



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

SECOND SECTION

CASE OF KURSHATSOVA v. UKRAINE

(Application no. 41030/02)

JUDGMENT

STRASBOURG

29 November 2005

FINAL

29/02/2006

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 Kurshatsova 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 Mr S. NAISMITH, *Deputy Section Registrar*,

Having deliberated in private on 8 November 2005,

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

PROCEDURE

1. The case originated in an application (no. 41030/02) 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 Olga Rudolfovna Kurshatsova (“the applicant”), on 15 October 2002.

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 1954 and lives in the town of Svitlovodsk, Kirovograd region, Ukraine.

5. In 1999 the applicant instituted proceedings in the Svitlovodskiy Town Court against her former employer, the State-owned “VAT Chysti Metaly” company, to recover salary arrears.

6. On 2 November 1999 the court awarded the applicant UAH 970.37¹ in salary arrears. On 18 November 1999 the Bailiffs' Service initiated enforcement proceedings.

7. In February 2001, upon the applicant's request, UAH 150 from the above judgment debt were transferred to the Municipal Heating Service to cover the applicant's debt to the Service.

8. On 25 April 2002 the same court awarded the applicant UAH 1,333.37² in compensation for the delay in enforcement of the judgment of 2 November 1999. On 20 June 2002 the Bailiffs' Service initiated enforcement proceedings.

9. By letter of 16 October 2002, the local Bailiffs' Service informed the applicant that the judgments in her favour could not be enforced due to the debtor's lack of funds, 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.

10. On 12 May 2003 the enforcement proceedings against the debtor were suspended due to the bankruptcy proceedings initiated against it. On 10 June 2004 the Dnipropetrovsk Regional Commercial Court approved the recovery plan for the debtor.

11. On 11 March 2005 the debtor made a postal money order in favour of the applicant for the outstanding debts under the judgments of 2 November 1999 and 25 April 2002. The applicant refused to receive the money, and 10 days later it was transferred to the account of the Bailiffs' Service.

12. On 31 March 2005 the Bailiffs' Service informed the applicant that she should provide them with details of her bank account, to which the money could be transferred.

II. RELEVANT DOMESTIC LAW

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

THE LAW

14. The applicant complained of an alleged failure by the State authorities to execute the judgments of 2 November 1999 and 25 April 2002 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:

¹ Around 160 euros (EUR)

² Around EUR 220

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

I. ADMISSIBILITY**A. The Government’s preliminary objections***1. The applicant’s victim status*

15. The Government considered that the applicant could no longer claim to be a victim of a violation of the Convention as the full amount of the judgment debts had been transferred to her, and the question of when to receive the money was entirely within her discretion.

16. The applicant explained that she had refused to receive the money because she had not been offered any compensation for the delay in its payment.

17. The Court notes that the enforcement proceedings have not yet been formally completed, although the money was made available to the applicant on 11 March 2005. In the Court’s view, the Government can no longer be held responsible for the non-enforcement of the judgment after that date, since the applicant deliberately refused to receive the money. The Court therefore concludes that the applicant can no longer claim to be a victim in relation to the non-enforcement as such.

18. However, this belated transfer of the judgment debts to the applicant does not meet the applicant’s complaint concerning the undue length of the procedure, for which no acknowledgment or reparation were offered by the authorities. The Court considers therefore that the applicant may still claim to be a victim of an alleged violation of the rights guaranteed by Article 6 § 1 of the Convention and Article 1 of Protocol No. 1 in relation to the

period during which the necessary funds were not made available to her (see *Voytenko v. Ukraine*, no. 18966/02, § 35, 29 June 2004).

2. Non-exhaustion of domestic remedies

19. The Government contended that the applicant had not exhausted domestic remedies regarding the Bailiffs' Service and the expedition of proceedings. They submitted examples of domestic case law in which people had successfully obtained compensation from the Bailiffs for delays in enforcement proceedings.

20. The applicant disagreed.

21. The Court notes that a similar point has already been dismissed in a number of Court judgments (see *Romashov v. Ukraine*, no. 67534/01, § 31-33, 27 July 2004). In such cases the Court has found that 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 the domestic remedies in cases of the non-enforcement of judgments.

3. Conclusion

22. In these circumstances, the Court dismisses the Government's preliminary objections.

B. The applicant's complaints

23. 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

24. The Government maintained that the delay in the enforcement of judgments had been caused by the difficult financial situation of the debtor and by the bankruptcy proceedings against it. They maintained that the Bailiffs performed all necessary actions to enforce the judgments 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 awarded sums were made available to the applicant.

25. The applicant did not submit any additional arguments to her original complaint.

26. The Court notes that the decisions of 2 November 1999 and 25 April 2002 remained unenforced respectively for five years and four months (November 1999 – March 2005) and two years and nine months (June 2002 – March 2005). It further notes that the full amount of the judgment debts was made available to the applicant after the communication of the application to the respondent Government.

27. The Court considers that by delaying for periods of more than two to five years the enforcement of the judgments 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).

28. 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

29. The Government in their submissions confirmed that the amount awarded to the applicant by the domestic courts 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 coal industry and its restructuring. Therefore, in the Government's opinion, the delay in enforcement was justified by the public interest of overcoming the economic crisis.

30. The applicant did not make any further comments in addition to her original complaint.

31. 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).

32. In the instant case the Court is therefore of the opinion that the impossibility for the applicant to obtain the execution of her judgments for such a long time constituted an interference with her right to the peaceful

enjoyment of her possessions, within the meaning of the first paragraph of Article 1 of Protocol No. 1.

33. By failing to comply with the judgments of the Svitlovodsky Town Court, the national authorities prevented the applicant, for a considerable period of time, from receiving in full the money to which she was entitled. The Government have not advanced any convincing justification for this interference, and the Court considers that economic difficulties 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

34. 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*

35. The applicant claimed in respect of pecuniary damage the judgment debts due to her, plus compensation for inflation losses, without specifying an amount.

36. The Government maintained that the judgment debts were available to the applicant and that she could not claim this amount twice. As to the claim for compensation for inflation, the Government maintained that the applicant could claim such compensation at the domestic level.

37. The Court notes that the money from the judgments has been available to the applicant since April 2005 and, therefore, it rejects this part of the claim. As to the applicant’s claim for compensation for inflation losses, the Court notes that it is unspecified and not supported by any documents which would enable the Court to determine the amount. Consequently, the Court also rejects this part of the claim.

2. *Non-pecuniary damage*

38. The applicant further claimed USD 10,000¹ in respect of non-pecuniary damage.

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

¹ EUR 8,123.81

40. 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 the sum of EUR 2,600 in respect of non-pecuniary damage.

B. Costs and expenses

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

C. Default interest

42. 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, EUR 2,600 (two thousand six hundred euros) in respect of non-pecuniary damage, plus any tax that may be chargeable;
 - (b) that the above amount shall be converted into the national currency of the respondent State at the rate applicable at the date of settlement;
 - (c) 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 29 November 2005, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

S. NAISMITH
Deputy Registrar

J.-P. COSTA
President