



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

FIFTH SECTION

CASE OF STANKOVSKAYA v. UKRAINE

(Application no. 20984/04)

JUDGMENT

This version was rectified on 17 February 2009
under Rule 81 of the Rules of the Court

STRASBOURG

11 December 2008

FINAL

11/03/2009

This judgment may be subject to editorial revision.

In the case of Stankovskaya v. Ukraine,

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

Peer Lorenzen, *President*,

Rait Maruste,

Karel Jungwiert,

Volodymyr Butkevych,

Renate Jaeger,

Mirjana Lazarova Trajkovska,

Zdravka Kalaydjieva, *judges*,

and Claudia Westerdiek, *Section Registrar*,

Having deliberated in private on 18 November 2008,

Delivers the following judgment, which was adopted on the last-mentioned date:

PROCEDURE

1. The case originated in an application (no. 20984/04) 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 Lidiya Valentinovna Stankovskaya (“the applicant”), on 21 May 2004.

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

3. The applicant alleged the non-enforcement of the judgments given in her favour.

4. On 11 October 2007 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**

5. The applicant was born in 1945 and lives in the town of Novaya Kakhovka, the Kherson Region, Ukraine.

6. On 4 November 2003¹ the Nova Kakhovka Court ordered the joint stock company “Pivdenelektronmash” (“the company”), in which the State holds 75 % of the shares, to pay the applicant 37,237.36² Ukrainian hryvnas (UAH) in salary arrears owed to her husband who died in October 2002.

7. There were bankruptcy proceedings pending against the company at that time.

8. On 2 December 2003 the Nova Kakhovka Bailiffs’ Office (“the Bailiffs”) instituted enforcement proceedings. The writ of execution was joined to other enforcement proceedings pending against the company.

9. Following the ruling of the Commercial Court of the Kherson Region of 27 February 2004, the enforcement proceedings in respect of the judgment of 4 November 2003 were suspended.

10. On 1 November 2004 the Nova Kakhovka Court rejected the applicant’s complaint against the alleged inactivity of the Bailiffs. This decision was upheld on 10 March 2005 by the Kherson Regional Court of Appeal.

11. On 1 July 2005 the enforcement proceedings were resumed.

12. On 7 May 2006 the company paid the applicant UAH 8,938³.

13. By its judgment of 2 June 2006 the Nova Kakhovka Court ordered that the company pay the applicant UAH 7,812⁴ in compensation for failure to pay in time the award under the judgment of 4 November 2003.

14. On 13 June 2006 the Bailiffs instituted the enforcement proceedings in respect of this judgment.

15. According to the applicant, the Bailiffs terminated the enforcement proceedings concerning the judgment of 4 November 2003 on the ground of false information provided by the company about the settlement of the debt. The applicant requested the Nova Kakhovka Court to provide her with a new writ of execution, which she submitted to the Bailiffs on 18 July 2006.

16. On 20 July 2006 the Bailiffs instituted new enforcement proceedings in respect of the judgment of 4 November 2003.

17. The judgments of 4 November 2003 and 2 June 2006 remain unenforced due to the company’s difficult financial situation.

II. RELEVANT DOMESTIC LAW

18. The relevant domestic law is summarised in the judgments of *Sokur v. Ukraine* (no. 29439/02, §§ 17-22, 26 April 2005) and *Voytenko v. Ukraine* (no. 18966/02, §§ 20-25, 29 June 2004).

¹ The date of judgment was given as 5 November 2003. On 17 February 2009, paragraphs 6, 9, 13, 15, 16, 17, 19, 22, 28, 34 and sub-item (a) of item 4 of the operative part of the judgment, were rectified pursuant to Rule 81.

² EUR 6,259.13

³ EUR 1,457.63

⁴ EUR 1,269.50

THE LAW

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

19. The applicant complained about the State authorities' failure to enforce the judgments of 4 November 2003 and 2 June 2006. She invoked Article 6 § 1 of the Convention and Article 1 of Protocol No. 1, which provide 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

20. The Government did not comment on the admissibility of these complaints.

21. The Court considers that the applicant's complaints raise issues of fact and law under the Convention and finds no ground for declaring them inadmissible. The Court must therefore declare them admissible.

B. Merits

22. In their observations on the merits of the applicant's complaints about the length of the non-enforcement of the judgments of 4 November 2003 and 2 June 2006, the Government put forward arguments similar to those in the cases of *Romashov v. Ukraine* and *Voytenko v. Ukraine*, contending that there had been no violation of either Article 6 § 1 of the Convention or Article 1 of Protocol No. 1 (see *Romashov v. Ukraine*, no. 67534/01, § 37, 27 July 2004; and *Voytenko v. Ukraine*, no. 18966/02, 29 June 2004, § 37)

23. They further maintained that, although the State owned 75 % of the shares in the company, it was a separate legal entity and the State could not be held responsible for its debts under domestic law.

24. The applicant disagreed.

25. The Court recalls that it has already held that the State was liable for the debts of a State-owned company, despite the fact that the company was a separate legal entity, and, therefore, the State was responsible for the ultimate failure to pay to an applicant the amounts awarded to him in the judgments against such company (see, for instance, *Mykhaylenky and Others v. Ukraine*, nos. 35091/02, 35196/02, 35201/02, 35204/02, 35945/02, 35949/02, 35953/02, 36800/02, 38296/02 and 42814/02, §§ 43-46, ECHR 2004-XII; and *Solovyev v. Ukraine*, no. 4878/04, § 20, 14 December 2006).

26. The Court observes that the Government have not demonstrated that the company enjoyed sufficient institutional and operational independence from the State to absolve the latter from responsibility under the Convention for its acts and omissions.

27. Therefore, the Court considers that the State is liable for the debts of the kind of the company involved in the present case (see, for instance, *Garkusha v. Ukraine*, no. 4629/03, § 25, 13 December 2005; *Martynov v. Ukraine*, no. 36202/03, § 23, 14 December 2006; and *Solovyev v. Ukraine*, cited above, § 20).

28. The Court notes that the judgments of 4 November 2003 and 2 June 2006 remained unenforced for around four years and eight months, and two years and one month, respectively.

29. 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 raising issues similar to the present application (see, for instance, *Garkusha*, cited above, §§ 24-25, and *Mykhaylenky and Others*, cited above, §§ 55, and *Voytenko*, cited above, §§ 39-43).

30. Having examined all the material submitted to it, the Court considers that the Government have not put forward any fact or convincing argument capable of persuading it to reach a different conclusion in the present case. There has, accordingly, been a violation of Article 6 § 1 of the Convention and Article 1 of Protocol No. 1.

II. 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 UAH 40,757.1¹ Ukrainian hryvnas (UAH) in respect of pecuniary damage. This amount included the unsettled judgment debt, to which the applicant added statutory default interest, which, according to the applicant, accrued on the outstanding debt due to her. Additionally, the applicant claimed UAH 100,000² in respect of non-pecuniary damage.

33. The Government contested these claims as unsubstantiated.

34. The Court finds that the Government should pay the applicant the outstanding debt under the judgments of 4 November 2003 and 2 June 2006, by way of compensation for pecuniary damage. Otherwise, it does not discern any causal link between the violation found and the pecuniary damage alleged; it therefore rejects the remainder of the applicant’s claim. On the other hand, ruling on an equitable basis, the Court finds it reasonable to award the applicant EUR 1,800 in respect of non-pecuniary damage

B. Costs and expenses

35. The applicant also claimed UAH 708.03³ for costs and expenses.

36. The Government contested this claim.

37. According to the Court’s case-law, an applicant is entitled to reimbursement of the 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 considers it reasonable to award the applicant the sum of EUR 100 for costs and expenses.

¹ EUR 5,762.36

² EUR 14,451.30

³ EUR 100.10

C. Default interest

38. 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 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, the debt still owed to the applicant under the judgments of the Nova Kakhovka Court of 4 November 2003 and 2 June 2006, as well as EUR 1,800 (one thousand eight hundred euros) in respect of non-pecuniary damage, and EUR 100 (one hundred euros) for costs and expenses, to be converted into the national currency at the rate applicable at the date of settlement, plus any tax that may be chargeable to the applicant;
 - (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;
5. *Dismisses* the remainder of the applicant's claim for just satisfaction.

Done in English, and notified in writing on 11 December 2008, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Claudia Westerdiek
Registrar

Peer Lorenzen
President