



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

FIFTH SECTION

CASE OF LAPINSKAYA v. UKRAINE

(Application no. 10722/03)

JUDGMENT

STRASBOURG

18 January 2007

FINAL

18/04/2007

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 Lapinskaya 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 11 December 2006,

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

PROCEDURE

1. The case originated in an application (no. 10722/03) 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 Lidiya Pavlovna Lapinskaya (“the applicant”), on 17 February 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 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 1954 and resides in the town of Novogrodivka, Donetsk region, Ukraine.

5. The applicant instituted proceedings in the Novogrodivskyy Town Court of Donetsk Region against the “Novogrodivskaya” Mining Company 1/3 (*Шахта 1/3 «Новогродівська»*) - a State-owned enterprise - to recover salary arrears and other payments due to her late husband.

6. On 1 March 2002 the Novogradivsky Town Court found in favour of the applicant (*Рішення Новогродівського міського суду Донецької області*) and awarded her UAH 2,290.80¹. The decision was sent for enforcement to the Novogradivsky Town Bailiffs' Service (*Відділ Державної виконавчої служби Новогродівського міського управління юстиції*). However, the decision was not enforced, allegedly due to the failure of the Bailiffs' Office to act, in not selling the property of the Mining Company.

7. In June 2002 the applicant instituted proceedings in the Novogradivsky Town Court of the Donetsk Region against the Novogradivsky Town Bailiffs' Service for failure to enforce the court decision in her favour. On 26 June 2002 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 decision of 1 March 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. Also on 26 December 2001, the ban on the forced sale of assets belonging to undertakings in which the State holds at least 25% of the share capital was entrenched in the Law on the Introduction of a Moratorium on the Forced Sale of Property. On 2 September 2002 the Donetsk Regional Court of Appeal upheld the decision of the first instance court. On 12 November 2002 the Novogradivsky Town Court of the Donetsk Region rejected the applicant's appeal in cassation against the decision of 26 June 2002 as submitted too late. On 24 December 2002 the Donetsk Regional Court of Appeal upheld this ruling.

8. The Government submitted that in October 2004 the debtor requested the Novogradivsky Town Court to review the judgment of 1 March 2002 in light of new circumstances. No further information was provided by the parties. In particular, the applicant stated that she was completely unaware of these proceedings.

9. According to the applicant, by November 2004 she received UAH 2,014.80; the rest of the debt due to her remains unpaid.

II. RELEVANT DOMESTIC LAW

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

¹ At the material time around 515.60 euros ("EUR")

THE LAW

I. SCOPE OF THE CASE

11. The Court notes that, after the communication of the case to the respondent Government, the applicant introduced a new complaint about a violation of Article 14 of the Convention alleging that she was discriminated because the judgment in her favour was not enforced.

12. In the Court's view, the new complaint is not an elaboration of the applicant's original complaints 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

A. Complaint under Article 2 § 1 of the Convention

13. 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 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* (dec.), 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.

B. Complaints under Article 6 § 1 of the Convention and Article 1 of Protocol No. 1

14. 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”

15. The Government did not submit any observations as for the admissibility of the applicant's complaints.

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 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

17. 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 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.

18. The applicant disagreed.

19. The Court notes that the judgment in the applicant's favour has not been enforced for more than four years and eight 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 application (see, *Sokur v. Ukraine*, cited above, §§ 30-37; *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.

IV. APPLICATION OF ARTICLE 41 OF THE CONVENTION

23. 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

24. The applicant claimed EUR 385 in respect of pecuniary damage and EUR 6,000 in respect of non-pecuniary damage.

25. The Government maintained that the applicant's claims were exorbitant and unsubstantiated.

26. The Court does not discern any causal link between the violation found and the pecuniary damage alleged. However, insofar as the judgment in the applicant's favour has not been enforced in full (paragraph 9 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. The Court also considers that the applicant must have sustained non-pecuniary damage, and, deciding on an equitable basis, awards her EUR 1,400 in this respect.

B. Costs and expenses

27. 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

28. 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 of the Convention and Article 1 of Protocol No. 1 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*
 - (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 1,400 (one thousand four 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 18 January 2007, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Claudia WESTERDIEK
Registrar

Peer LORENZEN
President