

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

FIFTH SECTION

DECISION

Application no. 8197/06
by Larisa Mikhaylovna FOMINA
against Ukraine

The European Court of Human Rights (Fifth Section), sitting on 30 August 2011 as a Committee composed of:

Boštjan M. Zupančič, *President,*
Ganna Yudkivska,
Angelika Nußberger, *judges,*

and Stephen Phillips, *Deputy Section Registrar,*

Having regard to the above application lodged on 11 February 2006,

Having deliberated, decides as follows:

## THE FACTS

The applicant, Ms Larisa Mikhaylovna Fomina, is a Ukrainian national who was born in 1952 and lives in Rovenki. The Ukrainian Government ("the Government") were represented by their Agents, Ms V. Lutkovska and M. Y. Zaytsev.

In April 1998 the applicant instituted proceedings in the Rovenky Court against a State-owned company R. for compensation for pecuniary and non-pecuniary damage caused by the failure of the company to supply heating to the applicant's apartment. After several reconsiderations of the case, on 10 November 2006 the court allowed the applicant's claim in part. It awarded her 7,369.34 Ukrainian hryvnias[1] (UAH) in compensation for pecuniary and non-pecuniary damage, court fees and expenses.

1. About 1,100 euros.

On 22 December 2006 the Luhansk Regional Court of Appeal left the applicant's appeal against this judgment without examination as being lodged out of time. The judgment became final and remains unenforced.

# COMPLAINTS

The applicant complains under Article 6 § 1 of the Convention about the length of the proceedings. She also complains about the non-enforcement of the judgment given in her favour.

Relying on Articles 1, 2, 6 § 1, 7, 8 § 1, 13, 14 and 17 of the Convention, Article 1 of Protocol No. 1 and Articles 3 and 4 of Protocol No. 7, the applicant complains about the outcome and of unfairness of the proceedings.

# THE LAW

## A. Length of the proceedings

The applicant complained about excessive length of the proceedings. He relied on Article 6 § 1 of the Convention which, in so far as relevant, provides as follows:

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

By a letter dated 22 December 2010, the Government informed the Court of their unilateral declaration, signed on the same date, with a view to resolving the issue raised by this complaint. They further requested the Court to strike out the application in accordance with Article 37 of the Convention.

The declaration provided as follows:

> "The Government of Ukraine acknowledge the excessive duration of the consideration of the applicant's case before the nationa court and further enforcement of the judgement, delivered in her favour.
>
> I, Valeria Lutkovska, Government Agent, declare that Government of Ukraine offer to pay *ex gratia* 3, 900 (three thousands nine hundred) euros to Larisa Mikhaylovna Fomina.
>
> The Government therefore invite the Court to strike the applications out of the list of cases. They suggest that the present declaration might be accepted by the Court as "any other reason" justifying the striking out of the case of the Court's list of cases, as referred to in Article 37 § 1 (c) of the Convention.

The sums *ex gratia* is to cover any pecuniary and non-pecuniary damage as well as costs and expenses, will be free of any taxes that may be applicable, and converted into the national currency of the respondent State at the rate applicable on the date of settlement. It will be payable within three months from the date of notification of the decision taken by the Court pursuant to Article 37 § 1 of the European Convention on Human Rights. In the event of failure to pay these sums within the said three-month period, the Government undertake to pay simple interest on them from expiry of that period until settlement, at a rate equal to the marginal lending rate of the European Central Bank during the default period plus three percentage points.

This payment will constitute the final resolution of the cases ».

In a letter of 17 February 2011, the applicant expressed the view that the sum mentioned in the Government's declaration was unacceptably low.

The Court recalls that in certain circumstances, it may strike out an application under Article 37 § 1 (c) on the basis of a unilateral declaration by a respondent Government even if the applicant wishes the examination of the case to be continued.

To this end, the Court will carefully examine the declaration in the light of the principles emerging from its case-law (see, in particular, *Tahsin Acar v. Turkey* (preliminary objection) [GC], no. 26307/95, §§ 75-77, ECHR 2003-VI).

The Court has established in a number of cases, including those against Ukraine (see, among many other authorities, *Pavlyulynets v. Ukraine*, no. 70767/01, §§ 52-53, 6 September 2005; *Moroz and Others v. Ukraine*, no. 36545/02, §§ 61-62, 21 December 2006; and *Golovko v. Ukraine*, no. 39161/02, §§ 64-65, 1 February 2007), its practice concerning complaints about violations of the right to a hearing within a reasonable time.

Having regard to the nature of the admissions contained in the Government's declaration, as well as the amounts of compensation proposed, which are consistent with the amounts awarded in similar cases by the Court, the Court considers that it is no longer justified to continue the examination of this part of the application.

It is satisfied that the settlement is based on respect for human rights as defined in the Convention and its Protocols and finds no public policy reasons to justify a continued examination of this part of the application (Article 37 § 1 *in fine* of the Convention).

Accordingly, this part of the application should be struck out of the list.

## B. The remaining complaints

Having carefully examined the remainder of the applicant's complaints under Articles 1, 2, 6 § 1, 7, 8 § 1, 13, 14 and 17 of the Convention, Article 1 of Protocol No. 1 and Articles 3 and 4 of Protocol No. 7, in the light of all the material in its possession and in so far as the matters complained of are within its competence, the Court finds that they do not disclose any

appearance of a violation of the rights and freedoms set out in the Convention.

For these reasons, the Court unanimously

*Takes note* of the terms of the respondent Government's unilateral declaration in respect of the complaint under Article 6 § 1 of the Convention about the excessive length of the proceedings in the applicants' case and of the modalities for ensuring compliance with the undertakings referred to therein;

*Decides* to strike the application out of its list of cases in so far as it relates to the above complaint in accordance with Article 37 § 1 (c) of the Convention;

*Declares* the remainder of the application inadmissible.

Stephen Phillips
Deputy Registrar

Boštjan M. Zupančič
President