



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

FIFTH SECTION

CASE OF LEONTYUK v. UKRAINE

(Application no. 3687/05)

JUDGMENT

STRASBOURG

22 July 2008

FINAL

26/01/2009

This judgment may be subject to editorial revision.

In the case of Leontyuk 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,

Mark Villiger,

Mirjana Lazarova Trajkovska,

Zdravka Kalaydjieva, *judges*,

and Claudia Westerdiek, *Section Registrar*,

Having deliberated in private on 24 July 2008,

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

PROCEDURE

1. The case originated in an application (no. 3687/05) 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 Tetyana Volodymyrivna Leontyuk (“the applicant”), on 10 December 2004.

2. The applicant was represented by Mr G. Avramenko, a lawyer practising in Chernigiv. The Ukrainian Government (“the Government”) were represented by their Agent, Mr Y. Zaytsev.

3. On 27 November 2006 the Court decided to communicate 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 1959 and lives in the town of Bila Tserkva, Ukraine.

5. The applicant’s husband worked at the State-owned Atomspetsbud company (Державна будівельно-промислова компанія «Атомспецбуд»). On 16 March 2000 he died.

6. By two judgments of 1 February 2001 the Bilotserkivskyy District Court of Kyiv Region awarded the applicant 8,235.38¹ Ukrainian hryvnyas (UAH) and UAH 3,270² from the Atomspetsbud company in salary arrears due to the applicant's deceased husband. The applicant received UAH 1,478.84; the remainder of the debts remains unpaid.

7. By an order of the Ministry of Energy dated 27 June 2002, the debtor company was liquidated and a liquidation commission established. As a result, the State Bailiffs' Service terminated the enforcement proceedings in the applicant's case and the writs of enforcement were forwarded to the liquidation commission. The liquidation proceedings are still pending.

8. On 6 October 2004 the Central Expert Commission on Chernobyl Related Diseases (*Центральна міжвідомча експертна комісія по встановленню причинного зв'язку хвороб, інвалідності та смерті з дією іонізуючого випромінювання та інших шкідливих чинників внаслідок аварії на Чорнобильській АЕС*) established that the death of the applicant's husband in 2000 was caused by diseases obtained as a result of his participation in the liquidation of the Chernobyl catastrophe in 1986.

II. RELEVANT DOMESTIC LAW

9. The relevant domestic law is summarised in the judgment of *Mykhaylenko and Others v. Ukraine* (nos. 35091/02, and the following, §§ 24-33, ECHR 2004-XII).

THE LAW

I. ALLEGED VIOLATION OF ARTICLE 6 § 1 OF THE CONVENTION AND ARTICLE 1 OF PROTOCOL NO. 1

10. The applicant complained under Article 6 § 1 of the Convention about the lengthy non-enforcement of the two judgments of 1 February 2001 given in her favour. She also complained under Article 1 of Protocol No. 1 that she could not recover the debts due to her from the State-owned company in accordance with the judgments at issue.

These Articles provide, insofar as relevant, as follows:

¹ At the material time around 1,619.95 euros (EUR)

² At the material time around EUR 643.23

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

11. The parties did not submit any observations in respect of the admissibility of these complaints.

12. The Court notes that this part of the application 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

13. The parties did not submit observations on the merits.

14. The Court notes that the judgments of 1 February 2001 have remained unenforced for more than seven years and four months.

15. 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 like the present application (see the *Mykhaylenky and Others* judgment, cited above, §§ 55 and 64).

16. The Government have not put forward any fact or argument capable of persuading the Court to reach a different conclusion in the present case.

17. There has, accordingly, been a violation of Article 6 § 1 of the Convention in respect of the lengthy non-enforcement of the judgments in the applicant's favour and a violation of Article 1 of Protocol No. 1 in the present application.

II. ALLEGED VIOLATION OF ARTICLE 2 OF THE CONVENTION

18. The applicant also complained under Article 2 of the Convention, without providing any further specification in this respect, that her husband

had died because the State had failed to create safe working conditions on the Chernobyl Nuclear Station.

19. The Court considers that, in the light of all the materials in its possession and insofar as the matter complained of is within its competence, it does not disclose any appearance of a violation of the rights and freedoms set out in the Convention or its Protocols.

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

III. APPLICATION OF ARTICLE 41 OF THE CONVENTION

21. 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

22. The applicant claimed the unsettled judgment debts in respect of pecuniary damage. She also claimed UAH 18,634.36³ for loss of profit which she would have allegedly received should she have placed her money on a deposit account in a commercial bank. The applicant further claimed EUR 36,750 in respect of non-pecuniary damage.

23. The Government submitted that they did not question the necessity to enforce the judgments in the applicant’s favour. However, they found the claims in respect of loss of profit and non-pecuniary damage exorbitant and unsubstantiated.

24. The Court notes that it is undisputed that the State still has an outstanding obligation to enforce the judgments at issue. However, the Court does not discern any causal link between the violations found and the remainder of the pecuniary damage alleged; it therefore rejects this claim. The Court further takes the view that the applicant must have sustained 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 the applicant EUR 2,600 in this respect.

B. Costs and expenses

25. The applicant also claimed EUR 135 for the costs and expenses.

³ About EUR 2,594.44

26. The Government maintained that this amount was manifestly overstated.

27. According to the Court's case-law, an applicant is entitled to reimbursement of his/her costs and expenses only insofar 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 considers it reasonable to award the sum of EUR 40 to the applicant covering costs and expenses incurred in the proceedings before the Court.

C. Default interest

28. 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 under Article 6 § 1 of the Convention and Article 1 of Protocol No. 1 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. *Holds*
 - (a) that the respondent State is to pay the applicant, within three months from the date on which the judgment becomes final according to Article 44 § 2 of the Convention,
 - (i) the outstanding debt in accordance with the judgments of 1 February 2001;
 - (ii) EUR 2,600 (two thousand and six hundred euros) in respect of non-pecuniary damage and EUR 40 (forty euros) for costs and expenses, 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 to the applicant;
 - (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 claims for just satisfaction.

Done in English, and notified in writing on 22 July 2008, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Claudia Westerdiek
Registrar

Peer Lorenzen
President