



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

FIFTH SECTION

CASE OF VNUCHKO v. UKRAINE

(Application no. 1198/04)

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 Vnuchko v. Ukraine,

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

Mr P. LORENZEN, *President*,
Mrs S. BOTOCHAROVA,
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. 1198/04) 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 Sergey Grigoryevich Vnuchko (“the applicant”), on 11 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 complaints under Article 6 § 1 of the Convention and Article 1 of Protocol No. 1 concerning the lengthy 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 1954 and resides in the town of Zhovti Vody, Dnipropetrovsk region, Ukraine.

5. On an unspecified date, the applicant instituted proceedings in the Zhovtovodskyy Town Court of Dnipropetrovsk Region against his employer, a State-owned company, the Zhovti Vody Building Department

(Жовтководське управління будівництва), in order to receive salary arrears and other payments.

6. On 26 January 2001 the court found for the applicant and awarded him 9,001.66¹ Ukrainian hryvnias (“UAH”) (*Рішення Жовтководського міського суду*).

7. On 9 February 2001 the Zhovti Vody Town Bailiffs' Service (*Відділ Державної виконавчої служби Жовтководського міського управління юстиції*) initiated the enforcement proceedings.

8. On an unspecified date, the applicant instituted new proceedings in the same court against the same enterprise for further payments and compensation.

9. On 19 February 2003 the court found for the applicant and awarded him UAH 1,483.83².

10. The applicant received UAH 650, but the rest of the awards remain unpaid.

11. By letters of 3 October and 27 November 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.

12. By letter of 6 February 2004, the Bailiffs' Service informed the applicant that the enforcement proceedings had been resumed and that the judgments in the applicant's favour would be enforced gradually in accordance with his place in the list of creditors. However, according to the applicant, the judgments remain unenforced.

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 1,793.02 euros “EUR”.

2. At the material time around 268.37 EUR.

THE LAW

I. ALLEGED VIOLATION OF ARTICLE 4 OF THE CONVENTION

15. The applicant complained about a violation of Article 4 § 1 of the Convention, referring to the fact that he had been forced to work without receiving remuneration. The Court notes that the applicant performed his work voluntarily and his entitlement to payment has never been denied. The dispute thus involves civil rights and obligations, but does not disclose any element of slavery or forced or compulsory labour within the meaning of this provision (see *Sokur v. Ukraine* (dec.), no. 29439/02, 26 November 2002). In these circumstances, the Court considers that this part of the application must be rejected as being manifestly ill-founded pursuant to Article 35 §§ 3 and 4 of the Convention.

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

16. The applicant complained about the lengthy non-enforcement of the judgments in his favour. 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

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

18. The Court concludes that the applicant's complaint under Article 6 § 1 of the Convention about the delay in the enforcement of the judgments 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

19. 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.

20. The applicant disagreed.

21. The Court notes that the judgments in the applicant's favour have not been enforced for more than five years and eight months, and three years and seven months, respectively.

22. 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).

23. 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.

24. 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

25. 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

26. The applicant claimed in respect of pecuniary damage the amount of the judgments' debts still owed to him and further pecuniary and non-pecuniary damage without specifying the exact amount.

27. The Government maintained that the applicant could have applied to the domestic courts claiming compensation for the loss of value of the amounts awarded. As he failed to do so his claim should be rejected.

28. In so far as the applicant claimed the amount awarded to him by the judgments at issue, the Court considers that the Government should pay him the outstanding debt¹ in settlement of his pecuniary damage. The Court dismisses the rest of the applicant's claims for pecuniary damage as they are unsubstantiated. The Court further considers that the applicant must have sustained non-pecuniary damage, and awards him, deciding on an equitable basis, EUR 2,300 in this respect.

B. Costs and expenses

29. The applicant also claimed costs and expenses occurred before the Court without specifying the exact amount.

30. The Court considers that the applicant has not provided any substantiation of the costs and expenses claimed; it makes, therefore, no award in this respect.

C. Default interest

31. 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 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 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 judgments' debts still owed to him,

1. Last known to the Court to be UAH 9,835.49 (currently around EUR 1,597.53).

as well as 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 amount 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 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 applicant's claim for just satisfaction.

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