



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

FIFTH SECTION

CASE OF PETROVA v. UKRAINE

(Application no. 33635/03)

JUDGMENT

STRASBOURG

11 January 2007

FINAL

11/04/2007

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 Petrova 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,

Mr R. MARUSTE,

Mr M. VILLIGER, *judges*,

and Mrs C. WESTERDIEK, *Section Registrar*,

Having deliberated in private on 4 December 2006,

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

PROCEDURE

1. The case originated in an application (no. 33635/03) 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, Ms Galina Vasilyevna Petrova (“the applicant”), on 23 September 2003.

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

3. On 15 March 2005 the Court decided to communicate the complaint under Article 6 § 1 of the Convention concerning the non-enforcement of the judgment 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 1943 and lives in Chuguyev, the Kharkiv region. She is a former employee of the OJSC “Chuguyevskaya Toplivnaya Aparatura” (“the Company,” *BAT “Чугуївська паливна апаратура”*). At the material time the State owned 32.67% of the Company's shares. The Company was therefore subject to the Law of 29 November 2001 “on the Introduction of a Moratorium on the Forced Sale of Property.”

5. The background facts for the case are described in the case of *Solovyeva v. Ukraine* (no. 32547/03, §§ 7-11, 13 December 2005).

6. On 25 November 2002 the Chuguyev Court (*Чугуївський місцевий суд Харківської області*) ordered the Company to pay the applicant UAH 1,939¹ in salary arrears. This judgment became final and on 9 January 2003 the enforcement writ was transferred to the Chuguyev Bailiffs' Service (*Відділ Державної виконавчої служби Чугуївського міського управління юстиції*) for enforcement.

7. On 10 July 2006 the award was fully paid to the applicant.

II. RELEVANT DOMESTIC LAW

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

THE LAW

I. SCOPE OF THE CASE

9. The Court notes that, after the communication of the case to the respondent Government, the applicant introduced a new complaint under Article 1 of Protocol No. 1 with regard to the facts of the present case.

10. In the Court's view, the new complaint is not an elaboration of the applicant's original complaint under Article 6 § 1 of the Convention, raised with the Court approximately two years earlier, on which the parties have commented. The Court considers, therefore, that it is not appropriate now to take this matter up (see e.g., *Zhmak v. Ukraine*, no. 36852/03, §§ 11-12, 29 June 2006).

II. ADMISSIBILITY

11. The applicant complained about the State authorities' failure to enforce the judgment of 25 November 2002 in due time. She invoked Article 6 § 1 of the Convention, which provides, insofar as relevant, as follows:

1. 377.46 euros ("EUR").

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. ...”

12. The Government raised objections, contested by the applicant, regarding non-exhaustion of domestic remedies and the responsibility of the State for the Company's debts, similar to those already dismissed in a number of the Court's judgments regarding non-enforcement of judgments against the State-controlled companies (see e.g., among many others, *Solovyeva v. Ukraine*, cited above, §§ 17 and 20-21). The Court considers that these objections must be rejected for the same reasons.

13. 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 25 November 2002 raises issues of fact and law under the Convention, the determination of which requires an examination on the merits. It finds no ground for declaring this complaint inadmissible. The Court must therefore declare it admissible.

III. MERITS

14. In their observations on the merits of the applicant's complaint, the Government contended that there had been no violation of Article 6 § 1.

15. The applicant disagreed.

16. The Court notes that the judgment of 25 November 2002 remained unenforced for three years and seven months.

17. The Court recalls that it has already found violations of Article 6 § 1 of the Convention in a number of similar cases, including the cases concerning the same State-controlled debtor – the OJSC “Chuguyevskaya Toplivnaya Aparatura” (see, for instance, *Solovyeva v. Ukraine*, cited above, §§ 25-39 and *Kosarevskaya and Others v. Ukraine*, nos. 29459/03, 4935/04 and 26996/04, §§ 29-32, 6 December 2005).

18. 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.

19. There has, accordingly, been a violation of Article 6 § 1 of the Convention.

IV. 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 UAH 7,000 (EUR 1,155) in respect of non-pecuniary damage.

22. The Government submitted that these claims should be rejected.

23. The Court takes the view that the applicant has suffered some non-pecuniary damage as a result of the violation 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 1,000 in respect of non-pecuniary damage.

B. Costs and expenses

24. The applicant also claimed UAH 95.21 (EUR 16) for postal expenses incurred before the Court and submitted copies of receipts for the postal services.

25. The Government raised no objections against paying the aforementioned sum.

26. Regard being had to the circumstances of the case and the information in its possession, the Court awards the applicant EUR 16 under this head.

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*

(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, EUR 1,000 (one thousand euros) in respect of non-pecuniary damage and EUR 16 (sixteen euros) in costs and expenses 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 amounts at a rate equal to the marginal lending rate of the European Central Bank during the default period plus three percentage points;

4. *Dismisses* the remainder of the applicant's claim for just satisfaction.

Done in English, and notified in writing on 11 January 2007, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Claudia WESTERDIEK
Registrar

Peer LORENZEN
President