



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

FIFTH SECTION

CASE OF SAMOYLENKO AND POLONSKA v. UKRAINE

(Application no. 6566/05)

JUDGMENT

STRASBOURG

18 December 2008

FINAL

18/03/2009

This judgment may be subject to editorial revision.

In the case of Samoylenko and Polonska v. Ukraine,

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

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

and Claudia Westerdiek, *Section Registrar*,

Having deliberated in private on 25 November 2008,

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

PROCEDURE

1. The case originated in an application (no. 6566/05) against Ukraine lodged with the Court under Article 34 of the Convention for the Protection of Human Rights and Fundamental Freedoms (“the Convention”) by two Ukrainian nationals, Ms Mariya Samoylenko and Ms Svitlana Polonska (“the applicants”), on 8 December 2004.

2. The applicants were 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 16 October 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 applicants are mother and daughter. They were born in 1945 and 1972 respectively, and live in Kyiv, Ukraine.

1. Background information

5. At the material time the companies “Spetsenergobud” (доцірне підприємство «Спеценергобуд») (a subsidiary of “Kyivenergobud” (BAT

«Київенергобуд»)) and “Atomspetsbud” (Державна будівельно-промислова компанія «Атомспецбуд») were owned by the State. By 29 May 1996 “Kyivenergobud” had been privatised and the State no longer held any shares in it. Atomspetsbud is still owned by the State.

6. Spetsenergobud and Atomspetsbut were engaged in work on eliminating the consequences of the Chernobyl catastrophe.

2. Proceedings against Atomspetsbud

7. On 8 December 1998 the Vatutinsky District Court of Kyiv awarded Mr S. – the applicants’ husband and father, respectively – salary arrears in the amount of 5,635 Ukrainian hryvnias (UAH)¹ to be paid by his former employer, Atomspetsbud.

8. When that judgment became final, the State Bailiffs’ Service instituted proceedings to enforce it.

9. On 19 March 2003 Mr S. died. According to the applicants, they are the only heirs of Mr S.

10. In the course of the enforcement proceedings the sum of UAH 290.16 was paid to the applicants. The remainder of the debt under the judgment of 8 December 1998 has still not been paid.

11. By an order of the Ministry of Energy dated 27 June 2002, Atomspetsbud was liquidated and a liquidation commission established. As a result, the State Bailiffs’ Service terminated the existing enforcement proceedings and all the writs of enforcement were forwarded to the liquidation commission as creditors’ claims.

12. The liquidation proceedings are still pending.

3. Proceedings against Spetsenergobud

13. Both applicants worked for Spetsenergobud. In 1998 they resigned.

14. On 17 December 1998 by two separate judgments the Vatutinsky District Court of Kyiv awarded the first and the second applicants salary arrears owed to them in the amounts of UAH 4,555.37² and UAH 1,137.88³, respectively, by their former employer.

15. When those judgments became final, the State Bailiffs’ Service instituted proceedings to enforce them. On 12 March 2004 those proceedings were terminated as it could not be established that the debtor company had any assets. No information as to whether the applicants challenged the decisions of 12 March 2004 and what other measures were taken by them after that date (for instance, measures aimed to have the enforcement proceedings reinstituted, or to join the liquidation proceedings as creditors, and so on) is available.

¹ At the material time about 1,490.74 US Dollars (USD).

² At the material time about USD 1,186.29.

³ At the material time about USD 296.32.

16. The applicants state that the judgments in question have still not been enforced due to the lack of funds of the debtor company. They never claimed damages from the State Bailiffs' Service.

17. According to an excerpt from the official companies' register, in April 2007 the debtor company was under liquidation. However, it is not clear when the liquidation proceedings were instituted and whether they are still pending.

II. RELEVANT DOMESTIC LAW

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

THE LAW

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

19. The applicants complained under Article 6 § 1 of the Convention and Article 1 of Protocol No. 1 about the lengthy non-enforcement of the judgments of 8 and 17 December 1998 given in their favour. 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

20. The parties did not comment on the admissibility of the present application.

1. As regards the judgment of 8 December 1998 against Atomspetsbud

21. The Court notes that in the present case the applicants were not parties to the proceedings before the Vatutinsky District Court of Kyiv, and Mr S. died almost two years before the present application was lodged with the Court. As to Article 6 of the Convention, the Court notes that the applicants were not involved in the substantive proceedings at all, and were only involved in the enforcement proceedings because they had inherited the judgment debt from their husband and father. In such circumstances, it is not open to them to claim to be victims of a violation of Article 6 of the Convention as regards the enforcement proceedings (see *Lopatyyuk and Others v. Ukraine*, nos. 903/05 et seq., §§ 13-14, 17 January 2008). It follows that the complaints about the length of non-enforcement under Article 6 must be rejected as being incompatible *ratione personae* with the provisions of the Convention, pursuant to Article 35 §§ 3 and 4.

22. However, the position as to Article 1 of Protocol No. 1 is different, as applicants were undoubtedly the owners of the respective court awards, having inherited them in accordance with the ordinary rules on administration of estates. They may therefore claim to be victims of a violation of Article 1 of Protocol No. 1. The Court finds that this complaint is not manifestly ill-founded within the meaning of Article 35 § 3 of the Convention. It further finds that it is not inadmissible on any other grounds. It must therefore be declared admissible.

2. As regards the judgments of 17 December 1998 against Spetsenergobud

23. According to the applicants, the Government were responsible for the non-payment of the judgment debt. They pointed out that Spetsenergobud had carried out work at Chernobyl within the evacuation zone, that it had been fully controlled and financed by the State and that the latter had failed to pay for the company's services. In support of this the applicants provided a copy of a letter of 21 February 2001, stamped by Kyivenergobud, in which the latter reported on the State debts to it on that date and about the measures taken to recover those debts.

24. The Government contended that the Spetsenergobud was a private company, and that they were not responsible for its debts. They accepted that Spetsenergobud had been granted a permit to work within the Chernobyl zone. However, they averred that the activity of the company was of an intermediary nature and it had never performed its services within

the zone at issue itself. Therefore, they stated, the company had never been funded from the State Budget.

25. The Court notes that Spetsenergobud was a wholly owned subsidiary of Kyivenergobud, and that Kyivenergobud had been privatised at least two years before the applicants' husband and father initiated the civil proceedings against it. It recalls that in enforcement proceedings against private persons the responsibility of the State is limited to the organisation and proper conduct of those proceedings (see *Shestakov v. Russia* (dec.), no. 48757/99, 18 June 2002). Where complaint is made of the organisation and conduct of enforcement proceedings, Ukrainian legislation provides for the possibility to challenge before the courts the lawfulness of actions and omissions of the State Bailiffs' Service in enforcement proceedings and to claim damages from that Service for delays in payment of the amount awarded (see, for instance, *Dzizin v. Ukraine* (dec.), no. 1086/02, 24 June 2003; *Kukta v. Ukraine* (dec.), no. 19443/03, 22 November 2005). The applicants, however, did not attempt to bring proceedings against the Bailiffs, and there is no indication that Bailiffs' Service otherwise behaved in a way which could give rise to the responsibility of the State.

26. In connection with the applicants' contention that the State was responsible for the non-payment of the company's debts to the applicants because the State itself had failed to pay off its debts to Spetsenergobud, the Court notes that the mere fact that a State has debts to a private company does not necessarily entail State responsibility for the debts of the company. In any event, the applicants have not submitted any evidence to support their claim.

27. Accordingly, no link between the State's actions and/or inactivity and the debtor company's inability to pay its debts to the applicants has been established in the instant case. The Court therefore cannot hold the respondent State responsible for the non-enforcement of the judgment of 17 December 1998 against Spetsenergobud.

28. It follows that this part of the application is manifestly ill-founded within the meaning of Article 35 § 3 of the Convention, and that it must be declared inadmissible pursuant to Article 35 §§ 1 and 4.

B. Merits

29. The parties did not submit any observations in respect of the merits of the application.

30. The Court notes that the judgment of 8 December 1998 given in the applicants' favour has remained unenforced for nine years and eleven months.

31. The Court recalls that it has already found a violation of Article 1 of Protocol No. 1 in cases like the present application (see the *Mykhaylenko*

and Others judgment, cited above, § 64, and the *Lopatyuk and Others* judgment, cited above, § 22).

32. There has, accordingly, been a violation of Article 1 of Protocol No. 1 in the present application.

II. APPLICATION OF ARTICLE 41 OF THE CONVENTION

33. 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

34. The applicants claimed the outstanding debts owed to them under the judgments of 8 and 17 December 1998 in the amounts of UAH 7,372.87⁴ and UAH 3,955.38⁵, respectively. They also claimed UAH 34,970.32⁶ and UAH 18,760.80⁷, respectively, for losses incurred as a result of the lengthy non-enforcement of those judgments. Finally, they claimed EUR 4,080 each in respect of non-pecuniary damage.

35. The Government submitted that they did not question the need to enforce the judgment of 8 December 1998. However, they found the claims in respect of losses and non-pecuniary damage exorbitant and unsubstantiated.

36. The Court notes that it is undisputed that the State still has an outstanding obligation to enforce the judgment of 8 December 1998. However, the Court does not discern any causal link between the violation found and the remainder of the pecuniary damage alleged; it therefore rejects this claim. The Court further takes the view that the applicants must have sustained non-pecuniary damage as a result of the violation found. Making its assessment on an equitable basis, as required by Article 41 of the Convention, the Court awards the applicants EUR 1,000 each in this connection.

B. Costs and expenses

37. The applicants also claimed EUR 135 each for costs and expenses.

⁴ About 1,097.25 euros (EUR).

⁵ About EUR 588.65.

⁶ About EUR 5,204.39.

⁷ About EUR 2,792.04.

38. The Government maintained that this amount was manifestly excessive.

39. 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 applicants the total sum of EUR 20 each to cover the costs and expenses incurred in the proceedings before the Court.

C. Default interest

40. 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 1 of Protocol No.1 about the lengthy non-enforcement of the judgment of 8 December 1998 admissible and the remainder of the application inadmissible;
2. *Holds* that there has been a violation of Article 1 of Protocol No. 1;
3. *Holds*
 - (a) that the respondent State is to pay the applicants, 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 under the judgment of 8 December 1998;
 - (ii) EUR 1,000 (one thousand euros) each in respect of non-pecuniary damage and EUR 20 (twenty euros) each for costs and expenses, plus any tax that may be chargeable to the applicants, 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 amounts 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 applicants' claim for just satisfaction.

Done in English, and notified in writing on 18 December 2008, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Claudia Westerdiek
Registrar

Rait Maruste
President