



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

FIFTH SECTION

**CASE OF ZHMAK v. UKRAINE**

*(Application no. 36852/03)*

JUDGMENT

STRASBOURG

29 June 2006

**FINAL**

***29/09/2006***

*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 Zhmak v. Ukraine,**

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

Mr P. LORENZEN, *President*,

Mrs S. BOTOUCHAROVA,

Mr K. JUNGWIERT,

Mr V. BUTKEVYCH,

Mrs M. TSATSA-NIKOLOVSKA,

Mr R. MARUSTE,

Mrs R. JAEGER, *judges*,

and Mrs C. WESTERDIEK, *Section Registrar*,

Having deliberated in private on 6 June 2006,

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

## PROCEDURE

1. The case originated in an application (no. 36852/03) 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 Anatoliy Grygorovych Zhmak (“the applicant”), on 3 October 2003.

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.

4. On 1 April 2006 this case was assigned to the newly constituted Fifth Section (Rule 25 § 5 and Rule 52 § 1).

## THE FACTS

### I. THE CIRCUMSTANCES OF THE CASE

5. The applicant was born in 1950 and lives in Kyiv.

6. In 2001 the applicant instituted proceedings in the Moskovskyy District Court of Kyiv against the Kvant Scientific Research Institute (the “KSRI”), a State-owned entity, seeking recovery of salary arrears and compensation. By decision of 8 October 2001, the court awarded the

applicant UAH 3,424.98<sup>1</sup> in salary arrears and other payments. On 26 November 2001 the Kyiv City Court of Appeal changed in part the decision of the first instance court and, in addition to the aforementioned sum, awarded the applicant UAH 1,500<sup>2</sup> in compensation for non-pecuniary damage.

7. On 21 January 2002 the Shevchenkivskyy District Bailiffs' Service instituted enforcement proceedings.

8. In January 2003 the applicant instituted proceedings in the Shevchenkivskyy District Court of Kyiv against the Bailiffs' Service for failure to enforce the decision of 26 November 2001. On 6 March 2003 the court found against the applicant, finding no fault on the part of the Bailiffs' Service. On 1 July 2003 the Kyiv City Court of Appeal quashed the decision of the first-instance court and ordered the Bailiffs' Service to seize the movable property of the KSRI. According to the applicant, this decision has not been enforced.

9. On 15 October 2003 the applicant received the amount due to him in full.

## 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

### I. SCOPE OF THE CASE

11. The Court notes that, after the communication of the case to the respondent Government, the applicant introduced his new complaints under Article 13 and Article 1 of Protocol No. 1 with regard to the facts of the present case.

12. In the Court's view, the new complaints are not an elaboration of the applicant's original complaint under Article 6 of the Convention lodged with the Court approximately two years earlier and on which the parties have commented. The Court considers, therefore, that it is not appropriate now to take these matters up separately (see *Skubenko v. Ukraine* (dec.), no. 41152/98, 6 April 2004).

---

1. Around 561 euros – "EUR".

2. Around EUR 246.

## II. ADMISSIBILITY

13. The applicant complained in substance under Article 6 § 1 of the Convention about the State authorities' failure to enforce the decisions of the Kyiv City Court of Appeal of 26 November 2001 and 1 July 2003 in due time. Article 6 § 1 of the Convention provides, 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. ...”

14. The Government raised objections regarding the applicant's victim status and exhaustion of domestic remedies similar to those which the Court has already dismissed in the case of *Romashov v. Ukraine* (see *Romashov*, cited above, §§ 23-33). The Court considers that the present objections must be rejected for the same reasons.

15. The Court considers that 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.

## III. MERITS

### A. Complaint about the delay in the enforcement of the decision of the Kyiv City Court of Appeal of 26 November 2001

16. In their observations on the merits of the applicant's complaint about the non-enforcement of the decision of the Kyiv City Court of Appeal of 26 November 2001, the Government put forward arguments similar to those in the case of *Romashov v. Ukraine*, contending that there had been no violation of Article 6 § 1 of the Convention (see *Romashov*, cited above, § 37).

17. The applicant disagreed.

18. The Court notes that the decision of the Kyiv City Court of Appeal of 26 November 2001 remained unenforced for almost two years.

19. The Court recalls that it has frequently found violations of Article 6 § 1 of the Convention in cases raising similar issues to the present application (see, for example, *Romashov*, cited above, §§ 42-46).

20. Having examined all the material submitted to it, 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.

### **B. Complaint about the length of the non-enforcement of the decision of the Kyiv City Court of Appeal of 1 July 2003**

21. In view of its findings under Article 6 § 1 of the Convention (see paragraphs 20-22 above), the Court does not consider it necessary to examine the applicant's complaint under the same provision about the non-enforcement of the decision of the Kyiv City Court of Appeal of 1 July 2003, as this decision concerned no more than an incidental matter which arose in the course of the enforcement of the decision of the Kyiv City Court of Appeal of 26 November 2001.

## **IV. APPLICATION OF ARTICLE 41 OF THE CONVENTION**

22. 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, costs and expenses**

23. The applicant claimed EUR 6,000 in respect of non-pecuniary damage and EUR 400 in relation to his legal, translation and postal expenses.

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

25. Making its assessment on an equitable basis, as required by Article 41 of the Convention, the Court considers it reasonable to award the applicant a global sum of EUR 500 in respect of non-pecuniary damage, and costs and expenses.

### **B. 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 application admissible;

2. *Holds* that there has been a violation of Article 6 § 1 of the Convention;
3. *Holds* that it is not necessary to examine the applicant's complaint under Article 6 § 1 of the Convention about the non-enforcement of the decision of the Kyiv City Court of Appeal of 1 July 2003;
4. *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, EUR 500 (five hundred euros) in respect of non-pecuniary damage, and cost 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 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 29 June 2006, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Claudia WESTERDIEK  
Registrar

Peer LORENZEN  
President