



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

SECOND SECTION

CASE OF RYZHENKOV AND ZAYTSEV v. UKRAINE

(Applications nos. 1805/03 and 6717/03)

JUDGMENT

STRASBOURG

13 December 2005

FINAL

13/03/2006

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 Ryzhenkov and Zaytsev 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 two applications (nos. 1805/03 and 6717/03) against Ukraine lodged with the Court under Article 34 of the Convention for the Protection of Human Rights and Fundamental Freedoms (“the Convention”) by two Ukrainian nationals, Mr Mykola Yegorovych Ryzhenkov (no. 1805/03), the first applicant, and Mr Ivan Mykolayovych Zaytsev, the second applicant (no. 6717/03), (“the applicants”), on 21 November 2002 and 23 January 2003, respectively.

2. The Ukrainian Government (“the Government”) were represented by their Agents, Ms Valeria Lutkovska, succeeded by Ms Zoryana Bortnovska.

3. On 24 October 2003 the Court decided to communicate the applications to the Government. Under the provisions of Article 29 § 3 of the Convention, it decided to join the applications and to examine their merits at the same time as their admissibility.

THE FACTS

4. The first applicant was born in 1959. The second applicant was born in 1947. They both reside in Kharkiv.

I. THE CIRCUMSTANCES OF APPLICATION NO. 1805/03

5. On 4 October 2000 the Moskovsky District Court of Kharkiv ordered the Kharkiv enterprise “Serp i Molot”, which is an enterprise in which the State owns 90% of the shares (hereafter referred to as the “KESM”), to pay

the first applicant UAH 23,963.78¹ for salary arrears, and compensation for the delay in that payment (for the period between March 1998 and 1 August 2000) and moral damage.

6. On 16 October 2000 the Moskovsky District Bailiffs' Service initiated the enforcement proceedings.

7. On 5 November 2002 the Commercial Court of the Kharkiv Region initiated bankruptcy proceedings against the KESM and, therefore, the Bailiffs' Service suspended the execution of the judgment. In accordance with the plan for the financial recovery of the enterprise, the applicant received UAH 100 in compensation.

8. On 7 March 2003 the Kharkiv Regional Department of Justice informed the applicant that the enforcement was still pending because of these bankruptcy proceedings.

9. On 31 December 2003 the applicant received UAH 100² in partial payment of the judgment debt.

10. On 29 January 2004 the applicant received UAH 7,529.05³ in further partial payment of the debt owed by the KESM.

11. On 8 November 2004 the applicant informed the Court that he had received payment for the remainder of the debt (UAH 16,434.73⁴) on 6 October 2004. The enforcement proceedings were terminated on the same date. The payment was made on the basis of funds transferred to the account of the KESM, as approved by the Head of the Kharkiv Regional Administration on 10 March 2004.

II. THE CIRCUMSTANCES OF APPLICATION NO. 6717/03

12. On 4 October 2000 the Moskovsky District Court of Kharkiv ordered the KESM to pay the second applicant UAH 21,170.19⁵ in compensation for the delayed payment of salary arrears (for the period between March 1998 and 1 August 2000) and moral damage.

13. On 16 October 2000 the Moskovsky District Bailiffs' Service initiated the enforcement proceedings.

14. On 5 November 2002 the Commercial Court of the Kharkiv Region initiated bankruptcy proceedings against the KESM and, therefore, the execution of the judgment was suspended.

15. On 31 December 2003 the applicant received UAH 88⁶ in partial payment of the judgment debt.

1. 3,737.53 euros – "EUR.

2. EUR 15.35.

3. EUR 1,1160.61.

4. EUR 2,576.94.

5. EUR 3,301.82.

6. EUR 13.51.

16. On 29 January 2004 the applicant received 6,755.73¹ in further partial payment of the debt owed by the KESM.

17. On 5 November 2004 the applicant informed the Court that he had received payment of the remainder of the debt (UAH 14,414.46²) on 6 October 2004. The enforcement proceedings were terminated on the same date. The payment was made on the basis of funds transferred to the account of the KESM, as approved by the Head of the Kharkiv Regional Administration on 10 March 2004.

III. RELEVANT DOMESTIC LAW

18. The relevant domestic law is set out in the judgment of 27 July 2004 in the case of *Romashov v. Ukraine* (no. 67534/01, §§ 16-19).

THE LAW

I. AS TO THE ALLEGED VIOLATION OF ARTICLES 6 § 1 AND 13 OF THE CONVENTION AND ARTICLE 1 OF PROTOCOL NO. 1

19. The applicants complained about the State authorities' failure to enforce two separate judgments of the Moskovsky District Court of Kharkiv given on 4 October 2000 in their favour. They alleged that the length of the enforcement proceedings had been unreasonable, invoking Articles 6 § 1 and 13 of the Convention and Article 1 of Protocol No. 1, which in so far as relevant provide 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.”

1. EUR 1,041.4.
2. EUR 2,260.16.

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.”

A. Admissibility

20. The Government raised objections similar to those which the Court dismissed in the case of *Romashov v. Ukraine* (see the *Romashov* judgment, cited above, §§ 28-33). In particular, they contended that the applicant was not a victim of a violation as the judgment was enforced, and that he had not exhausted domestic remedies.

21. The Court considers that the applicants may legitimately claim to be the victims of violations of Articles 6 § 1 and 13 of the Convention, and Article 1 of Protocol No. 1, given the prolonged delay in the enforcement of the judgments of 4 October 2000 and the failure of the domestic authorities to provide reparation for that. The applications must therefore be declared admissible.

B. Merits

22. In their observations the Government, put forward arguments similar to those in the case of *Romashov v. Ukraine*, contending that there was no violation of the Convention or Protocol (see, the *Romashov* judgment, cited above, §§ 28-33, 37). In particular, they submitted that they had taken all necessary measures under domestic law to enforce the judgments given in the applicants’ favour, which could not be enforced immediately due to the difficult financial situation of the KESM.

23. The applicants disagreed.

24. The Court notes that the judgments of 4 October 2000 remained unenforced wholly or in part until 6 October 2004, and that the enforcement proceedings were only effectively resumed in December 2003, after the case had been communicated to the Government. It thus took four years to pay the debts owed to the applicants.

25. The Court has frequently found violations of Articles 6 § 1 and 13 of the Convention and Article 1 of Protocol No. 1 in cases raising similar issues (see *Voytenko v. Ukraine*, no. 18966/02, § 43, 29 June 2004, and the aforementioned *Romashov* case, § 43, 27 July 2004).

26. Having examined the materials submitted to it, the Court notes 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. The Court finds that, by failing for so long to comply with the two enforceable judgments of 4 October 2000 given in the applicants' favour, the Ukrainian authorities prevented them from receiving the money to which they were entitled. Moreover, they did not have an effective domestic remedy to redress the damage caused by the delays.

27. There has accordingly been a violation of Articles 6 § 1 and 13 of the Convention and Article 1 of Protocol No. 1.

II. 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 and costs and expenses

29. The first applicant claimed UAH 150,000¹ in non-pecuniary damage. He further claimed UAH 36,090.93² in compensation for pecuniary damage, including the loss of interest and the cost of treatment in health resorts for the gastrointestinal disease from which he suffers. The applicant claimed UAH 1,000³ for the costs and expenses incurred for translation of the documents from and submitted to the Court.

30. The second applicant claimed UAH 100,000⁴ in non-pecuniary damage. He further claimed UAH 27,207.66⁵ in compensation for pecuniary damage, including loss of interest and the cost of treatment in health resorts for the gastrointestinal disease from which he also suffers.

31. The Government proposed to reject the applicants' claims for just satisfaction as being unsubstantiated.

32. Making its assessment on an equitable basis, as required by Article 41 of the Convention, the Court considers it reasonable to award the applicants a global sum of EUR 1,920 each in respect of pecuniary and non-pecuniary damage, costs and expenses.

1. EUR 24,442.8.

2. EUR 5,881.09.

3. EUR 162.95.

4. EUR 16,295.2.

5. EUR 4,433.55.

B. Default interest

33. 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 applications 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 13 of the Convention;
4. *Holds* that there has been a violation of Article 1 of Protocol No. 1;
5. *Holds*
 - (a) that the respondent State is to pay to the applicants, 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) each 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 amounts at a rate equal to the marginal lending rate of the European Central Bank during the default period plus three percentage points;
6. *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