



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

SECOND SECTION

CASE OF SOLOVYEVA v. UKRAINE

(Application no. 32547/03)

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 Solovyeva 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. 32547/03) 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, Ms Aleksandra Ivanovna Solovyeva (“the applicant”), on 14 August 2003.

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

3. On 15 March 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 1933 and lives in the town of Chuguyev, the Kharkiv region.

A. The debtor company

5. The State owns 32.67% of the shares in the Chuguyevskaya Toplivnaya Apparatura Company (the applicants’ employer, hereafter “the

Company”), which is therefore subject to the Law of 29 November 2001 “on the Introduction of a Moratorium on the Forced Sale of Property”.

B. The circumstances of the case

6. On 2 December 1999 the labour disputes commission of the Company awarded the applicant UAH 1,216¹ in salary arrears. On the same date the commission issued a certificate to the applicant, which had the same status as a court’s writ of execution. The enforcement proceedings were initiated on 8 December 1999 by the Chuguyev City Department of the State Bailiffs’ Service (the “Bailiffs”).

7. On 12 June 2002 the Chuguyev City Court ordered that the Company’s salary, social benefits and alimony arrears be paid by instalments. The court referred, *inter alia*, to the practical suspension of the enforcement proceedings against the Company following the adoption of the aforementioned moratorium Law.

8. In a letter of 2 July 2003, the Kharkiv Regional Department of Justice (the “Department”) also referred to this Law as being an impediment to the enforcement of the award. However, the Department indicated that the proceedings with respect to the assets of the Company not covered by the moratorium (i.e. bank accounts) were to continue.

9. Numerous enforcement proceedings against the Company (including the applicant’s case) were impeded by the decision of the City Court of 12 June 2002. Therefore, on 30 July 2002 and 29 October 2002, the Bailiffs applied to the court, requesting the clarification of its decision. However, it was not until 9 April 2003 that the clarification, enabling the Bailiffs to carry out the enforcement, was delivered.

10. On a number of occasions between July 2002 and February 2004, the Kharkiv Regional Commercial Court instituted bankruptcy proceedings against the Company and issued an injunction barring further debt recovery. The last decision of this kind was taken on 19 February 2004.

11. According to a letter dated 5 May 2004 from the Department, the enforcement of the applicant’s award was hindered by both the City Court decision of 12 June 2002 and the bankruptcy proceedings against the Company. The latter caused the Bailiffs to stay the enforcement proceedings on a number of occasions (the last such suspension being made on 16 May 2003 and subsequently lifted on 16 January 2004).

12. On 31 March 2005 the award was fully paid to the applicant.

1. approximately 174 euros (EUR).

II. RELEVANT DOMESTIC LAW

13. 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

14. The applicant complained of breaches of Article 6 § 1 of the Convention and Article 1 of Protocol No. 1, which in their relevant parts 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 1 of Protocol No. 1

“Every natural or legal person is entitled to the peaceful enjoyment of his possessions. (...).

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

1. Objection as to the exhaustion of domestic remedies

15. The Government submitted that the applicant had failed to exhaust domestic remedies, as required by Article 35 § 1 of the Convention, since she had not challenged the Bailiffs’ inactivity before the domestic courts.

16. The applicant contested this submission, alleging that this remedy had no prospect of success.

17. The Court notes that, throughout the period under consideration, the enforcement of the award was hindered by legislative measures, rather than by the Bailiffs' misconduct. In this respect the Court recalls its established case law that a claim for damages against the Bailiffs cannot be considered an effective remedy where the delay in the enforcement of the judgments was due to reasons beyond the Bailiffs' control (see, among many others, *Mykhaylenky and Others v. Ukraine*, nos. 35091/02, and the following, §§ 38-39, ECHR 2004-...).

2. Compatibility ratione personae (responsibility of the State)

18. The Government maintained that the Company was a separate legal entity and the State could not be held responsible for its debts under domestic law.

19. The applicant disagreed.

20. The Court recalls that the responsibility of a State is engaged if Convention rights and freedoms are affected as a result of the enactment of domestic legislation (see *Young, James and Webster v. the United Kingdom*, judgment of 13 August 1981, Series A no. 44, p. 20, § 49). The Court finds that in the present case the debtor company was undoubtedly a State-owned enterprise within the meaning of Article 1 of the Law "on the Introduction of a Moratorium on the Forced Sale of Property" (see *Sokur v. Ukraine*, no. 29439/02, § 18, 26 April 2005). As such, it attracted the application of the moratorium, barring the attachment and sale of the Company's assets. The responsibility of the respondent State for any resultant breach of the Convention is thus engaged on this basis.

3. Conclusion

21. The Court concludes that these complaints are not manifestly ill-founded within the meaning of Article 35 § 3 of the Convention. It further notes that they are not inadmissible on any other grounds.

B. Merits

22. The Government maintained that the lengthy failure to enforce the decision in the applicant's favour had been caused by the debtor's lack of funds, for which the State bears no responsibility, holding only 32.67% of the Company's share capital. The Government also stated that the Bailiffs performed all necessary actions to enforce the decision and could not be held liable for any delay. They concluded, therefore, that there was no infringement of Article 6 § 1 of the Convention.

23. The applicant disagreed.

24. The Court first notes that the decision of the labour disputes commission in the applicant's case is the equivalent of a court decision, and the State bears responsibility for its non-execution (see the aforementioned *Romashov v. Ukraine* case, § 41).

25. Secondly, the Court observes that the domestic authorities on a number of occasions confirmed that the application of the moratorium Law substantially impeded the enforcement proceeding against the Company (see paragraphs 7 and 8 above). It recalls its previous findings that the domestic legislation does not offer a creditor like the applicant, or the Bailiffs, any possibility to challenge the restriction imposed by the moratorium on the forced sale of property of State-owned entities in case of abuse or an unjustified application. Nor can a compensation claim be made for the delay in enforcement caused by this restriction (see *Trykhliv v. Ukraine*, no. 58312/00, § 51, 20 September 2005).

26. Thirdly, a further delay in the enforcement of the applicant's award was caused by the decision of the City Court on 12 June 2002, which substantially complicated any execution proceedings against the Company. However, despite the Bailiffs' repeated requests, it was not until April 2003 that the court clarified its decision, enabling the Bailiffs to carry out their duties. The Court finds that the Government have failed to advance any argument to justify this delay.

27. Fourthly, the Court notes that the bankruptcy proceedings against the Company further blocked the enforcement as the commercial court could prevent any debt retrieval from the bankrupt entity, and the latter would remain 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 aforementioned *Trykhliv* case (§§ 49-50) that this procedure, applied in similar circumstances, may lead to the violation of Article 6 § 1 of the Convention and Article 1 of Protocol No. 1. The Court sees no reason to depart from this conclusion in the present case.

28. Finally, the Court observes that the decision of 2 December 1999 remained unenforced until 31 March 2005, i.e. a period of over five years and five months, and then it was only executed after the application had been communicated to the respondent Government.

29. The Court considers that, by delaying the enforcement of the judgment in the applicant's case, 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.

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

II. ALLEGED VIOLATION OF ARTICLE 13 OF THE CONVENTION

31. The applicant next complained that she had no effective remedies in respect of her complaint under Article 6 § 1 of the Convention and Article 1 of Protocol No. 1. She relied on Article 13 of the Convention, which provides as follows:

“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.”

32. The Government submitted that the applicant had an opportunity to challenge the liquidation commission’s inactivity before the Court of Arbitration and to lodge a claim with the domestic courts to challenge the inactivity of the Bailiffs, or to seek compensation for material and moral damage.

33. The Court notes that this complaint is linked to the one examined above and cannot, therefore, be declared inadmissible.

34. The Court refers to its findings (at paragraph 17 above) in the present case concerning the Government’s argument regarding domestic remedies. For the same reasons, the Court concludes that the applicant did not have an effective domestic remedy, as required by Article 13 of the Convention, to redress the damage created by the delay in enforcing the judgment debt. Accordingly, there has been a breach of this provision.

III. APPLICATION OF ARTICLE 41 OF THE CONVENTION

35. 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

36. The applicant claimed UAH 6,000¹ in non-pecuniary damage.

37. The Government stated that the applicant had not sustained any non-pecuniary damage susceptible to monetary compensation.

38. 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. Making its assessment on an equitable basis, as required by Article 41 of the Convention, the Court awards the applicant’s claim in full, i.e. 1,000 euros (EUR).

1. approximately EUR 1,000.

B. Costs and expenses

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

C. Default interest

40. 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* that there has been a violation of Article 13 of the Convention;
5. *Holds*
(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 1,000 (one thousand 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;

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