



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

FIFTH SECTION

CASE OF LDOKOVA v. UKRAINE

(Application no. 17133/04)

JUDGMENT

STRASBOURG

21 December 2006

FINAL

23/05/2007

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 Ldokova 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,

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. 17133/04) 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 Rimma Yevgenyevna Ldokova (“the applicant”), on 4 May 2004.

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

3. On 7 September 2005 the Court decided to communicate the complaints under Article 6 § 1 of the Convention and Article 1 of Protocol No. 1 concerning the non-enforcement of the judgment in the applicant's favour 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 1940 and lives in the city of Simferopil, the Autonomous Republic of Crimea (“the ARC”), Ukraine.

A. Enforcement proceedings

5. In April 2002 the applicant instituted proceedings in the Tsentralnyy District Court of Simferopil against her employer, the Ministry of Education

of the ARC (*Міністерство освіти Автономної Республіки Крим*), claiming different payments allegedly due to her and compensation for moral damage. On 1 December 2003 the court awarded the applicant 1,184.98¹ Ukrainian hryvnias (“UAH”) (*Рішення Центрального районного суду м.Сімферополя*) in allowance for the length of service, in health allowance and in compensation for the delays of salary payments. By an additional decision of 1 March 2004, the court rejected the applicant's claim for moral damage. On 22 September 2004 the Court of Appeal of the ARC upheld the judgment of 1 December 2003. The applicant did not appeal in cassation against it.

6. By letter of 17 February 2005, the Prosecutor's Office of the ARC, following the applicant's complaint, informed her that the Ministry of Education of the ARC had been closed down and that the writ of enforcement had been forwarded to the liquidation commission.

7. By the letter of 3 May 2006 the applicant informed the Court that the judgment of 1 December 2003 had been enforced by instalments, the final amount being paid on 27 April 2006.

B. Other events

8. The applicant alleged that she has been persecuted by the police. In particular, the applicant stated that she had been beaten by police officers on 7 December 2003. From the applicant's submissions, it seems that this allegation is related to the situation of her son, who was detained on suspicion of committing a crime. The applicant did not raise this complaint before any relevant State authority.

II. RELEVANT DOMESTIC LAW

9. The relevant domestic law is summarised in the judgment of *Romashov v. Ukraine* (no. 67534/01, §§ 16-18, 27 July 2004).

THE LAW

I. ALLEGED VIOLATION OF ARTICLES 2, 3, 10, 14 AND 17 OF THE CONVENTION

10. The applicant complained that the existing situation infringed her right to life under Article 2 § 1 of the Convention, given her low standard of living. The Court reiterates that, according to its case-law, neither Article 2

1. At the material time 190.77 euros (“EUR”).

nor any other provision of the Convention can be interpreted as conferring on an individual a right to enjoy any given standard of living (*Wasilewski v. Poland*, no. 32734/96, 20 April 1999). Moreover, the applicant has not shown that she suffers such destitution as to put her life at risk (see *Sokur v. Ukraine* (dec.), no. 29439/02, 26 November 2002). It follows that this complaint is incompatible *ratione materiae* with the provisions of the Convention and must be rejected in accordance with Article 35 §§ 3 and 4 of the Convention.

11. The applicant next complained about a violation of Articles 3, 10, 14 and 17 of the Convention. However, in the light of all the materials in its possession, and insofar as the matters complained of are within its competence, the Court finds that they do not disclose any appearance of a violation of the rights and freedoms set out in the Convention or its Protocols. It follows that this part of the application is inadmissible as being manifestly ill-founded, pursuant to Article 35 §§ 3 and 4 of the Convention.

II. ALLEGED VIOLATION OF ARTICLES 6 AND 13 OF THE CONVENTION AND ARTICLE 1 OF PROTOCOL NO. 1

12. Relying on Article 13 of the Convention, and Article 1 of Protocol No. 1 the applicant complained about the lengthy non-enforcement of the judgment given in her favour. These Articles provide, insofar as relevant, as follows:

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”

13. The Court finds that the applicant's complaint about the lengthy non-enforcement of the judgment given in her favour also required examination under Article 6 § 1 of the Convention which reads 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. ...”

A. Admissibility

1) Failure to award compensation

14. As for the applicant's complaint about the failure of the national courts to award her compensation for moral damage, the Court notes that the applicant failed to appeal against the additional judgment of 1 March 2004 under the ordinary appeal procedure. She also failed to appeal in cassation against the judgment of 22 September 2004 and, therefore, has not exhausted, as required by Article 35 § 1 of the Convention, the remedies available to her under Ukrainian law (see, *Vorobyeva v. Ukraine* (dec.), no. 27517/02, 17 December 2002). It follows that this part of the application is inadmissible in accordance with Article 35 §§ 1 and 4.

2) Lengthy non-enforcement

15. The Government submitted no observations on the admissibility of the applicant's complaints about the lengthy non-enforcement of the judgment in her favour.

16. 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 Tsentralnyy District 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 13 of the Convention and Article 1 of Protocol No. 1 cannot be declared inadmissible.

B. Merits

17. The Government maintained that the right of the applicant to have a judgment in her favour enforced has been never questioned. The Government further submitted that the limitations of this right in the present case were aimed at the protection of the public interests and that these limitations did not breach the very essence of the right in question. In particular, in 2004-2005 the State had adopted a number of legal acts to improve the situations with salary and other payments in the sphere of education. The Government finally considered that the length of the enforcement in the present case could not be considered as unreasonable.

18. The applicant disagreed.

19. The Court notes that the judgment in the applicant's favour was not enforced for more than one year and seven months.

20. 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 applications (see, *Romashov v. Ukraine*, cited above, §§ 42-46; *Shmalko v. Ukraine*, no. 60750/00, §§ 55-57, 20 July 2004).

21. 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.

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

23. The Court does not consider it necessary in the circumstances to rule on the same complaint under Article 13 of the Convention.

III. 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 1,000 in respect of pecuniary and 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, making its assessment on an equitable basis, awards her EUR 200 in respect of non-pecuniary damage.

B. Costs and expenses

28. The applicant claimed UAH 638.80¹ in costs and expenses.

29. The Government argued that in substantiation of her claims the applicant had provided bills only for the amount of UAH 69.82.

30. The Court considers that the applicant has not provided substantiation for all costs and expenses claimed; however, she did submitted relevant bills for the amount of UAH 113.80². The Court, therefore, awards the applicant EUR 20 in this respect.

1. Around EUR 103.96.

2. Around EUR 20.

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 complaints under Article 6 § 1 and Article 13 of the Convention and Article 1 of Protocol No. 1 in respect of the lengthy non-enforcement of the judgment in the applicant's favour admissible and the remainder of the application inadmissible;
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* that it is not necessary to rule on the applicant's complaint under Article 13 of the Convention;
5. *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 220 (two hundred twenty euros) in respect of non-pecuniary damage, and costs and expenses, 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;
6. *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