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

FIFTH SECTION

DECISION

Application no. 4167/08
Iryna Georgiyivna PITYK
against Ukraine

The European Court of Human Rights (Fifth Section), sitting on 10 May 2016 as a Committee composed of:

André Potocki, *President,*
Ganna Yudkivska,
Síofra O'Leary, *judges,*

and Milan Blaško, *Deputy Section Registrar,*

Having regard to the above application lodged on 9 January 2008,

Having regard to the decision to apply the pilot-judgment procedure taken in the case of *Yuriy Nikolayevich Ivanov v. Ukraine*, no. 40450/04, 15 October 2009),

Having regard to the comments submitted by the Ukrainian Government,

Having deliberated, decides as follows:

THE FACTS

The applicant, Ms Iryna Georgiyivna Pityk, is a Ukrainian national, who was born on 27 October 1939 and lives in Chernivtsi. She was represented before the Court by Mr B.V. Fokiy, a lawyer practising in Chernivtsi.

The Ukrainian Government ("the Government") were represented most recently by their Acting Agent, Ms O. Davydchuk of the Ministry of Justice.

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

The applicant instituted two sets of proceedings with the domestic courts.

In the first set of proceedings the applicant sought fulfilment of the contract obligations by the debtor (Construction Department No. 5 of the "Budivelnyk" company). On 8 June 1995 the Pershotravnevyy District Court of Chernivtsi allowed the applicant's claim and ordered the debtor to provide the applicant with construction materials.

The second set of proceedings concerned a dispute between the applicant and her former employer ("Rembudizoliatsiya", JSC). On 16 May 2005 the Shevchenkivskyy District Court of Chernivtsi adopted a judgment ordering the company to pay to the applicant a salary debt of UAH 6,842 (about EUR 1,050 at the material time).

These judgments became binding, but the authorities delayed their enforcement.

COMPLAINTS

1. The applicant complained under Articles 6 § 1 and 13 of the Convention and Article 1 of Protocol No. 1 about the lengthy non-enforcement of domestic court decisions adopted in her favour.

2. The applicant, referring to Article 6 § 1 of the Convention, also complained about the alleged unfairness of the civil proceedings in which she was involved.

THE LAW

A. Complaints related to protracted non-enforcement

The respondent Government informed the Court that the debtors who were the subject of the unenforced judgments were private legal entities. In particular, as regards the judgment of 8 June 1995 handed down by the Pershotravnevyy District Court of Chernivtsi, the debtor was the Construction Department No. 5 of the "Budivelnyk" company. It appears from the documents submitted by the Government that the debtor company was privatised in January 1998. As regards the judgment of 16 May 2005 of the Shevchenkivskyy District Court of Chernivtsi, the debtor was "Rembudizoliatsiya", JSC. According to the documents submitted by the Government the debtor company had been privatised since from May 2000. The Government thus argued that they were not liable for enforcement of judgments against these private entities as they were not involved in the enforcement proceedings against these debtors. They requested the Court to declare the applications inadmissible.

The applicant disagreed.

The Court notes that the debtors the subject of both judgments are private legal entities. The Court recalls that the State cannot be held responsible for a private company's debts and its responsibility extends no further than the involvement of State bodies in any enforcement proceedings

(see *Kontsevych v. Ukraine*, no. 9089/04, § 52, 16 February 2012). The Court reiterates that, as it has already held in similar cases, Ukrainian legislation provides for a possibility to challenge before the courts the lawfulness of actions and omissions of the State Bailiffs' Service in enforcement proceedings and to claim damages from that Service for delays in payment of the amount awarded (see, for instance, *Kukta v. Ukraine* (dec.), no. 19443/03, 22 November 2005 or *Ponomaryov v. Ukraine*, no. 3236/03, § 53, 3 April 2008). In the present case, the applicant failed to challenge before the courts the lawfulness of acts and omissions of the State Bailiffs' Service in enforcement proceedings against the private legal entities involved and to claim damages from that Service. In the light of the foregoing, the applicant cannot be regarded as having exhausted the domestic remedies available to her under Ukrainian law (see *Dovgal v. Ukraine* (dec.), no. 50726/06, 20 October 2009).

Accordingly, this part of the application should be declared inadmissible pursuant to Article 35 §§ 1 and 4 of the Convention for non-exhaustion of domestic remedies.

B. Other complaints raised by the applicant

The Court observes that the applicant raised other complaints under the Convention concerning the unfairness and outcome of the domestic proceedings in her cases. The Court has examined such complaints. 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 or its Protocols.

It follows that this part of the application must be rejected pursuant to Article 35 §§ 3 and 4 of the Convention.

For these reasons, the Court, unanimously,

Declares the application inadmissible.

Done in English and notified in writing on 2 June 2016.

Milan Blaško
Deputy Registrar

André Potocki
President