



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

SECOND SECTION

CASE OF ROMANCHENKO v. UKRAINE

(Application no. 5596/03)

JUDGMENT

STRASBOURG

22 November 2005

FINAL

22/02/2006

This version was rectified on 21 March 2006 under Rule 81 of the Rules of the Court.

In the case of Romanchenko 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 V. BUTKEVYCH,

Mrs A. MULARONI,

Mrs E. FURA-SANDSTRÖM,

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. 5596/03) 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 Lidiya Grygorivna Romanchenko (“the applicant”), on 28 January 2003.

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

3. On 21 January 2005 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 1947 and lives in the village of Mykolaivka, Donetsk region, Ukraine.

5. In 2000 the applicant instituted proceedings in the Slovyansky Town Court against her employer, the State-owned “Slovyansky Keramichny Kombinat” company, to recover salary arrears. On 6 September 2000 the

court awarded the applicant UAH 3,485.10¹ in salary arrears and compensation for damages.

6. On several occasions the applicant was informed by the Bailiffs' Service that the judgment could not be enforced due to the large number of enforcement proceedings against the debtor, and that the procedure for the forced sale of assets belonging to the debtor was blocked by the Law on the Introduction of a Moratorium on the Forced Sale of Property of 26 November 2001.

7. In 2002 the applicant lodged a complaint with the Slovyansky Town Court against the Bailiffs' Service for failure to enforce the judgment of 6 September 2000. On 23 May 2003, the court rejected her complaint as unsubstantiated. The court found that the Bailiffs were prohibited from attaching the debtor's property and, therefore, could not be held responsible for the non-enforcement of the judgment.

8. In August 2004 the liquidation of the debtor was initiated and, on 7 December 2004, the Bailiffs' Service transferred the execution writs to the liquidation commission.

9. The judgment of 6 September 2000 in the applicant's favour remains unenforced.

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 of an alleged failure by the State authorities to execute the judgment of 6 September 2000 given in her favour. 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

¹ Around 569.49 euros (EUR)

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 or to secure the payment of taxes or other contributions or penalties.”

I. ADMISSIBILITY

A. The Government’s preliminary objection

12. The Government contended that the applicant had not exhausted domestic remedies regarding the Bailiffs’ Service and the expedition of proceedings. They further maintained that the applicant could claim compensation for the delay in the enforcement of the judgment. They submitted examples of domestic case law in which people had successfully obtained compensation from the Bailiffs for such delays.

13. The applicant contested this submission, stating that she had no effective remedies to exhaust in her particular situation, since the non-enforcement of the judgment given in her favour had been caused by legislative restrictions and not by the actions of the Bailiffs.

14. The Court notes that a similar point has already been dismissed in a number of Court judgments (see *Voytenko v. Ukraine*, no. 18966/02, §§ 29-31, 29 June 2004; *Chernyayev v. Ukraine*, no. 15366/03, § 25, 26 July 2005). In such cases the Court has found that the applicants were absolved from pursuing the remedies invoked by the Government. The domestic case-law presented by the Government does not demonstrate such sufficient consistency as might enable the Court to reach a different conclusion as to the effectiveness of this remedy in cases of the present kind.

15. In the light of the above considerations, the Court dismisses the Government’s preliminary objection.

B. The applicant’s complaints

16. In the light of the parties’ submissions, the Court concludes that the applicant’s complaint under Article 6 § 1 of the Convention 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 this part of the application inadmissible. For the same reasons, the applicant’s complaint under Article 1 of Protocol No.1 cannot be declared inadmissible.

II. MERITS

A. The applicant's complaints under Article 6 § 1 of the Convention

17. The Government maintained that the delay in the enforcement of judgment had been caused by the difficult financial situation of the debtor and by the bankruptcy proceedings against it. They further maintained that the Bailiffs performed all necessary actions to enforce the judgment and could not be held liable for the delays. They contended that there was no infringement of Article 6 § 1 of the Convention as the enforcement proceedings had not exceeded the "reasonable time" requirement.

18. The applicant maintained that the enforcement proceedings were excessively long and therefore her rights were violated.

19. The Court notes that the decision of 6 September 2000 has remained unenforced for more than five years and two months.

20. The Court considers that by delaying for so long the enforcement of the judgment in the applicant's case, the authorities deprived the provisions of Article 6 § 1 of the Convention of much of their useful effect. The Court finds 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).

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

B. The applicant's complaints under Article 1 of Protocol No. 1.

22. The Government in their submissions confirmed that the amount awarded to the applicant by the domestic court constituted a possession within the meaning of Article 1 of Protocol No. 1. Nevertheless, the Government maintained that the provision had not been violated since the applicant's entitlement to the award was not disputed and she was not deprived of her property. The Government noted that the delay in payment was due to the difficult economic situation of the debtor and the large number of enforcement proceedings against it. Therefore, in the Government's opinion, the delay in enforcement was justified by the public interest of balancing the interests of the applicant with those of other creditors.

23. The applicant disagreed and maintained that the State had prevented her having the peaceful enjoyment of her possessions.

24. The Court recalls its case-law that the impossibility for an applicant to obtain the execution of a judgment in his or her favour constitutes an interference with the right to the peaceful enjoyment of possessions, as set out in the first sentence of the first paragraph of Article 1 of Protocol No. 1

(see, among other authorities, *Burdov v. Russia*, no. 59498/00, § 40, ECHR 2002-III; *Jasiūnienė v. Lithuania*, no. 41510/98, § 45, 6 March 2003).

25. In the instant case the Court is therefore of the opinion that the impossibility for the applicant to obtain the execution of her judgement for a period of more than five years constituted an interference with her right to the peaceful enjoyment of her possessions.

26. By failing to comply with the judgment of the Slovyansky Town Court, the national authorities have prevented, and still prevent the applicant, for a considerable period of time, from receiving the money to which she is entitled. The Government have not advanced any convincing justification for this interference, and the Court considers that the economic difficulties of the debtor cannot justify such an omission. Accordingly there has also been a violation of Article 1 of Protocol No. 1.

III. APPLICATION OF ARTICLE 41 OF THE CONVENTION

27. 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

1. *Pecuniary damage*

28. The applicant claimed UAH 584.45¹ in compensation for inflation losses.

29. The Government maintained that the applicant could claim such compensation at the domestic level.

30. In view to its findings in the instant case (see paragraphs 14-15 above), the Court considers that the applicant was absolved from pursuing the litigation suggested by the Government. The Court notes that the applicant presented a detailed calculation of her losses caused by inflation, together with supporting documents. Therefore the Court awards the claimed amount in full.

31. In so far as the judgment in the applicant's favour has not been paid (paragraph 9 above), the Court notes that the State's outstanding obligation to enforce that judgment is not in dispute. Accordingly, the Court considers that, if the Government were to pay the judgment debt² owed to the

¹ EUR 95

² UAH 3,485.10 (currently around EUR 569.49)

applicant, it would constitute full and final settlement of her claim for pecuniary damage.

2. Non-pecuniary damage

32. The applicant further claimed EUR 4,000 in respect of non-pecuniary damage.

33. The Government maintained that this claim is exorbitant and unsubstantiated.

34. The Court takes the view that the applicant has suffered some non-pecuniary damage as a result of the violations found which cannot be made good by the Court's mere findings. Nevertheless, the amount claimed is excessive. Making its assessment on an equitable basis, as required by Article 41 of the Convention, the Court awards the applicant EUR 2,480 under this head.

B. Costs and expenses

35. The applicant claimed UAH 4,800¹ for costs and expenses incurred in the Convention proceedings. She presented an invoice for that sum from her lawyer.

36. The Government maintained that only those expenses which were actually and necessarily incurred should be awarded.

37. The Court reiterates that, in order for costs and expenses to be included in an award under Article 41, it must be established that they were actually and necessarily incurred in order to prevent or obtain redress for the matter found to constitute a violation of the Convention and were reasonable as to quantum (see, among many other authorities, *Nilsen and Johnsen v. Norway* [GC], no. 23118/93, § 62, ECHR 1999-VIII).

38. The Court considers that these requirements have not been met in the instant case. It notes that the case is not particularly complex. The lawyer did not make any submissions to the Court on the applicant's behalf and the applicant first informed the Court of her representation in her final written submissions to the Court. The Court further notes that the applicant was granted leave to use Ukrainian in the written procedure before the Court that would make unnecessary any expenses for the translation and certification of the documents presented to the Court. However, the applicant may have incurred some costs and expenses for her representation before the Court.

Regard being had to the information in its possession and to the above considerations, the Court awards the applicant EUR 200 for costs and expenses.

¹ Around EUR 780

C. Default interest

39. 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 in accordance with Article 44 § 2 of the Convention, the judgment debt still owed to her (five hundred and sixty-nine euros and forty-nine cents), as well as the following amounts:
 - EUR 95 (ninety-five euros) in respect of the pecuniary damage caused by inflation;
 - EUR 2,480 (two thousand four hundred and eighty euros) in respect of non-pecuniary damage; and
 - EUR 200 (two hundred euros) in respect of costs and expenses;
 - (b) that the above amounts shall be converted into the national currency of the respondent State at the rate applicable at the date of settlement, plus any tax that may be chargeable;
 - (c) 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 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