



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

SECOND SECTION

CASE OF RUDENKO v. UKRAINE

(Application no. 11412/02)

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 Rudenko 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 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. 11412/02) 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, Mrs Yekaterina Nikolayevna Rudenko (“the applicant”), on 9 February 2002.

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

3. On 23 November 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 1951 and lives in the village of Kosharivka, the Kharkiv region, Ukraine.

5. In 2000 the applicant instituted proceedings in the Kupyansk Town Court against the Joint Stock Company “Kupyanskyi Liteinyi Zavod” (the “KLZ”), in which the State held about 41% of the share capital. She sought

the recovery of salary arrears. On 18 December 2000 the court awarded her UAH 1,400¹ in salary arrears and other payments.

6. On 22 January 2001 the Kupyansk Town Bailiffs' Service instituted enforcement proceedings in respect of that judgment.

7. In 2001 the applicant filed an application with the labour disputes commission of the KLZ, seeking recovery of salary arrears. On 17 May 2001 the labour disputes commission allowed the applicant's claims and ordered the KLZ to pay the applicant UAH 857² in arrears. On 23 May 2001 the commission issued a certificate in respect of its decision of 17 May 2001, which had the same status as a writ of execution issued by a court.

8. On 8 June 2001 the Kupyansk Town Bailiffs' Service instituted enforcement proceedings in respect of the commission's decision.

9. In June 2001 the applicant instituted proceedings in Kupyansk City Court against the KLZ, seeking compensation for non-pecuniary damage. On 5 July 2001 the court found against the applicant. On 25 October 2001 the same court rejected the applicant's request for leave to appeal for failure to comply with procedural formalities. The applicant did not appeal against this decision.

10. On 8 July 2002 the Bailiffs' Service informed the applicant that the decisions of 18 December 2000 and 17 May 2001 could not be executed due to the large number of enforcement proceedings against the KLZ and the fact that the procedure for the forced sale of assets belonging to the debtor company had been suspended because of the moratorium on the forced sale of property belonging to State enterprises introduced by the Order of the President of Ukraine of 23 May 2001.

11. By two decisions of 28 January 2005, the Bailiffs' Service discontinued the enforcement proceedings on the ground that the decisions had been enforced in full.

12. The applicant did not challenge these decisions of the Bailiffs' Service before the domestic courts.

II. RELEVANT DOMESTIC LAW

13. The relevant domestic law is summarised in the judgment of *Sokur v. Ukraine* (no. 29439/02, §§ 18-22, 26 April 2005).

1. Around 229 euros – "EUR".

2. Around EUR 140.

THE LAW

I. ADMISSIBILITY

14. The applicant complained about the State authorities' failure to enforce the judgment of the Kupyansk Town Court of 18 December 2000 and the decision of the labour disputes commission of the KLZ of 17 May 2001 in full and 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”

A. The Government's preliminary objections

1. The applicant's victim status

15. The Government submitted that, since the decisions of 18 December 2000 and 17 May 2001 had been enforced in full, the applicant could no longer be considered a victim of a violation of her rights under Article 6 § 1 or Article 1 of Protocol No. 1. They therefore proposed that the application be declared inadmissible.

16. The applicant disagreed. In particular, she argued that the judgment of the Kupyansk Town Court of 18 December 2000 had not been enforced in full and the outstanding debt under that judgment was UAH 25¹. The applicant also stated that she had not been paid compensation for the length

1. Around EUR 4.

of the non-enforcement of the decisions of 18 December 2000 and 17 May 2001.

17. The Court observes that it is not clear from the parties' submissions whether these judgments have been enforced in full. However, it assumes that the judgments were so enforced by 28 January 2005, given the fact that, on that date, the Bailiffs' Service established that the amounts due had been paid to the applicant in full, which the applicant did not contest at the national level.

18. At the same time, the fact that the decisions in the applicant's favour were enforced does not deprive her of her victim status in relation to the period during which they remained unenforced (see *Romashov v. Ukraine*, no. 67534/01, §§ 26-27, 27 July 2004,). Accordingly, the Court rejects the Government's preliminary objection as to the applicant's lack of victim status.

2. Exhaustion of domestic remedies

19. The Government further contended that the applicant has not exhausted domestic remedies as she did not challenge the actions or inactivity of the State Bailiffs' Service before the domestic courts.

20. The applicant disagreed.

21. The Court considers that, in the light of its findings in similar cases, the Government's objection must be rejected (see *Romashov v. Ukraine*, cited above, §§ 30-33).

B. Conclusion

22. The Court concludes that the applicant's complaint under Article 6 § 1 of the Convention about the delay in the enforcement of the judgment of the Kupyansk Town Court of 18 December 2000 and the decision of the labour disputes commission of the KLZ of 17 May 2001 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. For the same reasons, the applicant's complaint under Article 1 of Protocol No. 1 cannot be declared inadmissible.

II. MERITS

23. 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).

24. The applicant disagreed.

25. The Court notes that the judgment of the Kupyansk Town Court of 18 December 2000 and the decision of the labour disputes commission of the KLZ of 17 May 2001 remained unenforced for four years, and three years and seven months, respectively. It observes that, despite the fact that the State does not appear to have a major share in the debtor company's assets, the latter qualified for immunity under domestic law from the attachment of its property, as the State held more than 25% of its share capital. As was noted earlier, the ban on the attachment of the debtor's property was applied in the present case (see paragraph 10 above).

26. 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 *Sokur v. Ukraine*, no. 29439/02, §§ 34-37, 26 April 2005, and *Voytenko*, cited above, §§ 53-55).

27. 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

28. 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

29. The applicant claimed UAH 12,438¹ in respect of pecuniary damage and UAH 419.50² in relation to her legal and postal expenses. She also claimed UAH 49,900³ in respect of non-pecuniary damage.

30. 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.

31. 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 1,920 in respect of pecuniary and non-pecuniary damage, costs and expenses.

1. Around EUR 2,027.

2. Around EUR 69.

3. Around EUR 8,129.

B. Default interest

32. 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 1,920 (one thousand nine hundred and twenty 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 29 November 2005, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

S. NAISMITH
Deputy Registrar

J.-P. COSTA
President