



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

SECOND SECTION

CASE OF ZAMULA AND OTHERS v. UKRAINE

(Application no. 10231/02)

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 Zamula and Others 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. 10231/02) against Ukraine lodged with the Court under Article 34 of the Convention for the Protection of Human Rights and Fundamental Freedoms (“the Convention”) by three Ukrainian nationals, Mr Vasiliy Ivanovich Zamula (the first applicant), Mrs Natalya Ivanovna Zamula (the second applicant) and Ms Maryna Zamula (the third applicant) (hereinafter “the applicants”), on 19 July 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. On 20 May 2003 the Former Second Section of the Court declared the applicants’ complaints partly inadmissible. It decided to adjourn the examination of the applicants’ complaints regarding the lengthy non-enforcement of a judgment, the unreasonable length of the proceedings in the applicants’ case and the alleged absence of effective domestic remedies for those complaints (Articles 6 § 1 and 13 of the Convention) and to communicate these complaints to the respondent Government for observations. The Court also decided to apply Article 29 § 3 of the Convention and to examine the admissibility and merits of the case together.

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

6. On 1 November 2004 the Court changed the composition of its Sections (Rule 25 § 1). This case was assigned to the newly composed Second Section (Rule 52 § 1).

THE FACTS

7. The first applicant was born on 12 January 1952 and currently resides in Yevpatoria, the Crimea. He lodged his application with the Court on behalf of his wife (the second applicant), who died on 25 October 2001, and on behalf of his youngest daughter (the third applicant), born in 1980.

I. THE CIRCUMSTANCES OF THE CASE

8. On 31 July 1997 police sergeant B.A.I. of the Shostka City Police Department, while under the influence of alcohol, fatally wounded the applicant's eldest daughter, Mrs Iryna Yachmeneva (born Zamula).

9. On 3 March 1998 the Sumy Regional Court sentenced B.A.I. to 14 years' imprisonment following his conviction for the murder of the applicant's daughter, attempted murder of other persons and abuse of power. It also ordered the Shostka District Police Department to pay UAH 65,114.20¹ to the first applicant and his deceased daughter's mother (the second applicant), youngest sister (the third applicant) and her former husband Mr Aleksandr Yachmenev.

10. On 7 April 1998 the Supreme Court of Ukraine upheld this decision.

11. The execution proceedings commenced on 19 May 1998.

12. On 15 May 2000 the Shostka City Execution Service informed the first applicant that UAH 1,223.56² were to be paid to the family, but that it was not possible to execute the decision in full. It also informed him that the outstanding debt was UAH 63,805.64³, of which UAH 19,405.64⁴ was to be paid to the first applicant and UAH 14,800⁵ to each of the other victims.

13. In October 2000 the Sumy Regional Department of the Ministry of the Interior (the "Sumy Department") underwent reorganisation and the Shostka District Department of the Interior was joined to the City Department of the Interior.

14. On 9 February 2001 the Sumy Regional Court declared the Shostka City Department of the Ministry of the Interior to be the legal successor to the debt awarded to the applicants by the judgment of 3 March 1998.

1. EUR 14,055.4.

2. EUR 240.14.

3. EUR 12,184.9.

4. EUR 3,705.89.

5. EUR 2,953.15.

15. On 5 July 2001 the Bailiffs terminated the execution proceedings due to the Shostka City Police Department's lack of funds. It was noted in the resolution that the writ of execution could be reintroduced for enforcement before 5 July 2004.

16. On 9 July 2001 the Sumy Regional Department of Justice informed the first applicant of the Police Department's lack of funds. It also informed him that he could reapply for execution of the judgment of 3 March 1998 within a three-year period.

17. The second applicant died on 25 October 2001.

18. On 2 November 2001 the first applicant informed the Court that he was the guardian of Ms Ekaterina Yachmeneva, born in 1995, the child of his murdered daughter, whose father (A.Y.) had been divested of his parental rights.

19. On 16 July 2003 the Sumy Department informed the applicants that the awards were available for payment and they could receive them after presentation of the writs of execution of the judgment of 3 March 1998.

20. The first applicant received this letter on 22 July 2003.

21. On 21 January 2004 the Department of the Ministry of Justice urged the applicants to accept the sums awarded to them by the judgment of 3 March 1998. It mentioned that, in the event that the applicants refused these sums, their further recovery would be impossible and that "further consideration of the case would be discontinued".

22. On 18 November 2003 and 22 March 2004 the Ministry of Justice informed the Court that the applicants had failed to reintroduce the execution writs at the State Bailiffs' Service.

23. On 18 March 2004 the first applicant informed the Court that he was aware of the expiry of the writs of execution in the case.

24. On 13 April 2004 the first applicant instituted proceedings in the Yevpatoria City Court, seeking to renew the time-limit for a request to become the heir of his deceased wife. On 15 May 2004 the Yevpatoria City Court allowed his request.

25. On 23 April 2004 the first applicant reintroduced the execution writs with the Shostka Bailiffs' Service in order to collect the UAH 15,000¹ in compensation for moral damage and UAH 5,114.2² in compensation for pecuniary damage. The Shostka Bailiffs' Service reinitiated the enforcement proceedings in the applicants' case on the same date.

26. On 22 June 2004 the first applicant received the full amounts awarded to him and his daughter. The enforcement proceedings with regard to the first applicant and his daughter were terminated on 30 June 2004. The writs of enforcement with regard to the award given to the first applicant's deceased wife remained with the Bailiffs' Service, as the Yevpatoria City

1. EUR 2,434.06.

2. EUR 829.86.

Court was still considering the first applicant's request to become the heir of his deceased wife.

27. On 27 April 2005 the applicant informed the Court that the inheritance proceedings were still pending before the Yevpatoria City Court.

II. RELEVANT DOMESTIC LAW AND PRACTICE

28. The relevant domestic law and practice are set out in the judgments of *Romashov v. Ukraine* (no. 67534/01, §§ 16-18, 27 July 2004), *Dubenko v. Ukraine* (no. 74221/01, §§ 21-23, 11 January 2005) and *Voytenko v. Ukraine* (no. 18966/02, §§ 20-25, 29 June 2004).

THE LAW

29. The applicants complained about the State authorities' failure to execute the judgment of 3 March 1998 in due time. They 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."

30. The applicants further alleged that the non-execution of the judgment given in their favour constituted an infringement of Article 13 of the Convention, which reads as follows:

"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."

I. ADMISSIBILITY

A. Preliminary considerations

Objection to the applicant lodging an application on behalf of his daughter and his deceased wife

31. The Government objected to the representation of Ms Maryna Zamula by the first applicant (her father). In particular, they stated that Mr Vasiliy Zamula had failed to provide a letter of authority to act on her behalf. They further claimed that the first applicant had not become a successor to his deceased wife and therefore could not claim to be a victim in respect of the non-enforcement of the judgment given in her favour.

32. As to the first applicant's lack of standing to represent his daughter (the third applicant), the Court recalls that where applicants choose to have a representative under Rule 36 of the Rules of Court, it is a requirement, under Rule 45 § 3 of the Rules of Court, that a power of attorney or written authority to act shall be supplied by him/her (see *Falkovych v. Ukraine* (dec.), no. 64200/00, 29 June 2004). Such a written formal letter of authority was not given by the first applicant's daughter to her father. It was assumed, from the applicant's submissions, that Ms Zamula was a minor and her father was therefore considered to be her legal representative in the proceedings before the Court.

33. However, it appears from the case-file that the domestic authorities addressed Ms Maryna Zamula as a separate applicant in the enforcement proceedings, suggesting that she should collect the money due to her (in a letter of 21 January 2004 of the Ministry of Justice No. 01-7/28), and the case-file contains correspondence with the Court signed by Ms Maryna Zamula (for instance, a letter of 18 September 2003 signed by the first applicant and the third applicant). In these circumstances, the Court is of the opinion that the Government's objection as to the lack of standing of Ms Zamula to pursue her application must be dismissed. The Court also considers that Mr Vasiliy Zamula has standing to represent Ms Maryna Zamula in the proceedings before the Court.

34. As to the second branch of the Government's objection, the Court recalls that the concept of "victim" in Article 34 of the Convention must be interpreted autonomously and independently of domestic law concepts, such as for instance the capacity to bring or take part in legal proceedings (see, *Greek Federation of Customs Officers, Gialouris and others v. Greece*, no. 24581/94, Commission decision of 6 April 1995, DR 81-B, p. 127). The Court recalls that an application may be pursued in the name of a deceased person by a person of the required standing, such as a relative or an heir to the estate (see, among many other authorities, *Ahmet Sadik v. Greece*, judgment of 15 November 1996, *Reports of Judgments and Decisions* 1996-V, §§ 26). It considers therefore that the Government's submission on the inheritance question has little relevance to the proceedings before the Court and must be rejected (see paragraph 26 above).

B. Admissibility of the complaints under Article 6 § 1 of the Convention

35. The Government submitted that the applicants had failed to reintroduce the writs of execution returned to them in 2001, which therefore meant that the applicants had lost interest in the enforcement of the judgment at issue. The Government further maintained that the applicant had not applied to the Court in order to be recognised as the successor to his deceased wife. They also contended that the applicants had not exhausted

domestic remedies as they had not lodged a claim with the domestic courts to challenge the inactivity of the State Bailiffs' Service or sought to expedite the enforcement proceedings in his case. They proposed therefore to declare this application inadmissible as manifestly ill-founded or for non-exhaustion.

36. The applicants disagreed. In particular, the first applicant mentioned that he did not reintroduce the writs of execution as he was awaiting a decision of the Court in the case and was not sure how it would influence the outcome of the proceedings before it. He further mentioned that he was not recognised as the legal successor of his deceased wife in relation to the judgment of 3 March 1998, and therefore could not collect the sums due to her.

37. The Court takes into account the Government's willingness to enforce the judgment given in the applicants' favour and considers that the readiness of the Government to enforce the judgment at issue redresses the issue of non-execution as such. However, the delayed partial execution of the judgment, after the communication of the case to the respondent Government, has not replied to the applicants' complaint about the violation of their rights guaranteed by Article 6 § 1 in relation to the period during which the judgment of 3 March 1998 remained unenforced (see, *Skubenko v. Ukraine* (dec.), no. 41152/98, 6 April 2004).

38. As to the Government's objection as to the failure of the applicants to exhaust domestic remedies, the Court recalls that a similar objection has already been rejected in a number of judgments given by the Court (see *Romashov v. Ukraine*, no. 67534/01, § 32, 27 July 2004).

39. Accordingly, the aforementioned objections of the Government must be dismissed and the applicants' complaints under Article 6 § 1 of the Convention must be declared admissible.

C. Admissibility of the applicants' complaints under Article 13 of the Convention

40. The Court refers to its reasoning under Article 6 § 1 of the Convention in relation to Article 35 § 1 (paragraphs 35 - 39 above), which is equally pertinent to the applicants' Article 13 complaint. Consequently, the Court finds that this complaint is not manifestly ill-founded or indeed inadmissible on any other ground cited in Article 35 of the Convention. It must therefore be declared admissible.

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

41. The Government suggested that there was no infringement of Article 6 § 1 of the Convention as the applicants had lost interest in the

enforcement of the judgment of 3 March 1998 because they had failed to reintroduce the writs of execution with the State Bailiffs' Service.

42. The applicants disagreed. They stated that there was a violation of Article 6 § 1 of the Convention as the judgment of 3 March 1998 was not enforced for a lengthy period of time.

43. The Court observes that the judgment at issue remained unenforced until 16 July 2003 when the full amount of the debt became available to the applicants, after communication of the application to the respondent Government. The Court takes into account that the applicants were duly notified about the possibility to recover the award established by the judgment of 3 March 1998 (see paragraph 18 above). However, they failed to reintroduce the relevant execution writs with the State authorities and thus the writs of execution expired on 5 July 2004.

44. Notwithstanding the fact that the applicants failed to reintroduce their execution writs and of the pending inheritance proceedings in relation to the Ministry of the Interior's debt with regard to the second applicant, the Court nevertheless considers that by failing for five years, four months and thirteen days (see paragraph 18 above) to take the necessary measures to comply with the judgment of 3 March 1998, the authorities deprived the provisions of Article 6 § 1 of the Convention of all useful effect. It further considers that the Government have not advanced any convincing justification for this delay (see *Shmalko v. Ukraine*, no. 60750/00, judgment of 20 July 2004, § 45).

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

III. ALLEGED VIOLATION OF ARTICLE 13 OF THE CONVENTION

46. The Court refers to its findings in the present case as to violation of Article 6 § 1 of the Convention (at paragraphs 43-45 above), as well as the Government's argument regarding domestic remedies. For the same reasons, the Court concludes that the applicants 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 present proceedings (see *Voytenko v. Ukraine*, no. 18966/02, §§ 46-48, 29 June 2004). Accordingly, there has been a breach of this provision.

IV. APPLICATION OF ARTICLE 41 OF THE CONVENTION

47. The applicant on behalf of himself, his deceased wife and his daughter sought just satisfaction under Article 41 of the Convention, which 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

48. The applicants claimed pecuniary damage relating to the amounts awarded to them by the judgment. They initially sought non-pecuniary damage in the sum of USD 10,000 for each of the applicants (approximately EUR 8,000).

49. Making an assessment on an equitable basis, as required by Article 41 of the Convention, the Court awards the first and third applicants the sum of EUR 2,560 each in compensation for pecuniary and non-pecuniary damage. As to the (deceased) second applicant, the Court notes that her heirs, once appointed, will be entitled to enforce the judgment in her favour. In respect of non-pecuniary damage, it awards the sum of EUR 2,560, to be paid to the second applicant’s estate.

50. As to the costs allegedly incurred by the first applicant, who represented the other applicants before the Court, the Court finds that no valid documents proving that the applicant actually incurred such costs were provided to the Court. However, it considers that the first applicant incurred some costs in the proceedings before it. It therefore awards the first applicant EUR 100 for costs and expenses.

B. Default interest

51. 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 remainder of 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 to the first and third applicants and to the estate of the second applicant, within three months from the date on which the judgment becomes final according to Article 44 § 2 of the Convention, the sum of EUR 2,560 (two thousand five hundred and sixty euros) each in respect of pecuniary and non-pecuniary damage, and also to the first applicant the sum of EUR 100 (one hundred euros) in respect of 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 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 applicants' claim for just satisfaction.

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