



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

SECOND SECTION

CASE OF CHEREMSKOY v. UKRAINE

(Application no. 7302/03)

JUDGMENT

STRASBOURG

8 November 2005

FINAL

08/02/2006

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 Cheremskoy 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 Mrs S. DOLLĚ, *Section Registrar*,

Having deliberated in private on 11 October 2005,

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

PROCEDURE

1. The case originated in an application (no. 7302/03) 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 Viktor Gavrilovich Cheremskoy (“the applicant”), on 18 February 2003.

2. The Ukrainian Government (“the Government”) were represented by their Agent, Mrs V. Lutkovska.

3. On 23 November 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 1934 and lives in the city of Snizhne, Ukraine.

5. On 12 June 2000 the Snizhne City Court ordered the State Holding Company “Torezantratsit” to pay the applicant UAH 3,448.60¹ in salary arrears and other payments.

1. Around 568 euros – “EUR”.

6. On 26 June 2000 the Torezk City Bailiffs' Service instituted enforcement proceedings in respect of that judgment.

7. On 2 March 2004 the Bailiffs' Service informed the applicant that the judgment of 12 June 2000 could not be executed due to the large number of enforcement proceedings against the debtor, and that the procedure for the forced sale of assets belonging to the debtor has been suspended due to the moratorium on the forced sale of property belonging to State enterprises introduced by the Law of 29 November 2001.

8. On 28 October and 22 December 2004, respectively, the full amount of the judgment debt was paid to the applicant in two instalments of UAH 2,679.70¹ and 768.90².

II. RELEVANT DOMESTIC LAW

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

THE LAW

10. The applicant complained in substance under Articles 6 § 1 and 13 of the Convention about the State authorities' failure to enforce the judgment of the Snizhne City Court of 12 June 2000 in due time. Articles 6 § 1 and 13 of the Convention provide, in so far 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."

1. Around EUR 441.

2. Around EUR 127.

I. ADMISSIBILITY

11. The Government raised objections similar to those which the Court dismissed in the case of *Romashov v. Ukraine* (see the *Romashov* judgment, cited above, §§ 28-33). The Court considers that these objections must therefore be rejected.

12. 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 complaint inadmissible. For the same reasons, the applicant's complaint under Article 13 of the Convention cannot be declared inadmissible.

II. MERITS

13. In their observations, the Government put forward arguments similar to those in the case of *Romashov v. Ukraine*, contending that there was no violation of Articles 6 § 1 and 13 of the Convention (see, the *Romashov* judgment, cited above, §§ 28-33, 37).

14. The applicant disagreed.

15. The Court notes that the judgment the Snizhne City Court of 12 June 2000 remained unenforced for around four years and five months.

16. The Court recalls that it has already found violations of Articles 6 § 1 and 13 of the Convention in cases raising issues similar to the present application (see, for instance, *Sokur v. Ukraine*, no. 29439/02, §§ 36-37, 26 April 2005, and *Voytenko v. Ukraine*, no. 18966/02, §§ 46-48, 29 June 2004).

17. 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. There has, accordingly, been a violation of Articles 6 § 1 and 13 of the Convention.

III. APPLICATION OF ARTICLE 41 OF THE CONVENTION

18. 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

19. The applicant claimed a total of UAH 30,000¹ in respect of pecuniary and non-pecuniary damage, costs and expenses.

20. 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.

21. Making its assessment on an equitable basis, as required by Article 41 of the Convention, the Court considers it reasonable to award the applicant a global sum of EUR 2,120 in respect of pecuniary and non-pecuniary damage, costs and expenses.

B. Default interest

22. 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 application admissible;
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, EUR 2,120 (two thousand one hundred and twenty euros) in respect of pecuniary and non-pecuniary damage, costs and expenses, plus any tax that may be chargeable, 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 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.

1. Around EUR 4,934.

Done in English, and notified in writing on 8 November 2005, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

S. DOLLÉ
Registrar

J.-P. COSTA
President