



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

SECOND SECTION

CASE OF MOLCHAN v. UKRAINE

(Application no. 68897/01)

JUDGMENT

STRASBOURG

4 October 2005

FINAL

04/01/2006

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 Molchan 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 K. JUNGWIERT,

Mr V. BUTKEVYCH,

Mr M. UGREKHELIDZE,

Mrs A. MULARONI,

Mrs E. FURA-SANDSTRÖM, *judges*,

and Mrs S. DOLLÉ, *Section Registrar*,

Having deliberated in private on 13 September 2005,

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

PROCEDURE

1. The case originated in an application (no. 68897/01) 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, Mr Vladimir Ivanovich Molchan (“the applicant”), on 27 August 2000.

2. The Ukrainian Government (“the Government”) were represented by their Agents, Mrs V. Lutkovska and Mrs Z. Bortnovska.

3. On 11 July 2003 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 1934 and lives in the town of Makeyevka, the Donetsk region, Ukraine.

A. First set of proceedings

5. On 8 April 1998 the Girnytskiy District Court (the Girnytskiy Court) ordered the State Joint Stock Company “Cheluskintsyv mine” (the Mine) to

pay the applicant UAH 6,388¹ in compensation for the applicant's occupational disability.

B. Second set of proceedings

6. In November 1998 the applicant instituted proceedings in the Petrovskiy District Court (the Petrovskiy Court) against the Mine seeking recovery of disability allowance debt and compensation for loss of earnings and for pecuniary and non-pecuniary damage.

7. On 9 December 1998 the Petrovskiy Court found in part for the applicant and ordered the Mine to pay him UAH 6,496.59² for disability allowance debt, in compensation for loss of earnings and for damages.

8. The applicant did not appeal in cassation against this decision.

9. On an unspecified date the President of the Donetsk Regional Court, following the applicant's complaint, lodged a *protest* with the Presidium of the Donetsk Regional Court seeking initiation of supervisory review proceedings in respect of the decision of the Petrovskiy Court of 9 December 1998. On 24 March 1999 the Presidium of the Donetsk Regional Court allowed the *protest*, quashed the decision of 9 December 1998 as to part of the award and remitted this part of the case for a fresh consideration.

10. On 17 June 1999 the Petrovskiy Court found in part for the applicant and ordered the Mine to pay the applicant a lump sum of UAH 2,443.19³ and a monthly allowance of UAH 146.29⁴ for an unlimited period of time in compensation for loss of earnings. The court held that the applicant was entitled to payment of the monthly allowance from 1 June 1999.

11. By a separate procedural decision of the same date, the court rejected the remainder of the applicant's claim on the ground that on 8 April 1998 the Girnytskiy Court had delivered a judgment in the case between the same parties relating to the same facts.

12. The applicant did not appeal in cassation against the judgment or separate procedural decision of the Petrovskiy Court of 17 June 1999.

13. On 9 June 2000 a judge of the Supreme Court of Ukraine informed the applicant that the Deputy President of that court had rejected the applicant's request for supervisory review of the decisions of the Petrovskiy Court of 9 December 1998 and 17 June 1999 and the decision of the Presidium of the Donetsk Regional Court of 24 March 1999.

1. Around 1,066 euros – “EUR”.

2. Around EUR 1,084.

3. Around EUR 408.

4. Around EUR 25.

C. Enforcement proceedings

14. On 3 June 1998 and 1 July 1999, respectively, the Petrovskiy District Bailiffs' Service instituted enforcement proceedings in respect of the judgments of the Girnytskiy Court of 8 April 1998 and of the Petrovskiy Court of 17 June 1999.

15. In October 1999 the Donetsk Regional Department of Justice (the "DRDJ") informed the applicant that the above judgments were not executed due to the debtor's lack of funds and to the substantial number of enforcement proceedings against it. The DRDJ further stated that the applicant was number 57 on the creditors' waiting list in respect of enforcement of the judgments in his favour and that he had been paid UAH 100¹ to date.

16. By letter of 30 January 2001, the Petrovskiy District Bailiffs' Service (the Bailiffs' Service) informed the applicant that the enforcement proceedings had been suspended from January 1999 to June 2000 pending the bankruptcy proceedings against the debtor and that the judgments were not enforced due to the debtor's lack of funds. It also informed him that the total amount he had received to date in respect of both judgments was UAH 150².

17. On 24 July 2002 the DRDJ informed the applicant that 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 and the Parliament, as well as due to the bankruptcy proceedings initiated against the debtor. The department of justice also stated that the applicant had been paid UAH 519.33³ to date.

18. In 2002 the applicant instituted proceedings in the Petrovskiy Court against the Bailiffs' Service seeking recovery of occupational disability debt and for compensation. On 24 September 2002 the court found against the applicant. The applicant did not appeal against this decision.

19. On 12 September 2003 the Bailiffs' Service discontinued the enforcement proceedings on the ground that the judgment of the Girnytskiy Court of 8 April 1998 and the judgment of the Petrovskiy Court of 17 June 1999, in its part concerning the lump sum award, had been enforced in full.

20. The applicant did not challenge the decision of the Bailiffs' Service of 12 September 2003 before the domestic courts.

21. The Government maintained that the judgments of the Girnytskiy and Petrovskiy Courts of 8 April 1998 and 17 June 1999 had been enforced in full by instalments. According to the Government, the monthly allowance awarded by the judgment of Petrovskiy Court has been paid by the Mine to

1. Around EUR 17.

2. Around EUR 25.

3. Around EUR 87.

the applicant up to 31 April 2001. Afterwards, the obligation to pay the monthly allowance for loss of earnings was taken up by the Girnytskiy District Department of the State Social Security Fund in accordance with domestic law. The amount of the monthly allowance was thereafter reviewed by the fund and the applicant was granted UAH 237.64¹ in compensation for loss of earnings.

22. The applicant maintained that the judgments in his favour in the part of the lump sum awards had not been enforced in full, although he failed to articulate precisely the amount of the alleged outstanding debt.

23. The applicant did not reply to the Court's request to indicate whether the monthly allowance of UAH 146.29² had been paid to him in accordance with the judgment of the Petrovskiy Court of 17 June 1999.

II. RELEVANT DOMESTIC LAW

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

THE LAW

I. SCOPE OF THE CASE

25. The Court notes that the applicant introduced new complaints about the alleged failure of the domestic authorities to enforce the judgments of the Girnytskiy Court of 22 May 2002 and the Petrovskiy Court of 12 May 2003 after the communication of the case to the respondent Government.

26. According to the judgment of the Girnytskiy Court of 22 May 2002, the court ordered the Mine to pay the applicant UAH 688.05³ in compensation for failure to pay the applicant the monthly allowance of UAH 146.29, which had been awarded by the judgment of the Petrovskiy Court of 17 June 1999, for the months of March, October, and November 1999, and October 2000.

27. According to the judgment of the Petrovskiy Court of 12 May 2003, the court ordered the Mine to pay the applicant UAH 257.11⁴ in compensation for failure to pay the applicant the aforementioned monthly allowance from 1 June 1999 until 1 April 2001 in due time.

1. Around EUR 40.

2. Around EUR 25.

3. Around EUR 115.

4. Around EUR 43.

28. In the Court's view, the new complaints are not an elaboration of the applicant's original complaint to the Court, lodged more than three years earlier, about the failure of the Mine to comply with the judgments of the Girnytskiy and Petrovskiy Courts of 8 April 1998 and 17 June 1999, and on which the parties have commented. The Court considers, therefore, that it is not appropriate now to take these matters up separately (see *Piryanik v. Ukraine*, no. 75788/01, § 20, 19 April 2005).

II. ADMISSIBILITY

29. The applicant complained about the State authorities' failure to enforce the judgments of the Girnytskiy Court of 8 April 1998 and the Petrovskiy Court of 17 June 1999 in full and in due time. He invoked Article 6 § 1 of the Convention and Article 1 of Protocol No. 1, 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 1 of Protocol No. 1

“Every natural or legal person is entitled to the peaceful enjoyment of his possessions. No one shall be deprived of his possessions except in the public interest and subject to the conditions provided for by law and by the general principles of international law.

The preceding provisions shall not, however, in any way impair the right of a State to enforce such laws as it deems necessary to control the use of property in accordance with the general interest”

A. The Government's preliminary objections

1. *The applicant's victim status*

30. The Government submitted that, since the judgments of the Girnytskiy and Petrovskiy Courts of 8 April 1998 and 17 June 1999 had been enforced, the applicant can no longer be considered a victim of a violation of his rights under Article 6 § 1 or Article 1 of Protocol No. 1. They therefore proposed that the application be declared inadmissible or struck out of the Court's list of cases.

31. The applicant disagreed. In particular, he argued that the judgments had not been enforced in full. He also stated that he had not been paid the

compensation for the pecuniary and non-pecuniary damages, which he had allegedly sustained as a result of the non-enforcement of the aforementioned judgments.

32. The Court observes that it is not clear from the parties' submissions whether these judgments have been enforced in full. However, it assumes that the judgments were enforced in full by 12 September 2003, given the fact that on that date the Bailiffs' Service established that the amounts due under the judgments had been paid to the applicant in full, which the applicant did not contest at the national level.

33. At the same time, the fact that the judgments in the applicant's favour were enforced does not deprive the applicant of his victim status in relation to the period during which the court decisions in his favour remained unenforced (see *Romashov v. Ukraine* judgment, cited above, §§ 26-27). Accordingly, the Court rejects the Government's preliminary objection as to the applicant's lack of victim status.

2. Exhaustion of domestic remedies

34. The Government further contended that the applicant has not exhausted domestic remedies as he did not challenge the actions or inactivity of the State Bailiffs' Service before the domestic courts.

35. The applicant disagreed, stating that he had complained, but that the domestic courts had found against him.

36. The Court considers that, in the light of its findings in similar cases, the Government's objection must be rejected (see *Romashov v. Ukraine*, cited above, §§ 30-33).

B. Other complaints

1. Second set of proceedings

37. The applicant further complained in substance under Article 6 § 1 of the Convention about the outcome of the second set of proceedings before the domestic courts, as the domestic courts had failed to favour his claims for higher sums of disability allowance and for compensation for pecuniary and non-pecuniary damages.

38. The Court reiterates that the rule of exhaustion of domestic remedies referred to in Article 35 § 1 of the Convention obliges applicants to use first the remedies that are normally available and sufficient in the domestic legal system to enable them to obtain redress for the breaches alleged. The Court notes that the applicant did not appeal in cassation to the Donetsk Regional Court against the judgment of the Petrovskiy Court of 17 June 1999. The applicant accordingly cannot be regarded as having exhausted all domestic remedies available to him under Ukrainian law. It follows that this part of

the application must be rejected pursuant to Article 35 §§ 1 and 4 of the Convention.

2. Proceedings against the Bailiffs' Service

39. The applicant also complained in substance under Article 6 § 1 of the Convention about the outcome of the proceedings against the Petrovskiy District Bailiffs' Service, as the Petrovskiy Court found against him in its judgment of 24 September 2002.

40. The Court observes that the applicant failed to appeal against the impugned judgment to the Donetsk Regional Court of Appeal. He therefore cannot be regarded as having exhausted all domestic remedies available to him under Ukrainian law. It follows that this complaint must be rejected pursuant to Article 35 §§ 1 and 4 of the Convention.

3. Remainder of the complaints

41. The applicant finally complained that the failure of the State authorities to enforce the judgments given in his favour violated his rights guaranteed by Articles 1, 2 and 3 of the Convention.

42. The Court reiterates that according to its case-law neither Article 2 nor any other provision of the Convention can be interpreted as conferring on an individual a right to enjoy any given standard of living (see *Wasilewski v. Poland* (dec.), no. 32734/96, 20 April 1999). Similarly, it does not appear that the suffering that he might have experienced was sufficient to amount to inhuman and degrading treatment under Article 3 of the Convention (see *Ireland v. the United Kingdom*, judgment of 18 January 1978, Series A no. 25, § 162). Therefore, this part of the application must be declared inadmissible as being manifestly ill-founded in accordance with Article 35 §§ 3 and 4 of the Convention.

C. Conclusion

43. The Court concludes that the applicant's complaint under Article 6 § 1 of the Convention about the delay in enforcement of the judgments of the Girnytskiy Court of 8 April 1998 and the Petrovskiy Court of 17 June 1999 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 1 Protocol No. 1 cannot be declared inadmissible.

III. MERITS

44. The applicant complained under Article 6 § 1 of the Convention and Article 1 of Protocol No. 1 about the State authorities' failure to enforce the judgments of the Girnytskiy Court of 8 April 1998 and the Petrovskiy Court of 17 June 1999 in due time.

45. In their observations, the Government maintained that the Bailiffs' Service had taken all measures provided for by the domestic legislation to enforce the judgments of the Girnytskiy and Petrovskiy Courts of 8 April 1998 and 17 June 1999. The delay in enforcement was caused by the difficult financial situation of the debtor and the bankruptcy proceedings instituted against it. The Government reiterated that the above judgments had been executed in full and suggested that there was no infringement of Article 6 § 1 of the Convention.

46. The Government further confirmed that the amounts awarded to the applicant by the domestic courts constituted a possession within the meaning of Article 1 of Protocol No. 1. Nevertheless, they maintained that the provision had not been violated, since the applicant's entitlement to the awards was not disputed and he was not deprived of his property. The Government also noted that the delays in payments were due to the difficult economic situation and, therefore, were justified.

47. The applicant disagreed.

48. The Court notes that the judgments of the Girnytskiy Court of 8 April 1998 and the Petrovskiy Court of 17 June 1999 remained unenforced for more than five and four years, respectively.

49. The Court recalls that it has frequently found violations of Article 6 § 1 of the Convention and Article 1 of Protocol No. 1 in cases raising issues similar to the present application (see, for instance, *Sokur v. Ukraine*, no. 29439/02, §§ 30-36, 26 April 2005; and *Voytenko v. Ukraine*, no. 18966/02, §§ 53-55, 29 June 2004).

50. 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 abovementioned periods of time the enforcement of the judgments in the applicant's favour, the State authorities deprived the provisions of Article 6 § 1 of the Convention and Article 1 of Protocol No. 1 of much of their useful effect. There has, accordingly, been a violation of these provisions.

IV. APPLICATION OF ARTICLE 41 OF THE CONVENTION

51. 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

52. The applicant claimed UAH 12,879¹, which are the indexed sums, awarded by the judgments in his favour, in respect of pecuniary damage. The applicant further claimed UAH 30,000² in respect of non-pecuniary damage.

53. The Government maintained that the applicant had failed to claim the amounts of pecuniary damage at the domestic level and had not substantiated the amounts claimed in respect of non-pecuniary damage. The Government further submitted that the finding of a violation would constitute sufficient just satisfaction.

54. The Court notes that the judgments given in the applicants' favour were enforced in full. The Court does not discern any causal link between the violation found and the pecuniary damage alleged; it therefore rejects the claim for pecuniary damage. However, the Court takes the view that the applicant has suffered some non-pecuniary damage as a result of the violations found which cannot be made good by the Court's mere finding of a violation. Nevertheless, the particular amount claimed is excessive. Making its assessment on an equitable basis, as required by Article 41 of the Convention, the Court awards the applicant the sum of EUR 2,520 in respect of non-pecuniary damage.

B. Costs and expenses

55. The applicant did not submit any claim under this head.

C. Default interest

56. 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.

1. Around EUR 2,158.

2. Around EUR 5,027.

FOR THESE REASONS, THE COURT UNANIMOUSLY

1. *Declares* the applicant's complaints under Article 6 § 1 of the Convention and Article 1 of Protocol No. 1 about the delay in enforcement of the judgments of the Girnytskiy District Court of 8 April 1998 and the Petrovskiy District Court of 17 June 1999 admissible and the remainder of the applicant's complaints 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 1 of Protocol No. 1;
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, EUR 2,520 (two thousand five hundred and twenty euros) in respect of non-pecuniary damage, to be converted into the national currency of the respondent State on the date of payment, 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 4 October 2005, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

S. DOLLÉ
Registrar

J.-P. COSTA
President