



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

FIFTH SECTION

CASE OF SAKSONTSEVA v. UKRAINE

(Application no. 31449/04)

JUDGMENT

STRASBOURG

12 June 2008

FINAL

12/09/2008

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 Saksontseva v. Ukraine,

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

Peer Lorenzen, *President*,

Rait Maruste,

Volodymyr Butkevych,

Renate Jaeger,

Isabelle Berro-Lefèvre,

Mirjana Lazarova Trajkovska,

Zdravka Kalaydjieva, *judges*,

and Claudia Westerdiek, *Section Registrar*,

Having deliberated in private on 20 May 2008,

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

PROCEDURE

1. The case originated in an application (no. 31449/04) 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 Zinaida Yakovlevna Saksontseva (“the applicant”), on 19 August 2004.

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

3. On 30 May 2006 the Court decided to communicate the complaints concerning the non-enforcement of the judgments given in the applicant’s favour and the lack of effective remedies in respect of the length of the enforcement 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 1948 and lives in Lugansk.

5. In 1998 the applicant instituted civil proceedings in the Kamyanobrodsky District Court of Lugansk (*Кам’янобродський районний суд м. Луганська*) against the Procurement Service of the Lugansk City Council Executive Committee (“the Procurement Service,”

Госпрозрахунковий відділ служби забезпечення при управлінні контролю Луганського міськвиконкому) seeking reinstatement to the position of human resources inspector (*інспектор з кадрів*) and various compensatory payments.

6. On 24 November 1998 the court rejected the applicant's reinstatement claim, but awarded her 438.95 Ukrainian hryvnias (UAH) in salary arrears.

7. On 4 March 1999 the Lugansk Regional Court (*Луганський обласний суд*)¹ upheld the judgment to the extent that the applicant was awarded salary arrears, and the judgment in this respect became final. The court remitted the remainder of the applicant's claims for fresh consideration.

8. On 2 July 1999 the Kamyanobrodsky District Court ordered the applicant's reinstatement and additionally awarded her UAH 650 in compensatory payments.

9. On 29 July 1999 the Lugansk Regional Court upheld the reinstatement order and remitted the case for fresh consideration in respect of the monetary claims.

10. On 5 November 1999 the Kamyanobrodsky District Court awarded the applicant UAH 542.52 (instead of UAH 650).

11. On 10 November 1999 the Kamyanobrodsky District Court additionally awarded the applicant UAH 1,356.30.

12. The judgment was enforced in the part relating to the reinstatement. However, the Procurement Service was in the process of liquidation, and on 16 December 1999 the Leninsky District Bailiffs' Service ("the Bailiffs' Service," *Відділ Державної виконавчої служби Ленінського районного управління юстиції м. Луганська*) transferred the writs of execution to the liquidation commission, having failed to collect the amounts owed to the applicant.

13. On 17 January 2000 the applicant was made redundant as a result of the liquidation of the Procurement Service.

14. On 28 March 2000 the Mayor of Lugansk (*міський голова*) informed the Bailiffs' Service that the Procurement Service had been liquidated without successors.

15. In January 2001 the applicant instituted civil proceedings in the Leninsky District Court of Lugansk (*Ленінський районний суд м. Луганська*) against the Procurement Service and the Lugansk City Council Executive Committee ("the Executive Committee," *Луганський міський виконавчий комітет*), seeking to oblige them to enforce the judgments given in her favour and to provide her with various additional compensatory payments.

16. On 30 August 2001 the court partly allowed the applicant's claims and awarded her UAH 2,019.51 in compensation from the Procurement

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

Service, having found that its liquidation process had not been finalised. The court rejected the applicant's claims against the Executive Committee. It found that the Committee bore no liability for the debts of its Procurement Service, as they were registered as two separate legal entities.

17. On 14 February 2002 the Regional Court upheld that judgment on appeal and it became binding for execution. On 19 February 2004 it was further upheld by the Supreme Court on appeal in cassation.

18. On 14 March 2002 the Bailiffs' Service initiated the enforcement proceedings.

19. On 9 January 2003 the Bailiffs' Service terminated the enforcement proceedings, having transferred all the writs of execution to the Procurement Service's liquidation commission. Subsequently the applicant unsuccessfully lodged complaints with judicial and other authorities seeking to facilitate the enforcement.

20. According to the case-file materials, the applicant has not received any award due to her under the four judgments.

II. RELEVANT DOMESTIC LAW

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

THE LAW

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

22. The applicant complained under Article 6 § 1 of the Convention about the State authorities' failure to enforce the judgments of 24 November 1998, 5 November 1999, 10 November 1999 and 30 August 2001 given in her favour. This provision provides, insofar as relevant, as follows:

"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

23. The Government raised objections, contested by the applicant, regarding exhaustion of domestic remedies similar to those already dismissed by the Court in other judgments (see, for example,

Sychev v. Ukraine, no. 4773/02, §§ 42-46, 11 October 2005). The Court considers that these objections must be rejected for the same reasons.

24. The Court concludes that the applicant's complaints raise issues of fact and law under the Convention, the determination of which requires an examination on the merits. The Court finds no ground for declaring them inadmissible. The Court must therefore declare them admissible.

B. Merits

25. The Government contended that the applicant's rights under Article 6 § 1 of the Convention had not been breached.

26. The applicant disagreed.

27. The Court notes that according to the case-file materials the judgments given in the applicant's favour have not been enforced, the non-enforcement periods ranging from six to nine years.

28. The Court has frequently found violations of Article 6 § 1 of the Convention in cases raising similar issues, where a debtor was a public entity (see, for example, *Kucherenko v. Ukraine*, no. 27347/02, §§ 26-27, 15 December 2005).

29. Having examined all the material in its possession, 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. There has, accordingly, been a violation of Article 6 § 1 of the Convention.

II. ALLEGED VIOLATION OF ARTICLE 13 OF THE CONVENTION

31. The applicant further complained that she had no effective domestic remedies for her complaint under Article 6 § 1 of the Convention. She relied on Article 13 of the Convention, which provides as follows:

"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."

A. Admissibility

32. The Court finds that this complaint is not manifestly ill-founded or indeed inadmissible on any other ground cited in Article 35 of the Convention. It must therefore be declared admissible.

B. Merits

33. The Government contended that the applicant had had effective channels of complaint on the same basis that they had argued that the applicant had not exhausted domestic remedies in respect of her complaints under Article 6 § 1 of the Convention.

34. The applicant objected to this view.

35. The Court refers to its findings in paragraphs 23-24 above concerning the Government's non-exhaustion argument. For the same reasons, the Court concludes that the applicant did not have an effective domestic remedy, as required by Article 13 of the Convention, to redress the damage created by the delay in the present proceedings.

36. Accordingly, there has been a breach of this provision.

III. ALLEGED VIOLATION OF ARTICLE 2 OF THE CONVENTION

37. Lastly, the applicant complained under Article 2 of the Convention about her poor standard of living and emotional suffering. 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 (see *Wasilewski v. Poland* (dec.), no. 32734/96, 20 April 1999). Moreover, the applicant has not shown that she suffered such destitution as to put her life at risk. It follows that this complaint is manifestly ill-founded and must be rejected in accordance with Article 35 §§ 3 and 4 of the Convention.

IV. APPLICATION OF ARTICLE 41 OF THE CONVENTION

38. 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

39. The applicant claimed the unsettled court awards and 30,000 euros (EUR) in respect of pecuniary and non-pecuniary damage.

40. The Government contested these claims.

41. The Court notes that, as the judgments given in the applicant's favour remain unenforced, the Government should pay her the outstanding debts in order to satisfy her claims for pecuniary damage. The Court further takes the view that the applicant has suffered non-pecuniary damage as a

result of the violations found. Making its assessment on an equitable basis, as required by Article 41 of the Convention, the Court awards her EUR 2,600 in this respect.

B. Costs and expenses

42. The applicant also claimed UAH 92 for postal expenses and presented the relevant receipts.

43. The Government did not comment on this claim.

44. The Court considers it reasonable to award the applicant EUR 15 under this head.

C. Default interest

45. 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 concerning the non-enforcement of the judgments and the lack of effective remedies in respect of the length of enforcement 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 13 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:
 - (i) the unsettled court awards still owed to her, as well as;
 - (ii) EUR 2,600 (two thousand six hundred euros) in respect of non-pecuniary damage and EUR 15 (fifteen euros) in respect of costs and expenses, plus any tax that may be chargeable to the applicant on these amounts, to be converted into the national currency of Ukraine 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 amounts 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 12 June 2008, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Claudia Westerdiek
Registrar

Peer Lorenzen
President