

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

FIFTH SECTION

DECISION

Application no. 19782/07
Olga Eduardovna STEFANENKO
against Ukraine

The European Court of Human Rights (Fifth Section), sitting on 22 May 2012 as a Committee composed of:

Mark Villiger, *President,*
Karel Jungwiert,
André Potocki, *judges,*

and Stephen Phillips, *Deputy Section Registrar,*

Having regard to the above application lodged on 20 April 2007,

Having deliberated, decides as follows:

THE FACTS

The applicant, Ms Olga Eduardovna Stefanenko, is a Ukrainian national, who was born in 1968 and lives in Crimea.

The Ukrainian Government ("the Government") were represented by their Agent, Ms Valeria Lutkovska, of the Ministry of Justice.

On 31 May 2005 the Sovetske Court ordered the F. company ("the debtor"), in which the State owned 26% of its shares, to pay the applicant certain pecuniary amounts. On 1 July 2005 the above judgment became final but remains unenforced.

COMPLAINT

The applicant complained under Article 6 § 1 of the Convention and Article 1 of Protocol No. 1 about non-enforcement of the above judgment.

THE LAW

1. By a letter dated 24 October 2011, the Government informed the Court that on 15 May 2009 the debtor had become a private company. They also submitted a unilateral declaration acknowledging the excessive duration of the enforcement of the applicant's judgment in the period between 1 July 2005 and 15 May 2009 and offered the applicant 705 euros in compensation. The Government maintained that after the latter date the State was not responsible for the private company's debts and the State responsibility extended no further than the involvement of the State bodies in enforcement proceedings, while the applicant had not challenged before the domestic courts the Bailiffs' alleged inactivity in the enforcement of the judgment at issue and had not claimed damages from the Bailiffs.

The Government further invited the Court to strike the application out of the list of cases and suggested that their declaration might be accepted by the Court as "any other reason" justifying the striking out of the case under Article 37 § 1 (c) of the Convention.

The declaration also provided that the compensation sum was to cover any pecuniary and non-pecuniary damage as well as costs and expenses, to be converted into the national currency of Ukraine at the rate applicable at the date of settlement, and would be free of any taxes that might be chargeable. It would 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 this sum within the said three-month period, the Government undertook to pay simple interest on it 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 would constitute the final resolution of the case.

The applicant did not provide any comments in reply.

The Court reiterates that it may at any stage of the proceedings strike an application out of its list of cases where the circumstances lead to the conclusions specified under Article 37 § 1 (a)-(c) of the Convention. In particular, under Article 37 § 1 (c) the Court may strike a case out of its list if for any other reason established by the Court, it is no longer justified to continue the examination of the application.

Article 37 § 1 *in fine* states:

> "However, the Court shall continue the examination of the application if respect for human rights as defined in the Convention and the protocols thereto so requires".

The Court also reiterates that in certain circumstances it may strike out an application under Article 37 § 1 (c) on the basis of a unilateral declaration made by a respondent Government (see *Tahsin Acar v. Turkey* (preliminary objection) [GC], no. 26307/95, §§ 75-77, ECHR 2003-VI).

The Court recalls that in the aforementioned pilot judgment it ordered Ukraine to grant redress to the applicants whose applications were communicated to the Government before the delivery of the judgment or would be communicated further to the judgment and concerned complaints about the prolonged non-enforcement of domestic decisions for which the State was responsible (see *Yuriy Nikolayevich Ivanov v. Ukraine*, cited above, § 99 and point 6 of the operative part). Having examined the terms of the Government's declaration, the Court understands it as intending to give the applicant the redress in accordance with the pilot judgment.

The Court is satisfied that the Government explicitly acknowledged the excessive duration of the enforcement of the applicant's judgment in the period between 1 July 2005 and 15 May 2009. It also notes that the sum offered by the Government is comparable with the Court's awards in similar cases, taking account, *inter alia*, of the specific delay in each particular case. The Court therefore considers that it is no longer justified to continue the examination of this complaint. It is also satisfied that respect for human rights as defined in the Convention and the Protocols thereto does not require it to continue the examination of this part of the application. Accordingly, it should be struck out of the list.

2. As regards the applicant's complaint about non-enforcement of her judgment after 15 May 2009, 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 the enforcement proceedings. The Ukrainian legislation provides for a possibility of challenging before the courts the State Bailiffs' alleged inactivity in the enforcement proceedings and for claiming damages from them (see, for instance, *Dovgal v. Ukraine* (dec.), no. 50726/06, 20 October 2009), but the applicant did not avail herself of this possibility. It follows that this complaint must be declared inadmissible pursuant to Article 35 §§ 1, 3 (a) and 4 of the Convention.

For these reasons, the Court unanimously

Takes note of the terms of the respondent Government's declaration in respect of the applicant's complaint about non-enforcement of her judgment in the period between 1 July 2005 and 15 May 2009;

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	Mark Villiger President