



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

FIFTH SECTION

CASE OF OLEG SEMENOV v. UKRAINE

(Application no. 25464/03)

JUDGMENT

STRASBOURG

21 December 2006

FINAL

21/03/2007

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 Oleg Semenov v. Ukraine,

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

Mr P. LORENZEN, *President*,
Mrs S. BOTOUCHAROVA,
Mr K. JUNGWIERT,
Mr V. BUTKEVYCH,
Mrs M. TSATSA-NIKOLOVSKA,
Mrs R. JAEGER,
Mr M. VILLIGER, *judges*

and Mrs C. WESTERDIEK, *Section Registrar*,

Having deliberated in private on 27 November 2006,

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

PROCEDURE

1. The case originated in an application (no. 25464/03) 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 Oleg Petrovich Semenov (“the applicant”), on 1 July 2003.

2. The Ukrainian Government (“the Government”) were represented by their Agent, Mrs Z. Bortnovska.

3. On 27 November 2003 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 1975 and lives in the town of Nova Kakhovka, Kherson Region, Ukraine. He is a former employee of the State-owned OJSC “Pivdenelektromash” (“the Company,” *BAT “Південелектромаш”*).

5. The background facts for the case are described in the case of *Semenov v. Ukraine* (no. 25463/03, §§ 5-8, 13 December 2005).

6. On 5 December 2002 the Nova Kakhovka City Court (*Новокаховський міський суд Херсонської області*) ordered the Company to pay the applicant UAH 4,393¹ in salary arrears. This judgment became final and the writs of execution were transferred to the Bailiffs' Service.

7. By letters of 26 February 2003 and 15 April 2003, the Bailiffs' Service and the Kherson Regional Department of Justice informed the applicant that the enforcement proceedings had been suspended due to the proceedings of financial rehabilitation of the debtor.

8. On 11 August 2003 the Nova Kakhovka City Court rejected the applicant's complaint about the allegedly unlawful inactivity of the Bailiffs' Service. The court stated that there was no fault attributable to the defendant.

9. On 15 January 2004 the Bailiffs' Service resumed the execution proceedings in the applicant's case. On 23 January and 10 February 2004, it ordered the seizure of the Company's accounts. However, on 27 February 2004 the Kherson Regional Commercial Court, on the trustee's appeal, quashed these decisions because the Bankruptcy Act envisaged the obligatory suspension of enforcement proceedings pending the resolution of a bankruptcy case.

10. The judgment in the applicant's favour remains unenforced.

II. RELEVANT DOMESTIC LAW

11. The relevant domestic law is summarised in the judgments of *Romashov v. Ukraine* (no. 67534/01, §§ 16-18, 27 July 2004) and *Trykhlib v. Ukraine* (no. 58312/00, §§ 25-32, 20 September 2005).

THE LAW

12. The applicant complained of the failure of the State authorities to enforce the judgment of 5 December 2002 given in his favour. He alleged an infringement of Article 6 § 1 of the Convention and Article 1 of Protocol No. 1 to the Convention which provide, in so far as relevant, as follows:

Article 6 § 1 of the Convention

“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 853 euros (EUR).

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 or to secure the payment of taxes or other contributions or penalties.”

I. ADMISSIBILITY

13. The Government submitted that the applicant had failed to exhaust domestic remedies, as required by Article 35 § 1 of the Convention, since he had not appealed against the judgment of the Nova Kakhovka City Court of 11 August 2003, whereby his complaints about the Bailiffs' inactivity were rejected, and he had not applied to the Kherson Regional Commercial Court for registration as a creditor in the bankruptcy proceedings.

14. The Court notes that these matters have already been discussed and dismissed in a number of its previous judgments (see, for example, the aforementioned cases of *Romashov* and *Trykhliv*, §§ 23-32 and 36-42, respectively). It finds no reason to draw different conclusions in the present case and it therefore rejects the Government's objection.

15. The Court notes that the application 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.

II. MERITS

16. The Government maintained that the lengthy non-enforcement of the judgment in the applicant's favour had been caused by the ongoing bankruptcy proceedings against the debtor Company and its critical financial situation. The Government further maintained that the Bailiffs' Service had performed all necessary actions and could not be blamed for the delay. The applicant disagreed.

17. The Court notes that the judgment of 5 February 2002 has remained unenforced for a period of four years and eight months.

18. The Court further 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, including the cases concerning the same State-owned company – the OJSC “Pivdenelektromash” (see, for instance, *Trykhliv v. Ukraine*, cited above, §§ 52-53; *Semenov v. Ukraine*, cited above,

§§ 24-25, *Chernyayev v. Ukraine*, no. 15366/03, §§ 19-20 and 23-25, 26 July 2005 and *Anatskiy v. Ukraine*, cited above, §§ 21-22).

19. 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.

20. 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

21. 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

22. The applicant claimed the unsettled debt due to him under the judgment at issue by way of compensation for pecuniary damage. Additionally, he claimed UAH 100,000¹ in respect of non-pecuniary damage.

23. The Government submitted that these claims should be rejected as unsubstantiated.

24. The Court notes that, as the judgment of the Nova Kakhovka Court of 5 February 2002 remains unenforced, the Government should pay the applicant the outstanding debt in order to satisfy his claim for pecuniary damage².

25. The Court further takes the view that the applicant has suffered some non-pecuniary damage as a result of the violations found. Making its assessment on an equitable basis, as required by Article 41 of the Convention, the Court awards the applicant the sum of EUR 1,800 in respect of non-pecuniary damage.

B. Costs and expenses

26. The applicant did not submit any claim under this head within the set time-limit; the Court therefore makes no award under this head.

1. Around EUR 16,667.

2. UAH 4,393 (EUR 853).

C. Default interest

27. 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 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 in accordance with Article 44 § 2 of the Convention, the judgment debt still owed to him, as well as EUR 1,800 (one thousand eight hundred euros) in respect of non-pecuniary damage, to be converted into the national currency of the respondent State at the rate applicable at 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 applicant's claim for just satisfaction.

Done in English, and notified in writing on 21 December 2006, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Claudia WESTERDIEK
Registrar

Peer LORENZEN
President