



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

FIFTH SECTION

CASE OF GLIVUK v. UKRAINE

(Application no. 19949/03)

JUDGMENT

STRASBOURG

20 September 2007

FINAL

20/12/2007

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 Glivuk 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 28 August 2007,

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

PROCEDURE

1. The case originated in an application (no. 19949/03) 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 Russian national, Mrs Anna Vasilyevna Glivuk (“the applicant”), on 9 June 2003.

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

3. On 7 September 2005 the Court decided to communicate the complaints concerning the lengthy 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.

4. In accordance with Article 36 § 1 of the Convention, the Russian Government were invited to exercise their right to intervene in the proceedings, but they declined to do so.

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

5. The applicant was born in 1962 and resides in the town of Shakhty, Rostov region, Russia.

6. At the material time the applicant lived in Ukraine.

7. In 1979, as a result of an accident, for which a State-owned mine was deemed liable, the applicant had her arms amputated.

8. On 23 September 1980 the Sverdlovskyy District Court awarded the applicant 80 Soviet roubles in life monthly compensation from the “Sverdlovskantratsyt” mining enterprise (*Виробниче об'єднання «Свердловськантрацит»*). The applicant had been receiving these payments until 2001.

9. In 2000 the applicant moved to Russia.

10. On 11 September 2000, following the applicant's request to review the amount of compensation due to her, the Sverdlovskyy Town Court awarded the applicant a lump sum of 2,748.60¹ and 152.28² Ukrainian hryvnas in monthly payments from the State Krasnodonsko-Sverdlovske Mine Liquidation Department (*Краснодонсько-Свердловське управління по ліквідації шахт*).

11. In October 2001 the court sent the writs of enforcement to the Voroshylovskyy Bailiffs' Service. The applicant informed the Court that her written requests about the course of the enforcement proceedings remained unanswered.

12. By letters of 28 November and 9 December 2003, the Ministry of Fuel and Energy, and the Donetsk State Administration, respectively, informed the applicant that, since April 2001, the monthly payments were to be made by the Social Security Fund. However, at the time of the accident the applicant was not employed by the mine, and the legislation in force did not foresee social security payments in such cases.

13. In their submissions of 11 December 2006 the Government stated that on 5 December 2001 the payment order for the lump sum of UAH 2,748.60 had been submitted to the Department of the State Treasury in Donetsk Region. On an unspecified date this amount was transferred to the Bailiffs' Service banking account since the applicant's whereabouts were allegedly unknown.

14. The applicant informed the Court that in November 2006 she had been requested to provide her bank account details with a view to transfer her an above amount. The parties did not inform the Court whether the judgment of 11 September 2000 had been finally enforced.

II. RELEVANT DOMESTIC LAW

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

¹ At the material time 583.03 euros (EUR)

² At the material time 32.30 EUR

THE LAW

16. Relying on Article 13 of the Convention, and Article 1 of Protocol No. 1 the applicant complained about the lengthy non-enforcement of the judgments given in her favour. These Articles provide, insofar as relevant, as follows:

Article 13

Everyone whose rights and freedoms as set forth in [the] Convention are violated shall have an effective remedy before a national authority notwithstanding that the violation has been committed by persons acting in an official capacity.”

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 ...”

17. The Court finds that the applicant's complaint about the lengthy non-enforcement of the judgments given in her favour also requires examination under Article 6 § 1 of the Convention which reads 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. ...”

I. ADMISSIBILITY

18. The Government maintained that the applicant had failed to institute enforcement proceedings concerning the judgment of 11 September 2000 and, therefore, could not claim to be a victim of an alleged violation of the Convention. In particular, they submitted that the writ of enforcement had been received by the Bailiffs' Service only in 2004.

19. The Court notes that, according to the documents submitted by the parties, the writ of enforcement for the judgment of 11 September 2000 was sent to the Bailiffs' Service by the court in October 2001 (see paragraph 11). Moreover, in their further submissions, the Government informed the Court that the Bailiffs' Service had performed certain actions in 2001 with a view to enforce the judgment in question (see paragraph 13).

20. The Court reiterates that it is inappropriate to require an individual who has obtained judgment against the State at the end of legal proceedings to then bring enforcement proceedings to obtain satisfaction (see, for example, *Metaxas v. Greece*, no. 8415/02, § 19, 27 May 2004; *Karahalios v. Greece*, no. 62503/00, § 23, 11 December 2003 and *Scordino v. Italy (no. 1)* [GC], no. 36813/97, § 198, ECHR 2006-...). Therefore, the Court rejects the Government's objection in this respect.

21. The Government further raised objections regarding the exhaustion of domestic remedies similar to those which the Court has already dismissed in the case of *Romashov v. Ukraine* (cited above, §§ 28-32). The Court considers that they must be rejected for the same reasons.

22. The Court concludes that the applicant's complaints about the delay in the enforcement of the judgments in her favour are not manifestly ill-founded within the meaning of Article 35 § 3 of the Convention. It further notes that these complaints are not inadmissible on any other grounds. They must therefore be declared admissible.

II. MERITS

23. The Government maintained that the Bailiffs' Service had performed all necessary actions in order to enforce the judgment of 11 September 2000 in the applicant's favour. The Government contended that the length of enforcement was not unreasonable and was caused by a difficult financial situation of the debtor company.

24. The applicant disagreed.

25. The Court notes that the judgment of 23 September 1980 was being enforced until 2001 (see paragraph 8). Following the applicant's request for a review of the amount due, the amount of further payments was determined by the judgment of 11 September 2000.

26. The Court further notes that the judgment of 11 September 2000 given in the applicant's favour has not been enforced for almost seven years.

27. 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, among others, *Romashov v. Ukraine*, no. 67534/01, § 42-46, 27 July 2004; *Shmalko v. Ukraine*, no. 60750/00, § 55-57, 20 July 2004).

28. Having examined all the materials 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.

29. There has, accordingly, been a violation of Article 6 § 1 of the Convention and of Article 1 of Protocol No. 1.

30. The Court does not consider it necessary in the circumstances to rule on the same complaint under Article 13 of the Convention.

III. APPLICATION OF ARTICLE 41 OF THE CONVENTION

31. 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

32. The applicant claimed in respect of pecuniary damage the amount of the judgments' debts still owed to her, and 1,000,000 Russian roubles¹ in respect of non-pecuniary damage.

33. The Government maintained that this amount was exorbitant and unsubstantiated.

34. Insofar as the applicant claimed the amounts awarded to her by the judgments at issue, the Court considers that the Government should pay the outstanding debt in accordance with the judgment of 11 September 2000 and to enforce this judgment in respect to the payment of the life monthly allowance awarded to the applicant. The Court further considers that the applicant must have sustained non-pecuniary damage, and awards her, deciding on an equitable basis, EUR 2,600 in this respect.

B. Costs and expenses

35. The applicant did not claim any costs and expenses occurred before the Court.

C. Default interest

36. 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;

¹ EUR 28,645.60

3. *Holds* that there has been a violation of Article 1 of Protocol No. 1 of the Convention;
4. *Holds* that it is not necessary to rule on the applicant's complaint under Article 13 of the Convention;
5. *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 debt still owed to her in accordance with the judgment of 11 September 2000, as well as EUR 2,600 (two thousand six hundred euros) in respect of non-pecuniary damage plus any tax that may be chargeable;
 - (b) that the above amount shall be converted into the national currency of the respondent State at the rate applicable at the date of settlement;
 - (c) 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.
6. *Dismisses* the remainder of the applicant's claim for just satisfaction.

Done in English, and notified in writing on 20 September 2007, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Claudia WESTERDIEK
Registrar

Peer LORENZEN
President