



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

FIFTH SECTION

CASE OF YEREMENKO v. UKRAINE

(Application no. 1179/04)

JUDGMENT

STRASBOURG

14 December 2006

FINAL

14/03/2007

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 Yeremenko v. Ukraine,

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

Mr P. LORENZEN, *President*,

Mrs S. BOTOUCHAROVA,

Mr V. BUTKEVYCH,

Mrs M. TSATSA-NIKOLOVSKA,

Mr R. MARUSTE,

Mr J. BORREGO BORREGO,

Mrs R. JAEGER, *judges*,

and Mrs C. WESTERDIEK, *Section Registrar*,

Having deliberated in private on 20 November 2006,

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

PROCEDURE

1. The case originated in an application (no. 1179/04) 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 Nikolay Georgiyevich Yeremenko ("the applicant"), on 6 December 2003.

2. The Ukrainian Government ("the Government") were represented by their Agents, Mrs V. Lutkovska and Mr Y. Zaytsev.

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

I. THE CIRCUMSTANCES OF THE CASE

4. The applicant was born in 1941 and resides in the town of Zhovti Vody, Dnipropetrovsk region, Ukraine.

5. On an unspecified date the applicant's late wife instituted proceedings in the Zhovtovodskyy Town Court of Dnipropetrovsk Region against her employer, a State-owned company, the Zhovti Vody Construction Department (*Жовтоводське управління будівництва*), in order to receive salary arrears and other payments.

6. On 19 March 2001 the court found for the applicant's wife and awarded her 4,346.81¹ Ukrainian hryvnas ("UAH") (*Рішення Жовтоводського міського суду*).

7. On 28 March 2001 the Zhovti Vody Town Bailiffs' Service (*Відділ Державної виконавчої служби Жовтоводського міського управління юстиції*) initiated the enforcement proceedings. On 28 September 2001 the applicant's wife received UAH 300. On 12 April 2002 she received a further UAH 350. The rest of the awarded amount remains unpaid.

8. On 1 May 2002 the applicant's wife died.

9. On 22 December 2002 the applicant instituted proceedings in the Shevchenkivskyi District Court of Kyiv against the Ministry of Fuel and Energy of Ukraine, claiming the salary arrears due to his late wife and compensation for moral damage.

10. On 1 February 2003 the applicant was recognised as an heir of his late wife.

11. On 11 August 2003 the court found against the applicant on the ground that the company was an independent legal entity for which debts the Ministry was not responsible.

12. By letter of 31 December 2003, the Bailiffs' Service informed the applicant that the enforcement proceedings had been stayed because of the bankruptcy proceedings initiated against the debtor by a decision of 27 December 2001 of the Commercial Court of the Dnipropetrovsk Region. The Bailiffs' Service also stated that, according to the Law on the Introduction of a Moratorium on the Forced Sale of Property, on 26 December 2001 a ban on the forced sale of assets belonging to undertakings in which the State holds at least 25% of the share capital had been introduced.

13. By the decree of 5 October 2004 the Ministry of Fuel and Energy of Ukraine liquidated the debtor company.

II. RELEVANT DOMESTIC LAW

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

1. At the material time around 894.33 euros ("EUR").

THE LAW

I. ALLEGED VIOLATION OF ARTICLE 6 § 1 OF THE CONVENTION AND ARTICLE 1 OF PROTOCOL NO. 1

15. The applicant complained about the lengthy non-enforcement of the judgment in favour of his late wife. He invoked Article 6 § 1 of the Convention and Article 1 of Protocol No. 1. These Articles 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”

A. Admissibility

16. The Government submitted no observations on the admissibility of the applicant's complaints.

17. The Court concludes that the applicant's complaint under Article 6 § 1 of the Convention about the delay in the enforcement of the judgment of the Zhovtovodskyy Town Court is not manifestly ill-founded within the meaning of Article 35 § 3 of the Convention. It further notes that it is not inadmissible on any other grounds. It must therefore be declared admissible. For the same reasons, the applicant's complaint under Article 1 of Protocol No. 1 cannot be declared inadmissible.

B. Merits

18. The Government maintained that the responsibility of the State in this situation was limited to the organisation and proper conduct of

enforcement proceedings and that the length of the enforcement proceedings had been caused by the critical financial situation of the debtor company.

19. The applicant disagreed. In particular, he maintained that he and his late wife had not been able to pay for his wife's necessary treatment because of the impossibility to recover the debt awarded to her by the court and this precipitated his wife's death.

20. The Court notes that the judgment in favour of the applicant's late wife has not been enforced for more than five years and seven months.

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 like the present application (see, among others, *Romashov v. Ukraine*, cited above, §§ 42-46; *Shmalko v. Ukraine*, no. 60750/00, §§ 55-57, 20 July 2004).

22. Having examined all the materials submitted to it, 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.

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

II. APPLICATION OF ARTICLE 41 OF THE CONVENTION

24. 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

25. The applicant claimed UAH 2,905¹ in inflation loss and the amount of the judgment debt in respect of pecuniary damage, and non-pecuniary damage without specifying the exact amount.

26. The Government agreed with the applicant's claims.

27. In so far as the applicant claimed the amount awarded to his late wife by the judgment at issue, the Court considers that the Government should pay him the outstanding debt. As to the remainder of the applicant's claims, the Court, considering the Government's position in this matter and making its assessment on an equitable basis, as required by Article 41 of the Convention, awards the applicant EUR 472 in respect of pecuniary damage and EUR 1,800 in respect of non-pecuniary damage.

1. Around EUR 472.

B. Costs and expenses

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

C. Default interest

29. 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 of Protocol No. 1 of 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, the outstanding debt in accordance with the judgment of 19 March 2001, as well as EUR 472 (four hundred seventy two euros) in respect of pecuniary damage and EUR 1,800 (one thousand eight 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;
 - (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.

Done in English, and notified in writing on 14 December 2006, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Claudia WESTERDIEK
Registrar

Peer LORENZEN
President