



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

SECOND SECTION

CASE OF MELNIKOVA v. UKRAINE

(Application no. 24626/03)

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 Melnikova 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. 24626/03) 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, Ms Nataliya Mikhaylovna Melnikova (“the applicant”), on 19 July 2003.

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

3. On 13 October 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 1956 and lives in the city of Lozova, Ukraine.

5. On 14 April 1999 the Lozova Town Court ordered the Lozova Town Department of Education to pay the applicant UAH 1,407.14¹ in salary arrears.

1. Around 230 euros – “EUR”.

6. On 7 June 1999 the Lozova Town Bailiffs' Service instituted enforcement proceedings in respect of that judgment.

7. In October 2001 the applicant instituted proceedings in the same court against the Bailiffs' Service for failure to enforce the judgment in her favour. On 24 May 2002 the court found against the applicant, finding no fault on the part of the Bailiffs. The court held that the judgment could not be enforced because of a lack of funds in the State budget.

8. On 13 August 2002 and 30 January 2003, respectively, the Kharkiv Regional Court of Appeal and the Supreme Court of Ukraine upheld the judgment of 24 May 2002.

9. On 24 November 2004 the judgment of 14 April 1999 was enforced in full.

II. RELEVANT DOMESTIC LAW

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

THE LAW

11. The applicant complained about the State authorities' failure to enforce the judgment of the Lozova Town Court of 14 April 1999 in due time. She 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"

I. ADMISSIBILITY

12. The Government raised objections regarding the applicant's victim status and exhaustion of domestic remedies similar to those which the Court has already dismissed in the case of *Romashov v. Ukraine* (see the *Romashov* judgment, cited above, §§ 23-33). The Court considers that the present objections must be rejected for the same reasons.

13. The Court concludes that the application 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.

II. MERITS

14. 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).

15. The applicant disagreed.

16. The Court notes that the judgment of the Lozova Town Court of 14 April 1999 remained unenforced for more than five years and seven months.

17. 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).

18. Having examined all the material submitted to it, the Court considers that the Government have not put forward any fact or convincing 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

19. 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

20. The applicant claimed UAH 1,051¹ in respect of pecuniary damage, as compensation for the delay in payment of the judgment debt. The applicant further claimed UAH 5,000² in respect of non-pecuniary damage.

21. 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.

22. The Court finds the applicant's claims to be reasonable and therefore awards them in full, i.e. a total of about EUR 990.

B. Costs and expenses

23. The applicant did not submit any claim under this head. The Court therefore makes no award.

C. Default interest

24. 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 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 990 (nine hundred and ninety euros) in respect of pecuniary and non-pecuniary damage, 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

1. Around EUR 172.

2. Around EUR 818.

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