CONSEIL DE L'EUROPE

COUNCIL OF EUROPE

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

FIFTH SECTION

CASE OF NAPALKOVA v. UKRAINE

(Application no. 316/04)

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 Napalkova v. Ukraine,

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

Mr P. LORENZEN, *President*,
Mrs S. BOTOUCHAROVA,
Mr V. BUTKEVYCH,
Mrs M. TSATSA-NIKOLOVSKA,
Mr R. MARUSTE,
Mr J. BORREGO BORREGO,
Mrs R. JAEGER, *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. 316/04) 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 Yevgeniya Vasilyevna Napalkova ("the applicant"), on 6 November 2003.

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

3. On 15 March 2005 the Court decided to communicate the complaint concerning the non-enforcement of the judgment in the applicant's favour 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 1953 and lives in the town of Yuzhne, Odessa region.

5. In February 2002 the applicant instituted proceedings against the Ministry of Education and Science (hereinafter "the Ministry") alleging that she had won in the "Best School Textbook" competition organised by the Ministry. However, the prize had not been paid to her. The applicant claimed material and moral damages.

6. On 20 May 2002 the Shevchenkivsky District Court of Kyiv allowed the applicant's claim and ordered the Ministry to pay her UAH 2,015.34[1].

7. On 2 December 2002 the Shevchenkivsky District Bailiffs' Service (hereinafter "the Bailiffs") instituted the enforcement proceedings.

8. As the Ministry failed to execute the judgment, the Bailiffs sent the writ of execution and payment order to the State Treasury. However, the payment order and the writ were returned to the Bailiffs without execution due to the lack of funds on the Ministry's accounts.

9. On 11 October 2002 the Bailiffs ordered the attachment of the Ministry's accounts. However, the State Treasury refused to execute this order referring to internal instructions prohibiting such actions.

10. In their submissions of 13 June 2005 the Government stated that during 2004-2005 the Bailiffs with their letters on several occasions informed the applicant that the amount due was allocated and that in order to receive payment she had to provide information concerning her bank account.

11. The applicant informed the Court that she had provided the Bailiffs with the information required.

12. To date, the amount due to the applicant under the judgment of 20 May 2002 was not paid.

II. RELEVANT DOMESTIC LAW

13. The relevant domestic law is summarised in the judgment of *Romashov v. Ukraine* (no. 67534/01, §§ 16-19).

THE LAW

I. ALLEGED VIOLATION OF ARTICLES 6 § 1 AND 13 OF THE CONVENTION

14. Relying on Articles 6 § 1 and 13 of the Convention, the applicant complained about the non-enforcement of the final judgment given in her favour. These provisions read, insofar as relevant, as follows:

1. EUR 293.11

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."

A. Admissibility

15. The Government raised objections, contested by the applicant, similar to those already dismissed in a number of the Court's judgments regarding non-enforcement against the State institutions (see *Voytenko v. Ukraine*, no. 18966/02, § 27-31, 29 June 2004 and *Romashov v. Ukraine*, cited above, §§ 28-32). The Court considers that these objections must be rejected for the same reasons.

16. The Court concludes that the applicant's complaints under Articles 6 § 1 and 13 of the Convention raise issues of fact and law under the Convention, the determination of which requires an examination of the merits. It finds no ground for declaring these complaints inadmissible. The Court must therefore declare them admissible.

B. Merits

17. In their observations, the Government contended that there had been no violation of the provisions of the Convention in the applicant's respect. In particular, they submitted that the debt under the judgment of 20 May 2002 was not paid to the applicant due to her failure to provide the Bailiffs with the information concerning her bank account.

18. The applicant disagreed. She maintained that in 2002 she had provided the Bailiffs with the information required and later on resubmitted it following the respective Bailiff's requests. She further outlined inaccuracies in the copies of the documents concerning the enforcement proceedings provided by the Government together with their observations.

19. The Court notes that the final court decision given in the applicant's favour remains unenforced for five years and one month.

20. The Court recalls that it has already found violations of Article 6 § 1 of the Convention in a number of similar cases (see *Romashov*, cited above, §§ 42-46 and *Voytenko v. Ukraine*, cited above, §§ 53-55).

21. 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.

22. There has, accordingly, been a violation of Article 6 § 1 of the Convention.

23. The Court does not find it necessary in the circumstances to examine the same complaints under Article 13 of the Convention (see *Derkach and Palek v. Ukraine*, nos. 34297/02 and 39574/02, § 42, 21 December 2004).

II. OTHER ALLEGED VIOLATIONS OF THE CONVENTION

24. The applicant also complained about the alleged breach of Article 14 of the Convention caused by the non-enforcement of the judgment given in her favour.

25. However, in the light of all the materials in its possession, the Court finds that they do not disclose any appearance of a violation of the rights and freedoms set out in the Convention or its Protocols.

26. It follows that this part of the application must be declared inadmissible as being manifestly ill-founded, pursuant to Article 35 §§ 1, 3 and 4 of the Convention.

III. APPLICATION OF ARTICLE 41 OF THE CONVENTION

27. 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

28. The applicant claimed EUR 10,000 in respect of pecuniary and non-pecuniary damage.

29. The Government found the applicant's claims excessive and unjustified.

30. In so far as the judgment's debt in the applicant's favour has not been paid (paragraph 6 above), the Court notes that the State's outstanding obligation to enforce this judgment is not in dispute. Accordingly, the Court considers that, if the Government were to pay the remaining debt owed to the applicant, it would constitute full and final settlement of the case.

31. As regards the remainder of the applicant's claims for pecuniary and non-pecuniary damage, the Court, making its assessment on equitable basis, as required by Article 41 of the Convention, considers it reasonable to award the applicant EUR 1,600 in respect of her non-pecuniary damage.

B. Costs and expenses

32. The applicants did not submit any separate claim under this head; the Court, therefore, makes no award

C. Default interest

33. 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 non-enforcement of the judgment in the applicant's favour 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 is no need to examine the complaint under Article 13 of the Convention;

4. *Holds*
   (a) that the respondent State is to pay to the applicant, within three months from the date on which the judgment becomes final in accordance with Article 44 § 2 of the Convention, the unsettled debt still owed to her, as well as EUR 1,600 (one thousand and 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;
   (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 claims for just satisfaction.

Done in English, and notified in writing on 12 July 2007, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Claudia WESTERDIEK
Registrar

Peer LORENZEN
President