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

THIRD SECTION

DECISION

Application no. 8517/10
Yelena Gennadyevna TSYBRIY and Yuriy Olegovich TSYBRIY
against Russia

The European Court of Human Rights (Third Section), sitting on 21 September 2017 as a Committee composed of:

Luis López Guerra, *President,*
Dmitry Dedov,
Jolien Schukking, *judges,*
and Liv Tigerstedt, *Acting Deputy Section Registrar,*

Having regard to the above application lodged on 22 January 2010,

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

Having deliberated, decides as follows:

FACTS AND PROCEDURE

The list of applicants and the relevant details of the application are set out in the appended table.

The applicants' complaints concerning the non-enforcement of domestic decision given against an allegedly State-owned company, a trust, and the lack of any effective remedy in domestic law were communicated to the Russian Government ("the Government").

THE LAW

The applicants complained about the State's failure to enforce the final court judgment rendered in their favour against a trust, which, as they argued, was a State-owned company. They also complained about the absence of any domestic remedies to obtain the full and timely enforcement of the judgment.

The Court will examine the applicants' complaint under Article 6 § 1 and Article 13 of the Convention and Article 1 of Protocol No. 1, which read as follows:

Article 6 § 1

"In the determination of his civil rights and obligations ... everyone is entitled to a fair ... hearing within a reasonable time by [a] ... tribunal ..."

Article 13

"Everyone whose rights and freedoms as set forth in [the] Convention are violated shall have an effective remedy before a national authority notwithstanding that the violation has been committed by persons acting in an official capacity."

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."

The Court notes the applicants' argument that the debtor, the Trust company, was a State-owned enterprise. However, it is not necessary to determine the issue of the State's responsibility in the present case, given that, for the reasons stated below, the application is inadmissible in view of the applicants' failure to comply with the six-month requirement.

In particular, the Court reiterates that 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 was enforced or 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) or when an applicant knew, or ought to have known, that the enforcement of the judgments in her favour was no longer possible (see, for instance, *Babich and Azhogin v. Russia* (dec.), nos. 9457/09 and 9531/09, §§ 47-54 and 57-58, 15 October 2013; or *Bichenok v. Russia* (dec.), no. 13731/08, 31 March 2015, when the applicant learned of the liquidation of the company and absence of any legal venues to seek further enforcement more than six months before her application to the Court).

The Court observes that the circumstances of the present application are very similar to those examined in *Bichenok v. Russia* (cited above). Having

examined all the material submitted to it, the Court has not found any fact or argument capable of persuading it to reach a different conclusion on the admissibility of the present application.

The Court reiterates that the applicants obtained the final judgment against the Trust, a company incorporated under the Russian law which went bankrupt in 2001 and which was liquidated in April 2004 without any legal successor or remaining bankruptcy estate, as was confirmed in the subsequent proceedings initiated by the applicants in 2005 when the Russian courts refused to appoint any other debtor in view of the liquidation of the Trust. 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. In the Court's view, it should then have become apparent to them that in those circumstances there was no available legal avenue at the domestic level whereby they could obtain the enforcement of the relevant judgment in their favour against the debtor in question, particularly in view of the Russian courts' approach to their claims for a change of the debtor in 2005.

Therefore, the Court finds that the applicants knew that the enforcement of the judgment in their favour was no longer possible since the liquidation of the Trust in 2004 or at least no later than 2005 when the Russian courts dismissed their claims for the change of the debtor. However, the applicants remained inactive for several years before bringing their grievance to the attention of the Court on 22 January 2010.

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

For these reasons, the Court, unanimously,

Declares the application inadmissible.

Done in English and notified in writing on 12 October 2017.

Liv Tigerstedt	Luis López Guerra
Acting Deputy Registrar	President

APPENDIX

No.	Application no. Date of introduction	Applicant name Date of birth	Relevant domestic decision and legal developments	Start date of non-enforcement period	End date of non-enforcement period Length of enforcement proceedings	Domestic order
1.	8517/10 22/01/2010	**Yelena Gennadyevna Tsybriy** 01/04/1970 **Yuriy Olegovich Tsybriy**	Oktyabrskiy District Court of Novorossiysk, 09/12/1997 Judgment against the Trust company, declared bankrupt in 2001 and liquidated ion 26/04/2004 In 2005 the applicants brought a separate claim asking courts to appoint another State entity, as a debtor in their case; the courts refused	23/12/1997	26/04/2004 6 year(s) and 4 month(s) and 4 day(s)	RUB 730,000 (as amended by the judgment of 18 October 2002)