



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

FIFTH SECTION

CASE OF VOROTNIKOVA v. UKRAINE

(Application no. 1225/02)

JUDGMENT

STRASBOURG

14 February 2008

FINAL

14/05/2008

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 Vorotnikova v. Ukraine,

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

Peer Lorenzen, *President*,
Karel Jungwiert,
Volodymyr Butkevych,
Margarita Tsatsa-Nikolovska,
Javier Borrego Borrego,
Renate Jaeger,
Mark Villiger, *judges*,

and Claudia Westerdiek, *Section Registrar*,

Having deliberated in private on 22 January 2008,

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

PROCEDURE

1. The case originated in an application (no. 1225/02) 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 Raisa Mikhaylovna Vorotnikova (“the applicant”), on 28 November 2001.

2. The Ukrainian Government (“the Government”) were represented by their Agent, Mr Yuriy Zaytsev.

3. On 23 January 2007 the Court decided to give notice of 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 1940 and lives in the village of Zidki, Kharkiv region, Ukraine.

A. Judicial proceedings

5. In December 2000 the applicant, a teacher by profession, brought proceedings against the Department of Education of the Leninsky District

of Kharkiv (*Ленінський районний відділ освіти м. Харкова*, hereafter “the Department”) claiming salary arrears, various teachers’ allowances allegedly due to her and a compensation for non-pecuniary damage.

6. On 4 January 2001 the Zmiyivskyi District Court (*Зміївський районний суд*, hereafter, “the Zmiyivskyi Court”) found against the applicant. The applicant appealed. On 13 February 2001 the Kharkiv Regional Court (*Харківський обласний суд*) quashed this judgment in part concerning the teachers’ allowances and remitted the case for a fresh consideration. The remainder of the judgment was upheld.

7. On 31 May 2001 the Zmiyivskyi Court found in part for the applicant and awarded her 1,386.06¹ Ukrainian hryvnias (UAH) in compensation for teachers’ allowances. This judgment was not appealed against within the statutory time-limit and thus became final and enforceable.

8. By a separate procedural decision of the same date the Zmiyivskyi Court rejected the applicant’s request to institute proceedings before the Constitutional Court (*Конституційний Суд України*) on compliance of the 1999 Law on Secondary Education with the Constitution of Ukraine.

9. On 3 July 2001 the Zmiyivskyi Court corrected an arithmetical mistake in its judgment of 31 May 2001 and changed the amount of the applicant’s award to UAH 1,499.29².

10. On the same date the Department filed an appeal against the judgment of 31 May 2001. On 10 July 2001 the Zmiyivskyi Court declared this appeal inadmissible as being lodged out of time. On 3 December 2001 the same court found inadmissible the Department’s appeal against the decision of 10 July 2001 as it had been signed by an unauthorised person. The Department appealed.

11. On 19 February 2002 the Kharkiv Regional Court of Appeal (*Апеляційний суд Харківської області*, the former Kharkiv Regional Court as renamed on 29 June 2001) quashed the decision of 3 December 2001 and remitted the question of the admissibility of the appeal against the decision of 10 July 2001 for a fresh consideration. The applicant filed an appeal in cassation against this decision.

12. On 28 May 2002 the Supreme Court (*Верховний Суд України*) upheld the decision of 19 February 2002. On 13 September 2002 the Supreme Court refused the applicant’s request to review this matter on the ground of new circumstances.

13. On 26 June 2003 the Zmiyivskyi Court again declared the Department’s appeal inadmissible as being signed by an unauthorised person.

14. On 14 October 2003 the applicant requested leave to lodge an appeal under the new cassation procedure against the first instance judgment of

1. At the material time 300 euros (EUR)

2. At the material time EUR 330

4 January 2001 and appeal decision of 13 February 2001 whereby her claims for salary arrears and moral damages were rejected and the Zmiyivskyi Court's judgment of 31 May 2001 in which her claims for allowances had not been allowed in their entirety.

15. On 15 April 2004 the Supreme Court refused the applicant leave to appeal under the new cassation procedure.

B. Enforcement proceedings

16. On 3 August 2001 the Bailiffs' Service of the Leninsky District of Kharkiv (*Відділ державної виконавчої служби Ленінського районного управління юстиції м. Харкова*, hereafter, "the Bailiffs' Service") instituted enforcement proceedings in respect of the Zmiyivskyi Court's judgment of 31 May 2001.

17. According to the Government, by letter of 26 September 2001 a judge of the Zmiyivskyi Court informed the Bailiffs' Service about the appeal against the judgment of 31 May 2001, filed by the Department (see paragraph 10 above), and indicated that it was necessary to suspend the enforcement proceedings pending the outcome of the appeal proceedings. Thereupon the Bailiffs' Service suspended the enforcement proceedings. The Government added that the destruction of the materials relating to the enforcement proceedings upon expiry of the archiving period prevented them from submitting relevant copies.

18. On 10 October 2003 the enforcement proceedings were terminated because the amount, awarded to the applicant by the judgment of 31 May 2001 was paid to her in full.

II. RELEVANT DOMESTIC LAW

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

20. Article 34 § 6 of the Law of Ukraine of 21 April 1999 "on Enforcement Proceedings", as in force at the relevant time, provided the following:

"the enforcement proceedings are subject to obligatory suspension if:

...

6) a ruling to suspend enforcement proceedings is issued by an official authorised by law to issue it;"

THE LAW

I. ALLEGED VIOLATION OF ARTICLE 6 § 1 OF THE CONVENTION AND ARTICLE 1 OF PROTOCOL No. 1 IN RESPECT OF NON-ENFORCEMENT OF A COURT JUDGMENT

21. The applicant complained of the length of proceedings in her case and the lengthy non-enforcement of the judgment in her favour. She relied on Article 6 § 1 of the Convention and Article 1 of Protocol No. 1 which, in so far as relevant, provide 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”

A. Admissibility

22. The Government argued that the applicant lost her victim’s status after the execution of the court judgment in her favour.

23. The Court notes that this objection is similar to that already dismissed by the Court in a number of judgments (see, for example, *Romashov v. Ukraine*, no. 67534/01, §§ 26-27, 27 July 2004 and *Gavrilenko v. Ukraine*, no. 24596/02, § 19, 20 September 2005). The Court considers that in the present case this objection must be rejected for the same reasons.

24. The Court, noting that the court proceedings and the enforcement proceedings are stages one and two in the total course of proceedings and thus the enforcement proceedings should not be dissociated from the action and the proceedings are to be examined in their entirety (see *Scordino v. Italy (no. 1)* [GC], no. 36813/97, § 197 and, as a recent authority, *Sika v. Slovakia*, no. 2132/02, §§ 24-27, 13 June 2006), concludes that the applicant’s complaints under Article 6 § 1 of the Convention about the

length of the proceedings concerning compensation and about the delay in the enforcement of the Zmiyivskyy Court's judgment of 31 May 2001 are not manifestly ill-founded within the meaning of Article 35 § 3 of the Convention. It further notes that they are not inadmissible on any other grounds. These complaints must therefore be declared admissible. For the same reasons, the applicant's complaint under Article 1 of Protocol No. 1 about the authorities' failure to enforce a judgment in her favour cannot be declared inadmissible.

B. Merits

25. In their observations, the Government contended that there had been no violation of Article 6 § 1 of the Convention or Article 1 of Protocol No. 1 (as in the cases of *Romashov*, cited above, § 37, and *Voytenko*, cited above § 37). They also maintained that the overall length of the proceedings was reasonable in the circumstances.

26. The applicant disagreed.

27. As regards the judicial stage of proceedings, it is to be noted that the applicant's claim was lodged with the court in December 2000. The final decision in this case was taken on 31 May 2001 by the Zmiyivskyy Court. Subsequently the Defendant, a defendant in these proceedings, unsuccessfully attempted to file an appeal out of time. This appeal was eventually rejected on 26 June 2003. The applicant lodged an equally unsuccessful request for leave to appeal under the new cassation procedure, an ineffective remedy in respect of the cases finally decided before 29 June 2001 (see *Prystavskaya v. Ukraine* (dec.), no. 21287/02, 17 December 2002). Therefore, the judicial proceedings on the merits of the applicant's claims lasted for five months, followed by a period of almost two years for considering the admissibility of the defendant's appeal lodged out of time.

28. The Court observes that the final judgment of the Zmiyivskyy Court of 31 May 2001 therefore remained unenforced for over two years and three months.

29. The Government seem to implicate that the lengthy non-enforcement was not imputable to the State authorities because the enforcement had to be suspended in view of the pending appeal proceedings. The Court notes the reasons advanced by the respondent Government for not having filed copies of the judge's letter of 26 September 2001 (see paragraph 17 above) nor of any formal ruling on the suspension of the enforcement proceedings, pursuant to Article 34 § 6 of the 1999 Law "on Enforcement Proceedings", as in force at the material time. In any event, the Court considers that the Government did not explain the lengthy delay in the said appeal proceedings which were limited to rather simple admissibility questions, the

Zmiyivskyy Court having found as early as on 10 July 2001 that the appeal had been lodged out of time.

30. 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 raising issues similar to the present application (see, for example *Sokur v. Ukraine*, no. 29439/02, §§ 34-37, 26 April 2005, and *Zhovner v. Ukraine*, no. 56848/00, §§ 33-40 and 45-56, 29 June 2004).

31. Having examined all the material submitted to it, the Court considers that the Government have not put forward any fact or convincing argument capable of persuading it to reach a different conclusion in the present case. There has, accordingly, been a violation of Article 6 § 1 of the Convention and Article 1 of Protocol No. 1.

II. OTHER ALLEGED VIOLATIONS OF THE CONVENTION

32. The applicant complained under Articles 6 and 13 of the Convention about the outcome of the proceedings in her case. The applicant complained that the courts failed to protect effectively her rights and, in particular, that the first instance court did not allow her request to institute proceedings before the Constitutional Court of Ukraine.

33. The applicant also complained under Article 1 of Protocol No. 1 that the failure of the courts to allow her claims in full violated her property rights.

34. The applicant finally invoked Articles 1, 17 and 53 of the Convention.

35. The Court, in the light of all material before it and in so far as these remaining complaints fall within its competence, finds that they do not disclose any appearance of an unjustified interference or breach of these provisions and rejects this part of the application in accordance with Article 35 §§ 3 and 4 of the Convention as being manifestly ill-founded.

III. APPLICATION OF ARTICLE 41 OF THE CONVENTION

36. 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.”

37. On 11 May 2007, after having received the Government’s observations on the admissibility and merits of the applicant’s complaints, the Court invited the applicant to submit her claims for just satisfaction by 25 June 2007 (Rule 60 of the Rules of Court). The applicant, however, submitted her claims only on 19 July 2007, i.e. outside the fixed time-limit.

As no extension of the allotted period was made before its expiry, the President of the Chamber, pursuant to Rule 38 § 1 of the Rules of Court, decided not to include these submissions in the case file for the consideration of the Court.

38. In these circumstances, the Court makes no award under Article 41.

FOR THESE REASONS, THE COURT UNANIMOUSLY

1. *Declares* the complaints under Article 6 § 1 of the Convention in respect of the allegedly excessive length of court and enforcement proceedings in the applicant's case and Article 1 of Protocol No. 1 concerning the lengthy non-enforcement of a court 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;
4. *Decides* to make no award under Article 41 of the Convention.

Done in English, and notified in writing on 14 February 2008, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Claudia Westerdiek
Registrar

Peer Lorenzen
President