



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

FIFTH SECTION

CASE OF SLUKVINA v. UKRAINE

(Application no. 9023/03)

JUDGMENT

STRASBOURG

21 December 2006

FINAL

26/03/2007

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 Slukvina v. Ukraine,

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

Mr P. LORENZEN, *President*,
Mr K. JUNGWIERT,
Mr V. BUTKEVYCH,
Mrs M. TSATSA-NIKOLOVSKA,
Mr J. BORREGO BORREGO,
Mrs R. JAEGER,
Mr M. VILLIGER, *judges*,

and Mrs C. WESTERDIEK, *Section Registrar*,

Having deliberated in private on 27 November 2006,

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

PROCEDURE

1. The case originated in an application (no. 9023/03) 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 Roza Polikarpovna Slukvina (“the applicant”), on 6 March 2003.

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

3. On 2 June 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 resides in the town of Novogrodivka, Donetsk region, Ukraine.

5. The applicant instituted proceedings in the Novogrodivsky Town Court of Donetsk Region against the Novogrodivska Mining Company No. 1/3 (*Шахта 1/3 «Новгородівська»*) - a State-owned enterprise - to recover salary arrears and other payments due to her late husband.

6. On 28 May 2001 the Novogrodivsky Town Court found in favour of the applicant (*Рішення Новгородівського міського суду Донецької*

області) and awarded her 23,741.84¹ Ukrainian hryvnias (“UAH”). The judgment was sent for enforcement to the Novogradivsky Town Bailiffs' Service (*Відділ Державної виконавчої служби Новгородівського міського управління юстиції*).

7. Subsequently, the applicant instituted proceedings in the Novogradivsky Town Court of the Donetsk Region against the Novogradivsky Town Bailiffs' Service for failure to enforce the judgment in her favour. On 20 December 2001 the Town Court rejected the applicant's claim, finding no fault had been committed by the Bailiffs' Service. The court stated that the Bailiffs' Service had acted properly in enforcing the judgment of 28 May 2001. 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. On 14 March 2002 the Supreme Court of Ukraine rejected the applicant's appeal in cassation.

8. In August 2002, the applicant instituted another set of proceedings in the Novogradivsky Town Court of the Donetsk Region against the Novogradivsky Town Bailiffs' Service for failure to enforce the judgment in her favour. On 10 October 2002 the Town Court rejected the applicant's claim, for the same reasons as before. On 16 December 2002 the Donetsk Regional Court of Appeal upheld the decision of the first instance court of 10 October 2002. On 22 October 2003 the Supreme Court of Ukraine rejected the applicant's appeal in cassation.

9. In February 2003 the Novogradivska Mining Company was reorganised and became a structural subdivision of the Selidovugol Mining Company. As the latter thereby became the debtor, in February 2004 the enforcement proceedings were transferred to the Selidivsky Town Bailiffs' Service (*Відділ Державної виконавчої служби Селидівського міського управління юстиції*).

10. The judgment in the applicant's favour was enforced by instalments, the last amount being paid on 31 August 2004.

11. The applicant instituted proceedings in the Selidivsky Town Court of the Donetsk region against the Selidivsky Town Bailiffs' Service claiming compensation for material and moral damage caused to her by the delay in the enforcement of the judgment in her favour. On 24 November 2004 the court found against the applicant. On 21 July 2005 the Donetsk Regional Court of Appeal upheld this judgment. The applicant appealed in cassation and the proceedings are still pending.

¹ At the material time around 3,774.14 euros (EUR)

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 a new complaint, alleging a violation of Article 13 of the Convention without any further specification.

14. In the Court's view, the new complaint is not an elaboration of the applicant's original complaints, lodged with the Court approximately two years 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 lengthy 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 an objection regarding the applicant's victim status similar to that which the Court has already dismissed (see *Shmalko v. Ukraine*, no. 60750/00, §§ 30-34, 20 July 2004). The Court considers that the present objection 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 Novogrodivskyy Town Court raises issues of fact and law under the Convention, the determination of which requires an examination of the merits. It finds no ground for declaring this complaint inadmissible. 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 judgment in the applicant's favour was enforced in full. They further 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 had performed all necessary actions and could not be blamed for the delay. The regularity of the enforcement proceedings in the present case was confirmed by the domestic courts. The Government argued that the State could not be considered responsible for the debts of its enterprises and that the State annually allocated substantial amounts from its budget to cover part of disability allowances and other compensatory payments to the workers in the mining industry.

19. The applicant disagreed.

20. The Court notes that the judgment in the applicant's favour was not enforced for more than three years and three 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*, cited above, §§ 55-57).

22. Having examined all the materials 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 2,001 in respect of pecuniary damage and EUR 6,000 in respect of non-pecuniary damage.

26. The Government maintained that the applicant had 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. However, the Court considers that the applicant must have sustained non-pecuniary damage, and, deciding on an equitable basis, awards her EUR 800 in this respect.

B. Costs and expenses

28. 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

29. 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, EUR 800 (eight hundred euros) in respect of non-pecuniary damage plus any tax that may be chargeable;
- (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;
- (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 21 December 2006, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Claudia WESTERDIEK
Registrar

Peer LORENZEN
President