



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

SECOND SECTION

CASE OF MIROSHNICHENKO v. UKRAINE

(Application no. 29420/03)

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 Miroshnichenko 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. 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. 29420/03) 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 Yuriy Pavlovich Miroshnichenko (“the applicant”), on 27 August 2003.

2. The applicant was represented by Mr O. Derevyanko, a lawyer practising in Pavlograd. 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 1942 and lives in the city of Pavlograd, Ukraine.

5. The applicant is the former employee of the Pavlogradska State Mine. He is suffering from an occupational disease.

6. On 24 January 2002 the Pavlograd City Court ordered the mine to pay the applicant UAH 24,352¹ in occupational disability allowance arrears.

7. On 27 February 2002 the Pavlograd City Bailiffs' Service instituted enforcement proceedings in respect of that judgment.

8. According to the Government, the judgment was partially enforced in instalments: during the periods of April – December 2002 and August – December 2003 the applicant received a total of UAH 10,227², and on 19 July 2004 he received UAH 1,972³.

9. On 12 October 2004 the applicant was paid the remaining amount of the judgment debt (UAH 12,153⁴).

10. On 15 October 2004 the Bailiffs' Service terminated the enforcement proceedings in view of the full enforcement of the judgment given in the applicant's favour.

II. RELEVANT DOMESTIC LAW

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

THE LAW

12. The applicant complained about the State authorities' failure to enforce the judgment of the Pavlograd City Court of 24 January 2002 in due time. He invoked Article 6 § 1 of the Convention, which provides, 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. ...”

I. ADMISSIBILITY

13. 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

1. Around 3,981 euros – “EUR”.

2. Around EUR 1,671.

3. Around EUR 323

4. Around EUR 1,987.

Romashov judgment, cited above, §§ 23-33). The Court considers that the present objections must be rejected for the same reasons.

14. The Court concludes that the applicant's complaint 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

15. In their observations, the Government contended that there had been no violation of Article 6 § 1 of the Convention (as in the case of *Romashov*, cited above, § 37).

16. The applicant disagreed.

17. The Court notes that the judgment of the Pavlograd City Court of 24 January 2002 remained unenforced for more than two years and eight months. It also notes that, notwithstanding the fact that the debts were paid to the applicant in instalments, a substantial amount of the award against the debtor company was fully paid to the applicant only after the communication of the application to the respondent Government.

18. The Court recalls that it has already found a violation of Article 6 § 1 of the Convention in cases raising issues similar to the present application (see, for instance, *Sharko v. Ukraine*, no. 72686/01, §§ 40-42, 19 April 2005).

19. 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.

III. APPLICATION OF ARTICLE 41 OF THE CONVENTION

20. 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

21. The applicant claimed UAH 20,000¹ in respect of pecuniary damage, as compensation for the delay in payment of the judgment debt. The applicant further claimed UAH 35,000² in respect of non-pecuniary damage.

1. Around EUR 3,269.

2. Around EUR 5,721.

22. 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.

23. 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 1,280 in respect of pecuniary and non-pecuniary damage.

B. Costs and expenses

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

C. Default interest

25. 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*
 - (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 1,280 (one thousand two hundred and eighty 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 equal to the marginal lending rate of the European Central Bank during the default period plus three percentage points;
4. *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