



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

FIFTH SECTION

CASE OF MIRONOV v. UKRAINE

(Application no. 19916/04)

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 Mironov 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. 19916/04) 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 Vyacheslav Alekseyevich Mironov (“the applicant”), on 21 May 2004. The applicant having died on 14 November 2004, his widow expressed the wish to pursue the application.

2. The applicant was represented by Mr Aleksey Matsak. 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

4. The applicant was born in 1952 and died on 14 November 2004. By letter of 4 April 2005, the applicant's widow informed the Court that she wished to pursue the application.

I. THE CIRCUMSTANCES OF THE CASE

5. In May 2003 the applicant instituted proceedings in the Kirovskyy District Court against his former employer, the Makeyivgillya State

Mining Company (ДП «Макеїввугілля»), for salary arrears and compensation for moral damage. On 15 August 2003 the court awarded the applicant 13,890.79¹ Ukrainian hryvnias (“UAH”) (*Рішення Кіровського районного суду м. Макеївки*).

6. On 25 September 2003 the Tsentralno-miskyy District Bailiffs' Service (*Відділ Державної виконавчої служби Центральньо-міського районного управління юстиції м.Макеївки*) initiated the enforcement proceedings. On 21 October 2003 the applicant received UAH 574.75. Later the applicant received UAH 2,666. The rest of the sum due to the applicant remains unpaid.

7. In October 2003 the applicant instituted proceedings in the Tsentralno-miskyy District Court of the town of Makeyivka against the Tsentralno-miskyy Bailiffs' Service for failure to enforce the court judgment in his favour. On 2 December 2003 the court found for the applicant and ordered the Bailiffs' Service to seize the debtor's property. By letters of 12 March and 5 May 2004, the Donetsk Regional Department of the Ministry of Justice informed the applicant that in January-February 2004 some of the debtor's property and accounts had been seized, and that the court judgment in the applicant's favour would be enforced gradually in accordance with his place in the list of creditors.

8. In August 2004 the applicant instituted proceedings in the Kirovskyy District Court against the Makeyivugillya State Mining Company claiming compensation for the loss of earnings because of the lengthy non-enforcement of the judgment in his favour. On 28 October 2004 the court found against the applicant. On 20 December 2004 the court provided the applicant with a time-limit until 9 January 2005 to lodge an appeal in compliance with procedural formalities previewed by law. On 14 July 2005 the Kirovskyy District Court returned the appeal lodged by the applicant's widow. She appealed against this decision. The parties did not submit any further information about these proceedings.

II. RELEVANT DOMESTIC LAW

9. 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 2,386.37 euros (“EUR”).

THE LAW

I. AS TO THE *LOCUS STANDI* OF MRS MIRONOVA

10. The applicant died in November 2004. On 4 April 2005 the applicant's widow informed the Court that she wished to pursue the application.

11. The respondent Government pointed out that the Court did allow previously next of kin to stand in the proceedings before the Court (see *Gayduk and Others v. Ukraine* (dec.), nos. 45526/99 and following, ECHR 2002-VI). The Government therefore left the issue to the Court's discretion.

12. The Court notes that the present application concerns a property right which is in principle transferable to the heirs, and that there are next of kin of the applicant who wish to pursue the application. In these circumstances the Court considers that the applicant's widow (hereinafter – the “heir”) has standing to continue the present proceedings in his stead. However, reference will still be made to the applicant throughout the ensuing text.

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

13. The applicant complained about the length of the non-enforcement of the judgment 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

14. The Government raised objections regarding the exhaustion of domestic remedies similar to those which the Court has already dismissed in the case of *Romashov v. Ukraine* (no. 67534/01, §§ 28-32, 27 July 2004). The Court considers that the present objections must be rejected for the same reasons.

15. 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 Kirovskyy District 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

16. The Government argued that the State could not be considered responsible for the debts of its enterprises. The Government maintained that the responsibility of the State in this situation was limited to the organisation and proper conduct of enforcement proceedings. The Government contended that the Bailiffs' Service had performed all necessary actions and could be blamed for the delay. In particular, due to the efforts of the Bailiffs' Service the judgment was enforced in part.

17. The applicant disagreed.

18. The Court notes that the judgment in the applicant's favour has not been enforced for more than three years and one month.

19. 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).

20. 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.

21. 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

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

23. The applicant claimed the amount of the judgment debt and UAH 8,737.31¹ in respect of pecuniary damage. He further claimed EUR 5,000 in respect of non-pecuniary damage.

24. The Government pointed out that if the Court awarded the applicant the amount of the judgment debt, this would lead to the situation of two decisions in the applicant's favour on the same claim. Therefore, the Government asked the Court to reject this claim. As for the rest of the applicant's claims the Government maintained that they were unsubstantiated as they were not supported by any documents.

25. Insofar as the applicant claimed the amount awarded to him by the judgment at issue, the Court considers that the Government should pay him the outstanding debt (see paragraph 6 above) in settlement of his pecuniary damage. As to the remainder of the applicant's just satisfaction claims for pecuniary damage, the Court does not discern any causal link between the violation found and the pecuniary damage alleged; it therefore rejects this claim. Making its assessment on an equitable basis, as required by Article 41 of the Convention, the Court awards the applicant EUR 800 in respect of non-pecuniary damage.

B. Costs and expenses

26. The applicant claimed EUR 80 in costs and expenses occurred in the domestic proceedings and EUR 300 in costs and expenses before the Court.

27. The Government maintained that these claims were unsubstantiated as they were not supported by any documents.

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

1. Around EUR 1,415.72.

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. *Holds* that the applicant's heir, Mrs Nina Mironova, has standing to continue the present proceedings in his stead;
2. *Declares* the application admissible;
3. *Holds* that there has been a violation of Article 6 § 1 of the Convention;
4. *Holds* that there has been a violation of Article 1 of Protocol No. 1 of the Convention;
5. *Holds*
 - (a) that the respondent State is to pay Mrs Nina Mironova, within three months from the date on which the judgment becomes final in accordance with Article 44 § 2 of the Convention, the sum outstanding on the judgment debt awarded to the applicant by the judgment of 15 August 2003, as well as EUR 800 (eight 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;
6. *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