



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

SECOND SECTION

CASE OF KOZHANOVA v. UKRAINE

(Application no. 27349/03)

JUDGMENT

STRASBOURG

22 November 2005

FINAL

22/02/2006

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 Kozhanova 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. JOČIENĖ,

Mr D. POPOVIĆ, *judges*,

and Mrs S. DOLLÉ, *Section Registrar*,

Having deliberated in private on 3 November 2005,

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

PROCEDURE

1. The case originated in an application (no. 27349/03) 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, Mrs Tatyana Vasilyevna Kozhanova (“the applicant”), on 16 August 2003.

2. 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 1958 and lives in the village of Ivanivka, the Lugansk region of Ukraine.

A. First set of proceedings

5. On 6 September 2000 the Krasnolutchsk City Court ordered the Krasnolutchska State Mine to supply the applicant with 8,850 kg of coal.

6. On 6 October 2000 the Krasnolutchsk City Bailiffs' Service instituted enforcement proceedings in respect of that judgment.

7. On 5 May 2003 the Bailiffs' Service informed the applicant that the judgment could not be enforced due to the large number of enforcement proceedings against the debtor and the fact that the procedure for the forced sale of assets belonging to the debtor had been suspended because of the moratorium on the forced sale of property belonging to State enterprises introduced by the Law of 29 November 2001.

8. On 21 October 2004 the judgment was enforced in full.

B. Second set of proceedings

9. On 30 July 2003 the same court ordered the Mine to supply the applicant with another 8,850 kg of coal.

10. On 1 September 2003 the Krasnolutchsk City Bailiffs' Service instituted enforcement proceedings in respect of the judgment of 30 July 2003.

11. On 19 October 2004 that judgment was also enforced in full.

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 in substance 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 Krasnolutchsk City Court of 6 September 2000 and 30 July 2003 in due time. Article 6 § 1 of the Convention and Article 1 of Protocol No. 1 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”

14. The Court notes that the above complaints concern two judgments, the delays in the enforcement of which vary significantly. Thus, the complaints about the length of the non-enforcement of each judgment will be examined separately.

A. The applicant’s complaint about the length of the non-enforcement of the judgment of 6 September 2000

15. The Government raised an objection regarding the applicant’s victim status similar to that which the Court has already dismissed in the case of *Romashov v. Ukraine* (see the *Romashov* judgment, cited above, §§ 23-27). The Court considers that the present objection must be rejected for the same reasons.

16. The Court takes the view that this aspect of the case 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 it inadmissible.

B. The applicant’s complaint about the length of the non-enforcement of the judgment of 30 July 2003

17. The Government contended that the delay in the enforcement of the judgment of 30 July 2003 did not exceed the “reasonable time” requirement contained in Article 6 § 1 of the Convention. They therefore proposed that this part of the application be declared inadmissible.

18. The applicant generally disagreed.

19. The Court observes that the enforcement proceedings in respect of the judgment of 30 July 2003 commenced on 1 September 2003 and were completed by the Bailiffs’ Service on 19 October 2004. Therefore, the period during which the enforcement proceedings were pending lasted around one year and one month. The Court notes that, given its findings in previous, similar cases against Ukraine (see, for instance, *Kornilov and Others v. Ukraine* (dec.), no. 36575/02, 7 October 2003), this period is not so excessive as to raise an arguable claim under the Convention. It follows that this part of the application is manifestly ill-founded within the meaning

of Article 35 § 3, and must be rejected pursuant to Article 35 § 4 of the Convention.

II. MERITS

20. The Court will now examine the merits of the applicant's complaint about the length of the non-enforcement of the judgment of the Krasnolutchsk City Court of 6 September 2000.

21. In their observations, the Government contended that there had been no violation of Article 6 § 1 of the Convention or Article 1 of Protocol No. 1 (as in the cases of *Romashov*, cited above, § 37, and *Voytenko v. Ukraine*, no. 18966/02, § 37, judgment of 29 June 2004).

22. The applicant disagreed.

23. The Court notes that the judgment of the Krasnolutchsk City Court of 6 September 2000 remained unenforced for more than four years and one month.

24. The Court recalls that it has already 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, *Voytenko*, cited above, §§ 39-43 and 53-55).

25. 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 Article 6 § 1 of the Convention and Article 1 of Protocol No. 1.

III. APPLICATION OF ARTICLE 41 OF THE CONVENTION

26. 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

27. The applicant claimed UAH 500¹ in respect of pecuniary damage and costs and expenses. The applicant further claimed EUR 3,000 in respect of non-pecuniary damage.

28. The Government had no objections to the amount claimed in respect of pecuniary damage and costs and expenses. However, they contended that

1. Around EUR 82.

the applicant had not substantiated the remainder of her claims and submitted that the finding of a violation would constitute sufficient just satisfaction in respect of non-pecuniary damage.

29. 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 1,960 in respect of pecuniary and non-pecuniary damage, costs and expenses.

B. Default interest

30. 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 Article 6 § 1 of the Convention and Article 1 Protocol No. 1 about the length of the non-enforcement of the judgment of the Krasnolutchsk City Court of 6 September 2000 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;
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 1,960 (one thousand nine hundred and sixty 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.

Done in English, and notified in writing on 22 November 2005, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

S. DOLLÉ
Registrar

J.-P. COSTA
President