



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

SECOND SECTION

**CASE OF KHANENKO v. UKRAINE**

*(Application no. 10174/02)*

JUDGMENT

STRASBOURG

13 December 2005

**FINAL**

*12/04/2006*

*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 Khanenko v. Ukraine,**

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

Mr A.B. BAKA, *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 22 November 2005,

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

**PROCEDURE**

1. The case originated in an application (no. 10174/02) 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 Oleksandra Lavrentiyivna Khanenko (“the applicant”), on 13 August 2001.

2. The Ukrainian Government (“the Government”) were represented by their Agents, Mrs V. Lutkovska and Mrs Z. Bortnovska.

3. On 9 May 2003 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 1945 and lives in the town of Pervomaysk, the Mykolaiv region.

**A. First set of proceedings**

5. On 22 December 1997 the Pervomaysk Town Court found the applicant guilty of libel and sentenced her to a public reprimand. By the

same decision, the court rejected the applicant's criminal law complaint against Mr and Mrs S as unsubstantiated. On 29 January 1998 the Mykolaiv Regional Court upheld that decision.

### **B. Second set of proceedings**

6. By two decisions of 16 February and 21 November 2000, the Pervomaysk Town Court ordered the Pervomaysk Town Department of Education (the "Department") to pay the applicant UAH 2,641.19<sup>1</sup> in salary arrears and other payments.

7. On 31 March 2000 and 5 February 2001, respectively, the Pervomaysk Town Bailiffs' Service instituted enforcement proceedings in respect of these judgments.

8. By a number of letters between 2000 and 2003, the Bailiffs' Service and the Ministry of Education informed the applicant that the judgments in her favour could not be enforced due to the lack of State budgetary allocations in respect of the Department's expenditures.

9. According to the Government, the Department transferred the amounts due under the judgments to the deposit account of the Bailiffs' Service in two instalments of 27 June and 4 July 2003.

10. The applicant acknowledged that on 9 and 10 July 2003 she had been invited to obtain the money due to her at the premises of the Bailiffs' Service. She has, however, failed to do so, no reasons having been given.

## **II. RELEVANT DOMESTIC LAW**

11. The relevant domestic law is summarised in the judgment of *Voytenko v. Ukraine* (no. 18966/02, §§ 20-25, 29 June 2004).

## **THE LAW**

### **I. SCOPE OF THE CASE**

12. The Court notes that, after the communication of the case to the respondent Government, the applicant introduced new complaints about the alleged failure of the domestic courts and prosecutors to consider her complaints about her unlawful dismissal and about the State authorities' alleged persecution of her.

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1. Around 440 euros – "EUR".

13. In the Court's view, the new complaints are not an elaboration of the applicant's original complaints to the Court, lodged approximately two and a half years earlier, about the State authorities' alleged failure to enforce the judgments of the Pervomaysk Town Court of 16 February and 21 November 2000, on which the parties have commented, and about the outcome and unfairness of the criminal proceedings against her. The Court considers, therefore, that it is not appropriate now to take these matters up separately (see *Piryanik v. Ukraine*, no. 75788/01, § 20, 19 April 2005).

## II. ADMISSIBILITY

14. The applicant complained about the State authorities' failure to enforce the judgments of the Pervomaysk Town Court of 16 February and 21 November 2000 in full and in due time. She 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. ..."

#### A. The Government's preliminary objections

##### 1. *The applicant's victim status*

15. The Government submitted that, since the judgments of 16 February and 21 November 2000 had been enforced in full, the applicant could no longer be considered a victim of a violation of her rights under Article 6 § 1. They therefore proposed that the application be declared inadmissible.

16. The applicant disagreed. In particular, she argued that she had not been paid the judgment debts.

17. The Court observes that on 9 July 2003 the applicant was duly informed that the money due to her under the judgments at issue had been deposited with the Bailiffs' Service and that the funds were available to her. The Court finds therefore that the judgments were enforced by that date, as there is no information in the case file that the applicant was prevented from obtaining the money from the Bailiffs' Service.

18. However, the fact that the judgments in the applicant's favour were enforced does not deprive her of her victim status in relation to the period during which they remained unexecuted (see *Voytenko v. Ukraine*, cited above, §§ 34-35). 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, for instance, *Romashov v. Ukraine*, no. 67534/01, §§ 30-33, 27 July 2004).

## **B. Other complaints**

22. The applicant further complained under Article 6 § 1 of the Convention about the outcome and unfairness of the criminal proceedings against her.

23. The Court observes that the final domestic decision within the meaning of Article 35 § 1 of the Convention was given by the Mykolaiv Regional Court on 29 January 1998 and thus more than six months before the date on which the application was submitted to the Court (paragraph 1). Accordingly, this part of the application has been submitted too late and must be rejected pursuant to Article 35 §§ 1 and 4 of the Convention.

## **C. Conclusion**

24. The Court concludes that the applicant's complaint under Article 6 § 1 of the Convention about the delay in the enforcement of the judgments of the Pervomaysk Town Court of 16 February and 21 November 2000 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.

## III. MERITS

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

26. The applicant disagreed.

27. The Court notes that the judgments of the Pervomaysk Town Court of 16 February and 21 November 2000 remained unenforced for more than three years and five months, and two years and eight months, respectively.

28. The Court recalls that it has already found violations of Article 6 § 1 of the Convention in cases raising issues similar to the present application (see the *Voytenko* judgment, cited above, §§ 39-43).

29. 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.

#### IV. APPLICATION OF ARTICLE 41 OF THE CONVENTION

30. 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**

31. The applicant claimed UAH 5,647.82<sup>1</sup> in respect of pecuniary damage and UAH 1,094.85<sup>2</sup> in relation to her legal, translation and postal expenses. She also claimed EUR 300,000 in respect of non-pecuniary damage.

32. The Government contended that the applicant had not substantiated the amounts claimed and submitted that the finding of a violation would constitute sufficient just satisfaction.

33. 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 1,560 in respect of pecuniary and non-pecuniary damage, costs and expenses.

##### **B. Default interest**

34. 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 applicant’s complaint under Article 6 § 1 of the Convention about the length of the non-enforcement of the judgments in her favour admissible, and the remainder of the application inadmissible;

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1. Around EUR 940.  
2. Around EUR 182.

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 1,560 (one thousand five 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;
4. *Dismisses* the remainder of the applicant's claim for just satisfaction.

Done in English, and notified in writing on 13 December 2005, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

S. DOLLÉ  
Registrar

A.B. BAKA  
President