



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

FIFTH SECTION

CASE OF GUSEYNOVA v. UKRAINE

(Application no. 19175/05)

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 Guseynova v. Ukraine,

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

Mr P. LORENZEN, *President*,

Mrs S. BOTOCHAROVA,

Mr K. JUNGWIERT,

Mr V. BUTKEVYCH,

Mrs M. TSATSA-NIKOLOVSKA,

Mr J. BORREGO BORREGO

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. 19175/05) against Ukraine lodged with the Court under Article 34 of the Convention for the Protection of Human Rights and Fundamental Freedoms (“the Convention”) by Mrs Valentina Stepanovna Guseynova, (“the applicant”) on 16 May 2005.

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

3. On 5 December 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

I. THE CIRCUMSTANCES OF THE CASE

4. The applicant, a Ukrainian national, was born in 1952 and lives in the city of Zaporizhzhya, Ukraine.

5. In 1999 the applicant, a private entrepreneur, concluded a labour contract with the Shevchenkivskiy District State Administration in Zaporizhzhya.

6. As the State Administration failed to pay the applicant under the contract, in 2002 she instituted proceedings against it in the Commercial Court of Zaporizhzhya Region, seeking recovery of remuneration and compensation for delay in payment.

7. On 15 January 2003 the court awarded the applicant UAH 16,094.52¹ (*Рішення Господарського суду Запоріжської області*). This judgment was not appealed against and became final.

8. On 28 March 2003 the Shevchenkivskiy District Bailiffs' Service (*Відділ Державної виконавчої служби Шевченківського районного управління юстиції м. Запоріжжя*) initiated enforcement proceedings. On 3 November 2004 the Bailiffs' Service returned the writ of execution to the applicant on the ground that no funds allowing enforcement of the judgment had been found.

9. On 28 May 2003 and 30 December 2004 the applicant received UAH 6,000² and UAH 5,000³, respectively.

10. By letters of 5 November and 6 December 2004 the Zaporizhzhya Regional Department of Justice informed the applicant that there were no funds in the debtor's bank accounts and that it was not possible to dispose of the debtor's property because the debtor was a governmental institution.

11. On 25 August 2005 the Commercial Court of Zaporizhzhya Region repeatedly ordered the Bailiffs' Service to enforce the judgment in the applicant's favour of 15 January 2003. On 20 August 2005 the Bailiffs' Service refused to institute the enforcement proceedings for lack of jurisdiction.

12. The judgment in the applicant's favour remains partly unenforced.

II. RELEVANT DOMESTIC LAW

13. The relevant domestic law is summarised in the judgment of *Romashov v. Ukraine* (no. 67534/01, §§ 16-18, 27 July 2004).

THE LAW

14. The applicant complained about the State authorities' failure to execute the judgment of 15 January 2003 in due time. She alleged an infringement of Article 6 § 1 of the Convention and Article 1 of Protocol No. 1, which provide, in so far 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 2,854 euros (EUR).

2. Around EUR 1,064.

3. Around EUR 887.

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”

I. ADMISSIBILITY

15. The Government raised objections regarding the applicant's exhaustion of domestic remedies similar to those which the Court has already dismissed in a number of judgments (see, *Nosal v. Ukraine*, no. 18378/03, §§ 33-35, 29 November 2005). The Court considers that the present objections must be rejected for the same reasons.

16. The Court concludes that the applicant's complaint under Article 6 § 1 of the Convention about the non-enforcement of the judgment of 15 January 2003 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.

II. MERITS

17. The Government contended that the applicant had failed to re-submit the writ of execution and thus the State was not responsible for non-enforcement of the judgment. The Government further maintained that the length of the enforcement proceedings was not excessive, that the Bailiffs' Service performed all necessary actions and that the applicant's entitlement to the award was not disputed.

18. The applicant disagreed. She submitted that there had been a substantial delay in payment which had therefore deprived her of the actual possession of her property.

19. The Court notes that the judgment in the applicant's favour has not been enforced for three years and nine months.

20. 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, *Sokur v. Ukraine*, no. 29439/02, §§ 30-37, 26 April 2005; *Shmalko v. Ukraine*, no. 60750/00, §§ 55-57, 20 July 2004).

21. Having examined all the material 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.

22. 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

23. 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

24. The applicant claimed UAH 7,708.79¹, including the amount of the judgment debt, in respect of pecuniary damage caused by violation of Article 6 § 1 and Article 1 of Protocol No.1, and EUR 7,000 in respect of non-pecuniary damage.

25. The Government maintained that the applicant's claim had to be rejected as unsubstantiated.

26. In so far as the applicant claimed the amount awarded to her by the judgment at issue, the Court considers that the Government should pay her the outstanding judgment debt (see paragraphs 7 and 9). As to the rest of the applicant's claim for pecuniary damage, the Court does not discern any causal link between the violation found and the pecuniary damage alleged; it therefore rejects this part of the claim.

27. As to the applicant's claim in respect of non-pecuniary damage – EUR 7,000 – the Court considers this sum excessive. 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

28. The applicant also claimed EUR 50 in costs and expenses. However she did not submit any document in this respect.

29. 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.

1. Around EUR 1,218.

30. The Court notes that the applicant did not submit any evidence of her expenses. However, the applicant may have incurred some costs and expenses in connection with her Convention proceedings. Regard being had to the Court's case-law and the information in its possession, the Court awards the amount she claimed (see, *mutatis mutandis*, *Romanchenko v. Ukraine*, no. 5596/03, § 38, 22 November 2005).

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 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 her, as well as EUR 1,050 (one thousand and fifty euros) in respect of non-pecuniary damage, and costs and expenses;
 - (b) that the above amounts shall 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;
 - (c) 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 11 January 2007, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Claudia WESTERDIEK
Registrar

Peer LORENZEN
President