CONSEIL DE L'EUROPE

COUNCIL OF EUROPE

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

FIFTH SECTION

CASE OF CHUKHAS v. UKRAINE

(Application no. 4078/03)

JUDGMENT

STRASBOURG

12 July 2007

FINAL

12/10/2007

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 Chukhas v. Ukraine,

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

Mr P. LORENZEN, *President*,
Mr K. JUNGWIERT,
Mr V. BUTKEVYCH,
Mrs M. TSATSA-NIKOLOVSKA,
Mr J. BORREGO BORREGO,
Mrs R. JAEGER,
Mr M. VILLIGER, *judges*,
and Mrs C. WESTERDIEK, *Section Registrar*,

Having deliberated in private on 19 June 2007,

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

PROCEDURE

1. The case originated in an application (no. 4078/03) 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 Mayya Stepanivna Chukhas ("the applicant"), on 4 November 2002.

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

3. On 5 April 2006 the Court decided to communicate the complaint concerning the length of the proceedings, including their enforcement stage, to the Government. Applying Article 29 § 3 of the Convention, it decided to rule on the admissibility and merits of the application at the same time.

THE FACTS

THE CIRCUMSTANCES OF THE CASE

4. The applicant was born in 1963 and lives in Gorodok.

5. On 1 June 1998 the applicant was dismissed by her employer, the Gorodok State Administration ("the Administration"; *Городокська районна державна адміністрація*) from her position as a senior logistics specialist (*головний спеціаліст організаційного відділу секретаріату*) on account of her failure to meet the requirements of the post.

A. Judicial proceedings

6. On 30 June 1998 the applicant instituted civil proceedings for reinstatement in the Yarmolynets City Court (the "Yarmolynets Court"; *Ярмолинецький районний суд Хмельницької області*).

7. On 5 April 1999 the court left the applicant's claim without consideration on account of her failures to appear for the hearings. The applicant did not appeal against this decision within the statutory time-limit.

8. On 24 October 2000 following the applicant's petition, the Khmelnytsky Region Deputy Prosecutor instituted a *protest*, seeking to re-open the proceedings on account of the court's failure to inform the applicant of the date of the last hearing.

9. On 24 November 2000 the Presidium of the Khmelnytsky Regional Court (the "Regional Court"; *Хмельницький обласний суд*)[1] found the protest substantiated, quashed the decision of 5 April 1999 and remitted the case for a fresh consideration to the Yarmolynets Court.

10. On 6 September 2001 the Yarmolynets Court dismissed the applicant's reinstatement claims. It found, however, that the dismissal record was incorrect, as in fact the applicant had not passed the probationary period. Accordingly, the court awarded the applicant 5,000 Ukrainian hryvnyas (UAH)[2] in non-pecuniary damage. Both parties appealed.

11. On 4 December 2001 the Regional Court upheld the judgment, but reduced the amount of compensation to UAH 1,000[3]. The applicant appealed in cassation.

12. On 11 May 2002 the Supreme Court rejected the applicant's request for leave to appeal in cassation against the court decisions of 6 September and 4 December 2001.

B. Enforcement proceedings

13. On 4 February 2002 the Gorodok Bailiffs' Service ("the Bailiffs"; *Відділ Державної виконавчої служби Городоцького районного управління юстиції*) initiated enforcement proceedings for the judgment of 4 December 2001.

14. On 19 September 2002 the applicant was paid UAH 50[4].

15. On 3 February 2003 the Bailiffs terminated the enforcement proceedings in view of the debtor's lack of funds.

16. In January 2003 the applicant instituted administrative proceedings against the Bailiffs complaining about their failure to collect the judgment

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1. Since July 2001 the Khmelnytskyy Regional Court of Appeal (*Апеляційний суд Хмельницької області*).
2. EUR 1,057.39
3. EUR 209.45
4. EUR 9.95

debt due to her. These proceedings ended on 22 February 2005 by a ruling of the Regional Court, upholding the decision to leave the applicant's complaint without consideration. The applicant did not appeal in cassation.

17. On an unspecified date the enforcement proceedings were re-opened and on 14 December 2004 the applicant was paid the remaining award of UAH 950[1].

THE LAW

I. ALLEGED VIOLATION OF ARTICLE 6 § 1 OF THE CONVENTION IN RESPECT OF THE LENGTH OF THE REINSTATEMENT PROCEEDINGS

18. The applicant complained about the length of her reinstatement proceedings, including their enforcement stage. She invoked Article 6 § 1 of the Convention, which reads, in so far as relevant, as follows:

> "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

19. The Government submitted that Article 6 § 1 was inapplicable to the proceedings at issue, as the dispute concerned a civil servant's career and therefore was not a "civil" dispute for the purposes of the impugned Convention provision.

20. The Court recalls that the applicant claimed to have been wrongfully dismissed from a position of a logistics specialist at a local administration and that pursuant the national law her claim was treated as an ordinary labour dispute. Accordingly, as the domestic system has not barred access to a court for the post of the category of staff in question, Article 6 § 1 applies to the circumstances of the present case (see *Vilho Eskelinen and Others v. Finland* [GC], no. 63235/00, §§ 62-64, 19 April 2007).

21. The Court further observes that the court proceedings and the enforcement proceedings are stages one and two in the total course of proceedings (see *Scordino v. Italy (no. 1)* [GC], no. 36813/97, § 197). Therefore, the enforcement proceedings should not be dissociated from the action and the proceedings are to be examined in their entirety (see, *Estima Jorge v. Portugal*, judgment of 21 April 1998, *Reports of Judgments and*

1. EUR 137.64

Decisions 1998-II, § 35 and, as a recent authority, *Sika v. Slovakia*, no. 2132/02, §§ 24-27, 13 June 2006).

22. The Court considers that the applicant's complaint raises issues of fact and law under the Convention and finds no ground for declaring it inadmissible. The Court must therefore declare it admissible.

B. Merits

23. In their observations on the merits of the applicant's complaints, the Government contended that there had been no violation of Article 6 § 1.

24. The applicant disagreed.

25. The Court reiterates that the applicant lodged her civil action for reinstatement on 30 June 1998. This action eventually led to the adoption of a court judgment on 4 December 2001, which became final on 11 May 2002. The Court notes, however, that no proceedings were pending during the nineteen-month period between the taking of the final decision in the applicant's case on 5 April 1999 leaving the applicant's claim without consideration and its quashing on 24 November 2000. Therefore, the length of proceedings in their judicial phase was two years and three months, during which period the applicant's claims were considered by the courts of three levels of jurisdiction.

26. The Court further notes that on 4 December 2001 the Gorodok Administration, a State entity, became obliged to pay compensation to the applicant pursuant a court judgment adopted on the same date and that on 4 February 2002 formal enforcement proceedings were instituted in this regard. However, the applicant was able to collect the full amount of the judgment debt only three years later, on 14 December 2004.

27. The Court reiterates that the reasonableness of the length of proceedings must be assessed in the light of the circumstances of the case and with reference to the following criteria: the complexity of the case, the conduct of the applicant and the relevant authorities and what was at stake for the applicant in the dispute (see, among many other authorities, *Frydlender v. France* [GC], no. 30979/96, § 43, ECHR 2000-VII).

28. The Court notes that the delay in the proceedings at issue was mostly caused by the remittal of the case for a fresh consideration and by the non-enforcement of a final judgment given in the applicant's favour. The Court has frequently found violations of Article 6 § 1 of the Convention in cases raising issues similar to the one in the present case (see, e.g., *Sika v. Slovakia*, cited above, § 35; *Svetlana Naumenko v. Ukraine*, no. 41984/98, 9 November 2004; and *Zolotukhin v. Ukraine*, no. 11421/03, 13 December 2005).

29. Having examined all the material submitted to it, 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. Having

regard to its case-law on the subject, the Court considers that in the instant case the length of the proceedings was excessive and failed to meet the "reasonable time" requirement.

30. There has accordingly been a breach of Article 6 § 1.

II. ALLEGED VIOLATION OF ARTICLE 1 OF PROTOCOL No. 1 TO THE CONVENTION

31. The applicant further complained that the length of the enforcement proceedings in her case had infringed her right to the peaceful enjoyment of her possessions, as guaranteed by Article 1 of Protocol No. 1.

32. The Government contested that argument.

33. The Court notes that this complaint is linked to the one examined above and finds that it must also be declared admissible.

34. The Court recalls its case-law that the impossibility for an applicant to obtain the enforcement of a judgment in his or her favour constitutes an interference with the right to the peaceful enjoyment of possessions, as set out in the first sentence of the first paragraph of Article 1 of Protocol No. 1 (see, among other authorities, *Burdov v. Russia*, no. 59498/00, § 40, ECHR 2002-III; *Jasiūnienė v. Lithuania*, no. 41510/98, § 45, 6 March 2003 and *Voytenko v. Ukraine*, no. 18966/02, § 53, 29 June 2004). The Court finds no ground to depart from its case-law in the present case.

35. There has, accordingly, been a violation of Article 1 of Protocol No. 1 of the Convention.

III. OTHER ALLEGED VIOLATIONS OF THE CONVENTION

36. The applicant additionally complained under Article 6 § 1 of the Convention about the unreasonable length of her administrative proceedings against the Bailiffs and about the general unfairness of both sets of her proceedings, particularly as the domestic courts erred in assessment of facts and application of the law.

37. Having carefully examined the applicant's submissions in the light of all the material in its possession and insofar as the matters complained of are within its competence, the Court finds that there is no appearance of a violation of the rights and freedoms set out in the Convention or its protocols.

38. It follows that this part of the application must be declared inadmissible as being manifestly ill-founded, pursuant to Article 35 §§ 3 and 4 of the Convention.

IV. APPLICATION OF ARTICLE 41 OF THE CONVENTION

39. 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

40. The applicant claimed 61.68 euros (EUR) in respect of pecuniary damage on account of devaluation of her judgment award during the non-enforcement period. She did not present any official documents justifying her calculations. Additionally, the applicant submitted that she had suffered non-pecuniary damage caused by the length of proceedings and the delay in enforcement of the judgment in her case, particularly as at the material time she was an unemployed single mother with two dependent children. However, she was not able to specify the amount of this claim and requested the Court to rule on an equitable basis.

41. The Government submitted that the applicant had failed to substantiate her claims.

42. The Court agrees with the Government as regards the applicant's failure to substantiate her pecuniary damage claim, and, accordingly, dismisses it. On the other hand, the Court takes the view that the applicant must have suffered some non-pecuniary damage as a result of the violations found (see e.g. *Duma v. Ukraine*, no. 39422/04, § 26, 30 November 2006 and *Silka v. Ukraine*, no. 3624/03, § 23, 18 January 2007). Making its assessment on an equitable basis, as required by Article 41 of the Convention, the Court awards the sum of EUR 800 in respect of non-pecuniary damage.

B. Costs and expenses

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

C. Default interest

44. 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 excessive length of the reinstatement proceedings, including their enforcement stage, 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 1 Protocol No. 1 of the Convention;

4. *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 800 (eight 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;
   (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;

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

Done in English, and notified in writing on 19 June 2007, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Claudia WESTERDIEK Registrar	Peer LORENZEN President