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

FIFTH SECTION

DECISION

Application no. 11706/13
Lyudmyla Vasylivna BRYSKA
against Ukraine

The European Court of Human Rights (Fifth Section), sitting on 10 October 2024 as a Committee composed of:

Lado Chanturia*, President*,
Mykola Gnatovskyy,
Úna Ní Raifeartaigh*, judges*,
and Martina Keller, *Deputy Section Registrar,*

Having regard to:

the application (no. 11706/13) against Ukraine lodged with the Court under Article 34 of the Convention for the Protection of Human Rights and Fundamental Freedoms ("the Convention") on 2 February 2013 by a Ukrainian national, Ms Lyudmyla Vasylivna Bryska ("the applicant"), who was born in 1960 and lives in Volodymyr-Volynskyy;

Having deliberated, decides as follows:

SUBJECT MATTER OF THE CASE

1. The case concerns the applicant's complaints, under Article 6 of the Convention and Article 1 of Protocol No. 1 to the Convention, that the domestic courts wrongly rejected her claims in bankruptcy proceedings.

2. At the relevant time she was an employee and shareholder in B., a private company ("the company"). The company filed a voluntary bankruptcy petition with the Volyn Regional Commercial Court ("the commercial court") and the relevant notice was published on 24 September 2011. This triggered the running of the statutory 30-day period within which creditors had to submit their claims.

3. During that period the applicant applied to be registered as a creditor, claiming "at least" 30,918.75 Ukrainian hryvnias (UAH; the equivalent of about 2,846 euros at the time), which she calculated as the nominal value of the company shares owned by her. She stated that this amount represented

her share of the company's net assets, in so far as she was able to determine it. She also asked the court to order the company to produce its financial statements so that she could determine with greater precision the share of the company's assets that corresponded to her share in the capital.

4. She did not specifically mention or demonstrate on that occasion that she was also an employee of the debtor company, but referred to section 31 § 1 (5) of the Restoration of Debtor's Solvency or Bankruptcy Act 1999 ("the Act"), which stated that claims for the recovery of employees' contributions to a company's statutory capital could be satisfied in bankruptcy proceedings and that they were fifth in the order of priority.

5. The debtor company informed the commercial court that it recognised the claim. The applicant subsequently increased her claim to UAH 51,412.

6. On 7 December 2011 the commercial court acknowledged (*визнав*) the applicant's first claim (as increased).

7. On 18 January 2012 the applicant submitted a second claim for UAH 309,045 which, by her calculation, represented the share of the company's assets that was proportionate to her share in the company's capital. This new calculation was apparently based on the company's financial documentation, which she had obtained in the meantime.

8. On 26 January 2012 the commercial court refused to recognise the applicant's claims and did not include her in the approved final list of the company's creditors. It referred to section 1 of the Act, which provided that claims relating to "obligations towards the debtor's shareholders resulting from their participation in capital" could not be recovered in bankruptcy proceedings. The court referred to decision no. 15 of 18 December 2009 of the Plenary Supreme Court, which held, in particular, that shareholders' claims for a share of the debtor's assets had to be rejected under section 1 of the Act.

9. In her appeals the applicant argued, in particular, that since she was an employee of the company, her claim had to be accepted by virtue of section 31 § 1 (5) of the Act (see paragraph 4 above).

10. The Rivne Commercial Court of Appeal endorsed the commercial court's findings.

11. On 9 August 2012 the Higher Commercial Court upheld the lower courts' decisions. It added that the content of the applicant's applications for recognition of her claims and of her cassation appeal made it clear that her first and second claims both concerned her claims for a share of the company's assets.

THE COURT'S ASSESSMENT

12. The applicant mainly complained, under Article 6 of the Convention, that the domestic courts had failed to address her argument that her claims could be satisfied in bankruptcy proceedings and hence had to be approved,

by virtue of section 31 § 1 (5) of the Act, as claims made by an employee for recovery of her contributions to statutory capital (see paragraph 4 above). She stated that the courts had referred only to the general provision of section 1 of the Act, which provided that obligations towards a debtor's shareholders resulting from their participation in capital could not be satisfied in bankruptcy proceedings (see paragraph 8 above).

13. The Court reiterates that, although Article 6 § 1 obliges courts to give reasons for their decisions, it cannot be understood as requiring a detailed answer to every argument (see *García Ruiz v. Spain* [GC], no. 30544/96, § 26, ECHR 1999-I).

14. In the present case, the applicant consistently presented her claims as those of a shareholder seeking a share of the company's assets proportionate to her share in its capital, rather than those of an employee seeking to recover the contribution she had made to the company's capital. There is no indication that she even specifically informed the court, prior to the appeal stage, that she was employed by the company. She never stated, either before the domestic courts or in her application to the Court, when or in what form she had made these contributions as an employee of the debtor company, or the amount she had contributed.

15. In these circumstances, a mere reference by the applicant to the section of the Act applicable to employees' claims was not sufficient to communicate to the courts her request to provide a detailed response in addition to their conclusion (which does not itself appear arbitrary or manifestly unreasonable) that her claims were that of a shareholder, and could not therefore be satisfied under the Act.

16. The applicant argued that the domestic courts had unlawfully set aside their initial decision to recognise the first claim, by refusing, on 26 January 2012, to include any of her claims in the approved final list of creditors' claims (see paragraphs 6 and 8 above).

17. She argued that the acknowledgment of the debt in the initial decision of 7 December 2011 had been final and could not be overturned in the decision of 26 January 2012. She did not, however, point to any provision in domestic legislation or case-law which might form the basis for this interpretation, and thus failed to establish the basis for an arguable claim that the domestic courts' decision to correct their initial erroneous recognition of her claim had been in breach of domestic law or the principle of legal certainty. It follows that the applicant's complaint under Article 6 is manifestly ill-founded.

18. The applicant also complained, under Article 1 of Protocol No. 1, that she had been deprived of her "possessions" on account of the above-mentioned domestic judicial decisions. The Court reiterates that the fact that the domestic authorities provided a forum for the determination of an insolvency dispute between private parties does not automatically give rise to an interference by the State with property rights under Article 1 of

Protocol No. 1 (see, for example, *Acar and Others v. Türkiye* (dec.), nos. 26878/07 and 32446/07, 12 December 2017, with further references). In view of its findings in respect of the applicant's complaint under Article 6 above, the Court considers that her complaint under Article 1 of Protocol No. 1 is equally manifestly ill-founded.

19. It follows that the application must be rejected in accordance with Article 35 § 4 of the Convention.

For these reasons, the Court, unanimously,

Declares the application inadmissible.

Done in English and notified in writing on 7 November 2024.

Martina Keller Deputy Registrar	Lado Chanturia President