



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

FIFTH SECTION

DECISION

Application no. 18453/09
Olga Maksimovna IVASHCHENKO
against Ukraine

The European Court of Human Rights (Fifth Section), sitting on 24 November 2015 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 18 March 2009,

Having regard to the Court's decision of 14 December 2010,

Having regard to the subsequent submissions of the respondent Government as well as the submissions of the applicant,

Having deliberated, decides as follows:

THE FACTS

The applicant, Ms Olga Maksimovna Ivashchenko, is a Ukrainian national, who was born in 1925 and lives in Andreyevo-Ivanovo.

The Ukrainian Government ("the Government") were represented by their Agent, most recently Mr Borys Babin, of the Ministry of Justice.

A. Facts that gave rise to the application

The application concerns delayed enforcement of the judgment of 3 October 2007, by which the Mykolayivka District Court of Odesa Region ordered the Department of Labour and Social Protection of the Mykolayivka State Administration to pay the applicant some monetary bonuses.

B. Proceedings before the Court

On 11 February 2010 the application was communicated to the Government of Ukraine.

On 28 May 2010 the Government submitted a unilateral declaration, in which they acknowledged the excessive duration of the enforcement of the judgment, expressed their readiness to enforce it and offered the applicant EUR 465 in compensation.

On 21 July 2010 the applicant informed the Court that the relevant domestic decision was fully enforced.

On 14 December 2010 the Court, having accepted the unilateral declaration in this and 33 other applications, decided to strike the application out of its list of cases (see *Mykhaylenko and 33 other applications v. Ukraine* (dec.), nos. 24986/06 and 33 others, 14 December 2010).

C. Events after the Court's decision to strike the application out of its list of cases

On 6 March 2012 the applicant informed the Court that in spite of her numerous requests before the State Bailiffs Service the amount of compensation was not paid to her and thus the conditions of the unilateral declaration were not fulfilled. The applicant submitted copies of her letters to the State Bailiffs Service dated 29 December 2010, 24 February 2011, 18 April 2011, 9 August 2011 and 22 December 2011. All letters were sent by registered post and delivered to the recipient. In the letters the applicant provided information needed for the money transfer (including her bank account details).

On 11 April 2012 the letter of the applicant was sent to the respondent Government for comments.

In their reply, received on 3 July 2012, the Government informed the Court that the applicant had to

“provide certain documents in order to obtain the sum awarded. However, the bank account details submitted by the applicant didn't contain the necessary information, namely the transit bank account details and MFO (sort code), or concerned her euro bank account. The applicant was informed about these deficiencies by the letters [...] and was requested to provide the missing data. However, the applicant failed to do so [...].

On 26 December 2011 the amounts due to the applicant were transferred to the State Budget of Ukraine and the enforcement proceedings were terminated according to the requirements of domestic legislation in force.

Having regard to the above the Government believe that they showed due diligence within the framework of enforcement of the Court's judgment in question and cannot be held responsible for the failure on the part of the applicant herself”.

The Government did not provide any documents in support.

In her reply of 30 August 2012 the applicant disagreed with the reasoning of the Government. In particular, the applicant referred to her letters (mentioned above) sent to the State Bailiffs' Service, in which she provided copies of the certificates issued by her bank which contained exhaustive information about her bank account. The applicant also submitted a copy of letter no. 33-45/6774 dated 15 December 2010 from the Ministry of Justice of Ukraine. In the letter the applicant's attention was drawn to paragraph 11.2.16 of Instruction no. 74/5 "On Conducting the Enforcement Proceedings" adopted by the Ministry of Justice on 15 December 1999. According to the document, sums put on the deposit account of the State Bailiffs' Service, if not requested by the parties to the enforcement proceedings during three years, are to be transferred to the State Budget of Ukraine.

The applicant also submitted a copy of the Resolution of the State Bailiff on termination of the enforcement proceedings in her case dated 29 December 2011. According to the resolution, on 22 December 2010 the money payable to the applicant had been transferred to the deposit account of the State Bailiffs' Service while "no letters from the applicant with full bank-details were registered at the office of the State Bailiffs' Service". On 26 December 2011 the sum had been returned to the State Budget of Ukraine in accordance with Section 45 (7) of the Law "On Enforcement Proceedings" according to which the amounts not claimed by the creditors within one year are to be returned to the State Budget of Ukraine. Enforcement proceedings were terminated.

The applicant's letter was sent to the Government for information. The Government did not reply.

On 11 August 2015 the Court received a letter from the applicant stating that the decision of the Court remained unenforced (the applicant did not receive the amount of compensation).

COMPLAINTS

The applicant originally complained of the lengthy non-enforcement of the judgment adopted in her favour by the Mykolayivka District Court of Odesa Region on 3 October 2007. She further complained about the failure of the Government to comply with their unilateral declaration and to pay her the amount of compensation. The applicant requested that the application be restored in the Court's list of cases.

THE LAW

The Court recalls that should a respondent State fail to comply with the terms of a unilateral declaration in a case which has been struck out, the application may be restored to the Court's list of cases in accordance with Article 37 § 2 of the Convention (see *Aleksentseva and 28 Others v. Russia* (dec.), no. 75025/01, ECHR, 23 March 2006).

As regards the present case, the Court notes that the applicant still has not received the amount of compensation under the unilateral declaration and this fact is not disputed by the Government.

In view of the documents before it the Court considers it justified to disjoin the application from the other applications to which it was joined, to restore the application to the Court's list of cases in accordance with Rule 43 § 5 of the Rules of Court and to adjourn the examination of the case.

For these reasons, the Court, unanimously

Decides to disjoin the application from the other applications to which it was joined;

Decides to restore the application to its list of cases;

Decides to adjourn the examination of the applicant's complaints.

Done in English and notified in writing on 1 December 2015.

Milan Blaško
Deputy Registrar

André Potocki
President