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

THIRD SECTION

CASE OF KUCHERENKO v. UKRAINE

(Application no. 27347/02)

JUDGMENT

STRASBOURG

15 December 2005

FINAL

15/03/2006

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 Kucherenko v. Ukraine,

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

Mr B.M. Zupančič, *President*,
Mr J. Hedigan,
Mr C. Bîrsan,
Mr V. Butkevych,
Mrs R. Jaeger,
Mr E. Myjer,
Mr David Thór Björgvinsson, *judges*,
and Mr V. Berger, *Section Registrar*,

Having deliberated in private on 24 November 2005,

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

PROCEDURE

1. The case originated in an application (no. 27347/02) 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 Lyudmila Andreyevna Kucherenko ("the applicant"), on 3 July 2002.

2. The applicant is represented before the Court by Mr Petro Petrovich Kukta, a human rights activist from Dneprodzerzhinsk. The Ukrainian Government ("the Government") were represented by their Agents, Ms Zoryana Bortnovska, succeeded by Ms Valeria Lutkovska.

3. On 2 July 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.

4. The applicant and the Government each filed observations on the merits (Rule 59 § 1).

5. On 1 November 2004 the Court changed the composition of its Sections (Rule 25 § 1). This case was assigned to the newly composed Third Section (Rule 52 § 1).

THE FACTS

6. The applicant was born in 1936 and currently resides in Dneprodzerzhinsk, the Dnepropetrovsk Region. The applicant is a former employee of the Public Transportation Company "Dneprodzerzhinskgorelectrotrans" ("the PTC"), managed and owned by

the Department of Communal Property of the Dneprodzerzhinsk City Council.

I. THE CIRCUMSTANCES OF THE CASE

7. On 5 July 2000 the applicant instituted proceedings in the Zavodskoy District Court of Dneprodzerzhinsk against the PTC, seeking compensation for unpaid salary. On 18 July 2000 the Zavodskoy District Court of Dneprodzerzhinsk allowed her claims and ordered the PTC to pay her UAH 2,970 in compensation.

8. On 10 August 2000 the Bailiffs' Service instituted the enforcement proceedings with regard to the judgment of 18 July 2000.

9. In June 2001 the applicant instituted proceedings against the PTC, seeking compensation for delayed salary payments, unpaid salary and compensation for moral damage. On 4 July 2001 the Zavodskoy District Court of Dnepropetrovsk allowed the applicant's claims in part and ordered the PTC to pay her UAH 990 and UAH 800 in compensation for pecuniary and non-pecuniary damage respectively.

10. The execution proceedings for this judgment were initiated on 16 July 2001.

11. On 3 September 2001 the Zavodskoy Bailiffs' Service informed the applicant that the aforementioned judgments could not be executed due the PTC's lack of funds.

12. On 4 February 2002 the Bailiffs' Service proposed that the PTC's property (trams, technical equipment and an administrative building) be transferred to the debtors.

13. On 14 June 2002 the Dnipropetrovsk Regional Department of Justice also informed the applicant that the judgments could not be executed due to the PTC's lack of funds.

14. On 6 September 2002 the Bailiffs' Service returned the writs of enforcement to the applicant unenforced. On 20 September 2002 the applicant informed the Court that the execution proceedings were still pending.

15. On 7 June 2003 the applicant received UAH 1,380 in partial enforcement of the judgments against PTC. On 17 June 2003 the Donetsk Regional Commercial Court declared the PTC bankrupt.

16. On 14 October 2004 the applicant informed the Court that the outstanding unpaid debt was UAH 1,436.

17. On 16 December 2004 the PTC ceased to exist as a result of its liquidation.

18. On 1 February 2005 the applicant informed the Court that the unpaid amount was UAH 800.

II. RELEVANT DOMESTIC LAW AND PRACTICE

19. 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. ALLEGED VIOLATION OF ARTICLES 6 § 1 AND 13 OF THE CONVENTION AND ARTICLE 1 OF PROTOCOL NO. 1

20. The applicant complained of an alleged failure of the State authorities to enforce the judgments of 18 July 2000 and 4 July 2001 of the Zavodskoy District Court of Dnepropetrovsk given in her favour. She invoked Articles 6 § 1, 13 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 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."

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

21. The Court finds that the applicant's complaints, concerning the lengthy non-enforcement of the final judgments of 18 July 2000 and

4 July 2001 of the Zavodskoy District Court of Dnepropetrovsk, are not manifestly ill-founded within the meaning of Article 35 § 3 of the Convention. It further notes that these complaints are not inadmissible on any other grounds. They must therefore be declared admissible.

B. Merits

22. The Government submitted that they took all necessary measures under domestic law to enforce the judgments given in the applicant's favour. They maintained that the delay from the date of the adoption of the judgments to the date of the receipt by the applicant of the part of the sums due to her under these judgments did not violate her rights and was caused by the enterprises' difficult financial situation.

23. The applicant disagreed.

24. The Court notes that the judgments of 18 July 2000 and 4 July 2001 of the Zavodskoy District Court of Dnepropetrovsk remain unenforced in part until the present moment. It was only after the communication of the case to the respondent Government that part of the debt owed to the applicant was paid. The amount of outstanding debt at present moment, in accordance with the parties' submission is UAH 800.

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, where a debtor was a public enterprise (see *Romashov* cited above, §§ 46-47; *Mykhaylenky and Others v. Ukraine*, nos. 35091/02, 35196/02, 35201/02, 35204/02, 35945/02, 35949/02, 35953/02, 36800/02, 38296/02 and 42814/02, §§ 55 and 64, ECHR 2004-...).

26. Having examined the materials submitted to it, the Court notes that the Government have not put forward any fact or argument capable of persuading it to reach a different conclusion in the present case. The Court finds that by failing to execute for almost five years and three months and for four years and three months the enforceable judgments of 18 July 2000 and 4 July 2001, respectively, given in the applicant's favour, the Ukrainian authorities prevented her from receiving the money to which she was entitled. Moreover, she did not have an effective domestic remedy to redress the damage created by the delay in the present proceedings.

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

II. OTHER ALLEGED VIOLATIONS

28. As to the complaints under Article 2 of the Convention, the Court considers that they are wholly unsubstantiated (cf. *Romashov* cited above, § 36).

It also notes that the complaints pertaining to the violation of the European Social Charter provisions are outside the competence of the Court.

It follows that these complaints are manifestly ill-founded and must be rejected pursuant to Article 35 §§ 3 and 4 of the Convention.

III. APPLICATION OF ARTICLE 41 OF THE CONVENTION

29. 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

30. The applicant claimed 10,000 United States dollars in respect of non-pecuniary damage. Initially, the applicant claimed a sum of UAH 1,436 in compensation for pecuniary damage. She eventually changed her claim to UAH 800 in compensation for pecuniary damage as according to her this sum remained unpaid. She claimed no particular sum in costs and expenses in the proceedings before the Court.

31. The Government suggested that a finding of a violation would of itself constitute sufficient just satisfaction.

32. In so far as the applicant claimed the amount awarded to her by the judgments at issue, the Court notes that the State's outstanding obligation to enforce these judgments is not in dispute. Accordingly, the Court considers that, if the Government were to pay the debt owed to the applicant, it would constitute full and final settlement of the case.

33. As for non-pecuniary damage, the Court, making its assessment on an equitable basis, as required by Article 41 of the Convention, awards the applicant 3,000 euros in respect of non-pecuniary damage.

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 complaints under Articles 6 § 1 and 13 of the Convention and Article 1 of Protocol No. 1 admissible, and the remainder of the application inadmissible;

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 the applicant, within three months from the date on which the judgment becomes final according to Article 44 § 2 of the Convention, the judgment debt still owed to her, as well as EUR 3,000 (three thousand 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 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 15 December 2005, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Vincent BERGER
Registrar

Boštjan M. ZUPANČIČ
President