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

THIRD SECTION

DECISION

Applications nos. 15948/04 and 30610/08
Dmitriy Eduardovich KUZNETSOV against Russia
and Galina Fedorovna GORBACHEVA against Russia

The European Court of Human Rights (Third Section), sitting on 11 October 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 29 March 2004 and 17 April 2008 respectively,

Having deliberated, decides as follows:

THE FACTS

1. The applicant in the first case, Mr Dmitriy Eduardovich Kuznetsov, is a Russian national, who was born in 1972 and lives in Omsk, the Omsk Region. He was represented before the Court by Ms M.G. Deryabina, a lawyer practising in Omsk.

2. The applicant in the second case, Ms Galina Fedorovna Gorbacheva, is a Russian national, who was born in 1949 and lives in Voronezh.

3. The Russian Government ("the Government") are represented by Mr G. Matyushkin, the Representative of the Russian Federation at the European Court of Human Rights.

A. The circumstances of the case

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

1. Application 15948/04

5. The applicant sued his employer, Federal State Unitary enterprise "Polet" (*ФГУП ПО «Полет»*) since it had failed to honour its obligation to provide the applicant with housing. On 17 November 2004 the Oktyabrskiy District Court of Omsk (hereafter "District Court") ordered the enterprise to provide the applicant with a single-room flat. The judgment became final on 12 January 2005.

6. As the judgment remained unenforced over months the applicant filed a complaint against bailiffs. He sought discontinuation of the enforcement proceedings as this would have allegedly enabled him to sue the State for the company's failure to execute the judgment.

7. On 13 December 2005 the District Court dismissed the complaint, having found that the bailiffs' refusal to close the proceedings had been lawful. The company had assets and the judgment in the applicant's favour was due to be executed after the claims of other creditors of the company were satisfied. On 1 February 2006 the Omsk Regional Court upheld the decision on appeal.

8. By letter of 28 December 2015 the applicant informed the Court that the judgment had been fully enforced on 5 August 2010.

2. Application 30610/08

9. The applicant sued her employer, State Unitary enterprise "NIIET" (*ГУП «НИИЭТ»*) for reinstatement in work and damages. On 27 March 2007 the Zheleznodorozhny District Court of Voronezh (hereafter "District Court") granted the claim. The judgment became enforceable on 4 December 2007.

10. On an unspecified date the sums awarded by the judgment were paid to the applicant in full.

11. On 28 March 2007 the applicant was admitted to her working place. On 4 April 2008 the bailiffs discontinued the enforcement proceedings.

12. On 9 September 2008, following the applicant's complaint the proceedings were resumed.

13. On 14 October 2008 the bailiffs compiled an act according to which the applicant had been effectively reinstated at work. She was afforded a work place, all the necessary equipment and was given work tasks. Accordingly, on 6 November 2008 the bailiffs decided to complete the proceedings.

14. On 2 February 2009 the applicant was again dismissed from work.

15. On 18 February 2010 the decision of 6 November 2008 was annulled, and the enforcement proceedings were resumed.

16. On 1 April 2010 the bailiffs adopted another decision to discontinue the proceedings. That decision was yet again annulled on 12 May 2010.

17. The applicant lodged another action for reinstatement. On 24 April 2009 the District Court dismissed it. The judgment became final on 6 August 2009.

18. On 16 July 2010 the District Court adopted a decision, according to which the judgment of 27 March 2007 had been fully enforced in October 2008. Hence, the subsequent decisions to resume and discontinue the enforcement proceedings had been null.

19. On 10 September 2010 the decisions of 18 February 2010 and of 1 April 2010 were cancelled by the Bailiffs' Service of the Zheleznodorozhny District of Voronezh. The applicant complained thereof to the Regional Bailiffs' Service. On 22 October 2010 her complaint was dismissed.

B. Relevant domestic law

20. The domestic provisions relevant to the cases on the legal status of State and municipal unitary enterprises with the right of economic control are summarised in *Liseytseva and Maslov v. Russia* (nos. 39483/05 and 40527/10, §§ 54-127, 9 October 2014), and *Samsonov v. Russia* ((dec.) no. 2880/10, 18 September 2014).

21. Under Article 56 § 3 of the Civil Code of Russia subsidiary liability for a legal entity's obligations may be imposed upon the owner of the legal entity's property or by other persons who have the right to issue binding instructions to the given legal entity, or may determine its actions in any other way, if the insolvency of a legal entity has been caused by such persons, in the event that the legal entity's assets prove to be insufficient.

COMPLAINT

The applicants complained under Article 6 of the Convention and Article 1 of Protocol 1 to the Convention about belated enforcement of the judgments in their favour. The second applicant also complained under Article 13 of the Convention of the lack of any effective remedy in domestic law.

THE LAW

A. Joinder of the applications

22. Given that the present applications raise similar issues under the Convention, the Court decides join them pursuant to Rule 42 § 1 of the Rules of Court.

B. Alleged violation of Articles 6 and 13 of the Convention and Article 1 of Protocol No. 1 to the Convention on account of non-enforcement of the judgements

23. The applicants complained about the non-enforcement of the judgments in their favour and the second applicant also complained about the lack of an effective remedy in that respect. They relied on Articles 6 § 1 and Article 13 of the Convention, as well as on Article 1 of Protocol No. 1 to the Convention, which, 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.

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."

1. The parties' submissions

(a) The Government

24. The Government submitted that the companies had not performed any public functions and their activities were purely commercial. The Government also pointed out that the companies had not become insolvent and thus the State could not be held liable for their debts under domestic law. The Government submitted that the companies were not the property of the State, were not entrusted with functions of public interest, were not controlled by the State, and had sufficient institutional and functional independence. They concluded that the debts of the companies in the present cases were not attributable to the State. Accordingly, the judgments

in the applicants' favour should be regarded as issued against private companies. In line with the Court's case-law, the authorities had provided requisite assistance to the applicants in their efforts to have the court awards enforced. This ultimately led to the execution of the judgments. In any event, the applicants did not try to obtain compensation of non-pecuniary damage sustained as a result of lengthy enforcement proceedings. In the case of Mr Kuznetsov, the Government also submitted that the applicant did not complain to courts about the alleged bailiffs' inaction. He could have also sought to modify the way of execution of the judgment, in accordance with Article 203 of the Code of civil procedure, and to request a sum of money instead of a flat.

(b) The applicants

25. The applicants maintained their claims. Mr Kuznetsov also submitted that the remedies suggested by the Government were not effective.

2. The Court's assessment

(a) The Court's case-law

26. The relevant case-law regarding the State's responsibility for the debts of unitary enterprises with the right of economic control is summarised in the judgment of *Liseytseva and Maslov*, cited above, §§ 183-92. The Court held that in order to decide on the operational and institutional independence of a given municipal unitary enterprise having the right of economic control the Court has to assess the nature of the enterprise's functions and the degree of the State or municipal authorities' actual involvement in the management of the enterprises' assets.

27. With regard to the non-enforcement of domestic judgments, the Court has consistently held that in situations where the party liable to pay is a State, the approach of the Court is that the judicial award should be enforced fully and without any unjustified delay (see *Burdov v. Russia*, no. 59498/00, § 35, ECHR 2002-III). In contrast to the obligation of a High Contracting Party to comply expediently with the judgments against it, within the domain of enforcement of a final and binding judicial decision against a private party a State's obligations are limited to providing a creditor with the necessary legal assistance and ensuring the effective operation of the procedure (see *Fuklev v. Ukraine*, no. 71186/01, § 84, 7 June 2005; *Anokhin v. Russia* (dec.), no. 25867/02, 31 May 2007; and *Kunashko v. Russia*, no. 36337/03, § 38, 17 December 2009). In the context of the Russian legal system, the principles cited above are applicable, in the first place, to the bailiffs service, which is required to perform its functions diligently and thoroughly with a view to ensuring effective execution of judgments issued against "private" defendants (*Pelipenko v. Russia*, no. 69037/10, § 50, 2 October 2012).

(b) Application to the present cases

28. The Government submitted that Mr Kuznetsov had failed to exhaust domestic remedies. The Court does not consider it necessary to examine the Government's objection since the complaint is anyway inadmissible on the following grounds.

(i) Whether the respondent enterprises' debts are attributable to the State in the present cases

29. With regard to the criteria developed by the Court in the case of *Liseytseva and Maslov,* the Court notes that the applicants in the present cases did not allege that the companies performed any public functions or that the State had somehow interfered with the companies' activities. In this respect the cases at hand are similar to *Samsonov* (cited above, §§ 82-85).

30. In any event, the Court notes that, unlike in *Liseytseva and Maslov*, the debtor company in the present case was not insolvent or subject to liquidation. The Court observes in this respect that under Russian law the owner of property under the economic control of a unitary enterprise is not liable for the debts of the unitary enterprise unless the insolvency of the enterprise has been caused by the owner's actions (see paragraph 21 above). As long as the company had sufficient assets on their balance, the State could not be held responsible for the company's failure to pay their debts.

31. In view of the above the Court is not convinced that the company did not enjoy sufficient institutional and operational independence from the authorities. Accordingly the State's responsibility for the company's failure to execute the judgment should be assessed in the light of the principles related to the non-enforcement of the judgments against private parties (see *Kunashko,* cited above, § 38-40, and *Samsonov*, cited above, §§ 82-85).

(ii) Non-enforcement of the judgments in the applicants' favour

32. In the case of Mr Kuznetsov, the Court observes that on 17 November 2004 the applicant obtained a judgment against his employer by which the latter was to provide him with a flat. The judgment was enforced on 5 August 2010 (see paragraphs 5 and 8 above).

33. In the case of Ms Gorbacheva, the Court notes that on 27 March 2007 the applicant obtained a judgment against her employer by which the latter was to reinstate her at work and to pay damages. The judgment was enforced on 14 October 2008 (see paragraphs 9 and 13 above).

34. Neither of the applicants maintained that the bailiffs had remained inactive during the enforcement proceedings. The applicants did not allege, either in domestic proceedings or before the Court, that the assistance which they had received from the Bailiffs' Service had been inadequate.

35. It follows that this complaint is manifestly ill-founded and must be rejected in accordance with Article 35 §§ 3 and 4 of the Convention.

C. Other complaints

36. The Court observes that Mr Kuznetsov also complained about the length of civil proceedings in his case. Having regard to all the evidence in its possession, and to the extent that it has power to examine the allegations, the Court does not find any appearance of a violation of the rights and freedoms guaranteed by those provisions. It follows that this part of the application must be rejected pursuant to Article 35 §§ 3 and 4 of the Convention.

For these reasons, the Court, unanimously,

Decides to join the applications;

Declares the applications inadmissible.

Done in English and notified in writing on 10 November 2016.

Fatoş Aracı
Deputy Registrar

Helena Jäderblom
President