



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

FIFTH SECTION

CASE OF SIKORSKA v. UKRAINE

(Application no. 34339/03)

JUDGMENT

STRASBOURG

6 September 2007

FINAL

06/12/2007

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 Sikorska 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 Mr J.S. PHILLIPS, *Deputy Section Registrar*,

Having deliberated in private on 10 July 2007,

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

PROCEDURE

1. The case originated in an application (no. 34339/03) 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 Olga Stepanivna Sikorska (“the applicant”), on 29 August 2003.

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

3. On 8 April 2005 the Court decided to communicate the complaint 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 1952 and lives in the city of Zhytomyr.

1. Non-enforcement of the judgment in the applicant's favour

5. From 1988 to 2001 the applicant worked as a teacher at the Zhytomyr Orphanage (*Житомирський обласний будинок дитини*; hereafter “the Orphanage”).

6. On 27 September 2001 the Bogunsky District Court of Zhytomir (hereinafter “the Bogunsky Court”) ordered the Orphanage to pay the applicant a total of UAH 3,483.60 (an equivalent of EUR 508.25) in compensation for salary and social benefits arrears (see, in this respect, *Kechko v. Ukraine*, no. 63134/00, §§ 9-11, 8 November 2005).

7. In a letter of 10 October 2003, the Zhytomyr Regional Department of Justice informed the applicant that the judgment in her favour could not be enforced due to the debtor's lack of funds. It also pointed out that the 2003 State Budget did not preview the expenditure for teachers' social benefits and that the Zhytomyr Regional State Administration applied to the Ministry of Finance for a loan for the payment of the debt to the applicant.

8. The judgment of 27 September 2001 remains unenforced.

2. Reinstatement proceedings

9. In November 2001 the applicant instituted proceedings against the Orphanage seeking her reinstatement and compensation for the loss of salary. On 31 May 2002 the Bogunsky Court rejected this claim as unsubstantiated. On 12 September 2002 the Zhytomyr Regional Court of Appeal upheld this judgment. On 12 February 2003 the Supreme Court rejected the applicant's cassation appeal.

II. RELEVANT DOMESTIC LAW

10. The relevant domestic law is summarised in the judgments of *Romashov v. Ukraine* (no. 67534/01, §§ 16-19) and *Kechko v. Ukraine* (cited above, §§ 16-18).

THE LAW

I. ALLEGED VIOLATION OF ARTICLE 6 § 1 OF THE CONVENTION

11. Relying on Article 6 § 1 of the Convention, the applicant complained about the non-enforcement of the judgment given in her favour. This provision reads, 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. ...”

A. Admissibility

12. The Government raised objections, contested by the applicant, similar to those already dismissed in a number of the Court's judgments regarding non-enforcement against the State institutions (see *Voytenko v. Ukraine*, no. 18966/02, § 27-31, 29 June 2004 and *Romashov v. Ukraine*, cited above, §§ 28-32). The Court considers that these objections must be rejected for the same reasons.

13. The Court concludes that the applicant's complaint under Article 6 § 1 of the Convention 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. The Court must therefore declare it admissible.

B. Merits

14. The Government acknowledged the need to enforce the judgment given in favour of the applicant. They stated that the judgment of 27 September 2001 had remained unenforced due to a lack of budget funding, which, in turn, was caused by the State's critical financial situation.

15. The applicant disagreed.

16. The Court notes that in the present case the enforcement of the judgment in the applicant's favour was delayed for five years and nine months due to the State's failure to foresee the relevant expenditure in the State Budget.

17. The Court accepts that appropriations for the payment of State debts may cause some delay in the enforcement of judgments from the Government's budget. Nevertheless, the Court considers that, by failing to make such appropriations for several consecutive years, the respondent State fell short of its obligations under Article 6 § 1 of the Convention (see *Voytenko v. Ukraine*, cited above, § 42, 29 June 2004). Moreover the State's lack of funds cannot justify the non-enforcement of a court judgment against it.

18. The foregoing considerations lead the Court to conclude that the enforcement of the judgment given in favour of the applicant was not carried out within a reasonable time.

19. There has accordingly been a violation of Article 6 § 1 of the Convention.

II. OTHER ALLEGED VIOLATIONS OF THE CONVENTION

20. The applicant also complained under Articles 1 and 6 § 1 of the Convention about the unfairness and outcome of the reinstatement proceedings.

21. However, in the light of all the materials in its possession, 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.

22. It follows that this part of the application must be declared inadmissible as being manifestly ill-founded, pursuant to Article 35 §§ 1, 3 and 4 of the Convention.

III. 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 5,000 in respect of pecuniary and non-pecuniary damage.

25. The Government found the applicant's claims excessive and unjustified.

26. In so far as the debt under the judgment of 27 September 2001 in the applicant's favour has not been paid (paragraph 6 above), the Court notes that the State's outstanding obligation to enforce this judgment is not in dispute. Accordingly, the Court considers that, if the Government were to pay the remaining debt owed to the applicant, it would constitute full and final settlement of the case.

27. As regards the remainder of the applicant's claims for pecuniary and non-pecuniary damage, the Court, making its assessment on equitable basis, as required by Article 41 of the Convention, considers it reasonable to award the applicant EUR 2,600 in respect of her non-pecuniary damage.

B. Costs and expenses

28. The applicant also claimed UAH 300 for the costs and expenses incurred before the domestic courts and before the Court.

29. The Government contested the claim.

30. The Court notes that the applicant failed to substantiate her claim and provide necessary documents to support it. Regard being had to the information in its possession, the Court makes no award.

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 complaint concerning the 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*
 - (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 2600 (two thousand and six hundred euros) in respect of non-pecuniary damage to 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;
 - (b) 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;
4. *Dismisses* the remainder of the applicant's claim for just satisfaction.

Done in English, and notified in writing on 6 September 2007, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Stephen PHILLIPS
Deputy Registrar

Peer LORENZEN
President