



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

FIFTH SECTION

CASE OF KISLAYA v. UKRAINE

(Application no. 21050/02)

JUDGMENT

STRASBOURG

29 May 2008

FINAL

29/08/2008

This judgment may be subject to editorial revision.

In the case of Kislaya v. Ukraine,

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

Peer Lorenzen, *President*,
Rait Maruste,
Volodymyr Butkevych,
Mark Villiger,
Isabelle Berro-Lefèvre,
Mirjana Lazarova Trajkovska,
Zdravka Kalaydjieva, *judges*,

and Claudia Westerdiek, *Section Registrar*,

Having deliberated in private on 6 May 2008,

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

PROCEDURE

1. The case originated in an application (no. 21050/02) 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, Ms Tatyana Nikolayevna Kislaya (“the applicant”), on 16 March 2002.

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

3. On 2 May 2007 the Court declared the application partly inadmissible and decided to communicate the complaints concerning the length of two sets of civil proceedings, the non-enforcement of the judgments, and the lack of effective remedies in this regard 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, Ms Tatyana Nikolayevna Kislaya, is a Ukrainian national who was born in 1950 and resides in the city of Lugansk, Ukraine.

A. First set of proceedings

5. On 21 June 2000 the applicant instituted civil proceedings in the Leninsky District Court of Lugansk (*Ленінський районний суд м. Луганська*) against her former employer, the “Lugansky Verstatobudivny Zavod” State-owned plant (*«Луганський верстатобудівний завод»*) “the enterprise”, challenging her dismissal and disciplinary measures against her and claiming various payments.

6. On 1 March 2001 the court found against the applicant. The applicant appealed in cassation.

7. On 7 May 2001 the Lugansk Regional Court (*Луганський обласний суд*)¹ upheld this judgment on appeal in cassation by the applicant and it became final.

8. On 17 August 2001 the applicant lodged a cassation appeal before the Supreme Court of Ukraine pursuant the newly introduced cassation procedure.

9. On 13 December 2001 the Supreme Court quashed the above judgments and remitted the case for a fresh consideration to the first-instance court.

10. On 20 May 2002 the Leninsky Court annulled disciplinary measures imposed on the applicant, ordered her reinstatement and awarded her the total of 2,364 hryvnyas (UAH) in various payments. Both parties appealed.

11. On 18 November 2002 the Regional Court quashed the judgment of 20 May 2002 to the extent that it concerned the monetary award and remitted this part of the case for a fresh consideration. The part of the judgment concerning the reinstatement of the applicant was upheld, became final and was enforced by the end of May 2003.

12. On 5 March 2003 the Supreme Court upheld the decision of 18 November 2002.

13. On 27 February 2004 the Leninsky Court awarded the applicant the total of UAH 11,733.92 in various payments. Both parties appealed.

14. On 21 June 2004 the Regional Court reduced the monetary award due to the applicant to UAH 4,971.82. This judgment immediately became enforceable.

15. On 27 November 2006 the Supreme Court rejected the applicant’s request for leave to appeal in cassation.

16. In the course of the proceedings, the first-instance court scheduled some thirty hearings. Some fifteen of them were adjourned on account of the defendant’s failures to appear or following its requests for adjournments. Three hearings were adjourned for various other reasons.

1. Since July 2001 the Lugansk Regional Court of Appeal (*Апеляційний суд Луганської області*).

17. On numerous occasions the bailiffs referred to the pending bankruptcy proceedings against the debtor as the reason for a delay in the enforcement of the judgment given in the applicant's favour. On 24 December 2004 the applicant was paid UAH 364 and on 23 February 2006 received the remainder of the award.

B. Second set of proceedings

18. On 22 December 2003 the applicant was dismissed again. On 12 January 2004 she instituted civil proceedings in the Leninsky Court challenging her dismissal and claiming compensation.

19. On 15 June 2005 the court ordered the applicant's reinstatement and awarded her UAH 2,517.96 in compensation. The part of the judgment concerning the reinstatement of the applicant immediately became enforceable and was enforced by 8 February 2006. On 29 September 2005 this judgment was upheld by the Regional Court and became enforceable.

20. On 1 December 2006 the judgment was further upheld by the Supreme Court.

21. On 12 June 2007 the applicant received the payment due to her by the judgment of 15 June 2005.

II. RELEVANT DOMESTIC LAW

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

THE LAW

23. The applicant complained that the length of two sets of her civil proceedings, including their enforcement stage, had been incompatible with the guarantees set forth in Article 6 § 1 of the Convention. Additionally, she complained that the failure of the authorities to enforce the judgments given in her favour breached her rights under Article 1 of Protocol No. 1. Finally, the applicant complained under Article 13 of the Convention that she had no effective remedies in respect of the complaint concerning the length of the proceedings and the non-enforcement of the judgments. These provisions read, in so far 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”

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.”

I. ADMISSIBILITY

24. The Government did not comment on the admissibility of these complaints.

25. The Court considers that the applicant’s complaints raise issues of fact and law under the Convention and finds no ground for declaring them inadmissible. The Court must therefore declare them admissible.

II. MERITS**A. Alleged violation of Article 6 § 1 of the Convention***1. First set of proceedings*

26. The Court reiterates that the applicant initiated the “determination” of her “civil rights” within the meaning of Article 6 § 1 of the Convention by instituting judicial proceedings on 21 June 2000, which resulted in adoption of a final judgment on 7 May 2001. This judgment having been quashed by the Supreme Court on 13 December 2001, the proceedings were re-opened and eventually led to the adoption of an enforceable judgment on 21 June 2004, which became final on 27 November 2006. This judgment was enforced by 23 February 2006. Therefore, the length of the proceedings in their judicial phase was five years and eleven months, while the period of debt recovery was one year and eight months.

27. The Court reiterates that the reasonableness of the length of proceedings must be assessed in the light of the circumstances of the case and with reference to the following criteria: the complexity of the case, the

conduct of the applicant and the relevant authorities and what was at stake for the applicant in the dispute (see, among many other authorities, *Frydlender v. France* [GC], no. 30979/96, § 43, ECHR 2000-VII). The Court reiterates that special diligence is necessary in employment disputes (*Ruotolo v. Italy*, judgment of 27 February 1992, Series A no. 230-D, p. 39, § 17).

28. Turning to the facts of the case, the Court notes that the most significant delays in the final determination of the applicant's civil rights were generated by repetitive remittals of the case for a fresh consideration, including after a judgment had become final; by numerous adjournments of hearings on account of the conduct of the State-owned defendant as well as the delay in the enforcement of a judgment given in the applicant's favour. The Court has frequently found violations of Article 6 § 1 of the Convention in cases raising issues similar to the one in the present case (see, e.g. *Moroz and Others v. Ukraine*, no. 36545/02, §§ 60-62, 21 December 2006; *Karnaushenko v. Ukraine*, no. 23853/02, §§ 59-62, 30 November 2006; *Sokur v. Ukraine*, cited above, §§35-37 and *Zaichenko v. Ukraine*, no. 29875/02, §§ 26-28, 22 November 2007).

29. Having examined all the material 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.

30. Having regard to its case-law on the subject, the Court considers that in the instant case there has accordingly been a breach of Article 6 § 1 in respect of the first set of the proceedings.

2. Second set of proceedings

31. The second set of proceedings at issue was instituted on 22 December 2003 and resulted in adoption of an enforceable judgment on 29 September 2005. This judgment became final on 1 December 2006 and was enforced by 12 June 2007. The overall duration of the judicial phase of the proceedings was, therefore, two years and eleven months for three levels of jurisdiction. The period of debt recovery was one year and nine months.

32. The Court observes that the major delay in the proceedings at issue was caused by the lengthy non-enforcement of a judgment given against a State-owned enterprise.

33. Referring to its findings in paragraphs 28-30 above, the Court considers that there has likewise been a breach of Article 6 § 1 in respect of the second set of proceedings.

B. Alleged violation of Article 1 of Protocol No. 1 to the Convention

34. The Court recalls its case-law that the impossibility for an applicant to obtain the enforcement of a judgment in his or her favour constitutes an interference with the right to the peaceful enjoyment of possessions, as set

out in the first sentence of the first paragraph of Article 1 of Protocol No. 1 (see, among other authorities, *Burdov v. Russia*, no. 59498/00, § 40, ECHR 2002-III; *Jasiūnienė v. Lithuania*, no. 41510/98, § 45, 6 March 2003 and *Voytenko v. Ukraine*, no. 18966/02, §§ 53-55, 29 June 2004). The Court finds no ground to depart from its case-law in the present case.

35. There has, accordingly, been a violation of Article 1 of Protocol No. 1 of the Convention.

C. Alleged violation of Article 13 of the Convention

36. The Court concludes that the applicant did not have an effective domestic remedy, as required by Article 13 of the Convention, whereby she could have obtained a ruling upholding her right to have her claims finally settled within a reasonable time, as set forth in Article 6 § 1 of the Convention (see e.g. *Voytenko v. Ukraine*, no. 18966/02, §§ 46-48, 29 June 2004 and *Efimenko v. Ukraine*, no. 55870/00, § 64, 18 July 2006). Accordingly, there has been a breach of this provision in this respect.

III. APPLICATION OF ARTICLE 41 OF THE CONVENTION

37. 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

38. The applicant claimed 19,433 euros (EUR) in respect of pecuniary damage and EUR 10,000 in respect of non-pecuniary damage.

39. The Government contested these claims.

40. The Court does not discern any causal link between the violations found and the pecuniary damage alleged; it therefore rejects this claim. On the other hand, it finds that the applicant must have sustained non-pecuniary damage on account of the violations found. Ruling on an equitable basis, the Court awards the applicant EUR 1,100 in respect of non-pecuniary damage.

B. Costs and expenses

41. The applicant submitted that she sustained costs and expenses in connection with the present application, but failed to specify the amount of her claim.

42. The Government submitted that this claim should be rejected as unsubstantiated.

43. According to the Court's case-law, an applicant is entitled to the reimbursement of costs and expenses only in so far as it has been shown that these have been actually and necessarily incurred and were reasonable as to quantum. In the present case, regard being had to the information in its possession and the above criteria, the Court rejects the claim for costs and expenses.

C. Default interest

44. 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 remainder of 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 to the Convention;
4. *Holds* that there has been a violation of 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 1,100 (one thousand and one hundred euros), plus any tax that may be chargeable, in respect of non-pecuniary damage, to be converted into the national currency at the rate applicable at the date of settlement;
 - (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;

6. *Dismisses* the remainder of the applicant's claim for just satisfaction.

Done in English, and notified in writing on 29 May 2008, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Claudia Westerdiek
Registrar

Peer Lorenzen
President