



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

SECOND SECTION

CASE OF BULYNKO v. UKRAINE

(Application no. 74432/01)

JUDGMENT

STRASBOURG

21 June 2005

FINAL

21/09/2005

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 Bulynko v. Ukraine,

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

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

Mr R. TÜRMEŖ,

Mr V. BUTKEVYCH,

Mr M. UGREKHĖLIDZE,

Mrs E. FURA-SANDSTRÖM,

Ms D. JOČIENĖ,

Mr D. POPOVIĆ, *judges*,

and Mrs S. DOLLÉ, *Section Registrar*,

Having deliberated in private on 31 May 2005,

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

PROCEDURE

1. The case originated in an application (no. 74432/01) 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, Mrs Raisa Petrovna Bulynko (“the applicant”), on 18 January 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. The applicants’ complaint under Articles 6 § 1 of the Convention about the non-enforcement of the judgment of the Torez City Court of 7 August 2000 were communicated to the respondent Government on 9 May 2003. On the same date the Court decided that Article 29 § 3 of the Convention should be applied and the admissibility and merits of the complaint be considered together.

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

THE FACTS

6. The applicant was born in 1935 and currently resides in Torez, the Donetsk Region.

I. THE CIRCUMSTANCES OF THE CASE

7. On 30 November 2000 the applicant was dismissed from her position in the State Holding Company “*Torezantratsit*” (the “SHC”).

8. In July 2000 the applicant instituted proceedings in the Torez City Court against the SHC seeking to recover salary owed to her.

9. On 7 August 2000 the Torez City Court allowed her claims and ordered the SHC to pay the applicant UAH 2,379.76¹ in compensation.

10. On 14 June 2001 the Torez Execution Service informed the applicant that the judgment of 7 August 2000 could not be executed due to the SHC’s lack of funds.

11. On 10 October 2002 the applicant informed the Court that the judgment of 7 August 2000 had still not been executed.

12. The Government stated that between 9 November 2000 and 15 April 2003 the bailiffs conducted 8 inspections of the company’s accounts and found that there were no funds available to enforce the judgment. They also stated that the bailiffs were enforcing 92 writs of execution against the company, with a total debt of UAH 213,526².

13. On 2 July 2003 the applicant received UAH 2,379.76³ in execution of the judgment of 7 August 2000.

14. On 3 July 2003 the enforcement proceedings on the applicant’s writ of execution were discontinued as the amount awarded by the judgment had been paid.

II. RELEVANT DOMESTIC LAW AND PRACTICE

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

THE LAW

16. The applicant submitted that the non-enforcement of the judgment in her favour amounted to an infringement of Article 3 of the Convention, which reads as follows:

“No one shall be subjected to torture or to inhuman or degrading treatment or punishment.”

17. The applicant complained of slavery, invoking Article 4 § 1 of the Convention, which provides as relevant:

1. EUR 482.22.

2. EUR 35,296.

3. EUR 393.96.

“No one shall be held in slavery or servitude.”

18. The applicant further complained about the State authorities’ failure to execute the judgment of 7 August 2000 in due time. She 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.”

I. ADMISSIBILITY

A. Complaints under Article 3 of the Convention

19. As the Court has held on many occasions, Article 3 of the Convention enshrines one of the most fundamental values of democratic society. It prohibits in absolute terms inhuman or degrading treatment or punishment, irrespective of the circumstances and the victim’s behaviour (see, among many other authorities, *V. v. the United Kingdom* [GC], no. 24888/94, § 69, ECHR 1999-IX, and *Labita v. Italy* [GC], no. 26772/95, § 119, ECHR 2000-IV).

20. However, the Court finds that there is no evidence that the lengthy non-enforcement of the judgment given in the applicant’s favour amounted to inhuman or degrading treatment.

21. Hence, this part of the application is manifestly ill-founded and must be rejected pursuant to Article 35 §§ 3 and 4 of the Convention.

B. The applicant’s complaint under Article 4 § 1 of the Convention

22. The Court notes that the applicant’s allegations under Article 4 § 1 derive from the fact that she did not receive remuneration for work she had performed. The Court further notes that the applicant performed her work voluntarily and her entitlement to payment has never been denied. The dispute thus involves civil rights and obligations, but does not disclose any element of slavery within the meaning of this provision.

23. In these circumstances, the Court considers that this part of the application must also be rejected as being manifestly ill-founded pursuant to Article 35 §§ 3 and 4 of the Convention (see *Sokur v. Ukraine* (dec.), no. 29439/02, 26 November 2002).

C. Complaints under Article 6 § 1 of the Convention

24. The Government contended that the applicant could no longer claim to be a victim of a violation of the Convention as she 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.

25. The applicant disagreed.

26. The Court notes that these objections have already been dismissed in a number of Court judgments (see, among many other authorities, the aforementioned *Romashov* judgment, §§ 23-33). 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. Accordingly, it dismisses the Government's preliminary objections as to admissibility and declares this part of the applicant's complaints admissible.

II. AS TO THE ALLEGED VIOLATION OF ARTICLE 6 § 1 OF THE CONVENTION

27. The Government repeated that there was no infringement of Article 6 § 1 of the Convention in view of the enforcement of the judgment. They considered that the time taken to enforce it was reasonable. Furthermore, the original non-enforcement of the judgment was caused by the difficult financial situation of the State. The State Bailiffs took all necessary steps under domestic legislation to enforce the judgment.

28. The applicant disagreed.

29. The Court notes that the judgment of 7 August 2000 remained unenforced for a lengthy period of time. In particular, it remained partially unenforced until 3 July 2003 when the enforcement proceedings were discontinued. It further notes that this decision was enforced in full only after the communication of the application to the respondent Government.

30. The Court considers therefore that by failing for 2 years and almost 11 months to take the necessary measures to comply with the aforementioned judgment, the authorities deprived the provisions of Article 6 § 1 of the Convention of much of their useful effect. The Court also finds that there clearly was a delay in the enforcement of the judgment as from the day of the initiation of the enforcement proceedings up to the day of its full enforcement, and the Government have not advanced any justification for this delay (see *Shmalko v. Ukraine*, no. 60750/00, judgment of 20 July 2004, § 45).

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

III. APPLICATION OF ARTICLE 41 OF THE CONVENTION

32. 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

33. The applicant claimed pecuniary damage in relation to the sums awarded to her by the judgment. She further claimed non-pecuniary damage in the amount of UAH 25,000 (approximately EUR 4,000).

34. The Government considered the applicant’s claims unsubstantiated.

35. The Court does not discern any causal link between the violation found and the claim for pecuniary damage as formulated by the applicant. However, making its assessment on an equitable basis, as required by Article 41 of the Convention, the Court awards the applicant the sum of EUR 1,000 in respect of her claims for non-pecuniary damage and expenses in pursuing her application before the Court.

B. Default interest

36. 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 applicant’s complaints under Article 6 § 1 of the Convention and the remainder of the application inadmissible;
2. *Holds* that there has been a violation of Article 6 § 1 of the Convention;
3. *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, EUR 1,000 (one thousand euros) for non-pecuniary damage and expenses, plus any tax that may be chargeable, which total sum is to be converted into the currency of the respondent State at the rate applicable on the date of settlement;

(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;

4. *Dismisses* the remainder of the applicant's claim for just satisfaction.

Done in English, and notified in writing on 21 June 2005, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

S. DOLLÉ
Registrar

J.-P. COSTA
President