CONSEIL DE L'EUROPE

COUNCIL OF EUROPE

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

SECOND SECTION

DECISION

Application no. 70750/01
by Lyubov Andriyivna KUROCHKINA
against Ukraine

The European Court of Human Rights (Second Section), sitting on 19 October 2004 as a Chamber composed of:

Mr J.-P. COSTA, *President*,
Mr L. LOUCAIDES,
Mr C. BÎRSAN,
Mr K. JUNGWIERT,
Mr V. BUTKEVYCH,
Mrs W. THOMASSEN,
Mrs A. MULARONI, *judges*,

and Mr T.L. EARLY, *Deputy Section Registrar*,

Having regard to the above application introduced on 9 August 2000,

Having regard to the decision of 7 March 2003 to communicate the application and to apply Article 29 § 3 of the Convention with a view to the joint examination of admissibility and merits,

Having regard to the observations submitted by the respondent Government,

Having deliberated, decides as follows:

THE FACTS

The applicant, Mrs Lyubov Andriyivna Kurochkina, is a Ukrainian national, who was born in the village of Chabanovka in the Mykolayiv Region on 12 January 1938, and lives in Kryvy Rig, Dnipropetrovs'k Region.

The facts of the case, as submitted by the parties, may be summarised as follows.

1. Proceedings for compensation

On 30 July 1995 the applicant had a heart attack allegedly as a result of her work after an accident at the PGZK company's plant (the applicant's former place of employment). In December 1995 she was declared to be "first group disabled" (*перша група інвалідності*). However, the PGZK company refused to recognise that the heart attack was related to the applicant's work.

On 26 November 1996, the applicant appealed to the labour disputes commission of the PGZK company seeking to establish a work disability status. On 3 December 1996 the labour disputes commission rejected her complaints.

In January 1997, the applicant instituted proceedings in the Ingulets District Court of Kryvy Rig (hereinafter Ingulets Court) against the PGZK company, seeking compensation for her disability which had occurred as a result of her former employment.

On 3 December 1997, the Ingulets Court allowed the applicant's claims and ordered compensation in the sum of UAH 28,942 (UAH 289.42 per month). On 26 March 1998, the Dnipropetrovs'k Regional Court quashed the decision of the Ingulets Court to whom the case was remitted.

On 9 March 1999, the Ingulets Court allowed the applicant's claims in part. On 17 May 1999, the Dnipropetrovs'k Regional Court quashed the decision of 9 March 1999 and again remitted the case.

On 31 March 2000, the Ingulets Court allowed her claims and ordered compensation in the sum of UAH 28,942 (a single payment), and payment for loss of income in the sum of UAH 14,953.22 (at UAH 289 per month). It also ordered the PGNZ company to pay her compensation for moral damage in the sum of UAH 2,550, and medical costs in the sum of UAH 317,95. The court ordered the immediate execution (*негайне виконання*) of that judgment. On 15 May 2000, the Dnipropetrovs'k Regional Court quashed the decision and remitted the case to the Ingulets Court.

On 4 December 2000, the Ingulets Court ordered a medical examination of the applicant. On 27 August 2001, the Ingulets Court allowed the applicant's complaints in part. It found that the applicant's disability had resulted from her work at the PGNZ factory. The court ordered PGNZ to conclude an act confirming that an accident had occurred at the place of work. The applicant's complaints with regard to compensation for loss of earnings and other sums in compensation were to be considered in the course of separate judicial proceedings.

On 6 December 2001, the Ingulets Court ordered the PGNZ plant to submit the documents relevant to the case. On 22 January 2001, the Ingulets

Court fined the director of PGNZ for failure to submit the requested documents and to appear before the court.

On 11 February 2002, the PGNZ company lodged a cassation appeal against the decision of 27 August 2001. On 13 February 2002, the Ingulets Court suspended the proceedings pending consideration of the cassation appeal. On 16 February 2002, the applicant lodged an appeal against this decision. On 26 March 2002, the Dnipropetrovs'k Regional Court of Appeal rejected the applicant's appeal and upheld the ruling of 13 February 2002.

On 26 March 2002, the Supreme Court of Ukraine returned the cassation appeal lodged by PGNZ company without consideration to the Ingulets Court and obliged the PGNZ company to provide relevant evidence and proof of its tax payments. On 16 April 2002, the Ingulets Court ruled that the said company could re-submit the cassation appeal by 30 April 2002 having met the required formalities.

The proceedings in the case are currently pending.

2. Complaints against the actions of the State execution service

a. Non-execution of the decision of the Ingulets Court of 31 March 2000

The writ of execution of the judgment of the Ingulets Court was issued on 19 April 2000.

On 30 May 2000, the applicant instituted proceedings in the Ingulets Court against the State bailiffs' failure to execute the decision of 31 March 2000 of the Ingulets Court. On 28 July 2000, the Ingulets Court rejected her claims as being unsubstantiated, a decision which was upheld by the Dnipropetrovs'k Regional Court on 4 September 2000.

b. Execution of the decision of Ingulets Court of 27 August 2001

On 5 December 2001, the State execution service suspended the execution of the judgment of 27 August 2001 since bankruptcy proceedings involving the PGNZ company were pending in the Arbitration Court of the Dnipropetrovs'k Region.

On 7 December 2001, the applicant applied to the Ingulets Court seeking to obtain a writ of execution against the respondent's property. On 21 January 2002, this application was rejected.

On 24 December 2001, the applicant instituted proceedings against the State execution service in the Ingulets Court complaining of the non-execution of the judgment of 27 August 2001. On 13 February 2002, the Ingulets Court rejected these claims as unsubstantiated. The applicant appealed against this decision to the Dnipropetrovs'k Regional Court of Appeal. On 20 February 2002, the Ingulets Court refused the applicant leave to appeal, subsequently granted by the Dnipropetrovs'k Regional Court of Appeal on 22 April 2002.

On 1 March 2002, the decision of 27 August 2001 was rectified to facilitate its execution and sent to the execution service.

COMPLAINTS

The applicant complains under Article 6 § 1 of the Convention about the outcome and unreasonable length of the proceedings in her case. She also complains of the lack of effective remedies for the examination of her length of proceedings complaints, invoking Article 13 of the Convention.

Finally, the applicant complains of the non-execution of a judgment of Ingulets District Court that was supposed to have been executed immediately.

THE LAW

Notice of the application was given to the Government which submitted their observations on the admissibility and merits of the applicant's complaints on 3 June 2003. However, the Court notes that the applicant has failed to submit her observations in reply. Moreover, she has failed to respond to the communications from the Registry of the Court, the last of which were registered letters dated 9 March and 4 June 2004 warning the applicant of the possibility that her case might be struck out of the Court's list.

Having regard to Article 37 § 1 (a) of the Convention, the Court concludes that the applicant does not intend to pursue the application. Furthermore, in accordance with Article 37 § 1 *in fine*, the Court finds no special circumstances regarding respect for human rights as defined in the Convention and its protocols which require the examination of this application to be continued. Accordingly, the application of Article 29 § 3 of the Convention to the case should also be discontinued.

For these reasons, the Court unanimously

Decides to strike the application out of its list of cases.

T.L. EARLY
Deputy Registrar

J.-P. COSTA
President