



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

SECOND SECTION

CASE OF CHIZHOV v. UKRAINE

(Application no. 6962/02)

JUDGMENT

STRASBOURG

17 May 2005

FINAL

17/08/2005

This judgment will become final in the circumstances set out in Article 44 § 2 of the Convention. It may be subject to editorial revision.

In the case of Chizhov v. Ukraine,

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

Mr J.-P. COSTA, *President*,

Mr A.B. BAKA,

Mr I. CABRAL BARRETO,

Mr R. TÜRMEŇ,

Mr V. BUTKEVYCH,

Ms D. JOČIENĚ,

Mr D. POPOVIĆ, *judges*,

and Mr S. NAISMITH, *Deputy Section Registrar*,

Having deliberated in private on 26 April 2005,

Delivers the following judgment, which was adopted on that date:

PROCEDURE

1. The case originated in an application (no. 6962/02) against Ukraine lodged with the Court under Article 34 of the Convention for the Protection of Human Rights and Fundamental Freedoms (“the Convention”) by a Ukrainian national, Mr Sergey Vasilyevich Chizhov (“the applicant”), on 16 May 2001.

2. The Ukrainian Government (“the Government”) were represented by their Agents, Ms Valeria Lutkovska, succeeded by Ms Zoryana Bortnovska.

3. The application was allocated to the Second Section of the Court (Rule 52 § 1 of the Rules of Court). Within that Section, the Chamber that would consider the case (Article 27 § 1 of the Convention) was constituted as provided in Rule 26 § 1.

4. On 6 May 2003 the Second Section of the Court declared the applicants’ complaints partly inadmissible. It also decided to adjourn the examination of the applicant’s complaints regarding the non-execution of a judgment and an alleged lack of effective domestic remedies for that complaint, under Articles 6 § 1 and 13 of the Convention, and communicate these complaints to the respondent Government for observations.

5. The applicant and the Government each filed observations on the merits (Rule 54A).

THE FACTS

6. The applicant, Mr Sergey Vasilyevich Chizhov, is a Ukrainian national, who was born in 1962 and lives in Zaporizzhia.

I. THE CIRCUMSTANCES OF THE CASE

7. On 6 October 1997 the applicant was apprehended by police officers B.Y.Y. and L.G.T. On the same day he was brought to the medical sobering-up facility by these officers. In the course of the applicant's apprehension the police officers inflicted bodily injuries on him, resulting in a short-term health disorder.

8. On 7 October 1997 the applicant was charged with assaulting and attempting to bribe them.

9. On 21 October 1997 the Leninsky District Court of Zaporizzhia acquitted the applicant.

10. The applicant complained to the Regional Prosecution Service and the General Prosecution Service seeking to institute criminal proceedings against the police officers who had unlawfully apprehended and harmed him.

11. On 12 February 1998 the applicant initiated civil proceedings against the Zaporizzhia City Police Department in the Leninsky District Court of Zaporizzhia, seeking compensation for the moral damage caused by the actions of B.Y.Y. and L.G.T.

12. On 9 March 1998 the Prosecution Service of Zaporizzhia instituted criminal proceedings against the officers.

13. On 29 January 1999 the Leninsky District Court of Zaporizzhia sentenced B.Y.Y. and L.G.T. to a 3 year suspended prison sentence following their conviction for abuse of power and inflicting bodily harm on the applicant. It also ordered the Zaporizzhia City Police Department to pay the applicant UAH 3,709.13¹ in compensation for pecuniary and non-pecuniary damage.

14. On 22 March 1999 the Zaporizzhia Regional Court upheld that decision.

15. On 1 April 1999 the Leninsky District Court of Zaporizzhia initiated the execution proceedings for the judgment of 29 January 1999.

16. On 14 April 1999 the writ of execution was lodged with the Leninsky District Bailiffs' Service in Zaporizzhia.

17. On 20 May 1999 the respondent in the case was changed from the City Police Department of Zaporizzhia to the Regional Police Department of Zaporizzhia, because the latter was responsible for managing the medical sobering-up facilities.

18. On 27 July 1999 the writ of execution was transferred to the Ordzhonikidze Bailiffs' Service for further enforcement.

19. In August 1999 the State Treasury Department confirmed the lack of funds of the Regional Police Department.

1. EUR 837.51.

20. On 16 August 1999 the applicant lodged a motion to attach the property of the Zaporizzhia Regional Police Department.

21. On 14 September 1999 the Ordzhonikidze District Execution Service of Zaporizzhia informed the applicant that the attachment of the property of a State institution was prohibited by law.

22. On 3 November 1999 the Ordzhonikidze District Execution Service informed the applicant of the Zaporizzhia Regional Police Department's lack of funds. It also stated that the latter owned no property and therefore attachment was not possible.

23. During 1999-2000, the applicant repeatedly lodged a number of motions with the Prosecution Service of Zaporizzia, the General Prosecution Service, the State Security Service, the Supreme Court of Ukraine and the Human Rights Ombudsman, seeking to institute criminal proceedings against various officials of the Zaporizzhia Regional Police Department, the execution service officials, Judge D.L.A of the Leninsky District Court, and a private person, D.S.S., who had allegedly assaulted the applicant.

24. On 5 April 2000 the Ordzhonikidze District Bailiffs' Service terminated the proceedings in the applicant's case due to the lack of funds of the Zaporizzhia Regional Police Department. The Government mentioned that the applicant retained a right to reintroduce the writ of execution with the Bailiffs' Service for up to three years.

25. On 17 November 2000 the Deputy President of the Supreme Court of Ukraine refused to initiate supervisory review proceedings in the applicant's case. It also remitted the applicant's claims concerning the non-execution of the judicial decision to the Ministry of Justice.

26. On 9 June 2003 the Ordzhonikidze District Bailiffs' Service issued resolution no. 1131/9 concerning the institution of the enforcement proceedings for the judgment of 29 January 1999. It also proposed to the debtor that it enforce the judgment given in the applicant's favour voluntarily. On the same date the resolution instituting the criminal proceedings was sent to the Zaporizzhia Regional Police Department and to the applicant.

27. On 20 June 2003 the bailiff requested the State Treasury to transfer the funds awarded to the applicant by the judgment of 29 January 1999 to his account.

28. On 7 August 2003 the applicant requested that the funds be transferred to his account.

29. On 14 August 2003 the judgment of 29 January 1999 was enforced and the applicant received UAH 3,709.13¹.

30. On 20 November 2003 the Ordzhonikidze Bailiffs' Service terminated the execution proceedings in the case in view of the fact that the judgment of 29 January 1999 had been enforced in full.

1. EUR 634.44.

II. RELEVANT DOMESTIC LAW AND PRACTICE

31. The relevant domestic law is summarised in the judgment of *Romashov v. Ukraine* (no. 67534/01, §§ 16-18, 27 July 2004).

THE LAW

32. The applicant complained about the State authorities' failure to execute the decision of 29 January 1999 in due time. He relied on Article 6 § 1 of the Convention, which in so far as relevant provides:

“In the determination of his civil rights and obligations ..., everyone is entitled to a fair and public hearing ... by an independent and impartial tribunal established by law.”

33. The applicant further alleged that non-execution of the judgment given in his favour constituted an infringement of Article 13 of the Convention. That provision reads:

“Everyone whose rights and freedoms as set forth in [the] Convention are violated shall have an effective remedy before a national authority notwithstanding that the violation has been committed by persons acting in an official capacity.”

I. ADMISSIBILITY

A. The Government's preliminary objections

34. The Government considered that the applicant had not complied with the six months rule as he only lodged his application with the Court on 16 May 2001. They submitted that the six months period for lodging an application with the Court must be counted as from 5 April 2000 (see paragraph 24 above). Otherwise, he could no longer claim to be a victim of a violation of the Convention as he had received full payment of the judgment debt. They also contended that the applicant had not exhausted domestic remedies regarding the Bailiffs' Service and the expedition of proceedings.

35. The applicant disagreed.

36. The Court notes that, on the date of introduction of the application, the judgment had not been enforced. Thus the six months rule had no application to this continuing situation. As regards the other objections, the Court also notes that similar points have already been dismissed in a number of Court judgments (see the aforementioned *Romashov* judgment, § 41). In such cases the Court has found that applicants may still claim to be

victims of an alleged violation of Article 6 § 1 in relation to the period during which the decisions of which complaint is made remain unenforced, and that the applicants were absolved from pursuing the remedies invoked by the Government. It finds no reason to reach different conclusions in the present case and, therefore, rejects the Government's objections.

37. In the light of the parties' submissions, the Court concludes that the applicant's complaint under Article 6 § 1 of the Convention raises serious issues of fact and law under the Convention, the determination of which requires an examination of the merits. It finds no ground for declaring this part of the application inadmissible. For the same reasons, the applicant's complaint under Article 13 of the Convention cannot be declared inadmissible.

II. MERITS

A. The applicant's complaints under Article 6 § 1 of the Convention

38. The Government contended that there was no infringement of Article 6 § 1 of the Convention in view of the enforcement of the judgment. Furthermore, they alleged that the applicant failed to reintroduce the execution writs within the three year limitation period provided for by law, and therefore showed no interest in the enforcement of the judgment given in his favour.

39. The applicant disagreed.

40. The Court recalls that a delay in the execution of a judgment may not be such as to impair the essence of the right protected under Article 6 § 1 (see *Immobiliare Saffi v. Italy* [GC], no. 22774/93, § 74, ECHR 1999-V). However, in the instant case, the applicant should not have been prevented from benefiting from the decision given in his favour against the Zaporizzhia Regional Police Department, which was of major importance to him and his family, on the ground of the State institution's alleged financial difficulties. Furthermore, the Court considers that it is the State's positive obligation to organise a system of enforcement of judgments in such a way as to ensure that there is no undue delay and that the system is effective both in law and in practice. It considers therefore that the Government's submission as to the failure of the applicant to reintroduce the execution writ is unsubstantiated, as proved by the fact that the bailiffs instituted the enforcement proceedings independently from the applicant on 23 June 2003 and the payment to the applicant was made on 14 August 2003. However, this was only done after the application was communicated to the respondent Government.

41. The Court observes that the judgment of 29 January 1999, as upheld by the ruling of 22 March 1999, remained unenforced for four years and

almost five months. It considers that the failure of the authorities to take the necessary measures to comply with the judgment of 29 January 1999 for the aforementioned period deprived the provisions of Article 6 § 1 of the Convention of most of their useful effect. The Court also takes into account that there clearly was a delay in the enforcement of the judgment from 5 April 2000 until 23 June 2003, for which the Government have not advanced any justification (see *Shmalko v. Ukraine*, no. 60750/00, judgment of 20 July 2004, § 45).

42. There has, accordingly, been a violation of Article 6 § 1 of the Convention.

B. The applicant's complaints under Article 13 of the Convention

43. The Government maintained that there was no violation of Article 13 of the Convention.

44. The applicant disagreed.

45. The Court refers to its previous judgments finding a lack effective remedies for the complaint under Article 6 § 1 of the Convention with regard to the lengthy failure to enforce judgments (see *Romashov v. Ukraine*, no. 67534/01, § 47, 27 July 2004). For the same reasons expounded in its case law, the Court concludes that the present applicant did not have an effective domestic remedy, as required by Article 13 of the Convention, to redress the damage created by the delay in the present proceedings (see *Voytenko v. Ukraine*, no. 18966/02, judgment of 29 June 2004, §§ 46-48). Accordingly, there has been a breach of this provision.

III. APPLICATION OF ARTICLE 41 OF THE CONVENTION

46. Article 41 of the Convention provides:

“If the Court finds that there has been a violation of the Convention or the Protocols thereto, and if the internal law of the High Contracting Party concerned allows only partial reparation to be made, the Court shall, if necessary, afford just satisfaction to the injured party.”

A. Damage, costs and expenses

47. The applicant claimed the pecuniary damage relating to the sum awarded to him by the domestic court judgment. He initially alleged that his non-pecuniary damage amounted to EUR 500,000. He also claimed UAH 20,000 in purported legal fees which he had paid to his representative.

48. The Government contested the applicant's claims, which they alleged were unsubstantiated and exorbitant.

49. The Court does not discern any causal link between the violation found and the pecuniary damage alleged by the applicant. Making its assessment on an equitable basis, as required by Article 41 of the Convention, the Court awards the applicant the global sum of EUR 2,500 in respect of his non-pecuniary claim and expenses in pursuing his application before the Court.

B. Default interest

50. The Court considers it appropriate that the default interest should be based on the marginal lending rate of the European Central Bank, to which should be added three percentage points.

FOR THESE REASONS, THE COURT UNANIMOUSLY

1. *Declares* admissible the remainder of the application;
2. *Holds* that there has been a violation of Article 6 § 1 of the Convention;
3. *Holds* that there has been a violation of Article 13 of the Convention;
4. *Holds*
 - a) that the respondent State is to pay the applicant, within three months from the date on which the judgment becomes final according to Article 44 § 2 of the Convention, to be converted into the national currency of the respondent State on the date of payment, EUR 2,500 (two thousand five hundred euros) in respect of non-pecuniary damage, costs and expenses, plus any tax that may be chargeable;
 - b) that from the expiry of the above-mentioned three months until settlement simple interest shall be payable on the above amounts at a rate equal to the marginal lending rate of the European Central Bank during the default period plus three percentage points;
5. *Dismisses* the remainder of the applicant's claim for just satisfaction.

Done in English, and notified in writing on 17 May 2005, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

S. NAISMITH
Deputy Registrar

J.-P. COSTA
President