



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

1959 · 50 · 2009

FIFTH SECTION

CASE OF KORNIYCHUK v. UKRAINE

(Application no. 28808/07)

JUDGMENT

STRASBOURG

15 October 2009

FINAL

15/01/2010

This judgment will become final in the circumstances set out in Article 44 § 2 of the Convention. It may be subject to editorial revision.

In the case of Korniychuk v. Ukraine,

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

Peer Lorenzen, *President*,
Renate Jaeger,
Karel Jungwiert,
Rait Maruste,
Isabelle Berro-Lefèvre,
Mirjana Lazarova Trajkovska, *judges*,
Mykhaylo Buromenskiy, *ad hoc judge*,

and Claudia Westerdiek, *Section Registrar*,

Having deliberated in private on 22 September 2009,

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

PROCEDURE

1. The case originated in an application (no. 28808/07) 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, Mrs Vira Oleksandrivna Korniychuk (“the applicant”), on 26 May 2007.

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

3. On 20 November 2008 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).

THE FACTS

THE CIRCUMSTANCES OF THE CASE

4. The applicant was born in 1953 and lives in Ovruch.

5. On an unspecified date the applicant retired from the army.

6. On 10 September 2001 the Military Court of the Zhytomyr Garrison awarded the applicant 1,946.20 Ukrainian hryvnias (UAH)¹ in compensation for her uniform to be paid by the Military Unit A-4602. The judgment became final but remains unenforced due to the debtor's lack of funds.

1. About 402 euros (EUR).

THE LAW

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

7. The applicant complained about the lengthy non-enforcement of the judgment of 10 September 2001. She alleged an infringement of Article 6 § 1 of the Convention which provides, in so far as relevant, as follows:

Article 6 § 1 of the Convention

“In the determination of his civil rights and obligations ... everyone is entitled to a fair ... hearing within a reasonable time by [a] ... tribunal ...”

A. Admissibility

8. 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.

9. The applicant disagreed.

10. 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-...).

11. 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

12. The Court notes that the judgment of 10 September 2001 has remained unenforced for about seven years and ten months.

13. The Court reiterates that it has already found violations of Article 6 § 1 of the Convention in a substantial number of cases raising issues similar to the present application (see, for example, *Voytenko v. Ukraine*, no. 18966/02, 29 June 2004, *Bagriy and Krivanich v. Ukraine*, nos. 12023/04 and 12096/04, 9 November 2006, *Pivnenko v. Ukraine*, no. 36369/04, 12 October 2006).

14. 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.

15. Accordingly, the Court finds that there has been a violation of Article 6 § 1 of the Convention.

II. APPLICATION OF ARTICLE 41 OF THE CONVENTION

16. 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

17. The applicant claimed the unpaid judgment debt due to her and EUR 3,000 in respect of non-pecuniary damage.

18. The Government contested these claims.

19. In so far as the applicant claimed the amount awarded to her by the judgment at issue, the Court considers that the Government should pay her the outstanding debt in settlement of her pecuniary damage. As to the remainder of the applicant's just satisfaction claims, the Court, making its assessment on an equitable basis, as required by Article 41, awards the applicant EUR 2,000 in respect of non-pecuniary damage.

B. Costs and expenses

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

C. Default interest

21. 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*
 - 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,
 - the outstanding judgment debt due to her;
 - EUR 2,000 (two thousand euros) in respect of non-pecuniary damage, plus any tax that may be chargeable;
 - (b) that the latter amounts shall be converted into the national currency of the respondent State at the rate applicable at the date of settlement;
 - (c) that from the expiry of the above-mentioned three months until settlement simple interest shall be payable on the latter 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 15 October 2009, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Claudia Westerdiek
Registrar

Peer Lorenzen
President