



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

FIFTH SECTION

CASE OF SILKA v. UKRAINE

(Application no. 3624/03)

JUDGMENT

STRASBOURG

18 January 2007

FINAL

18/04/2007

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 Silka v. Ukraine,

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

Mr P. LORENZEN, *President*,

Mr K. JUNGWIERT,

Mr V. BUTKEVYCH,

Mrs M. TSATSA-NIKOLOVSKA,

Mr J. BORREGO BORREGO,

Mrs R. JAEGER,

Mr M. VILLIGER, *judges*,

and Mrs C. WESTERDIEK, *Section Registrar*,

Having deliberated in private on 11 December 2006,

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

PROCEDURE

1. The case originated in an application (no. 3624/03) 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 Tamara Andreyevna Silka (“the applicant”), on 16 January 2003.

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

3. On 19 January 2004 the Court decided to communicate the complaints under Article 6 § 1 of the Convention and Article 1 of Protocol No. 1 concerning the non-enforcement of the judgments 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 1944 and lives in Nova Kakhovka, the Kherson region. She is a former employee of the State-controlled OJSC “Pivdennelektromash” (“the Company,” BAT “Південелектромаши”).

5. The background facts of the case are described in the case of *Anatskiy v. Ukraine* (no. 10558/03, §§ 5-8, 13 December 2005).

6. On 17 October 2002 the Nova Kakhovka Court (*Новокаховський міський суд Херсонської області*) gave two judgments ordering the Company to pay the applicant UAH 1,316.00¹ and UAH 1,327.00² in salary arrears due to her and her deceased husband, respectively. The judgments became final and the enforcement writs were transferred to the Nova Kakhovka Bailiffs' Service ("the Bailiffs," *Відділ Державної виконавчої служби Новокаховського міського управління юстиції*) for enforcement.

7. Both judgments remain unenforced to the present day.

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 *Trykhlub v. Ukraine* (no. 58312/00, §§ 25-32, 20 September 2005).

THE LAW

9. The applicant complained about the State authorities' failure to enforce the judgments of 17 October 2002. 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. ..."

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"

1. 260.57 euros ("EUR").

2. EUR 262.75.

I. ADMISSIBILITY

10. The Government raised objections, contested by the applicant, regarding exhaustion of domestic remedies similar to those already dismissed in a number of the Court's judgments regarding non-enforcement against the State-owned companies (see e.g. among many others, *Mykhaylenky and Others v. Ukraine*, nos. 35091/02 and following, §§ 38-39, ECHR 2004-XII). The Court considers that these objections must be rejected for the same reasons.

11. The Court concludes that the applicant's complaints under Article 6 § 1 of the Convention and Article 1 of Protocol No. 1 about the delay in the enforcement of the judgments of 17 October 2002 raise issues of fact and law under the Convention, the determination of which requires an examination on the merits. It finds no ground for declaring these complaints inadmissible. The Court must therefore declare them admissible.

II. MERITS

12. In their observations on the merits of the applicant's complaints, the Government contended that there had been no violation of Article 6 § 1 of the Convention or Article 1 of Protocol No. 1.

13. The applicant disagreed.

14. The Court notes that the judgments of 17 October 2002 have remained unenforced for the period exceeding four years and three months.

15. The Court 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 debtor - the OJSC "Pivdenelektromash" (see, for instance, *Trykhliv v. Ukraine*, cited above, §§ 52-53; *Chernyayev v. Ukraine*, no. 15366/03, §§ 19-20 and 23-25, 26 July 2005 and *Anatskiy v. Ukraine*, cited above, §§ 21-22).

16. 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.

17. 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

18. 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

19. The applicant claimed pecuniary and non-pecuniary damage without specifying the exact amount.

20. The Government maintained that the applicant had failed to submit her just satisfaction claims within the time limit set by the Court and invited the Court to make no award.

21. The Court observes that when invited to submit her just satisfaction claims following the receipt of the Government's observations, the applicant confirmed the claims which she had made at the time when she had lodged the present application with the Court.

22. Accordingly, in so far as the judgments in the applicant's favour have not been paid (paragraph 7 above), the Court considers that the Government should pay the judgments debts owed to the applicant in settlement of her claim for pecuniary damage (see e.g., *Romanchenko v. Ukraine*, no. 5596/03, § 31, 22 November 2005).

23. The Court further considers that the applicant must have sustained non-pecuniary damage as a result of the violations found (see *Kryachkov v. Ukraine*, no. 7497/02, § 30, 1 June 2006). Making its assessment on an equitable basis, as required by Article 41 of the Convention, the Court awards the applicant EUR 1,600 in this respect.

B. Costs and expenses

24. The applicant did not submit any claim under this head. The Court therefore makes no award.

C. Default interest

25. 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 Protocol No. 1 of 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 unsettled debt still owed to her, as well as EUR 1,600 (one thousand six 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 amounts at a rate equal to the marginal lending rate of the European Central Bank during the default period plus three percentage points.

Done in English, and notified in writing on 18 January 2007, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Claudia WESTERDIEK
Registrar

Peer LORENZEN
President