



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

FIFTH SECTION

CASE OF MIZINA v. UKRAINE

(Application no. 28181/04)

JUDGMENT

STRASBOURG

10 August 2006

FINAL

10/11/2006

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 Mizina v. Ukraine,

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

Mr P. LORENZEN, *President*,

Mrs S. BOTOUCHAROVA,

Mr K. JUNGWIERT,

Mr V. BUTKEVYCH,

Mrs M. TSATSA-NIKOLOVSKA,

Mr R. MARUSTE,

Mr J. BORREGO BORREGO, *judges*,

and Mrs C. WESTERDIEK, *Section Registrar*,

Having deliberated in private on 10 July 2006,

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

PROCEDURE

1. The case originated in an application (no. 28181/04) 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 Vera Petrovna Mizina (“the applicant”), on 22 July 2004.

2. The Ukrainian Government (“the Government”) were represented by their Agents, Mrs V. Lutkovska and Mr Y. Zaytsev.

3. On 15 March 2005 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.

4. On 1 April 2006 this case was assigned to the newly constituted Fifth Section (Rule 25 § 5 and Rule 52 § 1).

THE FACTS

I. THE CIRCUMSTANCES OF THE CASE

5. The applicant was born in 1940 and resides in the town of Novogradovka, Donetsk region, Ukraine.

6. The applicant instituted proceedings in the Novogradovski Town Court of the Donetsk Region against the Novogradovskaya Mining Company No. 1/3 - a State-owned enterprise - to recover salary arrears.

7. On 18 December 2002 the Novogradovski Town Court found in favour of the applicant (*Решение Новогродовского городского суда*

Донецкой области) and awarded her UAH 1,810.24¹. On 28 January 2003 the Novogradovskiy Town Bailiffs' Service (*Отдел Государственной исполнительной службы Новогородовского городского управления юстиции*) initiated the enforcement proceedings.

8. In February 2003 the Novogradovskaya Mining Company was reorganised and became a structural subdivision of the Selidovugol Mining Company. As the latter thereby became the debtor, in December 2003 the enforcement proceedings were transferred to the Selidovskiy Town Bailiffs' Service (*Отдел Государственной исполнительной службы Селидовского городского управления юстиции*).

9. In January 2004 the applicant instituted proceedings in the Novogradovskiy Town Court of the Donetsk Region against the Novogradovskiy Town Bailiffs' Service for failure to enforce the court decision in her favour. On 11 March 2004 the Town Court rejected the applicant's claim, finding that no fault had been committed by the Bailiffs' Service. The court stated that the Bailiffs' Service had acted properly in taking steps to enforce the decision of 18 December 2002. However, by a number of decisions of the Commercial Court of the Donetsk Region, the Bailiffs' Service had been prohibited from selling the property of the Mining Company, due to the bankruptcy proceedings which had been initiated against the company. The court also stated that, according to the Law on the Introduction of a Moratorium on the Forced Sale of Property, on 26 December 2001 a ban on the forced sale of assets belonging to undertakings in which the State held at least 25% of the share capital had been introduced. On 10 June 2004 the Appellate Court of the Donetsk Region upheld the decision of the first instance court of 11 March 2004. The applicant appealed in cassation to the Supreme Court of Ukraine. The proceedings are still pending.

10. In August-October 2004 the applicant has received UAH 1,681.03², the rest of the debt remains unpaid.

11. The applicant instituted proceedings in the Selidovskiy Town Court against the Selidovskiy Town Bailiffs' Service claiming compensation for material and moral damage caused by a lengthy non-enforcement of the judgment in her favour. On 22 November 2004 the court found against the applicant. On 8 April 2005 the Court of Appeal of the Donetsk Region upheld this judgment. On 10 May 2005 the Selidovskiy Town Court provided the applicant a time-limit until 20 May 2005 for lodging her cassation appeal in compliance with procedural requirements prescribed by law. The parties did not submit any further information about these proceedings.

1. At the material time around 341.35 euros (EUR).

2. Around EUR 291.02; around EUR 50 remains unpaid.

II. RELEVANT DOMESTIC LAW

12. The relevant domestic law is summarised in the judgment of *Sokur v. Ukraine* (no. 29439/02, § 17-22, 26 April 2005).

THE LAW

I. SCOPE OF THE CASE

13. The Court notes that, after the communication of the case to the respondent Government, the applicant introduced new complaint, alleging violation of Article 13 of the Convention on account of the non-enforcement of judgment in her favour.

14. In the Court's view, the new complaint is not an elaboration of the applicant's original complaints, lodged with the Court approximately one year earlier, on which the parties have commented. The Court considers, therefore, that it is not appropriate now to take this matter up separately (see *Piryanik v. Ukraine*, no. 75788/01, § 20, 19 April 2005).

II. ADMISSIBILITY

15. The applicant complained about the length of the non-enforcement of the judgment in her favour. She invoked Article 6 § 1 of the Convention and Article 1 of Protocol No. 1. These Articles 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”

16. The Government raised objections regarding the exhaustion of domestic remedies similar to those which the Court has already dismissed in the case of *Romashov v. Ukraine* (no. 67534/01, §§ 28-32, 27 July 2004).

The Court considers that the present objections must be rejected for the same reasons.

17. The Court concludes that the applicant's complaint under Article 6 § 1 of the Convention about the delay in the enforcement of the judgment of the Novogradovskiy Town Court 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. For the same reasons, the applicant's complaint under Article 1 of Protocol No. 1 cannot be declared inadmissible.

III. MERITS

18. The Government maintained that the responsibility of the State in this situation was limited to the organisation and proper conduct of enforcement proceedings and that the length of the enforcement proceedings had been caused by the critical financial situation of the debtor company and the energy sector of the Ukrainian economy in general. The Government contended that the Bailiffs' Service performed all necessary actions and cannot be blamed for the delay. The regularity of the enforcement proceedings in the present case was confirmed by the domestic courts. The Government finally argued that the State could not be considered responsible for the debts of its enterprises.

19. The applicant disagreed.

20. The Court notes that the judgment in the applicant's favour has not been fully enforced for more than three years and five months.

21. 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 like the present application (see, *Sokur v. Ukraine*, cited above, §§ 30-37; *Shmalko v. Ukraine*, no. 60750/00, §§ 55-57, 20 July 2004).

22. 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.

23. There has, accordingly, been a violation of Article 6 § 1 of the Convention and of Article 1 of Protocol No. 1.

IV. APPLICATION OF ARTICLE 41 OF THE CONVENTION

24. 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

25. The applicant claimed EUR 6,382 in respect of pecuniary and non-pecuniary damage.

26. The Government maintained that the applicant has not substantiated her claims.

27. The Court does not discern any causal link between the violation found and the pecuniary damage alleged; it therefore rejects this claim.

28. In so far as the judgment in the applicant's favour has not been enforced in full (paragraph 10 above), the Court considers that, if the Government were to pay the remaining judgment debt owed to the applicant, it would constitute full and final settlement of her claim for pecuniary damage.

29. The Court further considers that the applicant must have sustained non-pecuniary damage, and awards her EUR 1,000 in respect of non-pecuniary damage.

B. Costs and expenses

30. The applicant did not submit any claim under this head within the set time-limit; the Court therefore makes no award in this respect.

C. Default interest

31. 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 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 of the Convention;
4. *Holds*
 - (a) that the respondent State is to pay the applicant, within three months from the date on which the judgment becomes final in accordance with Article 44 § 2 of the Convention, the judgment debt still owed to her, as well as EUR 1,000 (one thousand euros) in respect of non-pecuniary damage;
 - (b) that the above amount shall be converted into the national currency of the respondent State at the rate applicable at the date of settlement, plus any tax that may be chargeable;
 - (c) 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;
5. *Dismisses* the remainder of the applicant's claim for just satisfaction.

Done in English, and notified in writing on 10 August 2006, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Claudia WESTERDIEK
Registrar

Peer LORENZEN
President