



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

1959 · 50 · 2009

FIFTH SECTION

CASE OF FILSHTEYN v. UKRAINE

(Application no. 12997/06)

JUDGMENT

STRASBOURG

28 May 2009

FINAL

28/08/2009

This judgment may be subject to editorial revision.

In the case of Filshteyn v. Ukraine,

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

Peer Lorenzen, *President*,

Rait Maruste,

Karel Jungwiert,

Renate Jaeger,

Mark Villiger,

Mirjana Lazarova Trajkovska, *judges*,

Stanislav Shevchuk, *ad hoc judge*,

and Claudia Westerdiek, *Section Registrar*,

Having deliberated in private on 5 May 2009,

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

PROCEDURE

1. The case originated in an application (no. 12997/06) 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 Lyudmila Nikolayevna Filshteyn (“the applicant”), on 27 March 2006.

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

3. On 11 September 2007 the Court decided to communicate the applicant’s complaints under Articles 6 § 1 and 13 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 1959 and lives in Kirovograd, Ukraine.

5. On 16 November 2001, 6 March and 13 September 2002 the Leninskiy District Court of Kirovograd awarded the applicant 4,912.67 Ukrainian hryvnias (UAH)¹, UAH 4,967.66² and UAH 6,025.10³,

¹ Approximately 1,040.33 euros (EUR) at the material time.

² Approximately EUR 1,114.45 at the material time.

respectively, in salary arrears and other payments due to her by her former employer, the Municipal Company “Garantiya” (комунальне підприємство «Гарантія») owned and controlled by the city council.

6. All these judgments became final and the State Bailiffs’ Service instituted proceedings to enforce them. According to the Government, in the course of these proceedings the total amount of UAH 3,190.33 was paid to the applicant. According to the applicant, she had received UAH 2,366.02 only.

7. Being dissatisfied with the lengthy non-enforcement of these judgments, the applicant instituted proceedings in the same court against the State Bailiffs’ Service, claiming compensation for pecuniary and non-pecuniary damage. On 28 March 2003 the court rejected her claim for pecuniary damage but awarded her UAH 500⁴ in respect of non-pecuniary damage. On 7 August 2003 the Kirovograd Regional Court of Appeal upheld this judgment and the latter became final. Subsequently the applicant unsuccessfully appealed against this judgment in cassation before the Supreme Court of Ukraine.

8. According to the Government, the applicant did not request the State Bailiffs’ Service to institute enforcement proceedings under the judgment of 28 March 2003. The applicant disagreed, providing in support the letter of the State Bailiffs’ Service of 7 June 2006 in which the latter informed her that the judgment of 28 March 2003 had not been enforced due to its lack of funds.

9. The applicant also complained to various State authorities but to no avail.

10. On 28 December 2004 the Kirovograd Commercial Court instituted liquidation proceedings against the debtor company.

11. In this regard on 24 and 28 March 2005 the State Bailiffs’ Service terminated the enforcement proceedings against the debtor company and transferred the applicant’s writs of enforcement to the liquidation commission for further processing. The liquidation proceedings are apparently still pending.

12. All the above-mentioned judgments given in the applicant’s favour remain unenforced.

II. RELEVANT DOMESTIC LAW

13. The general provisions of domestic legislation on enforcement of judicial decisions are set out in the judgment of 27 July 2004 in the case of *Romashov v. Ukraine* (no. 67534/01, §§ 16-18).

³ Approximately EUR 1,192.49 at the material time.

⁴ Approximately EUR 89.57 at the material time.

14. The provisions of the Civil Code of 18 July 1963 (repealed on 1 January 2004) and the Civil Code of 16 January 2003 (in force since 1 January 2004) on owners' liability for the obligations of their legal entities are set out in the case of *Mykhaylenko and Others v. Ukraine*, nos. 35091/02 and foll., §§ 25-26, ECHR 2004-XII).

15. Article 143 of the 1996 Constitution of Ukraine provides:

“Territorial communities of a village, settlement and city, directly or through the bodies of local self-government established by them, manage property that is in municipal ownership; [...] establish, reorganise and liquidate municipal enterprises, organisations and institutions, and also exercise control over their activity; [...]”

16. Section 31 of the Property Act 1991 (repealed by the Act of 27 April 2007) provides that State property includes State property itself and the property of administrative-territorial units (municipal property).

17. By a letter of 27 December 2004 the Ministry of Justice of Ukraine, having analysed the then current legislation, concluded, *inter alia*, that State and municipal property were different types of property.

18. Article 78 “Municipal unitary enterprises” of the Commercial Code of Ukraine (in force since 1 January 2004) provides that municipal unitary enterprises are set up by a competent body of the local self-government and are managed by it. A municipal unitary enterprise holds assets under the right of economic management (for municipal commercial enterprises) or operative management (for municipal non-commercial enterprises). A municipal unitary enterprise is managed by the head of that enterprise appointed by the body to which it is subordinate.

THE LAW

I. COMPLAINTS ABOUT THE LENGTHY NON-ENFORCEMENT OF THE JUDGMENTS IN THE APPLICANT’S FAVOUR

19. The applicant complained about the State authorities’ failure to enforce the judgments taken in her favour in due time and the lack of effective remedies in that respect. In this regard she relied on Articles 6 § 1 and 13 of the Convention and Article 1 of Protocol No. 1, which read 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 13

“Everyone whose rights and freedoms as set forth in [the] Convention are violated shall have an effective remedy before a national authority notwithstanding that the violation has been committed by persons acting in an official capacity.”

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”

The applicant also relied on a number of provisions of the Universal Declaration of Human Rights.

A. Admissibility

1. Complaints under Articles 6 § 1 and 13 of the Convention and Article 1 of Protocol No. 1

20. Relying on the provisions of national legislation (among others, the 1963 and 2003 Civil Codes and the 1997 Local Self-Government Act), the Government submitted that they were not responsible for the debts of the municipal company. They further submitted that the applicant had failed to exhaust domestic remedies as required by Article 35 § 1 of the Convention. In particular, they maintained that the applicant had not availed herself of the opportunity to be registered as a creditor in the insolvency and liquidation proceedings pending against the debtor company, and had failed to challenge the liquidation commission’s inactivity before the relevant commercial court or to apply to any domestic court against the Bailiffs’ Service to challenge the allegedly inadequate enforcement of the judgments in her favour. Additionally, the Government challenged the victim status of the applicant, as, in their view, she did not request the State Bailiffs’ Service to institute enforcement proceedings under the judgment of 28 March 2003 (see paragraph 8 above).

21. The Court notes that the debtor enterprise in the present case was owned and controlled by local authorities (see paragraph 5 above). According to the established case-law of the Convention organs, agencies of local self-government are State organisations in the sense that they are governed by public law and exercise public functions vested in them by the Constitution and the laws. The Court reiterates that under the international

law the term “State organisation” is not limited only to organs of the central Government. In cases where State power is decentralised it extends to any national authority which exercises public functions (see, for example, *Mikryukov v. Russia*, no. 7363/04, § 21, 8 December 2005 with further references). It follows that the actions and/or omissions of the local authorities are attributed to the respondent State and for these reasons the Court concludes that the latter is accountable for the debts of municipal enterprises to the same extent as it is accountable for the debts of State-owned enterprises. Accordingly, the Court dismisses the Government’s objection.

22. As regards the Government’s objection that the applicant had failed to exhaust domestic remedies, the Court notes that similar objections have already been rejected in a number of judgments adopted by the Court (see *Sokur v. Ukraine* (dec.), no. 29439/02, 16 December 2003; *Sychev v. Ukraine*, no. 4773/02, §§ 42-46, 11 October 2005; and *Trykhlil v. Ukraine*, no. 58312/00, §§ 38-43, 20 September 2005). The Court considers that this objection must be rejected in the instant case for the same reasons.

23. As regards the Government’s objection to the victim status of the applicant, the Court notes that in the instant case the applicant has obtained a judgment against the State, in the person of the State Bailiffs’ Service, which has become final and enforceable. The Court reiterates that it is inappropriate to require an individual who has obtained a 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 to therein). Accordingly, the Court dismisses the Government’s objection.

24. 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.

2. Complaints under provisions of the Universal Declaration of Human Rights

25. The Court reiterates that it is competent to examine the complaints under the European Convention on Human Rights and Protocols thereto only and is not competent to ensure the application of other international instruments. Accordingly, it dismisses the applicant’s complaints under the provisions of the Universal Declaration of Human Rights as being out of the Court’s competence *ratione materiae* in accordance with Article 35 §§ 3 and 4 of the Convention.

B. Merits

26. In their observations on the merits of the applicant's claims, the Government contended that there had been no violation of Articles 6 § 1 or 13 of the Convention or Article 1 of Protocol No. 1.

27. The applicant disagreed.

28. The Court notes that the judgments in the applicant's favour have remained unenforced for more than five years.

29. The Court reiterates that it has already found violations of Articles 6 § 1 and 13 of the Convention and Article 1 of Protocol No. 1 in cases like the present application (see, among other authorities, *Kucherenko v. Ukraine*, no. 27347/02, § 27, 15 December 2005).

30. Having examined all the materials 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.

31. There has, accordingly, been a violation of Articles 6 § 1 and 13 of the Convention and a violation of Article 1 of Protocol No. 1 in respect of the lengthy non-enforcement of the judgments in the applicant's favour and the lack of an effective remedy for her relevant complaints in the present application.

II. APPLICATION OF ARTICLE 41 OF THE CONVENTION

32. 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

33. The applicant claimed the outstanding debt under the judgments in her favour plus UAH 10,610.82⁵ to cover inflation adjustments in respect of pecuniary damage, and UAH 2,109.94⁶ in exemplary damages, based on a 3% interest rate. In support of her last-mentioned claims, the applicant presented detailed calculations based, *inter alia*, on the relevant inflation rates issued by the State Statistics Committee (*Державний комітет статистики України*). She also claimed UAH 25,000⁷ in respect of non-pecuniary damage.

⁵ About EUR 1,564.23.

⁶ About EUR 311.05.

⁷ About EUR 3,685.47.

34. The Government contested these claims as excessive and unsubstantiated. With respect to the claims for inflation losses and exemplary damages they argued that these claims should be rejected as there had been an effective domestic remedy available to the applicant, which, in their view, she had failed to make use of.

35. The Court further notes with regard to the claim for inflation adjustment that the applicant was absolved from pursuing the litigation suggested by the Government (see *Glova and Bregin v. Ukraine*, nos. 4292/04 and 4347/04, § 29, 28 February 2006, and *Voytenko v. Ukraine*, no. 18966/02, §§ 29-31, 29 June 2004). The Court finds that the applicant's claim is supported by detailed calculations based on official data on inflation rates. Taking into account that the Government did not dispute the method of calculation employed by the applicant (see, for example, *Maksimikha v. Ukraine*, no. 43483/02, § 29, 14 December 2006), the Court awards her the amount of EUR 1,565 claimed in this connection.

36. As regards the claim for exemplary damages, the Court has declined on several occasions to impose any form of punitive or exemplary damages (see, for example, *Akdivar and Others v. Turkey* (Article 50), 1 April 1998, § 38, *Reports of Judgments and Decisions* 1998-II; *Cable and Others v. the United Kingdom* [GC] nos. 24436/94 et seq., 18 February 1999, § 30; and *Orhan v. Turkey*, no. 25656/94, § 448, 18 June 2002). It sees no reason to depart from this practice in the present case and therefore rejects this claim.

37. The Court further finds that the applicant must have suffered non-pecuniary damage on account of the violations found. Ruling on an equitable basis, it awards her EUR 2,600 under this head.

B. Costs and expenses

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

C. Default interest

39. 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 Articles 6 § 1 and 13 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 13 of the Convention;
4. *Holds* that there has been a violation of Article 1 Protocol No. 1 to the Convention;
5. *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 debts under the judgments given in the applicant's favour;
 - (ii) EUR 1,565 (one thousand five hundred sixty five euros) in respect of pecuniary damage and EUR 2,600 (two thousand six hundred 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;
6. *Dismisses* the remainder of the applicant's claim for just satisfaction.

Done in English, and notified in writing on 28 May 2009, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Claudia Westerdiek
Registrar

Peer Lorenzen
President