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

SECOND SECTION

CASE OF USHACHOV v. UKRAINE

(Application no. 44221/04)

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 Ushachov 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,
Ms D. JOČIENĖ,
Mr D. POPOVIĆ, *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. 44221/04) 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 Viktor Andriyovych Ushachov ("the applicant"), on 2 December 2004.

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

3. On 24 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 1946 and lives in the town of Askaniya-Nova, the Kherson region.

5. By two separate decisions of 22 April 2002, the Chaplynsk Town Court ordered the State Agricultural Research Firm "Askaniya-Nova" to pay the applicant the total of UAH 10,101[1] in debts and compensation.

1. Around 1,686 euros – "EUR".

6. On 27 June 2002 the Chaplynsk Town Bailiffs' Service instituted enforcement proceedings.

7. On 16 December 2002 the Kherson Regional Commercial Court initiated bankruptcy proceedings against the debtor. On 26 November 2003 the same court terminated these proceedings. On 23 May 2003 the court reinitiated bankruptcy proceedings against the debtor.

8. On 2 December 2004 the Bailiffs' Service informed the applicant that the judgment given in his favour could not be enforced due to the debtor's lack of funds and the fact that the procedure for the forced sale of assets belonging to the debtor had been suspended because of the moratorium on the forced sale of property belonging to State enterprises introduced by the Law of 29 November 2001.

9. The judgments in the applicant's favour remain unenforced.

II. RELEVANT DOMESTIC LAW

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

THE LAW

11. The applicant complained about the State authorities' failure to enforce the judgments of the Chaplynsk City Court of 22 April 2002 in full and in due time. He 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 ...."

I. ADMISSIBILITY

A. The Government's preliminary objections

12. The Government raised objection regarding exhaustion of domestic remedies similar to one which the Court has already dismissed in the case of *Romashov v. Ukraine* (cited above, §§ 30-33). The Court considers that the present objection must be rejected for the same reasons.

13. The Court concludes that this part of the application 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.

B. Other complaints

14. The applicant further complained about a violation of Article 2 (right to life), Article 14 (prohibition of discrimination) and Article 17 (prohibition of abuse of rights) of the Convention on account of the non-enforcement of the judgment in his favour.

15. The Court finds that this part of the application is wholly unsubstantiated and must therefore be rejected as being manifestly ill-founded, pursuant to Article 35 §§ 3 and 4 of the Convention.

II. MERITS

16. In their observations, the Government contended that there had been no violation of either 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).

17. The applicant disagreed.

18. The Court notes that the judgments of the Chaplynsk City Court of 22 April 2002 remained unenforced for more than three years and seven months.

19. 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, for instance, *Voytenko,* cited above, §§ 39-43 and 53-55, and *Sokur v. Ukraine*, no. 29439/02, §§ 30-37, 26 April 2005).

20. Having examined all the material submitted, 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

21. 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

22. The applicant claimed UAH 10,101[1] in respect of pecuniary damage, which represented the amount of the judgment debts, and EUR 4,000,000 in respect of non-pecuniary damage.

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

24. In so far as the applicant claimed the amounts awarded to him by the judgments at issue, the Court considers that the Government should pay him the outstanding debts in settlement of the outstanding pecuniary damage. As to the applicant's claim for non-pecuniary damage, the Court considers it excessive and, making its assessment on an equitable basis, as required by Article 41 of the Convention, awards the applicant EUR 1,720.

B. Costs and expenses

25. The applicant did not submit any claim under this head. The Court therefore makes no award.

C. Default interest

26. 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 complaints under Article 6 § 1 of the Convention and Article 1 of Protocol No. 1 admissible, and the remainder of the application inadmissible;

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1. Around EUR 1,686 euros.

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, within three months from the date on which the judgment becomes final according to Article 44 § 2 of the Convention, the judgment debts still owed to him, as well as EUR 1,720 (one thousand seven hundred and twenty euros) in respect of non-pecuniary damage, 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 13 December 2005, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

S. DOLLÉ
Registrar

A.B. BAKA
President