



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

SECOND SECTION

CASE OF OVCHARENKO v. UKRAINE

(Application no. 5578/03)

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 Ovcharenko v. Ukraine,

The European Court of Human Rights (Second Section), sitting as a Chamber composed of:

Mr J.-P. COSTA, *President*,

Mr I. CABRAL BARRETO,

Mr K. JUNGWIERT,

Mr V. BUTKEVYCH,

Mr M. UGREKHELIDZE,

Mrs A. MULARONI,

Mrs E. FURA-SANDSTRÖM, *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. 5578/03) 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 Sergeyevich Ovcharenko (“the applicant”), on 30 January 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 1946 and lives in the city of Lugansk, Ukraine.

5. On 17 April 2000 the Leninsky District Court of Lugansk ordered the State Enterprise “Luganskyi Stankobudivnyi Zavod” to pay the applicant UAH 1,219.10¹ in salary arrears and other payments.

1. Around 200 euros – “EUR”.

6. On 20 July 2000 the Leninsky District Bailiffs' Service instituted enforcement proceedings in respect of that judgment.

7. In May 2001 the applicant lodged with the Leninsky District Court of Lugansk a complaint alleging the unlawfulness of the Bailiffs' Service's inactivity in respect of the enforcement of the judgment in his favour. On 15 May 2001 the court found against the applicant, finding no fault on the part of the Bailiffs. The applicant did not appeal in cassation against that decision.

8. In March 2002 the applicant instituted proceedings in the same court against the Bailiffs' Service seeking compensation for failure to enforce the judgment. On 7 May 2002 the court rejected the applicant's claim as being unsubstantiated.

9. On 12 September 2002 and 5 May 2003, respectively, the Lugansk Regional Court of Appeal and the Supreme Court of Ukraine upheld the judgment of 7 May 2002.

10. In two instalments of 11 and 27 October 2004 the amount of the judgment debt was transferred to the Bailiffs' deposit account. On the same dates the applicant was invited to provide the Bailiffs' Service with his bank account details in order that they transfer the amount of the award.

11. The applicant informed the Bailiffs' Service that he did not wish to take the money before the Court decided on his application.

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 about the State authorities' failure to enforce the judgment of the Leninsky District Court of Lugansk of 17 April 2000 in due time. He invoked Articles 6 § 1 and 13 of the Convention, 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 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.”

A. The Government’s preliminary objections

14. 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.

15. The Court concludes that the applicant’s complaints under Articles 6 § 1 and 13 of the Convention raise 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 part of the application inadmissible.

B. Other complaints

16. The applicant further complained about a violation of Article 2 (the right to life) and Article 4 (freedom from slavery) of the Convention on account of the non-enforcement of the judgment in his favour.

17. The Court finds that this part of the application is wholly unsubstantiated and must therefore be rejected as being manifestly ill-founded, pursuant to Article 35 §§ 3 and 4 of the Convention.

II. MERITS

18. The Court will now examine the merits of the applicant’s complaint about the length of the non-enforcement of the judgment of the Leninsky District Court of Lugansk of 17 April 2000.

19. In their observations, the Government contended that there had been no violation of Articles 6 § 1 or 13 of the Convention (as in the case of *Romashov*, cited above, §§ 28-33 and 37).

20. The applicant disagreed.

21. The Court notes that the judgment in question remained unenforced for more than four years and six months, and that there was no effective remedy at the applicant’s disposal to redress that delay.

22. 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, the *Romashov* judgment, cited above, §§ 42-46, and *Voytenko v. Ukraine*, no. 18966/02, §§ 46-48, 29 June 2004).

23. 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 Articles 6 § 1 and 13 of the Convention.

III. APPLICATION OF ARTICLE 41 OF THE CONVENTION

24. 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

25. The applicant claimed UAH 3,000¹ in respect of pecuniary damage and UAH 1002 in relation to his postal expenses. He also claimed EUR 10,000 in respect of non-pecuniary damage.

26. The Government contended that the applicant had not substantiated the amounts claimed in respect of pecuniary and non-pecuniary damage and submitted that the finding of a violation would constitute sufficient just satisfaction. The Government further maintained that the applicant’s postal expenses were only partly justified.

27. 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 2,160 in respect of pecuniary and non-pecuniary damage, costs and expenses.

B. Default interest

28. 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.

1. Around EUR 490.

2. Around EUR 17.

FOR THESE REASONS, THE COURT UNANIMOUSLY

1. *Declares* the applicant's complaints under Articles 6 § 1 and 13 of the Convention 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 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 2,160 (two thousand one 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