



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

FIFTH SECTION

**CASE OF NEGRICH v. UKRAINE**

*(Application no. 22252/02)*

JUDGMENT

STRASBOURG

9 November 2006

**FINAL**

*09/02/2007*

*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 Negrich v. Ukraine,**

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

Mr P. LORENZEN, *President*,

Mr K. JUNGWIERT,

Mr V. BUTKEVYCH,

Mrs M. TSATSA-NIKOLOVSKA,

Mr J. BORREGO BORREGO,

Mrs R. JAEGER,

Mr M. VILLIGER, *judges*,

and Mrs C. WESTERDIEK, *Section Registrar*,

Having deliberated in private on 16 October 2006,

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

## PROCEDURE

1. The case originated in an application (no. 22252/02) against Ukraine lodged with the Court under Article 34 of the Convention for the Protection of Human Rights and Fundamental Freedoms (“the Convention”) by Mr Vitaliy Alekseyevich Negrich (“the applicant”) on 25 May 2002.

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

### THE CIRCUMSTANCES OF THE CASE

4. The applicant was born in 1930 and lives in the city of Kherson, Ukraine.

5. On 20 September 1999 the Komsomolskiy District Court of Kherson allowed the applicant's claim against the State-owned enterprise “Khersonskyy Sudnobudivelnnyy Zavod” (the “KSZ”), and ordered the latter to pay the applicant UAH 1,070<sup>1</sup> in salary arrears. On 6 October 1999 the

---

<sup>1</sup> At the material time around 232.88 euros (“EUR”)

Komsomolsky District Bailiffs' Service (the "Bailiffs") instituted enforcement proceedings.

6. By decisions of 16 November 1999, 30 January 2002 and 15 May 2002, the Labour Disputes Commission allowed the applicant's claims and ordered the KSZ to pay the applicant a total of UAH 3283.09<sup>1</sup>. The Bailiffs instituted enforcement proceedings on 30 November 1999, 1 March 2002 and 13 June 2002 respectively.

7. On 27 December 1999 the Kherson Regional Court of Arbitration instituted bankruptcy proceedings against the debtor and, consequently, all enforcement proceedings were suspended. On 10 January 2001 the bankruptcy case was terminated and the enforcement proceedings were resumed.

8. In 2001 a substantial part of the debtor's assets was attached by the Bailiffs; however its sale was barred by the Law on the Introduction of a Moratorium on the Forced Sale of Property, which banned the forced sale of assets belonging to undertakings in which the State held at least 25% of the share capital.

9. On 6 May 2001, 6 December 2001, 17 May 2002 and 1 March 2004 the Bailiffs informed the applicant that the decisions in his favour had not been executed due to the substantial number of enforcement proceedings against the debtor and the debtor's lack of funds.

10. On 23 June 2005 the applicant was paid the amounts due to him in full.

## II. RELEVANT DOMESTIC LAW

11. The relevant domestic law is summarised in the judgment of *Romashov v. Ukraine* (no. 67534/01, §§ 16-18 and 39-41, 27 July 2004).

## THE LAW

### I. ADMISSIBILITY

#### **A. Complaints under Article 6 § 1 of the Convention and Article 1 of Protocol No. 1**

12. The applicant complained about the State authorities' failure to enforce the judgment of the Komsomolskiy District Court of 20 September

---

<sup>1</sup> Around EUR 701

1999 and the decisions of the Labour Disputes Commission of 16 November 1999, 30 January 2002 and 15 May 2002 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 ....”

13. 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) and *Trykhlil v. Ukraine* (see, *Trykhlil v. Ukraine*, no. 58312/00, §§ 40-43, 20 September 2005). The Court considers that the present objections must be rejected for the same reasons.

14. The Government further maintained that, although the debtor company was a State-owned enterprise, it was a separate legal entity and the State could not be held responsible for its debts under domestic law. In this respect the Court refers to its findings in the case of *Mykhaylenko and Others v. Ukraine* (nos. 35091/02 et seq., §§ 44-45, ECHR 2004-XII) which concerned the failure of the State-owned enterprise to pay the applicants the amount awarded to them in the final judgments given against that company. The Court held that the respondent State's Convention responsibility under Articles 6 and 1 of Protocol No. 1 was engaged on account of that failure. It sees no reason to depart from this conclusion in the instant case.

15. The Court concludes 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.

**B. Complaint under Article 8 of the Convention**

16. The applicant maintained that non-enforcement of the decisions in his favour had affected his private life. He invoked Article 8 of the Convention.

17. The Court finds no indication whatsoever in the case-file which might disclose any appearance of a violation of this provision. The Court, therefore, rejects this part of the application, in accordance with Article 35 §§ 3 and 4 of the Convention, as being manifestly ill-founded.

## II. MERITS

18. In their observations, the Government put forward arguments similar to those in the cases of *Romashov v. Ukraine* and *Voytenko v. Ukraine*, contending that there had been no violation of either Article 6 § 1 of the Convention or Article 1 of Protocol No. 1 (see *Romashov*, cited above, § 37, and *Voytenko v. Ukraine*, no. 18966/02, 29 June 2004, § 37).

19. The applicant disagreed.

20. The Court notes that the judgment of the Komsomolskiy District Court of 20 September 1999 and the decisions of the Labour Disputes Commission of 16 November 1999, 30 January 2002 and 15 May 2002 remained unenforced for around five years and nine months, five years and seven months, three years and five months, and three years and one month, respectively.

21. 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, *Romashov*, cited above, §§ 42-46, and *Voytenko*, cited above, §§ 53-55).

22. 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 and Article 1 of Protocol No. 1.

## III. APPLICATION OF ARTICLE 41 OF THE CONVENTION

23. 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

24. The applicant claimed USD 200,000 (EUR 157,575) in respect of pecuniary and non-pecuniary damage.

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

26. The Court does not discern any causal link between the violation found and the pecuniary damage alleged; it therefore rejects this claim. However, the Court considers that the applicant must have sustained non-pecuniary damage and, making its assessment on an equitable basis, as required by Article 41 of the Convention, awards the applicant EUR 2,300 in respect of non-pecuniary damage.

### **B. Costs and expenses**

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

### **C. Default interest**

28. 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 complaints under Article 6 § 1 of the Convention and Article 1 of Protocol No. 1 to the Convention 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 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, EUR 2, 300 (two thousand three hundred euros) in respect of non-pecuniary damage, plus any tax that may be chargeable;
  - (b) that the above amounts shall 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;

(c) 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;

5. *Dismisses* the remainder of the applicant's claim for just satisfaction.

Done in English, and notified in writing on 9 November 2006, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Claudia WESTERDIEK  
Registrar

Peer LORENZEN  
President