



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

FIFTH SECTION

CASE OF GAYEVSKAYA v. UKRAINE

(Application no. 9165/05)

JUDGMENT

STRASBOURG

24 July 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 Gayevskaya v. Ukraine,

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

Peer Lorenzen, *President*,

Karel Jungwiert,

Volodymyr Butkevych,

Renate Jaeger,

Mark Villiger,

Isabelle Berro-Lefèvre,

Mirjana Lazarova Trajkovska, *judges*,

and Claudia Westerdiek, *Section Registrar*,

Having deliberated in private on 1 July 2008,

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

PROCEDURE

1. The case originated in an application (no. 9165/05) 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 Yekaterina Pavlovna Gayevskaya (“the applicant”), on 23 February 2005.

2. The Ukrainian Government (“the Government”) were represented by their Agents, Mrs V. Lutkovska and Mr Y. Zaytsev.

3. On 7 September 2005 the Court decided to communicate the applicant’s complaints under Article 6 § 1 of the Convention and Article 1 of Protocol No. 1 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 1949 and lives in Novogrodivka, Donetsk region, Ukraine.

5. On 8 May 2002 the Novogrodivka Town Court ordered the Novogrodivka Mining Company No. 1/3 – a State-owned enterprise – to pay the applicant arrears of compensation for loss of breadwinner, i.e. her husband, in the amount of 1,285.58¹ Ukrainian hryvnas (UAH).

6. This judgment became final and on 6 August 2002 the Novogrodivka Town Bailiffs' Service initiated the enforcement proceedings.

7. In April 2004 the applicant instituted proceedings in the Novogrodivka Town Court against the Novogrodivka Town Bailiffs' Service claiming compensation for the lengthy non-enforcement of the judgment in her favour. On 12 August 2004 the court found against the applicant. On 14 October 2004 the Donetsk Regional Court of Appeal upheld this judgment. The applicant lodged a cassation appeal with the Supreme Court of Ukraine. According to her, in April 2005 the proceedings were still pending. The applicant did not provide the Court with any further information in this regard.

8. On 19 October 2005 the Bailiffs' Service discontinued the enforcement proceedings on the ground that the judgment of 8 May 2002 had been enforced in full. The applicant did not contest this decision.

II. RELEVANT DOMESTIC LAW

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

THE LAW

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

10. The applicant complained about the lengthy non-enforcement of the judgment of 8 May 2002. In this regard she invoked Article 6 § 1 of the Convention and Article 1 of Protocol No. 1, which provide, 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. ...”

¹ At the material time 274.06 euros (EUR)

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 Government did not submit any observations on the admissibility of the application.

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 Government maintained that the responsibility of the State in this situation was limited to the organisation and proper conduct of enforcement proceedings and that the length of the enforcement proceedings had been caused by the critical financial situation of the debtor company and the energy sector of the Ukrainian economy in general. The Government contended that the Bailiffs’ Service had done everything necessary and could not be blamed for the delay. The regularity of the enforcement proceedings in the present case had been confirmed by the domestic courts. The Government finally argued that the State could not be considered responsible for the debts of its enterprises.

14. The applicant disagreed. In particular, she argued that the judgment of the Novogrodivka Town Court of 8 May 2002 had not been enforced.

15. The Court observes that it is not clear from the parties’ submissions whether this judgment was enforced in full. However, it assumes that the judgment was so enforced by 19 October 2005, given the fact that, on that date, the Bailiffs’ Service established that the amounts due had been paid to the applicant in full, which the applicant did not contest at the national level (see e.g. *Gavrilenko v. Ukraine*, no. 24596/02, § 18, 20 September 2005).

16. The Court further notes that the judgment in the applicant’s favour remained unenforced for more than three years and five months.

17. 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 *Sokur* judgment, cited above, §§ 30-37, and *Shmalko v. Ukraine*, no. 60750/00, §§ 55-57, 20 July 2004).

18. 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.

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

II. ALLEGED VIOLATION OF ARTICLE 13 OF THE CONVENTION

20. The applicant also complained under Article 13 of the Convention that a cassation appeal to the Supreme Court of Ukraine could not be considered an effective remedy because the examination of such an appeal in her case had been too lengthy.

21. The Court recalls that a cassation appeal to the Supreme Court of Ukraine is considered by the Court to be an effective remedy (see *Vorobyeva v. Ukraine* (dec.), no. 27517/02, 17 December 2002). As to the length of the examination of the applicant's cassation appeal, the Court observes that in April 2005 the proceedings were pending before the Supreme Court of Ukraine and that the applicant did not provide any further information in this regard. However, even assuming that the proceedings in question are still pending, the Court notes that at present the overall length of proceedings amounts to four years and one month, which cannot be regarded as excessive.

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

III. APPLICATION OF ARTICLE 41 OF THE CONVENTION

23. 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

24. The applicant claimed EUR 7,970 in respect of pecuniary and non-pecuniary damage.

25. The Government maintained that the applicant had not substantiated her claims.

26. The Court does not discern any causal link between the violations found and the pecuniary damage alleged; it therefore rejects this claim. However, the Court considers that the applicant must have sustained non-pecuniary damage. Making its assessment on an equitable basis, as required by Article 41 of the Convention, the Court awards the applicant EUR 650 in respect of non-pecuniary damage.

B. Costs and expenses

27. The applicant claimed EUR 100 in costs and expenses. In this respect she provided vouchers for expenditure amounting in total to UAH 40.17².

28. The Government contended that the applicant had failed to substantiate her claims and requested the Court to reject them.

29. According to the Court's case-law, an applicant is entitled to reimbursement of his 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 considers it reasonable to award the sum of EUR 6.

C. Default interest

30. 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 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 of the Convention;

² About EUR 6

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, the following amounts, plus any tax that may be chargeable to the applicant:

(i) EUR 650 (six hundred fifty euros) in respect of non-pecuniary damage;

(ii) EUR 6 (six euros) in respect of costs and expenses;

(b) that the above amounts shall be converted into the national currency of the respondent State at the rate applicable at the date of settlement;

(c) 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 24 July 2008, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Claudia Westerdiek
Registrar

Peer Lorenzen
President