



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

FIFTH SECTION

CASE OF STADNYUK v. UKRAINE

(Application no. 30922/05)

JUDGMENT

STRASBOURG

27 November 2008

FINAL

27/02/2009

This judgment may be subject to editorial revision.

In the case of Stadnyuk v. Ukraine,

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

Rait Maruste, *President*,
Karel Jungwiert,
Volodymyr Butkevych,
Renate Jaeger,
Isabelle Berro-Lefèvre,
Mirjana Lazarova Trajkovska,
Zdravka Kalaydjieva, *judges*,

and Stephen Phillips, *Deputy Section Registrar*,

Having deliberated in private on 4 November 2008,

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

PROCEDURE

1. The case originated in an application (no. 30922/05) 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 Olena Yakivna Stadnyuk (“the applicant”), on 9 August 2005.

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

3. On 11 October 2007 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 1931 and lives in Andrushivka, Zhytomyr region, Ukraine.

5. By its judgment of 8 December 2000, the Andrushivka District Court awarded the applicant 700 Ukrainian hryvnias (UAH) in compensation for pecuniary and non-pecuniary damage caused to her by Mr Y. It appears that this judgment became final and the enforcement proceedings were initiated. No further information about enforcement of this judgment is available.

6. In February 2002 the applicant lodged a claim with the Bogunsky District Court of Zhytomyr against the Bogunsky District Bailiffs' Service of Zhytomyr (*відділ державної виконавчої служби Богунського районного управління юстиції м. Житомира*), alleging the latter's inactivity in respect of the enforcement of the judgment of 8 December 2000 and claiming compensation for pecuniary and non-pecuniary damage she had sustained as a result.

7. On 17 April 2003 the court found in part for the applicant and ordered the defendant to pay her a total of UAH 450.39¹. The applicant did not appeal against this judgment.

8. On 21 November 2003 the Bogunsky District Bailiffs' Service of Zhytomyr instituted enforcement proceedings. Subsequently, the latter transferred the enforcement writ to the Zhytomyr Regional Bailiffs' Service (*відділ примусового виконання рішень державної виконавчої служби Житомирської області*) for enforcement.

9. In the course of these enforcement proceedings the Zhytomyr Regional Bailiffs' Service requested the Bogunsky District Court of Zhytomyr to replace the Bogunsky District Bailiffs' Service of Zhytomyr with the local department of the State Treasury of Ukraine, as the debtor under the judgment of 17 April 2003. On 28 October 2004 the court rejected this request. The applicant did not attend this hearing.

10. On 21 May 2004 the State Treasury of Ukraine replied, upon the applicant's request, that the 2004 State Budget of Ukraine did not provide funds for payment of compensation for damage caused by officials of the State Bailiffs' Service.

11. Between July 2004 and April 2006 the Zhytomyr Regional Bailiffs' Service several times terminated and resumed the enforcement proceedings in respect of the judgment of 17 April 2003. By the decision of 18 April 2006, the Zhytomyr Regional Bailiffs' Service terminated the enforcement proceedings of the judgment of 17 April 2003 on the ground that the debtor had been liquidated. Apparently the applicant did not appeal against this decision.

12. The judgment of 17 April 2003 remains unenforced.

II. RELEVANT DOMESTIC LAW

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

¹ At the material time about 66.55 euros (EUR)

THE LAW

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

14. Referring to Article 6 § 1 of the Convention, the applicant submitted that the length of the court proceedings against the bailiffs' service was excessive. She also complained under this provision and Article 1 of Protocol No. 1 about the lengthy non-enforcement the judgment of 17 April 2003. The above provisions 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. ..."

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

15. The Government contended that the applicant had not exhausted domestic remedies as she had not challenged the decision of the Zhytomyr Regional Bailiffs' Service of 18 April 2006. They also maintained that the applicant had failed to show due diligence in the proceedings before the Bogunsky District Court of Zhytomyr aimed to replace the Bogunsky District Bailiffs' Service of Zhytomyr with the local department of the State Treasury of Ukraine (see paragraph 9 above). They asserted in this regard that the applicant was no longer interested in the enforcement of the judgment in question.

16. The applicant disagreed.

17. The Court notes that in the instant case the applicant has obtained a judgment against the State which became final and enforceable. The Court reiterates that it is inappropriate to require an individual who has obtained

judgment against the State at the end of legal proceedings to then bring enforcement proceedings to obtain satisfaction (see *Lizanets v. Ukraine*, no. 6725/03, § 43, 31 May 2007 and the case-law referred therein). Nor should the applicant have been required to take any actions - for instance, those aimed at replacing one debtor State entity with another - in the course of the already instituted enforcement proceedings (see, *mutatis mutandis*, *Vasylyev v. Ukraine*, no. 10232/02, §§ 24-31, 21 June 2007). Therefore, it is not for the applicant to retune the enforcement proceedings, if they have already been instituted, to the changing structure of the State apparatus. Furthermore the applicant is not called on to reinstitute the terminated enforcement proceedings nor to challenge the decision to terminate them. Neither of these actions relieves the State of its obligation to enforce a final judgment against it.

18. The Court concludes that the applicant's complaints under Article 6 § 1 of the Convention and Article 1 of Protocol No. 1 are not manifestly ill-founded within the meaning of Article 35 § 3 of the Convention. It further notes that they are not inadmissible on any other grounds. They must therefore be declared admissible.

B. Merits

19. In their observations, the Government contended that there had been no violation of the provisions of the Convention in the applicant's respect. They further maintained that the State authorities took all necessary measures to enforce the judgment in question.

20. The applicant disagreed.

21. The Court reiterates that the court proceedings and the enforcement proceedings are stages one and two in the total course of proceedings (see, *Scordino v. Italy (no. 1)* [GC], no. 36813/97, § 197). Therefore, the enforcement proceedings should not be dissociated from the action and the proceedings are to be examined in their entirety (see *Estima Jorge v. Portugal*, judgment of 21 April 1998, *Reports of Judgments and Decisions* 1998-II, § 35, and *Sika v. Slovakia*, no. 2132/02, §§ 24-27, 13 June 2006).

22. The Court notes that the consideration of the applicant's case by the national court lasted from February 2002 to 17 April 2003 when the Bogunsky District Court of Zhytomyr found in the applicant's favour. The length of proceedings in the judicial phase is therefore one year and two months and there is no discernible period of inactivity which can be attributed to the domestic court.

23. However, the judgment of 17 April 2003 remains unenforced for five years and six months.

24. The Court reiterates 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, among other authorities, *Voytenko v. Ukraine*, cited above, §§ 43 and 55 and, as the recent one, *Lysenko v. Ukraine*, no. 18219/02, § 26, 7 June 2007). The Court finds no ground to depart from its case-law in the present case.

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

II. APPLICATION OF ARTICLE 41 OF THE CONVENTION

26. 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

27. The applicant claimed the outstanding debt in accordance with the judgment of 17 April 2003 in respect of pecuniary damage. She also claimed EUR 3,000 in respect of non-pecuniary damage.

28. The Government submitted that they did not question the necessity to enforce the judgment in the applicant's favour. However, they found the claims in respect of non-pecuniary damage exorbitant and unsubstantiated.

29. The Court notes that it is undisputed that the State still has an outstanding obligation to enforce the judgment at issue. 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 450 in respect of non-pecuniary damage.

B. Costs and expenses

30. In the present case the applicant failed to submit any claims; the Court therefore makes no award.

C. Default interest

31. 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,
 - (i) the outstanding debt in accordance with the judgment of 17 April 2003;
 - (ii) EUR 450 (four hundred and fifty euros) 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, 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 claim for just satisfaction.

Done in English, and notified in writing on 27 November 2008, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Stephen Phillips
Deputy Registrar

Rait Maruste
President