



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

FIFTH SECTION

CASE OF LESINA v. UKRAINE

(Application no. 9510/03)

JUDGMENT

STRASBOURG

19 June 2008

FINAL

01/12/2008

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 Lesina v. Ukraine,

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

Peer Lorenzen, *President*,

Rait Maruste,

Karel Jungwiert,

Volodymyr Butkevych,

Renate Jaeger,

Isabelle Berro-Lefèvre,

Mirjana Lazarova Trajkovska, *judges*,

and Claudia Westerdiek, *Section Registrar*,

Having deliberated in private on 27 May 2008,

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

PROCEDURE

1. The case originated in an application (no. 9510/03) 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, Ms Lyudmila Vasilyevna Lesina (“the applicant”), on 9 March 2003.

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

3. On 15 December 2005 the Court decided to give notice of the application to the Government. Applying Article 29 § 3 of the Convention, it decided to rule on the admissibility and merits of the application at the same time.

THE FACTS**I. THE CIRCUMSTANCES OF THE CASE**

4. The applicant was born in 1935 and lives in Rischon Le Zion, Israel.

A. Termination of pension payments

5. The applicant had been receiving an old age pension until her departure to take up permanent residence in Israel in December 1997. Before her departure, she was paid, at her written request, six months’

pension in advance prior to the termination of such payments in accordance with section 92 of the Pensions Act.

6. In January 1999 the applicant and her husband wrote a letter to the Pension Fund of Ukraine requesting the resumption of their pension payments. In a letter of 15 March 1999, the Pension Fund informed them that under section 92 of the Pensions Act an old-age pension was not paid to citizens residing permanently abroad and there were no legal grounds for resuming payment of their pensions.

7. On 13 August 2001 the applicant lodged a complaint with the Pechersky District Court of Kyiv (hereafter – “the Pechersky Court”) against the Pension Fund. This complaint was transferred to the Kievsky District Court of Odessa within whose jurisdiction the applicant had resided prior to emigration.

8. On 25 February 2004 that court found against the applicant, after establishing that the Pension Fund had acted in accordance with the law.

9. On 13 September 2006 the Odessa Regional Court of Appeal upheld the decision of the first-instance court. The applicant appealed in cassation to the Supreme Court.

10. On 16 November 2006 the Supreme Court transferred the applicant’s appeal to the Highest Administrative Court in accordance with the rules on jurisdiction. The proceedings are still pending.

B. Indexed deposit

11. The applicant held an account in the Savings Bank. At the beginning of the 1990s her deposit, which was in karbovanets, significantly depreciated as a result of hyperinflation.

12. In 1996 the Ukrainian authorities implemented a monetary reform intended to replace the former monetary unit, the karbovanets, with a new currency, the Ukrainian hryvna (*українська гривня*, UAH), at an exchange rate of 100,000 karbovanets for 1 hryvna.

13. On 21 November 1996 the Ukrainian Parliament enacted the Ukrainian Citizens’ Deposits (State Guarantee of Reimbursement) Act (Law no. 537/96). Pursuant to section 3 of that Act, the applicant’s deposit was indexed at a ratio of 1 karbovanets to 1.05 hryvnas. Section 7 established a system for the indexed savings to be repaid progressively, taking into account the account holder’s age, the amount on deposit and other criteria. Each year the Government brings in regulations specifying the categories of account holders entitled to receive compensation in the coming year.

14. In April 2000 the applicant wrote a letter to the Savings Bank of Ukraine requesting the repayment of the entire indexed deposit. On 31 May 2000 the Bank replied that by law indexed deposits had to be paid gradually in accordance with the procedure laid down in the relevant legislation.

15. On 20 September 2001 the applicant lodged a claim with the Pechersky Court against the Savings Bank seeking recovery of her indexed deposit in full.

16. On 22 January 2002 the Pechersky Court rejected her claim.

17. On 24 April 2002 it sent its decision of 22 January 2002 to a court in Israel to be officially served on the applicant. It appears that this was not done.

18. According to the applicant on 24 December 2001 and 10 January 2002 the applicant wrote letters respectively to the Kyiv City Court and to the Supreme Court requesting information about the results of the examination of the case. The Supreme Court received the letter in August 2002 and requested the Pechersky Court to notify the applicant of the outcome of her case.

19. The applicant maintained that she received a copy of the Pechersky Court judgment only in January 2004. She appealed to the Kyiv City Court of Appeal.

20. On 28 May 2004 and 19 September 2006 the Kyiv City Court of Appeal and the Supreme Court upheld the decision of the Pechersky District Court of 22 January 2002.

II. RELEVANT DOMESTIC LAW

21. The relevant domestic law is summarised in *Sheidl v. Ukraine* (dec.), no. 3460/03, 25 March 2008, and *Gayduk and Others v. Ukraine* (dec.), nos. 45526/99 et al., ECHR 2002-VI (extracts).

THE LAW

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

22. The applicant complained that the length of the both sets of proceedings was incompatible with the “reasonable-time” requirement laid down in Article 6 § 1 of the Convention, which reads as follows:

“In the determination of his civil rights and obligations ..., everyone is entitled to a ... hearing within a reasonable time by [a] ... tribunal...”

A. Admissibility

1. Proceedings against the Savings Bank

23. The period to be taken into consideration began on 20 September 2001 and ended on 19 September 2006. It thus lasted five years for three levels of jurisdiction. The Court considers that some delays in the proceedings were caused by the fact that the applicant lived abroad and there were technical difficulties in serving all the relevant decisions on her on time. Taking this into account, the length of these proceedings does not appear to have been excessively long. It follows that this complaint is manifestly ill-founded and must be rejected in accordance with Article 35 §§ 3 and 4 of the Convention.

2. Proceedings against the Pension Fund

24. The period to be taken into consideration began on 13 August 2001 and has not yet ended. It has thus lasted six years and nine months for three levels of jurisdiction.

25. The Court notes that this complaint is not manifestly ill-founded within the meaning of Article 35 § 3 of the Convention. It further notes that it is not inadmissible on any other grounds. It must therefore be declared admissible.

B. Merits

26. The Government left the issue to the Court's discretion.

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).

28. 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 *Frydlender*, cited above).

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. Having regard to its case-law on the subject, the Court considers that the length of the proceedings in the instant case was excessive and failed to meet the "reasonable-time" requirement.

There has accordingly been a breach of Article 6 § 1.

II. OTHER COMPLAINTS

A. Termination of pension payments

30. The applicant complained that the termination of her pension payments upon her emigration had violated her rights guaranteed by Article 14 of the Convention, Article 1 of Protocol No. 1 and Article 2 of Protocol No. 4.

31. The Court notes that the Government did not submit any observations on the question of the six-month rule. In this respect it reiterates that the six-month rule, in reflecting the wish of the Contracting Parties to prevent past decisions being called into question after an indefinite lapse of time, serves the interests not only of the respondent Government but also of legal certainty as a value in itself. It marks out the temporal limits of supervision carried out by the organs of the Convention and signals to both individuals and State authorities the period beyond which such supervision is no longer possible. It is therefore not open to the Court to set aside the application of the six-month rule solely because a Government have not made a preliminary objection based on it (see *Walker v. the United Kingdom* (dec.), no. 34979/97, ECHR 2000-I).

32. The Court observes that under the Pensions Act the applicant, when leaving Ukraine to take up permanent residence abroad, received her pension for six months. The payment was made at her request, so that the latest date by which she would have been aware that her pension was to be terminated under section 92 of the Pensions Act would have been the date of that payment. The Court reiterates its findings in the *Sheidl* case (cited above), that the Ukrainian legal system does not provide an individual with a judicial remedy against statutory provisions that allegedly violate the Convention. The Court considers that, in these circumstances, the six-month time-limit ran from December 1997, when the applicant learned of the termination of her pension rights. Given that this application was lodged more than three years later, on 9 March 2003, the Court concludes that the applicant's complaints under Article 14 of the Convention, Article 1 of Protocol No. 1 and Article 2 of Protocol No. 4 were introduced out of time and must be rejected in accordance with Article 35 §§ 1 and 4 of the Convention (see *Dudnik and Others v. Ukraine* (dec.), nos. 9408/05, 10642/05 and 26842/05, 20 November 2007; and *Sheidl v. Ukraine*, cited above).

B. Inability to recover the indexed deposit

33. The applicant further complained that she had been unable to recover her indexed deposit in the State Savings Bank, in violation of Article 1 of Protocol No. 1.

34. The Court reiterates its findings in the *Gayduk and Others* case (cited above), that Article 1 of Protocol No. 1 does not guarantee any right to acquire the ownership of property and, consequently, does not impose any general obligation on States to maintain the purchasing power of sums deposited through the systematic indexation of savings. The amounts referred to in Law no. 537/96 represent the indexed value of the deposits. The Court notes that their availability depends on the amounts which the State allocates to the Treasury subject to certain conditions. The proceedings issued by the applicant in the domestic courts did not, therefore, concern “existing possessions” that belonged to the applicant. In that connection, the Court reiterates that the right to the indexation of savings as such is not guaranteed by Article 1 of Protocol No. 1, (see the *Rudzińska* decisions cited above, and *Trajkovski v. Former Yugoslav Republic of Macedonia* (dec.), no. 53320/99, ECHR 2002-...), which provision is therefore inapplicable in the instant case. This part of the application is accordingly incompatible *ratione materiae* with the provisions of the Convention within the meaning of Article 35 § 3 and must be rejected in accordance with Article 35 § 4.

III. APPLICATION OF ARTICLE 41 OF THE CONVENTION

35. 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

36. The applicant claimed 17,265.50 euros (EUR) in respect of pecuniary and non-pecuniary damage.

37. The Government contested these claims.

38. The Court does not discern any causal link between the violation found and the pecuniary damage alleged; it therefore rejects this claim. On the other hand, ruling on an equitable basis, it awards the applicant EUR 600 in respect of non-pecuniary damage.

B. Costs and expenses

39. The applicant also claimed EUR 60 for postal expenses.
40. The Government did not express any views on this.
41. The Court considers it reasonable to award the applicant the claimed amount in full.

C. Default interest

42. 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 excessive length of the proceedings instituted by the applicant against the Pension Fund 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, the following sums:
 - (i) EUR 600 (six hundred euros) in respect of non-pecuniary damage;
 - (ii) EUR 60 (sixty euros) for costs and expenses;
 - (iii) plus any tax that may be chargeable to the applicant on the above amounts;
 - (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 19 June 2008, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Claudia Westerdiek
Registrar

Peer Lorenzen
President