



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

FIFTH SECTION

CASE OF SERIKOVA v. UKRAINE

(Application no. 43108/04)

JUDGMENT

STRASBOURG

7 December 2006

FINAL

07/03/2007

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 Serikova 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 13 November 2006,

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

PROCEDURE

1. The case originated in an application (no. 43108/04) 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, Ms Anna Arkhipovna Serikova (“the applicant”), on 2 March 2004.

2. The applicant was represented by Mr V. Bychkovskiy from Miusinsk. The Ukrainian Government (“the Government”) were represented by Mr Y. Zaytsev, their Agent, and Mrs I. Shevchuk, Head of the Office of the Government Agent before the European Court of Human Rights.

3. On 8 November 2005 the Court decided to communicate the complaints under Article 6 § 1 of the Convention and Article 1 of Protocol No. 1 concerning the non-enforcement of the judgments in the applicant's favour 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 1943 and lives in Vakhrushevo, the Lugansk region.

5. On 5 June 2000 and 5 June 2001 the Krasnyy Luch Court (*Краснолучський міський суд Луганської області*) awarded the applicant

UAH 1,278.79¹ and UAH 375.06² respectively in salary arrears and other payments against her employer, the Gob Piles Fire-fighting Department of the State Holding Company “Donbasantratsyt” (“the Department,” *Управління з тушіння, профілактики териконів та рекультивації земель ДХК „Донбасантрацит”*). These judgments became final and the enforcement writs were transferred to the Krasnyy Luch Bailiffs' Service (“the Bailiffs,” *Відділ Державної виконавчої служби Краснолуцького міського управління юстиції*) for enforcement.

6. In the meantime, according to the Government, the Department's assets were held in a tax lien since 12 August 1998, which blocked the possibility of their sale. Additionally, in accordance with the explanations of the Bailiffs of 11 February 2005, the enforcement was impeded by the reorganization of the State Holding Company “Donbasantratsyt” into the State Enterprise “Donbasantratsyt” (*ГП „Донбасантрацит”*) and the need to appoint the Department's successor for the purposes of the enforcement proceedings.

7. The applicant received the debt due to her by the judgment of 5 June 2000 on 14 October 2004 and on 14 October 2005 – the one due to her by the judgment of 5 June 2001.

II. RELEVANT DOMESTIC LAW

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

THE LAW

9. The applicant complained about the State authorities' failure to enforce the judgments of 5 June 2000 and 5 June 2001 in due time. She invoked Articles 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. ...”

1. EUR 243.08.

2. EUR 82.27.

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

10. The Government raised objections, contested by the applicant, regarding the applicant's victim status, similar to those already dismissed in a number of the Court's judgments regarding non-enforcement of judgments against the State-owned companies (see e.g., among many others, *Romashov v. Ukraine*, cited above, §§ 25-27). The Court finds no reason to depart from its case-law in the present case and accordingly dismisses these objections.

11. The Court concludes that the applicant's complaints under Article 6 § 1 of the Convention and Article 1 of Protocol No. 1 to the Convention about the delay in the enforcement of the judgments of 5 June 2000 and 5 June 2001 raise issues of fact and law under the Convention, the determination of which requires an examination on the merits. It finds no ground for declaring these complaints inadmissible. The Court must therefore declare them admissible.

II. MERITS

12. In their observations on the merits of the applicant's complaints, the Government contended that there had been no violation of Article 6 § 1 of the Convention or Article 1 of Protocol No. 1.

13. The applicant disagreed.

14. The Court notes that both judgments given in the applicant's favour remained unenforced for four years and four months.

15. The Court recalls that it has already found violations of Article 6 § 1 of the Convention and Article 1 of Protocol No. 1 in a number of similar cases (see, for instance, *Romashov v. Ukraine*, cited above, §§ 42-46 and *Sharenok v. Ukraine*, no. 35087/02, §§ 34-38, 22 February 2005).

16. Having examined all the material in its possession, the Court considers that the Government have not put forward any fact or argument capable of persuading it to reach a different conclusion in the present case.

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

III. APPLICATION OF ARTICLE 41 OF THE CONVENTION

18. 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

19. The applicant claimed the unsettled judgments debts and an additional sum of UAH 5,853.85 (EUR 920) by way of just satisfaction.

20. The Government noted that the judgments in the applicant's favour had been enforced in full. They further raised no objections against paying the aforementioned additional sum in the event of the Court's finding a violation.

21. The Court recalls that the judgments in the applicant's favour have been enforced in full (see paragraph 7) and dismisses therefore the applicant's claim for the unsettled debts. Regard being had to the circumstances of the case and the submissions of the parties, the Court awards the applicant the global sum of EUR 920 by way of just satisfaction.

B. Default interest

22. 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 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 according to Article 44 § 2 of the Convention, the global sum of EUR 920 (nine hundred twenty euros) by way of just satisfaction, to be converted into

the currency of the respondent State at the rate applicable on 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;

5. *Dismisses* the remainder of the applicants' claims for just satisfaction.

Done in English, and notified in writing on 7 December 2006, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Claudia WESTERDIEK
Registrar

Peer LORENZEN
President