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

THIRD SECTION

DECISION

Application no. 19208/13
Anna Sergeyevna POPOVA
against Russia

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 application lodged on 11 February 2013,

Having deliberated, decides as follows:

THE FACTS

The applicant, Ms Anna Sergeyevna Popova, is a Russian national, who was born in 1973 and lives in Pereleshinskiy, the Voronezh Region.

Her application belongs to a group of cases lodged with the Court on various dates by former municipal unitary enterprise employees in Petrovskoye, the Voronezh Region, working for 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).

On 19 November 2001 the Paninskiy District Court of the Voronezh Region awarded the applicant 4,693 Russian roubles in respect of salary

arrears. By the same judgment, which became final ten days later, the court granted similar claims by several other ex-employees of the company.

On 22 December 2006 the Commercial Court of the Voronezh Region declared the company insolvent.

On 25 December 2006 the liquidation was recorded in the Register of Legal Entities, and the company ceased to exist. The creditors' claims which had not been satisfied during the liquidation procedure, including the applicant's claims, were considered as settled. The judgment in the applicant's favour was not enforced.

On various dates between late December 2010 and early 2011 the applicant's several ex-colleagues brought court actions under Federal Law № 68-ФЗ 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", in force as of 4 May 2010), seeking compensation for a violation of their right to enforcement. Domestic courts at two instances refused to examine their actions, as the Compensation Act did not apply to non-enforcement of judicial decisions against unitary enterprises.

COMPLAINT

The applicant complained under Article 6 of the Convention and Article 1 of Protocol No. 1 to the Convention about the non-enforcement of judgment in her favour and under Article 13 of the Convention that she did not have effective domestic remedies at her disposal in respect of the non-enforcement.

THE LAW

In so far as the non-enforcement complaint under Article 6 of the Convention and Article 1 of Protocol No. 1 to the Convention is concerned, the Court notes that the judgment in the applicant's favour was not set aside by the domestic courts. Given that the judicial award has remained 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 and 6 others, § 31, 14 January 2014, with further references). While there are obvious distinctions as regards different continuing situations (ibid.), the Court considers that 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 v. Russia,* no. 39678/03, § 38, 30 July 2015, with further references). In *Bichenok v. Russia* the Court found, in the context of the non-enforcement of pecuniary awards made against a unitary enterprise with the right of economic control, that the applicant could have had a realistic hope of progress in enforcement of the judgment, or a favourable outcome for her claims at the domestic level as long as the insolvency proceedings were ongoing (see, in so far as relevant, *Bichenok v. Russia* (dec.), no. 13731/08, § 23, 31 March 2015).

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 applicant's claims, were considered as settled, and there is nothing to suggest that the applicant learned about the liquidation with any delay. As in earlier cases, the Court finds that it should have become apparent to the applicant as early as in 2006 that the debtor company was no longer in a position to honour the relevant judgments in her favour (see *Bichenok,* cited above*,* § 23, and *Voronkov*, cited above, § 39).

The Court further notes that since 2006 the applicant did not attempt to initiate any kind of domestic proceedings which could have brought her closer to her goal, that is, either the enforcement of the judgment in her favour, or, alternatively, engaging the authorities' responsibility for the failure to properly assist her in the enforcement of the judicial award (see, by contrast, *Voronkov*, cited above, §§ 42-45). In so far as she refers to the proceedings under the Compensation Act brought by other employees of the company, she was not a party to those proceedings and, in any event, it took her two more years to bring her grievance to the Court after her colleagues' claims under the Compensation Act had been rejected at the domestic level.

In these circumstances, it cannot be said that the applicant acted without undue delay (see, by way of contrast, *Voronkov*, cited above, § 45; see further *Sokolov and Others*, cited above, §§ 31 and 35). On the contrary, she remained completely inactive for several years before bringing her grievance to the attention of the Court in 2013, and failed to provide a sufficient explanation, consonant with the purpose of Article 35 § 1 of the Convention and the effective implementation of the Convention guarantees, for such a long delay of inaction (see *Artyomov v. Russia*, no. 14146/02, § 115, 27 May 2010). Accordingly, the present complaint has been introduced out of time.

It follows that this part of the application must be rejected in accordance with Article 35 §§ 1 and 4 of the Convention.

Insofar as the applicant 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.

It follows that this part of application should be rejected in accordance with Article 35 §§ 3 (a) and 4 of the Convention.

For these reasons, the Court, unanimously,

Declares the application inadmissible.

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

Fatoş Aracı
Deputy Registrar

Helena Jäderblom
President