05/08/2011	**Ivan Ivanovich AGARKOV** 07/09/1966	17 December 1999 (court writ)	7 January 2000 (as indicated in the writ)	January 2011	14 February 2011 the Voronezh Regional Court, 22 April 2011 the Supreme Court
5.	53776/11 05/08/2011	**Arkadiy Konstantinovich FEDORININ** 23/08/1954	17 December 1999 (court writ)	7 January 2000 (as indicated in the writ)	January 2011	14 February 2011 the Voronezh Regional Court, 22 April 2011 the Supreme Court

No.	Application No. Lodged on	Applicant Date of birth	Date of the final judgment or court writ	Date of the judgment/writ's entry into force	Date of appeal under the Compensation Act	Proceedings under the Compensation Act, domestic courts and dates
6.	53811/11 08/08/2011	**Vladimir Nikolayevich GOSTEV** 04/01/1954	19 November 2001	30 November 2001	January 2011	14 February 2011 the Voronezh Regional Court, 1 April 2011 the Supreme Court
7.	53812/11 05/08/2011	**Nikolay Georgiyevich LYULIN** 03/12/1953	18 December 2000 (court writ)	18 December 2000	January 2011	25 January 2011 the Voronezh Regional Court, 18 March 2011 the Supreme Court
8.	65704/11 04/08/2011	**Zinaida Ivanovna VLADIMIROVA** 09/01/1954	19 November 2001	30 November 2001	December 2010	21 January 2011 the Voronezh Regional Court, 11 March 2011 the Supreme Court: