



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

FIFTH SECTION

CASE OF KRIPAK v. UKRAINE

(Application no. 6164/05)

JUDGMENT

STRASBOURG

25 September 2008

FINAL

25/12/2008

This judgment may be subject to editorial revision.

In the case of Kripak 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 2 September 2008,

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

PROCEDURE

1. The case originated in an application (no. 6164/05) 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, Ms Viktoriya Petrivna Kripak (“the applicant”), on 2 February 2005.

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

3. On 26 November 2007 the Court decided to give notice of the application to the Government. It also decided to examine the merits of the application at the same time as its admissibility (Article 29 § 3).

4. In their observations the Government requested the Chamber to relinquish jurisdiction in favour of the Grand Chamber pursuant to Article 30 of the Convention. In particular, they challenged applicability of Article 6 § 1 of the Convention and Article 1 of Protocol No. 1 in the present case. The Court recalls that it has already examined similar issues and gave a judgment on them (see, for instance, *Zubko and Others v. Ukraine*, nos. 3955/04, 5622/04, 8538/04 and 11418/04, ECHR 2006-... (extracts), *Voytenko v. Ukraine*, no. 18966/02, 29 June 2004 and *Bagriy and Krivanich v. Ukraine*, nos. 12023/04 and 12096/04, 9 November 2006). It finds therefore no reason to depart from its established case-law or to relinquish the Chamber’s jurisdiction to the Grand Chamber in this particular case.

THE FACTS

I. THE CIRCUMSTANCES OF THE CASE

5. The applicant was born in 1941 and lives in Town of Gayvoron. She worked as a judge at the Gayvoron Town Court and retired in February 2007.

6. On 20 August 2002 the Pecherskyy District Court of Kyiv ordered the State Treasury to pay the applicant UAH 4,766¹ in compensation for her uniform.

7. On 30 October 2002 the Kyiv City Court of Appeal upheld the judgment.

8. On 3 December 2002 the Bailiffs instituted the enforcement proceedings.

9. On 22 December 2003 the enforcement proceedings were discontinued for the lack of budgetary funds.

10. On 3 October 2005 the judgment in the applicant's favour was enforced in full.

II. RELEVANT DOMESTIC LAW

11. The relevant domestic law and practice are summarised in the judgment of *Zubko and Others v. Ukraine* (nos. 3955/04, 5622/04, 8538/04 and 11418/04, §§ 33-43, 26 April 2006).

THE LAW

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

12. The applicant complained under Article 6 § 1 of the Convention about the delay in the enforcement of the judgment of 20 August 2002 and about a violation of Article 1 of Protocol No. 1 on the same ground. The provisions invoked 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 ... hearing within a reasonable time by [a] ... tribunal ...”

1. About 949.58 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 or to secure the payment of taxes or other contributions or penalties.”

A. Admissibility

13. The Government submitted that Article 6 § 1 was not applicable in the present case stating that the compensation awarded to the applicant concerned her uniform which she was obliged to wear in the exercise of public functions. In their view, the award was of a public law nature and was not decisive for the applicant’s private law rights or obligations.

14. The Government raised objections regarding exhaustion of domestic remedies. They stated the applicant had to seek her judgment debt from the State Judiciary Administration, which according to the relevant legislation, had funds for the execution of judgments in favour of judges.

15. The Government also submitted that the uniform for which the applicant obtained compensation was not her property within the meaning of Article 1 of Protocol No. 1. It belonged to the State and the applicant’s complaint under Article 1 of Protocol No. 1 was thus incompatible *ratione materiae* with the provisions of the Convention.

16. The applicant disagreed.

17. As regards the Government’s objections to the admissibility on the grounds of incompatibility *ratione materiae* under Article 6 § 1 of the Convention and Article 1 of Protocol No. 1 raised above, the Court observes that the applicant’s case concerned the right to compensation and not, as the Government put it, a title to the uniform. It also notes that the applicant had access to a court under national law. Thus, the Court discerns no justification for the exclusion from the guarantees of Article 6 of the applicant’s dispute (*Vilho Eskelinen and Others v. Finland* [GC], no. 63235/00, §§ 62-63, ECHR 2007-...). Furthermore, the Court recalls that a judgment debt constitutes possession for the purposes of Article 1 of Protocol No. 1 and, accordingly, it is applicable in the present case (see, *Voytenko v. Ukraine*, no. 18966/02, §§ 51-54, 29 June 2004).

18. As regards the Government’s objection concerning exhaustion of domestic remedies, the Court recalls that having obtained a judgment and an execution order against a particular State authority an applicant should not be required to institute, on her own initiative, other proceedings against

another State agency to have such a judgment enforced (*Vasylyev v. Ukraine*, no. 10232/02, § 30, 13 July 2006 and *Litovkina v. Ukraine*, no. 35741/04, § 13, 22 November 2005).

19. In view of the foregoing, the Court concludes that the application raises issues of fact and law under the Convention, the determination of which requires an examination of the merits. It finds no ground for declaring it inadmissible.

B. Merits

20. The Court notes that the judgment of 20 August 2002 remained unenforced for about three years after it became final on 30 October 2002.

21. 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 raising issues similar to the present application (see, for instance, *Voytenko v. Ukraine*, no. 18966/02, 29 June 2004, *Zubko and Others v. Ukraine*, nos. 3955/04, 5622/04, 8538/04 and 11418/04, ECHR 2006-... (extracts), and *Bagriy and Krivanich v. Ukraine*, nos. 12023/04 and 12096/04, 9 November 2006).

22. 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.

23. There has, accordingly, been a violation of Article 6 § 1 of the Convention and Article 1 of Protocol No. 1.

II. APPLICATION OF ARTICLE 41 OF THE CONVENTION

24. 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

25. The applicant claimed EUR 10,000 in respect of non-pecuniary damage.

26. The Government contested this claim.

27. The Court, making its assessment on an equitable basis, as required by Article 41, awards the applicant EUR 800 in respect of non-pecuniary damage.

B. Costs and expenses

28. The applicant did not submit any claims for costs and expenses, therefore, the Court makes no award.

C. Default interest

29. 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 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;
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, EUR 800 (eight hundred euros), plus any tax that may be chargeable, in respect of non-pecuniary damage, to be converted into the national currency of the respondent State 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;
5. *Dismisses* the remainder of the applicant's claim for just satisfaction.

Done in English, and notified in writing on 25 September 2008, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Claudia Westerdiek
Registrar

Peer Lorenzen
President