



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

FIFTH SECTION

CASE OF CHUYKINA v. UKRAINE

(Application no. 28924/04)

JUDGMENT

STRASBOURG

13 January 2011

FINAL

13/04/2011

This judgment has become final under Article 44 § 2 of the Convention. It may be subject to editorial revision.

In the case of Chuykina v. Ukraine,

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

Peer Lorenzen, *President*,
Karel Jungwiert,
Rait Maruste,
Mark Villiger,
Isabelle Berro-Lefèvre,
Mirjana Lazarova Trajkovska,
Ganna Yudkivska, *judges*,

and Claudia Westerdiek, *Section Registrar*,

Having deliberated in private on 7 December 2010,

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

PROCEDURE

1. The case originated in an application (no. 28924/04) against Ukraine lodged with the Court under Article 34 of the Convention for the Protection of Human Rights and Fundamental Freedoms (“the Convention”) by a Ukrainian national, Ms Lyudmila Dmitriyevna Chuykina (“the applicant”), on 10 July 2004.

2. The applicant, who had been granted legal aid, was represented by Mr D. Kurdelchuk, a lawyer practising in Kyiv. The Ukrainian Government (“the Government”) were represented by their Agent, Mr Y. Zaytsev, of the Ministry of Justice.

3. On 12 May 2009 the President of the Fifth Section decided to give notice of the application to the Government.

THE FACTS

I. THE CIRCUMSTANCES OF THE CASE

4. The applicant was born in 1949 and lives in the town of Kamenka-Dniprovska, Ukraine.

A. Proceedings against G. company

5. On 5 February 1998 the applicant instituted proceedings for compensation in the Energodar Local Court (“the Energodar Court”) against a private company, G., for selling her a defective television set.

6. On 18 June 1998 the case was transferred to the Kamenka-Dniproviskiy Local Court (“the Kamenka-Dniproviskiy Court”).

7. On 28 July 1998 the latter court found against the applicant. On 8 September 1998 the Zaporizhzhya Regional Court (“the Zaporizhzhya Court”) quashed that judgment and remitted the case to the first-instance court for fresh consideration.

8. On 19 October 1998 the Kamenka-Dniproviskiy Court found for the applicant. On 24 November 1998 the Zaporizhzhya Court quashed that judgment and remitted the case to the Kamenka-Dniproviskiy Court for fresh consideration.

9. On 19 May 1999, following a decision by the President of the Zaporizhzhya Court, the case was transferred to the Vasylivskiy Local Court (“the Vasylivskiy Court”).

10. On 6 September 1999 the case was transferred to the Energodar Court, which, in a hearing on 26 January 2000, left the applicant's claim unexamined. The applicant appealed.

11. On 14 March 2000 the Zaporizhzhya Court quashed the decision of 26 January 2000 and remitted the case to the Kamenka-Dniproviskiy Court for fresh consideration.

12. On 13 November 2000 the case was transferred to the Vasylivskiy Court, which on 1 February 2001 left the applicant's claim unexamined. On 6 March 2001 the Zaporizhzhya Court quashed that decision and remitted the case for fresh consideration to the same court.

13. On 13 December 2001 the Vasylivskiy Court left the applicant's claim unexamined. On 6 June 2002 the Zaporizhzhya Court upheld that decision. On 13 March 2003 the Supreme Court quashed the decisions of the lower courts and remitted the case for fresh consideration to the first-instance court.

14. On 12 February 2004 the Energodar Court allowed the applicant's claim in part, awarding her 17,614 Ukrainian hryvnias (UAH) in compensation for pecuniary and non-pecuniary damage.

15. On 28 April 2004 the Zaporizhzhya Court upheld that judgment with minor amendments.

16. The applicant did not appeal in cassation to the Supreme Court.

17. In 2004 insolvency proceedings were initiated against the defendant company.

18. The judgment of 12 February 2004 remains unenforced.

B. Proceedings against the bailiffs

19. On 26 May 2004 the Bailiffs' Department of the Energodar Town Department of Justice (*Відділ Державної виконавчої служби міського управління юстиції в Запорізькій області* – “the Bailiffs' Department”) initiated enforcement proceedings in respect of the judgment of 12 February 2004.

20. The Bailiffs' Department did not enforce the judgment and the applicant complained to the Energodar Court, which, by judgments of 17 January, 23 June and 25 October 2005 and 27 April 2006, found the Bailiffs' Department liable for the failure to enforce the judgment of 12 February 2004.

21. Following the reorganisation of the State mechanism for enforcing judgments, the State Bailiffs' Departments were closed down without legal successors. The State Bailiffs' Services were created as the new enforcement bodies (see Relevant Domestic Law below).

22. In July 2006 the applicant instituted proceedings against the newly created Energodar Bailiffs' Service (*Державна виконавча служба у м. Енергодар* – “the Bailiffs' Service”) in the Energodar Court, seeking compensation for the damage caused as a result of the failure to enforce the judgment. On 16 October 2006 the court ordered that the Bailiffs' Department, which no longer performed any functions but remained in the State register of legal entities, should be joined as a co-defendant in the case.

23. On 10 November 2006 the Energodar Court granted the applicant's claims in part and awarded her UAH 3,660 in compensation for non-pecuniary damage caused by the non-enforcement of the judgment, to be paid by the Bailiffs' Department. It dismissed all her claims against the newly created Bailiffs' Service as it had not been found liable for the non-enforcement of the judgment in the applicant's favour.

24. On 16 January 2007, the Bailiffs' Department was finally liquidated and removed from the State register of legal entities.

25. On 1 March 2007 the Zaporizhzhya Court examined the applicant's appeal and found that the first-instance court had made a correct assessment of the legal relationship between the parties. It further quashed the judgment in the part awarding the applicant UAH 3,660 against the Bailiffs' Department and nullified the proceedings in this part on the ground that the Bailiffs' Department had been liquidated without a legal successor.

26. On 25 June 2007 the Supreme Court rejected a request by the applicant for leave to appeal in cassation.

II. RELEVANT DOMESTIC LAW

A. Constitution

27. The relevant provision of the Constitution provides as follows:

Article 55

“...Everyone is guaranteed the right to challenge in court the decisions, actions or omissions of bodies of State power, bodies of local self-government, officials and officers...”

B. Code of Civil Procedure

28. The relevant provisions of the Code provide as follows

Article 205. Grounds for nullification of the proceedings

“1. A court shall, by its ruling, nullify the proceedings, if:

...

7) a legal person that was a party to the proceedings has been liquidated.”

C. Restructuring of the State Bailiffs' Service

29. In 2005 the Bailiffs' Service was restructured under Decree No. 320 of the Cabinet of Ministers of 23 April 2005 and the Act of Parliament of 23 June 2005 “on introducing amendments to the State Bailiffs' Service Act and the Enforcement Proceedings Act”. The above government decree specified that new bailiffs' services were to be created in place of the bailiffs' departments of the Ministry of Justice.

30. In implementing this restructuring, the Ministry of Justice issued Order No 1482 of 19 August 2005, and this was followed by orders of the regional departments of justice. The Zaporizhzhya Regional Department of Justice issued such an order on 25 August 2005 (Order No. 521/15). Under the orders the bailiffs' departments were liquidated without legal successors and the new bailiffs' services were created in their stead as new legal persons.

THE LAW

I. ALLEGED VIOLATION OF ARTICLE 6 § 1 OF THE CONVENTION

31. The applicant complained under Articles 1 and 6 of the Convention about the length and fairness of the proceedings against company G., and about non-enforcement of the judgment given in the above-mentioned proceedings. She further complained of the domestic courts' failure to give due consideration to her compensation claim against the bailiffs. The Court, which is master of the characterisation to be given in law to the facts of the case, decides to examine these complaints under Article 6 § 1 of the Convention, which is the relevant provision and which provides, in so far as relevant, as follows:

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

A. Admissibility

1. Fairness of the proceedings against the company

32. The applicant complained that the proceedings had been unfair.

33. The Court notes that the applicant did not appeal against the judgment of 12 February 2004 or the decision of 28 April 2004 to the Supreme Court of Ukraine under the ordinary cassation procedure. It follows that this complaint must be rejected under Article 35 §§ 1 and 4 of the Convention for non-exhaustion of domestic remedies.

2. Length of the proceedings against the company

34. The applicant further complained that the proceedings were unreasonably long. In particular, she submitted that delays had been caused by the repeated remittals of her case.

35. The Court notes that this complaint is not manifestly ill-founded within the meaning of Article 35 § 3 of the Convention. It further notes that it is not inadmissible on any other grounds. It must therefore be declared admissible.

3. Non-enforcement of the judgment of 12 February 2004 and proceedings against the bailiffs

36. The applicant also complained that the judgment of 12 February 2004 remained unenforced, that the proceedings instituted

against the bailiffs had been unfair, and that she had been deprived of the opportunity to seek damages from the bailiffs in the courts.

37. The Court notes that these complaints are not manifestly ill-founded within the meaning of Article 35 § 3 of the Convention. It further notes that they are not inadmissible on any other grounds. They must therefore be declared admissible.

B. Merits

1. Length of the proceedings against company G.

38. The period to be taken into consideration began on 5 February 1998 when the applicant lodged her civil claim and ended on 24 April 2004 when the court of appeal adopted a decision in the case which was not appealed against and so became final. It thus lasted six years, two months and nineteen days at three levels of jurisdiction.

39. The applicant maintained that she had not contributed significantly to the length of the proceedings, whereas the State authorities had remitted the case several times for fresh consideration. She also pointed out that her civil dispute was not particularly complex and its outcome was important to her.

40. The Government stated that the hearings in the applicant's case had been scheduled regularly and there had been no delays attributable to the State.

41. The Court reiterates that the reasonableness of the length of proceedings must be assessed in the light of the circumstances of the case and with reference to the following criteria: the complexity of the case, the conduct of the applicant and the relevant authorities and what was at stake for the applicant in the dispute (see, among many other authorities, *Frydlender v. France* [GC], no. 30979/96, § 43, ECHR 2000-VII).

42. In the instant case it does not appear that the issue under consideration was particularly complex or that any long delays were attributable to the applicant. Moreover, the Court notes that the case was remitted for fresh consideration on several occasions. Although not in a position to analyse the quality of the adjudication by the domestic courts, it considers that, since the remittal of cases for re-examination is usually ordered as a result of errors committed by lower courts, the repetition of such orders within one set of proceedings discloses a serious deficiency in the judicial system (see *Wierciszewska v. Poland*, no. 41431/98, § 46, 25 November 2003).

43. The Court has frequently found violations of Article 6 § 1 of the Convention in cases raising issues similar to the one in the present case (see *Frydlender*, cited above).

44. Having examined all the material submitted to it, the Court considers that the Government have not put forward any fact or argument capable of persuading it to reach a different conclusion in the present case. Having regard to its case-law on the subject, the Court considers that in the instant case the length of the proceedings was excessive and failed to meet the “reasonable time” requirement.

There has accordingly been a breach of Article 6 § 1.

2. Non-enforcement of the judgment of 12 February 2004 and the fairness of the proceedings against the bailiffs

45. The applicant considered that the bailiffs were responsible for the non-enforcement of the judgment of 12 February 2004. However, she could not obtain compensation on account of the nullification of the proceedings against the bailiffs. Therefore, she considered that the proceedings instituted against the bailiffs had been unfair and that she had been deprived of the opportunity to seek damages from the bailiffs in the courts. She maintained that the State authorities could not rely on the lack of legal successors to its own institutions as an excuse for not honouring their obligations.

46. The Government maintained that the length of the enforcement proceedings in the applicant's case was objectively justified by the liquidation proceedings against the company. As to the proceedings against the bailiffs, they submitted that the first-instance court had rightly found the Bailiffs' Department liable for of the failure to enforce the judgment of 12 February 2004 in favour of the applicant, while the appellate court had quashed the awarded amount because the defendant had ceased to exist since there was no legal succession. They underlined that the domestic courts had decided the case in full compliance with the domestic legislation, and expressed the view that it was not the task of the Court to act as a court of appeal from the decisions of domestic courts.

47. The Court notes that the judgment of 12 February 2004 was given against a private person and, therefore, the responsibility of the State extended no further than the involvement of State bodies in the enforcement proceedings (see *Shestakov v. Russia* (dec.), no. 48757/99, 18 June 2002).

48. Moreover, it is not the task of this Court to act as a court of appeal or, as is sometimes said, as a court of fourth instance, from the decisions of domestic courts. It is the role of the latter to interpret and apply the relevant rules of national procedural and substantive law. Furthermore, the domestic courts are best placed for assessing the credibility of witnesses and the relevance of evidence to the issues in the case (see, amongst many authorities, *Vidal v. Belgium*, 22 April 1992, § 32, Series A no. 235-B, and *Edwards v. the United Kingdom*, 16 December 1992, § 34, Series A no. 247-B,).

49. In the instant case, however, it was the domestic courts that found the relevant bailiffs' department responsible for failing to enforce the above

judgment on several occasions and acknowledged the applicant's right to compensation. Compensation, however, was not finally awarded on account of the nullification of the proceedings against the bailiffs. The Court will therefore start with an examination of the issue of access to a court in the applicant's proceedings against the bailiffs.

50. The Court reiterates that the procedural guarantees laid down in Article 6 secure to everyone the right to have any claim relating to his civil rights and obligations brought before a court or tribunal; in this way Article 6 embodies the “right to a court”, of which the right of access, that is the right to institute proceedings before courts in civil matters, constitutes one aspect (see *Golder v. the United Kingdom*, 21 February 1975, §§ 28-36, Series A no. 18). Furthermore, the institution of proceedings does not, in itself, satisfy all the requirements of Article 6 § 1. The Convention is intended to guarantee not rights that are theoretical or illusory but rights that are practical and effective. The right of access to a court includes not only the right to institute proceedings but also the right to obtain a “determination” of the dispute by a court. It would be illusory if a Contracting State's domestic legal system allowed an individual to bring a civil action before a court without ensuring that the case was determined by a final decision in the judicial proceedings. It would be inconceivable for Article 6 § 1 to describe in detail the procedural guarantees to be afforded to litigants – proceedings that are fair, public and expeditious – without guaranteeing to the parties that their civil disputes will be finally determined (see *Multiplex v. Croatia*, no. 58112/00, § 45, 10 July 2003, and *Kutić v. Croatia*, no. 48778/99, § 25, ECHR 2002-II).

51. In the instant case, the domestic authorities relied on the fact that the State body had been liquidated without a legal successor as a ground for the nullification of the proceedings against it. The Court has established that the liquidation of a State institution without a legal successor cannot dispense the State from the necessity to enforce a judgment against the liquidated entity. It has further noted that “to conclude otherwise would allow the State to use this avenue to avoid payment of the debts of its organs, especially taking into account that changing needs force the State to make frequent changes in its organisational structure, including by forming new organs and liquidating old ones” (*Nikitina v. Russia*, no. 47486/07, § 19, 15 July 2010, not final yet). A similar approach must be taken with regard to judicial proceedings against a State organ in which an individual challenges enforcement proceedings, given that enforcement was and remains the State's responsibility regardless of which particular institution is responsible for the performance of this function at any given moment. Therefore, the liquidation of the bailiffs' department without legal succession in the present case led to a denial of the applicant's right to have her compensation claim determined by a final decision on the merits. The Court finds therefore that such a denial deprived the applicant of the right of access to a court. There

has therefore been a violation of Article 6 § 1 of the Convention in this respect.

52. The Court further considers that in the view of these findings it is not necessary to examine the applicant's complaint about the non-enforcement of the judgment in her favour given against the private company G.

II. APPLICATION OF ARTICLE 41 OF THE CONVENTION

53. Article 41 of the Convention provides:

“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

54. The applicant claimed 3,359 euros (EUR) in respect of pecuniary damage, consisting of the equivalent in euros of the amounts awarded to her by the domestic courts against company G. (UAH 17,594) and against the bailiff (UAH 3,690). The applicant further claimed EUR 11,000 in respect of non-pecuniary damage.

55. The Government objected to these claims. They noted that the judgment of 12 February 2004 was against a private company and the judgment of 10 November 2006 had not become final but had been quashed within the ordinary appeal procedure. They considered that there was no causal link between the applicant's complaints under Article 6 and the alleged pecuniary damage. As to the non-pecuniary damage claimed, the Government considered it exaggerated and unsubstantiated.

56. In view of its findings above, the Court does not discern any causal link between the violation found and the pecuniary damage alleged; it therefore rejects this claim. On the other hand, it considers that the applicant suffered non-pecuniary damage which cannot be compensated by the mere finding of a violation of his Convention rights. Having regard to the circumstances of the case, and ruling on an equitable basis, as required by Article 41, it awards her EUR 2,600 in respect of non-pecuniary damage.

B. Costs and expenses

57. The applicant also claimed EUR 200 for the costs and expenses incurred before the domestic courts and before the Court.

58. The Government noted that no supporting documents had been submitted by the applicant in respect of this claim.

59. According to the Court's case-law, an applicant is entitled to the reimbursement of costs and expenses only in so far as it has been shown that these have been actually and necessarily incurred and are reasonable as to quantum. In the present case, regard being had to the information in its possession and the above criteria, the Court rejects the claim for costs and expenses.

C. Default interest

60. The Court considers it appropriate that the default interest 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 complaints concerning the length of the proceedings against company G., and the non-enforcement of the judgment against that company, and the complaint concerning access to a court in the proceedings against the bailiffs admissible and the remainder of the application inadmissible;
2. *Holds* that there has been a violation of Article 6 § 1 of the Convention in respect of the length of the proceedings against company G.;
3. *Holds* that there has been a violation of Article 6 § 1 of the Convention in respect of access to a court in the proceedings against the bailiffs;
4. *Holds* that it is not necessary to examine separately the applicant's complaint under Article 6 § 1 of the Convention concerning the non-enforcement of the judgment of 12 February 2004;
5. *Holds*
 - (a) that the respondent State is to pay the applicant, within three months of the date on which the judgment becomes final in accordance with Article 44 § 2 of the Convention, EUR 2,600 (two thousand six hundred euros), plus any tax that may be chargeable to the applicant, in respect of non-pecuniary damage, to be converted into Ukrainian hryvnias at the rate applicable on the date of settlement;
 - (b) that from the expiry of the above-mentioned three months until settlement simple interest shall be payable on the above amount at a rate

equal to the marginal lending rate of the European Central Bank during the default period plus three percentage points;

6. *Dismisses* the remainder of the applicant's claim for just satisfaction.

Done in English, and notified in writing on 13 January 2011, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Claudia Westerdiek
Registrar

Peer Lorenzen
President