



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

FIFTH SECTION

CASE OF GURSKA v. UKRAINE

(Application no. 35185/04)

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 Gurska 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:

Commented [Note1]: Judges names are to be followed by a COMMA and a MANUAL LINE BREAK (Shift+Enter). The Registrar's name is not to be lined up with the judges' names (no tab to be added).

Commented [a2]: Substitute judges' names are not to appear.

Commented [Note3]: Indicate only the date(s) of the deliberations of the Chamber which actually adopts the judgment.

PROCEDURE

1. The case originated in an application (no. 35185/04) 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, Mrs Anelya Vatslavivna Gurska ("the applicant"), on 24 September 2004.

2. The Ukrainian Government ("the Government") were represented by their Agent, Mr Y. Zaitsev.

3. On 5 December 2005 the Court decided to give notice of 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.

Commented [N4]: Remove paragraph for clone, repetitive or other simple cases.

THE FACTS**I. THE CIRCUMSTANCES OF THE CASE**

4. The applicant was born in 1956 and lives in the village of Sobolivka, the Zhytomyr Region.

5. By three judgments of 18 February, 5 March and 20 May 2003 the Dzerzhynsk Town Court ordered the Sobolivka Village Council to pay the applicant UAH 4,097.01¹ in salary arrears and other payments.

1. Around 679 euros – "EUR".

6. The Romaniv Town Bailiffs' Service instituted enforcement proceedings in respect of the first judgment on 3 March 2003 and in respect of two other judgments on 26 June 2003.

7. On 14 June 2003 the Bailiffs' Service discontinued the enforcement proceedings on the ground that the Cabinet of Ministers of Ukraine had not foreseen the order of payment of such judgment debts.

8. In January 2004 the applicant lodged a complaint with the same court against the Bailiffs' Service for failure to enforce the judgments in her favour. On 5 February 2004 the court rejected her claim, finding no fault on the part of the Bailiffs' Service. On 8 April 2004 the Zhytomyr Regional Court of Appeal upheld the decision of the first instance court. The courts held that the judgments could not be enforced as there were no procedure regulating the seizure of funds from the accounts of the State Treasury. The applicant's appeal in cassation is still pending before the Supreme Court of Ukraine.

9. On an unspecified date the applicant received UAH 364.92¹. The judgments remain to a large extent unenforced (UAH 3,732.09²).

II. RELEVANT DOMESTIC LAW

10. The relevant domestic law is summarised in the judgment of *Voytenko v. Ukraine* (no. 18966/02, § 20-25, 29 June 2004).

THE LAW

I. ADMISSIBILITY

11. The applicant complained about the State authorities' failure to enforce the judgments of the Dzerzhynsk Town Court of 18 February, 5 March and 20 May 2003 in full and in due time. She 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. ..."

1. Around EUR 61.

2. Around EUR 618.

Commented [Note5]: Delete sections that are not needed.

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”

12. The Government contended that the applicant had not exhausted domestic remedies as the proceedings, in which she had challenged the alleged inactivity of the Bailiffs’ Service, were still pending before the domestic courts. The Government further stated that the applicant had not resubmitted the writs of execution for the judgments of 18 February, 5 March and 20 May 2003 to the Bailiffs’ Service. The Government therefore proposed that the application be declared inadmissible.

13. The Court recalls that it has already dismissed the Government’s analogous contentions in similar cases (see, for instance, *Voytenko*, cited above, §§ 29-31, and *Garkusha v. Ukraine*, no. 4629/03, §§ 18-19, 13 December 2005) and finds no reason to reach a different conclusion in the present case.

14. The Court concludes that this part of the application raises 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.

II. MERITS

15. In their observations, the Government put forward arguments similar to those in the case of *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 *Voytenko*, cited above, § 37).

16. The applicant disagreed.

17. The Court notes that to date the judgments of the Dzerzhynsk Town Court of 18 February, 5 March and 20 May 2003 have remained unenforced for around three years and seven months, and three years and four months, respectively.

18. 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 *Voytenko*, cited above, §§ 39-43 and 53-55).

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For decisions and judgments adopted before 1 November 1998, precede paragraph reference by page reference. Add a second "§" if referring to more than one paragraph.

19. 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

20. 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

21. The applicant claimed the remaining amount of the judgment debts (see paragraph 9 above) in respect of pecuniary damage. She further claimed UAH 46,000¹ for non-pecuniary damage.

22. The Government maintained that the applicant had not substantiated her claims and submitted that the finding of a violation would constitute sufficient just satisfaction.

23. In so far as the applicant claimed the amount awarded to her by the judgments at issue, the Court considers that the Government should pay her the outstanding debt in settlement of her pecuniary damage.

24. As to the applicant's claim in respect of non-pecuniary damage, the Court, making its assessment on an equitable basis, as required by Article 41 of the Convention, awards the applicant the amount of EUR 1,300.

B. Costs and expenses

25. The applicant also claimed UAH 600² for the cost of legal advice concerning the domestic proceedings and those before the Court. She submitted a certificate issued in this respect by Mr P. Veremchuk, a lawyer practising in the town of Romaniv, the Zhytomyr Region.

26. The Government contested this claim.

27. According to the Court's case-law, an applicant is entitled to reimbursement of his costs and expenses only in so far as it has been shown that these have been actually and necessarily incurred and were reasonable as to quantum. In the present case, regard being had to the information in its

1. Around EUR 7,641.

2. Around EUR 100.

possession and the above criteria, the Court considers it reasonable to award the applicant the requested sum of EUR 100 for costs and expenses in the proceedings before the Court.

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 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;
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 judgment debts still owed to her, as well as the following sums, to be converted into the national currency of the respondent State at the rate applicable on the date of payment:
 - (i) EUR 1,300 (one thousand three hundred euros) in respect of non-pecuniary damage;
 - (ii) EUR 100 (one hundred euros) for costs and expenses;
 - (iii) plus any tax that may be chargeable on the above amounts;
 - (b) 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 14 December 2006, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Claudia WESTERDIEK
Registrar

Peer LORENZEN
President

Commented [Note7]: Check names. Adapt tabs.