



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

SECOND SECTION

**CASE OF LYUTYKH v. UKRAINE**

*(Application no. 22972/02)*

JUDGMENT

STRASBOURG

13 September 2005

**FINAL**

*13/12/2005*

*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 Lyutykh v. Ukraine,**

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

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

Mr I. CABRAL BARRETO,

Mr V. BUTKEVYCH,

Mr M. UGREKHELIDZE,

Mrs A. MULARONI,

Ms D. JOČIENĖ,

Mr D. POPOVIĆ, *judges*,

and Mrs S. DOLLÉ, *Section Registrar*,

Having deliberated in private on 25 August 2005,

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

## PROCEDURE

1. The case originated in an application (no. 22972/02) 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, Ms Valentina Aleksandrovna Lyutykh (“the applicant”), on 18 May 2002.

2. The applicant was represented by Ms T. Skiba, a lawyer practising in Ukraine. The Ukrainian Government (“the Government”) were represented by their Agent, Mrs V. Lutkovska.

3. On 9 September 2004 the Court decided to communicate the application to the Government. Under the provisions of Article 29 § 3 of the Convention, it decided to examine the merits of the application at the same time as its admissibility.

## THE FACTS

### I. THE CIRCUMSTANCES OF THE CASE

4. The applicant was born in 1952 and currently resides in the town of Pervomayskiy, the Kharkiv region, Ukraine.

5. On 26 March 2001 the Pervomayskiy Town Court ordered the Khimprom State Enterprise to pay the applicant UAH 3,923.4 (around 640 euros –“ EUR”) in salary arrears.

6. In August 2001 the applicant instituted proceedings in the Pervomayskiy Town Court against the Pervomayskiy Bailiffs' Service for failure to enforce the judgment in her favour. On 7 September 2001 the

court found against the applicant, finding no fault on the part of the Bailiffs. On 19 November 2001 and 10 April 2002, respectively, the Appellate Court of the Kharkiv Region and the Supreme Court of Ukraine upheld the decision of the first instance court.

7. The enforcement proceedings were suspended from 18 July 2001 until 10 September 2001 pending the proceedings against the Bailiffs' Service instituted by the applicant in the Pervomayskiy Town Court.

8. On 18 June 2001 the procedure for the forced sale of the debtor's assets was suspended due to the moratorium on the forced sale of property belonging to State enterprises introduced by the President.

9. The enforcement proceedings were also suspended from 4 September 2003 until 13 January 2004 pending the bankruptcy proceedings initiated against the debtor.

10. On 24 June 2004 the applicant was informed by a letter from the Bailiffs' Service that the judgment in her favour was not executed due to the substantial number of enforcement proceedings against the debtor and the latter's lack of funds.

11. The judgment of 26 March 2001 remains unenforced.

## II. RELEVANT DOMESTIC LAW

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

## THE LAW

### I. ADMISSIBILITY

13. The applicant complained of an alleged failure by the State authorities to enforce the judgment of the Pervomayskiy Town Court of 26 March 2001 given in her favour. She invoked Articles 6 § 1 and 13 of the Convention, which provide, insofar as relevant, as follows:

#### **Article 6 § 1**

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

#### **Article 13**

“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.”

### **A. The Government's preliminary objections**

14. The Government submitted that the applicant is not a victim of a violation of Articles 6 § 1 and 13 of the Convention, as the length of the enforcement proceedings in the applicant's case had been caused by the critical financial situation of the debtor enterprise and the pending bankruptcy proceedings against it. The State authorities could not therefore be held responsible for this delay in the proceedings. The Government noted that the applicant had challenged the alleged omissions and inactivity of the Bailiffs before the domestic courts. The courts, however, found that the Bailiffs were not responsible for the delay in execution.

15. The Court recalls that it has already dismissed such contentions in similar cases (see, for instance, *Sokur v. Ukraine* (dec.), no. 29439/02, 16 December 2003, and the judgment in the same case, §§ 30 – 37, 26 April 2005) and finds no reason to reach a different conclusion in the present case. Accordingly, it dismisses the Government's preliminary objections.

### **B. Other complaints**

16. The applicant further complained about a violation of Articles 3, 4 and 17 of the Convention on account of the non-enforcement of the judgment in her favour.

17. The Court finds that this part of the application is wholly unsubstantiated and must therefore be rejected as being manifestly ill-founded, pursuant to Article 35 §§ 3 and 4 of the Convention.

### **C. Conclusion**

18. 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 complaint under Article 6 § 1 of the Convention**

19. The Court notes that the judgment of the Pervomayskiy Town Court of 26 March 2001 remains unenforced for more than four years.

20. The Court recalls that it has frequently found violations of Articles 6 § 1 and 13 of the Convention in cases raising similar issues to the present application (see, for example, the aforementioned *Sokur* judgment, and the judgments in *Voytenko v. Ukraine*, no. 18966/02, §§ 43 and 48, 29 June 2004, and *Romashov v. Ukraine*, no. 67534/01, § 46 and 47, 27 July 2004).

21. Having examined all the material submitted to it, the Court considers that the Government have not put forward any fact or argument capable of persuading it to reach a different conclusion in the present case. Having regard to its case-law on the subject, the Court considers that by delaying for the period of more than four years the enforcement of the judgment in the applicant's favour, the State authorities deprived the provisions of Article 6 § 1 of the Convention of much of their useful effect. There has, accordingly, been a violation of Article 6 § 1 of the Convention.

### **B. The applicant's complaint under Article 13 of the Convention**

22. The Court refers to its findings (at paragraph 15 above) concerning the Government's argument regarding domestic remedies. For the same reasons, the Court finds that the 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 enforcement proceedings. Accordingly, there has also been a breach of this provision.

## **III. APPLICATION OF ARTICLE 41 OF THE CONVENTION**

23. 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**

24. The applicant claimed UAH 20,000 (EUR 3,253.97) in respect of pecuniary damage. This amount included the judgment debt, EUR 640, and compensation for the delay in payment. The applicant further claimed EUR 1,500 in respect of non-pecuniary damage.

25. The Government maintained that the applicant had not substantiated the amounts claimed and submitted that the finding of a violation would constitute sufficient just satisfaction.

26. The Court notes that the applicant did not substantiate the whole amount claimed in respect of pecuniary damage. In so far as the applicant claimed the amount awarded to her by the judgment at issue, the Court notes that the State's outstanding obligation to enforce that judgment is not

in dispute. Accordingly, the Court considers that, if the Government were to pay the debt owed to the applicant, it would constitute full and final settlement of the case. Therefore, the Court awards EUR 640 in respect of pecuniary damage.

27. As for non-pecuniary damage, the Court considers that the applicant has suffered distress as a result of the violations found which cannot be made good by the Court's mere finding of a violation. Making its assessment on an equitable basis, as required by Article 41 of the Convention, the Court awards the applicant the requested sum of EUR 1,500 in respect of non-pecuniary damage.

### **B. Costs and expenses**

28. The applicant also claimed UAH 750 (EUR 122.02) in relation to her representation, translation and postal expenses incurred both in the domestic and Convention proceedings. The Government did not comment on this specific point. Having regard to the information in its possession, the Court awards the applicant EUR 100 in respect of cost and expenses.

### **C. Default interest**

29. 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* the applicant's complaints under Articles 6 § 1 and 13 of the Convention admissible and the remainder of the application inadmissible;
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, the following amounts, to be converted into the national currency of the respondent State at the rate applicable at the date of settlement:
    - (i) EUR 640 (six hundred and forty euros) in respect of pecuniary damage;

- (ii) EUR 1,500 (one thousand five hundred euros) in respect of non-pecuniary damage;
  - (iii) EUR 100 (one hundred euros) in respect of costs and expenses;
  - (iv) any tax that may be chargeable on the above amounts;
- (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 13 September 2005, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

S. DOLLÉ  
Registrar

J.-P. COSTA  
President