



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

SECOND SECTION

CASE OF LITOVKINA v. UKRAINE

(Application no. 35741/04)

JUDGMENT

STRASBOURG

22 November 2005

FINAL

22/02/2006

This judgment will become final in the circumstances set out in Article 44 § 2 of the Convention. It may be subject to editorial revision.

In the case of Litovkina v. Ukraine,

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

Mr J.-P. COSTA, *President*,

Mr I. CABRAL BARRETO,

Mr K. JUNGWIERT,

Mr V. BUTKEVYCH,

Mr M. UGREKHELIDZE,

Mrs A. MULARONI,

Mrs E. FURA-SANDSTRÖM, *judges*,

and Mrs S. DOLLÉ, *Section Registrar*,

Having deliberated in private on 3 November 2005,

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

PROCEDURE

1. The case originated in an application (no. 35741/04) 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, Mrs Alisa Borisovna Litovkina (“the applicant”), on 25 September 2004.

2. The Ukrainian Government (“the Government”) were represented by their Agent, Mrs V. Lutkovska.

3. On 19 November 2004 the Court decided to communicate the application to the Government. Under the provisions of Article 29 § 3 of the Convention, it decided to examine the merits of the application at the same time as its admissibility.

THE FACTS

I. THE CIRCUMSTANCES OF THE CASE

4. The applicant was born in 1936 and lives in the city of Donetsk, Ukraine. She is a retired judge of the Donetsk Regional Court of Appeal.

5. On 5 April 2002 the Pecherskyi District Court of Kyiv ordered the Ministry of Finance of Ukraine to pay the applicant UAH 4,187.97¹ in pension arrears (involving a special retired judges’ allowance). The court

1. Around 683 euros – “EUR”.

held that the amount of the award should be seized from a specific account of the State Treasury.

6. The judgment was not appealed against and became final on 17 May 2002. On the same date the Pecherskyi District Court of Kyiv submitted the writ of execution for that judgment to the Pecherskyi District Bailiffs' Service of Kyiv for initiation of the enforcement proceedings.

7. On 22 December 2003 the Bailiffs' Service returned the writ to the applicant because of the absence of relevant allocations from the State Budget.

8. The applicant challenged the decision of 22 December 2003 before the Golosiyvskyi District Court of Kyiv. On 26 April 2004 the court found in part for the applicant and quashed the decision of 22 December 2003. It also ordered the Bailiffs' Service to renew the enforcement proceedings.

9. On 29 April 2005 the judgment was enforced in full.

II. RELEVANT DOMESTIC LAW

10. The relevant domestic law is summarised in the judgment of *Voytenko v. Ukraine* (no. 18966/02, §§ 20-22 and 24-25, 29 June 2004).

THE LAW

I. ADMISSIBILITY

11. The applicant complained in substance under Article 6 § 1 of the Convention and Article 1 of Protocol No. 1 about the State authorities' failure to enforce the judgment of the Pecherskyi District Court of Kyiv of 5 April 2002 in due time. Article 6 § 1 of the Convention and Article 1 of Protocol No. 1 provide, insofar as relevant, as follows:

Article 6 § 1

"In the determination of his civil rights and obligations ... everyone is entitled to a fair and public hearing within a reasonable time by an independent and impartial tribunal established by law. ..."

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”

12. The Government contended that the applicant had not exhausted domestic remedies as he had not appealed against that judgment with the aim of changing the debtor in the enforcement proceedings. They maintained that it had been the responsibility of the State Court Administration, and not of the Ministry of Finance, to pay the special retired judges’ allowance. They therefore proposed that the application be declared inadmissible.

13. The Court does not find any reasonable ground to hold the applicant responsible for failure to appeal against a judgment favourable to herself. Moreover, there is no information in the case file that any party to the proceedings, including the Ministry of Finance, was prevented from contesting that judgment. Accordingly, it dismisses the Government’s objection.

14. The Court takes the view that the application raises serious issues of fact and law under the Convention, the determination of which requires an examination of the merits. It finds no ground for declaring it inadmissible.

II. MERITS

15. The Government repeated their arguments (summarised at paragraph 12 above), contending that there had been no violation of Article 6 § 1 of the Convention or Article 1 of Protocol No. 1.

16. The Court notes that the judgment of the Pecherskyi District Court of Kyiv of 5 April 2002 remained unenforced over three years.

17. Having rejected the Government’s arguments above, the Court recalls that it has already found violations of Article 6 § 1 of the Convention and Article 1 of Protocol No. 1 in cases raising issues similar to the present application (see, for instance, *Voytenko*, cited above, §§ 39-43 and 53-55).

18. Having examined all the material submitted to it, the Court considers that the Government have not put forward any fact or convincing argument capable of persuading it to reach a different conclusion in the present case. There has, accordingly, been a violation of Article 6 § 1 of the Convention and Article 1 of Protocol No. 1.

III. APPLICATION OF ARTICLE 41 OF THE CONVENTION

19. 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.”

20. The applicant did not submit a claim for just satisfaction. Accordingly, the Court makes no such award.

FOR THESE REASONS, THE COURT UNANIMOUSLY

1. *Declares* the application admissible;
2. *Holds* that there has been a violation of Article 6 § 1 of the Convention;
3. *Holds* that there has been a violation of Article 1 of Protocol No. 1.

Done in English, and notified in writing on 22 November 2005, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

S. DOLLÉ
Registrar

J.-P. COSTA
President