



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

SECOND SECTION

CASE OF CHERNOBRYVKO v. UKRAINE

(Application no. 11324/02)

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 Chernobryvko 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,

Mrs A. MULARONI,

Mrs E. FURA-SANDSTRÖM,

Ms D. JOČIENĖ,

Mr D. POPOVIĆ, *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. 11324/02) 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 Nikolay Ivanovich Chernobryvko (“the applicant”), on 26 January 2002.

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

3. On 21 June 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 1953 and lives in the town of Lisichansk, the Lugansk region.

5. In 1982 the applicant had a serious accident at work and from that time onwards was entitled to occupational disability benefit – including compensation for a purchase of a car designed for disabled persons – from the Chernomorka coal mine (a State owned entity, hereafter “the Coal Mine”).

6. On 11 June 2001 the Lisichansk City Court awarded the applicant UAH 14,490 (approximately EUR 2,360) against the Coal Mine for its failure to pay compensation for a car.

7. The judgment became effective and was sent for execution to the Lysychansk City Bailiffs' Service (hereafter "the Bailiffs' Service"), which on 14 July 2001 instituted enforcement proceedings in the applicant's case.

8. On 12 November 2001 the Lisichansk City Court informed the applicant that the attachment and sale proceedings concerning the Coal Mine's assets were suspended due to the moratorium on the forced sale of the property of State-owned enterprises.

9. On 29 November 2001 the Ministry of Fuel and Energy ordered the Coal Mine's liquidation, designating the Ukrvuglrestrukrutizatsyya Company as its successor. The coal mine's liquidation commission was established and on 18 February 2002 it was entrusted with the enforcement of the applicant's writ of execution.

10. On 5 June 2003 the Ministry of Fuel and Energy ordered that the Ukrvuglrestrukrutizatsyya Company split up and its funds be divided between the Luganskvuglrestrukrutizatsyya and the Donetskuglrestrukrutizatsyya Companies.

11. On 15 April 2004 the writ of execution was returned unenforced to the Bailiffs' Service, which reopened the enforcement proceedings. On account of the liquidation of the coal mine and the Ukrvuglrestrukrutizatsyya Company the Bailiffs' Service on 6 July 2004 suspended the proceedings pending the replacement of the debtor in the applicant's case.

12. From the parties' submissions it appears that the judgment in the applicant's favour remains unenforced.

II. RELEVANT DOMESTIC LAW

13. Some of the relevant domestic law is set out in the judgments of 27 July 2004 in the case of *Romashov v. Ukraine* (no. 67534/01, §§ 16-19), of 30 November 2004 in the case of *Dubenko v. Ukraine* (no. 74221/01, §§ 22-29) and of 26 April 2005 in the case of *Sokur v. Ukraine* (no. 29439/02, §§ 18 and 22).

THE LAW

14. The applicant complained of the failure of the State authorities to execute the judgment of 11 June 2001 given in his favour. He alleged in substance an infringement of Article 6 § 1 of the Convention and Article 1

of Protocol No. 1 to the Convention, which provide, in so far as relevant, as follows:

Article 6

“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 or to secure the payment of taxes or other contributions or penalties.”

I. ADMISSIBILITY

A. Complaint under Article 8 of the Convention

15. The applicant complained about a violation of Article 8 of the Convention without any specific reasoning.

16. The Court finds no indication whatsoever in the case-file which might disclose any appearance of a violation of this provision. The Court, therefore, rejects this part of the application, in accordance with Article 35 §§ 3 and 4 of the Convention, as being manifestly ill-founded.

B. Complaints under Article 6 § 1 of the Convention and Article 1 of Protocol No. 1 to the Convention

17. The Government contended that the applicant has not exhausted domestic remedies as he did not lodge a claim with the domestic courts to challenge the inactivity of the State Bailiffs' Service or seek to expedite the enforcement proceedings in his case.

18. The applicant contested this submission.

19. The Court recalls its recent case-law on this issue (see *Voytenko v. Ukraine*, no. 18966/02, §§ 28-31, 29 June 2004 and *Shmalko v. Ukraine*, no. 60750/00, §§ 37-39, 20 July 2004). It finds no reason to distinguish the present application from these previous decisions. It concludes therefore

that the applicant was absolved from pursuing the remedy invoked by the Government and has therefore complied with the requirements of Article 35 § 1 of the Convention. The Court further finds the examples supplied by the Government from the domestic case-law of limited assistance in this connection.

20. The Court notes that these complaints are not manifestly ill-founded within the meaning of Article 35 § 3 of the Convention. It further notes that they are not inadmissible on any other grounds. They must, therefore, be declared admissible.

II. MERITS

21. The Government maintained that there was no infringement of Article 6 § 1 of the Convention or of Article 1 of Protocol No.1. They stated that the original non-enforcement of the judgment was caused by the difficult financial situation of the Coal Mine. The Government maintained that, although the debtor company was a State-owned enterprise, it was a separate legal entity and the State could not be held responsible for its debts under domestic law. The Government thus stated that the State's responsibility for the enforcement of the judgment in the applicant's favour was limited to the actions of the bailiffs, who took all necessary steps under domestic legislation to enforce the judgment of 11 June 2001. Furthermore, the period of time when the writ of execution was entrusted to the coal mine's liquidators must, in the Government's view, be exempted from the overall length of the enforcement for which the State can be held accountable.

22. The applicant reiterated that the State was responsible for the delay in the enforcement of the court judgment in his favour.

23. Insofar as the Government maintains that the State cannot be held responsible for the coal mine's debts, the Court recalls that the decision to wind up the coal mine was taken by the Ministry of Fuel and Energy, which, furthermore, disposed of its property as it found fit, ordering the transfer of the Coal Mine's assets first to the Ukrvuglrestrukrutizatsyya Company and then to the Luganskuglrestrukrutizatsyya and the Donetskuglrestrukrutizatsyya Companies. Moreover, the debtor companies operated in a highly regulated area of coal mining, where the State determines, *inter alia*, the amount and the terms of payment of the employees' salaries and benefits (see, *mutatis mutandis*, *Dubenko v. Ukraine*, cited above, §§ 22-29).

24. The Court considers, therefore, that, as in the *Mykhaylenky and Others v. Ukraine* case (see, nos. 35091/02 and following, §§ 44-45, ECHR 2004-...) the Government have failed to demonstrate that the debtor companies enjoyed sufficient institutional and operational independence

from the State to absolve the State from responsibility under the Convention for its acts and omissions.

25. The Court notes that, to date, the judgment given in favour of the applicant remains unenforced in full. In the Court's opinion, given the finding of State liability for the debts owed to the applicant in the present case, the period of non-execution should not be limited to the enforcement stage only, but should include the period of debt recovery in the course of the liquidation proceedings. Consequently, the period of debt recovery in the applicant's case has so far lasted four years and three months (*Mykhaylenky and Others v. Ukraine*, cited above, § 53).

26. The Court further finds it important to distinguish the present case from the decision of 11 January 2005 in *Ganenko v. Ukraine*, where the two years' delay in providing the applicant with a car designed for disabled persons was found to be compatible with the Convention (see *Ganenko v. Ukraine* (dec.), no. 27184/03, 11 January 2005). The Court, first, notes that in the instant case the period of non-execution of the court judgment was considerably longer. Moreover, the argument that "the enforcement of a judgment incorporating a ruling of a non-pecuniary nature may take more time than is the case for payment of money awarded under a court judgment", which the Court relied on in the *Ganenko* decision, cannot be applied to the present case, as it was precisely money (a monetary compensation for the car) which the applicant was awarded by the domestic court and subsequently deprived of due to the State's failure to execute the judgment. Moreover, unlike the present applicant, Mr Ganenko had a vehicle at his disposal while awaiting delivery of the new car.

27. The Court has frequently found violations of Article 6 § 1 of the Convention and of Article 1 of Protocol No. 1 in cases raising similar issues to the ones in the present case (*Romashov v. Ukraine*, cited above, § 46; *Dubenko v. Ukraine*, cited above, §§ 47 and 51; and *Sokur v. Ukraine*, cited above, § 37)

28. Having examined the material submitted to it, the Court finds in the present case that by failing for several years to take the necessary measures to comply with the enforceable judgment in the applicant's favour, the Ukrainian authorities prevented him from receiving the money he could reasonably have expected to receive.

29. There has accordingly been a violation of Article 6 § 1 of the Convention and of Article 1 of Protocol No. 1.

III. APPLICATION OF ARTICLE 41 OF THE CONVENTION

30. 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 and costs and expenses

31. The applicant claimed pecuniary damage related to the amounts awarded to him by the judgment. He further alleged that his non-pecuniary damage amounted to UAH 52,000 (approximately EUR 8,600).

32. The Government did not agree with the applicant's claims. They alleged that they were unsubstantiated.

33. In so far as the judgment in the applicant's favour has not been paid in full (paragraph 12 above), 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 remaining debt owed to the applicant, it would constitute full and final settlement of the case.

34. The Court considers that the applicant's remaining claims are excessive. Making its assessment on equitable basis, as required by Article 41 of the Convention, the Court awards the applicant EUR 2,000 in non-pecuniary damage.

B. Costs and expenses

35. The applicant did not submit any claim under this head within the set time-limit; the Court therefore makes no award in this respect.

C. 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* the complaints concerning Article 6 § 1 of the Convention and Article 1 of the Protocol No. 1 to 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 1 of Protocol No. 1 to 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 judgment debt still owed to him, as well as EUR 2,000 (two thousand euros) in respect of non-pecuniary damage, 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 amount 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