



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

FIFTH SECTION

CASE OF CHECHIN v. UKRAINE

(Application no. 6323/03)

JUDGMENT

STRASBOURG

15 May 2008

FINAL

15/08/2008

This judgment may be subject to editorial revision.

In the case of Chechin v. Ukraine,

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

Peer Lorenzen, *President*,

Snejana Botoucharova,

Karel Jungwiert,

Volodymyr Butkevych,

Rait Maruste,

Mark Villiger,

Mirjana Lazarova Trajkovska, *judges*,

and Claudia Westerdiek, *Section Registrar*,

Having deliberated in private on 22 April 2008,

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

PROCEDURE

1. The case originated in an application (no. 6323/03) 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 Sergey Sergeyevich Chechin (“the applicant”), on 7 February 2003.

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

3. On 26 May 2005 the Court decided to give notice of 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 1948 and lives in Tavriysk.

5. On 20 December 2001, 27 March 2003 and 30 March 2004 the Nova Kakhovka Court (*Новокаховський міський суд Херсонської області*) ordered the OJSC “Pivdenelekromash” (“the Company,” *BAT “Південелектромаш”*), 75% of whose shares were owned by the State, to pay the applicant the total of 18,250.55 hryvnias (UAH) in salary arrears and other payments.

6. These judgments were not appealed against and became final. Enforcement proceedings were instituted in respect of the judgments of 20 December 2001 and 27 March 2003. On different occasions the bailiffs informed the applicant that the collection of the debts was impeded by pending bankruptcy proceedings against the Company.

7. The judgment awards due to the applicant have not been fully paid.

II. RELEVANT DOMESTIC LAW

8. The relevant domestic law is summarised in the judgments of *Romashov v. Ukraine* (no. 67534/01, §§ 16-19, 27 July 2004) and *Trykhlil v. Ukraine* (no. 58312/00, §§ 25-32, 20 September 2005).

THE LAW

I. ALLEGED VIOLATIONS OF ARTICLE 6 § 1 OF THE CONVENTION AND ARTICLE 1 OF PROTOCOL NO. 1

9. The applicant complained about the State authorities' failure to enforce the judgments given in his favour in due time. He 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”

A. Admissibility

10. The Government submitted that the applicant had not exhausted domestic remedies in respect of his complaints, as he never requested to be registered as a Company creditor in bankruptcy proceedings. They further submitted that the State was not responsible for the enforcement of the judgment of 30 March 2004, as the applicant never sought institution of the enforcement proceedings in respect of this judgment.

11. The applicant disagreed.

12. The Court recalls that it has already dismissed similar objections in other cases concerning the non-enforcement of judgments against the State-controlled companies (see, e.g., *Trykhliv v. Ukraine*, cited above, §§ 38-43 and *Kozachek v. Ukraine*, no. 29508/04, §§ 19-25, 7 December 2006). The Court considers that these objections must be rejected for the same reasons.

13. The Court finds that the above complaints are not manifestly ill-founded within the meaning of Article 35 § 3 of the Convention. It further notes that they are not inadmissible on any other grounds. They must therefore be declared admissible.

B. Merits

14. The Court observes that the judgments given in the applicant's favour remain unenforced for the periods ranging from over four to six years.

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 in cases concerning the same State-controlled debtor - the OJSC "Pivdenelektromash" (see, for instance, *Trykhliv v. Ukraine*, cited above, §§ 52-53; *Chernyayev v. Ukraine*, no. 15366/03, §§ 19-20 and 25-26, 26 July 2005 and *Anatskiy v. Ukraine*, no. 10558/03, §§ 21-23, 13 December 2005).

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 of Article 1 of Protocol No. 1.

II. 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 the unsettled judgments debts and 12,000 euros (EUR) in respect of non-pecuniary damage.

20. The Government contested these claims.

21. The Court finds that the Government should pay the applicant the outstanding judgments debts still owed to him. The Court also considers that the applicant must have sustained non-pecuniary damage. Ruling on an equitable basis, it awards him EUR 2,600 in this respect.

B. Costs and expenses

22. The applicant submitted that he sustained costs and expenses in connection with the present application, but failed to specify any amount.

23. The Government did not comment on this claim.

24. According to the Court’s case-law, an applicant is entitled to the reimbursement of 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. In the present case, regard being had to the information in its possession and the above criteria, the Court rejects the claim for costs and expenses.

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 of Protocol No. 1;
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,
 - (i) the unsettled judgments debts still owed to him and
 - (ii) EUR 2,600 (two thousand six hundred euros), plus any tax that may be chargeable, 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;
 - (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 15 May 2008, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Claudia Westerdiek
Registrar

Peer Lorenzen
President