



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

FIFTH SECTION

CASE OF LEBEDINTSEVA v. UKRAINE

(Application no. 37208/04)

JUDGMENT

STRASBOURG

12 March 2009

FINAL

12/06/2009

This judgment may be subject to editorial revision.

In the case of Lebedintseva v. Ukraine,

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

Peer Lorenzen, *President*,

Rait Maruste,

Karel Jungwiert,

Mark Villiger,

Mirjana Lazarova Trajkovska,

Zdravka Kalaydjieva, *judges*,

Stanislav Shevchuk, *ad hoc judge*,

and Claudia Westerdiek, *Section Registrar*,

Having deliberated in private on 17 February 2009,

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

PROCEDURE

1. The case originated in an application (no. 37208/04) 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 Tamara Vasilyevna Lebedintseva (“the applicant”), on 7 October 2004.

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

3. On 6 December 2007 the President of the Fifth Section decided to give notice of the application to the Government. It was also decided to examine the merits of the application at the same time as its admissibility (Article 29 § 3).

THE FACTS**I. THE CIRCUMSTANCES OF THE CASE**

4. The applicant was born in 1949 and lives in the city of Kharkiv, Ukraine.

5. On 21 February 2001 the Snizhne Court awarded the applicant 23,536.80¹ Ukrainian hryvnyas (UAH) against the State-owned Udarnik mine in compensation for her husband’s death as a result of a work-related

1. Around EUR 4,760.

accident. Subsequently, the mine was reorganised into the Snizhneantratsyt State Company.

6. The judgment was not appealed against, became final, and enforcement proceedings were instituted to collect the debt.

7. Between February 2002 and December 2003 the applicant was paid UAH 11,135.

8. On 18 January 2008 the applicant received the rest of the judgment debt.

9. The applicant attempted to collect compensation from the debtor company for the delay in enforcement, by way of judicial proceedings; however her efforts were to no avail.

II. RELEVANT DOMESTIC LAW

10. The relevant domestic law is summarised in the judgments of *Romashov v. Ukraine*, no. 67534/01, §§ 16-19, 27 July 2004, and *Voytenko v. Ukraine*, no. 18966/02, §§ 20-25, 29 June 2004.

THE LAW

I. ALLEGED VIOLATION OF ARTICLE 6 § 1 OF THE CONVENTION

11. The applicant complained about the lengthy non-execution of the judgment of 21 February 2001. The Court will examine the applicant's complaint under Article 6 § 1 of the Convention (see *Sharov v. Russia*, no. 38918/02, § 11, 12 June 2008). As far as relevant, this Article reads 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. ...”

A. Admissibility

12. The Government raised objections regarding the applicants' victim status and exhaustion of domestic remedies similar to those which the Court has already dismissed in the case of *Romashov v. Ukraine* (see the *Romashov* judgment, cited above, §§ 23-33). The Court considers that the present objections must be rejected for the same reasons.

13. The Court concludes that the application raises serious 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. It must therefore be declared admissible.

B. Merits

14. In their observations, the Government contended that there had been no violation of Article 6 § 1 of the Convention (as in the cases of *Romashov* cited above, § 37, and *Solovyev v. Ukraine*, no. 4878/04, §18, 14 December 2006).

15. The applicant reiterated that the State was responsible for the delay in the enforcement of the court judgment in her favour.

16. The Court observes that the judgment in the applicant's favour remained without enforcement for around six years and eight months.

17. The Court has frequently found violations of Article 6 § 1 of the Convention in cases raising similar issues to the ones in the present case (see *Romashov v. Ukraine*, cited above, § 46, and *Solovyev*, cited above § 24).

18. Having examined the material submitted to it, the Court notes 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.

II. OTHER ALLEGED VIOLATIONS OF THE CONVENTION

20. The applicant further complained of a violation of Articles 3 and 4 the Convention on account of the non-enforcement of the judgment in her favour.

21. The Court, in the light of all material before it, finds that in so far as the matters complained of are within its competence, they do not disclose any appearance of an unjustified interference or breach of these provisions and rejects this part of the application in accordance with Article 35 §§ 3 and 4 of the Convention as being manifestly ill-founded.

III. APPLICATION OF ARTICLE 41 OF THE CONVENTION

22. 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

23. The applicant claimed 500,000 euros (EUR) in respect of non-pecuniary damage.

24. The Government contested the applicant's claim as being unsubstantiated.

25. The Court finds that the applicant must have suffered non-pecuniary damage on account of the lengthy non-enforcement of the judgment given in her favour. Ruling on an equitable basis, it awards the applicant EUR 2,600 in respect of non-pecuniary damage.

B. Costs and expenses

26. The applicant did not submit any claim under this head. The Court therefore makes no award.

C. Default interest

27. 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 concerning the non-enforcement of the judgment given in the applicant's favour 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*
 - (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 2,600 (two thousand six 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;

4. *Dismisses* the remainder of the applicant's claim for just satisfaction.

Done in English, and notified in writing on 12 March 2009, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Claudia Westerdiek
Registrar

Peer Lorenzen
President