



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

1959 · 50 · 2009

FIFTH SECTION

CASE OF KASYANCHUK v. UKRAINE

(Application no. 4187/05)

JUDGMENT

STRASBOURG

10 December 2009

FINAL

10/03/2010

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 Kasyanchuk 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,

Mark Villiger,

Isabelle Berro-Lefèvre, *judges*,

Mykhaylo Buromenskiy, *ad hoc judge*,

and Claudia Westerdiek, *Section Registrar*,

Having deliberated in private on 17 November 2009,

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

PROCEDURE

1. The case originated in an application (no. 4187/05) 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 Lyudmyla Leonidivna Kasyanchuk (“the applicant”), on 10 December 2004.

2. The applicant was represented by Mr G. M. Avramenko, a lawyer practising in Chernihiv. The Ukrainian Government (“the Government”) were represented by their Agent, Mr Yu. Zaytsev.

3. On 15 October 2008 the President of the Fifth Section decided to communicate 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 1953 and lives in the village of Uzhachyn, Zhytomyr Region.

5. The applicant worked at the State-owned Atomspetsbud company (*Державна будівельно-промислова компанія «Атомспецбуд»*).

6. On an unspecified date the applicant instituted proceedings against the above company in the Novograd-Volynsky Town Court (“the Town Court”) claiming 8,677.37 Ukrainian hryvnias (UAH) in salary arrears.

7. By an order of the Ministry of Energy dated 27 June 2002, the company was liquidated and a liquidation commission established.

8. On 15 April 2003 the Town Court terminated the proceedings in the case because the company was in liquidation.

9. By a letter of 15 December 2003 the liquidation commission acknowledged the applicant's claim of UAH 8,677.37¹. The applicant was included in the register of creditors of the company.

10. On 19 December 2008 the applicant was paid the full amount of the outstanding debt.

II. RELEVANT DOMESTIC LAW

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

THE LAW

I. ALLEGED VIOLATION OF ARTICLE 1 OF PROTOCOL NO. 1

12. The applicant complained that she could not recover debt from the State-owned company for a long period of time. She relied on Article 1 of Protocol No. 1, which reads, in so far as relevant, as follows:

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.”

A. Admissibility

13. The Government submitted that the applicant had lost victim status as the debt was paid to her. They further insisted that the applicant should have appealed against the Town Court's decision of 15 April 2003 and that the application was submitted outside the six-month period.

14. The applicant disagreed.

15. In so far as the Government object to the victim status of the applicant, the Court notes that the fact that the debt in question was paid

¹ About 1,361.95 euros (EUR) at the relevant time.

does not deprive the applicant of the victim status in relation to the period during which the debt remained unpaid (see *Romashov v. Ukraine*, no. 67534/01, §§ 26-27, 27 July 2004).

16. As to the non-exhaustion plea, the Court notes that the applicant's appeal against the decision of 15 April 2003 would obviously be of no assistance to the applicant. The debt in question was confirmed by the liquidation commission, which was responsible for its payment.

17. The Court finally notes that on the date of the introduction of the application the debt had not been paid to the applicant. Thus the six-month rule does not apply to this continuing situation.

18. Accordingly, the Court dismisses the Government's objections. The Court notes that 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.

B. Merits

19. The Government advanced their standard arguments for cases concerning lengthy non-compliance with financial obligations by State-owned companies. They insisted that there had been no violation of Article 1 of Protocol No. 1.

20. The applicants disagreed.

21. The Court notes that on 15 December 2003 the liquidation commissions acknowledged the debt to the applicant. On 19 December 2008 this debt was paid. Thus, the overall delay exceeded five years.

22. The Court reiterates that it has already found violations of Article 1 of Protocol No. 1 in cases like the present application (see *Mykhaylenko and Others*, cited above, § 64).

23. The Government have not put forward any fact or argument capable of persuading the Court to reach a different conclusion in the present case.

24. 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

25. 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

26. The applicant claimed 4,000 euros (EUR) in respect of non-pecuniary damage.

27. The Government submitted that this amount was exorbitant and unsubstantiated.

28. The Court 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 2,100 in this respect.

B. Costs and expenses

29. The applicant also claimed EUR 135 for the costs and expenses incurred before the Court.

30. The Government contended that this amount was unsubstantiated.

31. According to the Court's case-law, an applicant is entitled to reimbursement of his/her costs and expenses only in so far as it has been shown that these have been actually and necessarily incurred and are 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 sum of EUR 40 to the applicant to cover costs and expenses incurred in the proceedings before the Court.

C. Default interest

32. 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 1 of Protocol No. 1;
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 2,100 (two thousand one hundred euros) in respect of non-pecuniary damages and EUR 40 (forty euros) in respect of costs and expenses, plus any tax that may be chargeable, to be

converted into Ukrainian hryvnias 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 applicant's claim for just satisfaction.

Done in English, and notified in writing on 10 December 2009, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Claudia Westerdiek
Registrar

Peer Lorenzen
President