



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

SECOND SECTION

CASE OF SEMENOV v. UKRAINE

(Application no. 25463/03)

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 Semenov 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. 25463/03) 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, Mr Petr Nikolayevich Semenov (“the applicant”), on 1 July 2003.

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

3. On 27 November 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 1940 and lives in the town of Nova Kakhovka, the Kherson region.

A. The background of the case

5. The State owns 75% of the shares in the Pivdenelektromash Company (hereafter “the Company”), which is therefore subject to the moratorium on

the forced sale of property of State-owned entities, barring the attachment and sale of its assets.

6. On 5 June 2000 the Kherson Regional Court of Arbitration (hereafter “the Arbitration Court”) instituted bankruptcy proceedings against the Company and issued an injunction barring debt recovery. This decision led, *inter alia*, to the suspension of the enforcement of all court judgments given against the Company.

7. Following the adoption of the ruling of the Supreme Court of Arbitration of 10 August 2000, which directed that the bankruptcy proceedings should not impede the execution of judgments awarding salary arrears, the Novokahovsky City Bailiffs’ Service (hereafter “the Bailiffs’ Service”) resumed enforcement proceedings against the Company.

8. On 15 January 2001 the Arbitration Court approved a rehabilitation proposal and appointed a trustee to rehabilitate the Company’s business. On 17 January 2002 the court found that enforcement proceedings of any kind contradicted the June 2000 injunction, particularly in view of the pending rehabilitation programme, the success of which could be jeopardised if the Bailiffs’ actions continued (cf. *Trykhlil v. Ukraine*, no. 58312/00, 20 September 2005, §§ 7-14).

B. The circumstances of the case

9. The applicant is a former employee of the Company, against which he instituted proceeding, claiming salary arrears. On 5 December 2002 the Nova Kakhovka City Court (hereafter “the City Court”) granted this claim and awarded the applicant UAH 6,044¹. The judgment became final and was sent to the Bailiffs’ Service for compulsory enforcement.

10. By letters of 26 February 2003 and 15 April 2003, the Bailiffs’ Service and the Kherson Regional Department of Justice informed the applicant that the enforcement proceedings had been suspended due to the rehabilitation proceedings pending against the debtor.

11. On 11 August 2003 the City Court rejected the applicant’s complaint about the allegedly unlawful inactivity of the Bailiffs’ Service. The court stated that there was no fault attributable to the defendant, who had to suspend the enforcement of the applicant’s award in accordance with the Bankruptcy Act 1992.

12. On 9 December 2003 the Minister for Justice issued a circular letter, informing the Bailiffs that the injunction against debt collection in bankruptcy cases did not extend to warrants for the execution of judgments awarding salary arrears.

1. approximately 1,000 euros (EUR).

13. On 15 January 2004 the Bailiffs' Service resumed the execution proceedings in the applicant's case. On 23 January and 10 February 2004, it ordered the attachment of the Company's accounts. However, on 27 February 2004 the Kherson Regional Commercial Court, on the trustee's appeal, quashed these decisions because the Bankruptcy Act envisaged the obligatory suspension of enforcement proceedings pending the resolution of a bankruptcy case. The exemption of salary arrears payments from the general injunction against debt recovery concerned only the Company's current salary expenditures.

14. The judgment in the applicant's favour remains unenforced.

II. RELEVANT DOMESTIC LAW

15. The relevant domestic law is summarised in the judgments of *Romashov v. Ukraine* (no. 67534/01, §§ 16-18, 27 July 2004) and *Trykhliv v. Ukraine* (no. 58312/00, §§ 25-32, 20 September 2005).

THE LAW

I. ALLEGED VIOLATION OF ARTICLE 6 § 1 OF THE CONVENTION AND ARTICLE 1 OF PROTOCOL NO. 1.

16. The applicant complained of the failure of the State authorities to execute the judgment of 5 December 2002 given in his favour. He alleged an infringement of Article 6 § 1 of the Convention and Article 1 of Protocol No. 1 to the Convention which provide, in so far as relevant, as follows:

Article 6 § 1 of the Convention

"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.”

A. Admissibility

17. The Government submitted that the applicant had failed to exhaust domestic remedies, as required by Article 35 § 1 of the Convention, since he had failed to appeal in cassation against the judgment of the City Court of 11 August 2003, whereby his complaints about the Bailiffs’ inactivity were rejected, and he had not applied to the Kherson Regional Commercial Court for registration as a creditor in the bankruptcy proceedings.

18. The applicant contested these submissions, alleging that neither of these remedies had any prospects of success.

19. The Court notes that these matters have already been discussed and dismissed in a number of its previous judgments (see, for example, the aforementioned cases of *Romashov* and *Trykhliv*, §§ 23-32 and 36-42, respectively). It finds no reason to draw different conclusions in the present case and it therefore rejects the Government’s objection.

20. The Court notes that the application is not manifestly ill-founded within the meaning of Article 35 § 3 of the Convention. It further notes that it is not inadmissible on any other grounds.

B. Merits

21. The Government maintained that the lengthy failure to enforce the decision in the applicant’s favour had been caused by the ongoing bankruptcy proceedings against the debtor Company and its critical financial situation. The Government further maintained that the Bailiffs’ Service had performed all necessary actions and cannot be blamed for the delay. The applicant disagreed.

22. The Court will first address the Government’s submissions regarding the ongoing bankruptcy proceedings. It observes that, in the course of such proceedings, the commercial court may block any debt retrieval from the bankrupt entity, and the latter remains immune from any penalties for the delays in honouring its obligations for the duration of those proceedings. The Court recalls that it has already found in the *Trykhliv* case (cited above, §§ 49-50) that this procedure, applied in similar circumstances, may lead to the violation of Article 6 § 1 of the Convention. Moreover, in the present case, the situation was aggravated by the striking discordance between the domestic authorities as to the correct interpretation of the Bankruptcy Act, which created a situation whereby the apparently active Company was capable of meeting the applicant’s salary arrears, but the Bailiffs were

prevented from pursuing the legal enforcement of the court decisions in the applicant's favour against the Company (*ibid.* §§ 49-50).

23. Insofar as the Government refer to the Company's critical financial situation, the Court recalls that it was undoubtedly a State-owned entity. As such, it attracted the application of the Law on the Introduction of a Moratorium on the Forced Sale of Property 2001, barring the attachment and sale of its assets. The Court notes that the domestic law does not offer a creditor like the applicant, or the Bailiffs, any possibility to challenge this restriction in case of an abuse or unjustified application. Nor can a compensation claim be made for the delay in enforcement caused by this restriction (*ibid.* § 51).

24. The Court finds, therefore, that by failing since December 2002, some two years and eleven months later, to take the necessary measures to comply fully with a judgment in the applicant's favour, the authorities deprived the provisions of Article 6 § 1 of the Convention and Article 1 of Protocol No. 1 of much of their useful effect.

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

II. APPLICATION OF ARTICLE 41 OF THE CONVENTION

26. 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

27. The applicant claimed UAH 6,044 (i.e. the amount still owed to him) in respect of pecuniary damage and UAH 100,000¹ in respect of non-pecuniary damage.

28. The Government contested the applicant's claims as being unsubstantiated.

29. In so far as the judgment debt in the applicant's favour has not been paid, the Court notes that the State's outstanding obligation to enforce this judgment is not in dispute. Accordingly, the Court considers that, if the Government were to pay the remaining debt owed to the applicant, it would constitute full and final settlement of the applicant's claim for pecuniary damage.

1. approximately EUR 16,485.

30. As regards the applicant's claim for non-pecuniary damage, the Court, making its assessment on equitable basis, as required by Article 41 of the Convention, considers it reasonable to award him 1,400 euros (EUR).

B. Costs and expenses

31. The applicant did not submit any claim under this head within the set time-limit; the Court therefore makes no award in this respect.

C. 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 to the Convention;
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 him, as well as EUR 1,400 (one thousand four hundred euros) in respect of non-pecuniary damage, to 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;
 - (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 13 December 2005, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

S. DOLLÉ
Registrar

A.B. BAKA
President