



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

FIFTH SECTION

CASE OF ANDRIYCHUK v. UKRAINE

(Application no. 18024/04)

JUDGMENT

STRASBOURG

19 February 2009

FINAL

19/05/2009

This judgment may be subject to editorial revision.

In the case of Andriychuk v. Ukraine,

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

Peer Lorenzen, *President*,
Rait Maruste,
Karel Jungwiert,
Renate Jaeger,
Isabelle Berro-Lefèvre,
Mirjana Lazarova Trajkovska, *judges*,
Stanislav Shevchuk, *ad hoc judge*,

and Claudia Westerdiek, *Section Registrar*,

Having deliberated in private on 27 January 2009, delivers the following judgment, which was adopted on that date:

PROCEDURE

1. The case originated in an application (no. 18024/04) 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 Olga Oleksandrivna Andriychuk (“the applicant”), on 29 April 2004.

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

3 On 6 September 2007 the President of the Fifth Section decided to give notice of the application to the Government. It was also decided to examine the merits of the application at the same time as its admissibility (Article 29 § 3).

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

3. The applicant was born in 1950 and lives in the town of Zhytomyr, Ukraine.

4. On 13 December 2001 the Korolyovsky District Court of Zhytomyr ordered the Lyonteks open joint-stock company, in which the State held 51% of the share capital, to pay the applicant 2,833.97 Ukrainian hryvnias (UAH)¹ in salary arrears and other payments. The judgment was not appealed against and became final. On 18 January 2002 the Korolyovsky District Bailiffs' Service of Zhytomyr instituted enforcement proceedings in respect of this judgment.

5. On 3 April 2002 the same court, following the applicant's request, adopted a procedural decision, in which it held that the total amount of the award of 13 December 2001 had been wrongly summed up. It found that the correct total amount of the payments due to the applicant was UAH 2,807.28².

6. On 11 October 2002 the applicant instituted proceedings in the Bogunskyy District Court of Zhytomyr against the Bailiffs' Service, seeking compensation for the failure to enforce the judgment of 13 December 2001.

7. On 1 July 2003 the court ruled against the applicant, finding no fault on the part of the Bailiffs' Service.

8. On 4 November 2003 and 18 October 2006 the Zhytomyr Regional Court of Appeal and the Supreme Court respectively upheld the judgment of 1 July 2003.

9. The judgment was enforced in full on 23 December 2005.

II. RELEVANT DOMESTIC LAW

10. The relevant domestic law is summarised in the judgments of *Romashov v. Ukraine*, no. 67534/01, §§ 16-19, 27 July 2004; *Sokur v. Ukraine*, no. 29439/02, §§ 17-22, 26 April 2005, and *Voytenko v. Ukraine*, no. 18966/02, §§ 20-25, 29 June 2004.

THE LAW

I. ALLEGED VIOLATION OF ARTICLE 6 § 1 OF THE CONVENTION

11. The applicant complained about the lengthy non-execution of the judgment of 13 December 2001. She relied on Article 6 § 1 of the Convention, which provides as follows:

¹ Around EUR 590

² Around EUR 588

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. ...”

A. Admissibility

12. The Government raised objections regarding the applicants’ victim status similar to those which the Court has already dismissed in the case of *Romashov v. Ukraine* (see the *Romashov* judgment, cited above, §§ 23-27). The Court considers that the present objections must be rejected for the same reasons.

13. The Court concludes that the application raises serious issues of fact and law under the Convention, the determination of which requires an examination of the merits. It finds no ground for declaring it inadmissible.

B. Merits

14. The Government submitted that the Bailiffs’ Service had taken all measures provided for by the domestic legislation to enforce the judgment given in the applicant’s favour. Moreover, they maintained that the long period of non-enforcement of the judgment did not violate the applicant’s rights under Article 6 § 1 of the Convention as the delay in enforcement was caused by the difficult financial situation of the debtor.

15. The applicant reiterated that the State was responsible for the delay in the enforcement of the court judgment in her favour.

16. The Court observes that the judgment in the applicant’s favour remained unenforced for four years.

17. The Court has frequently found violations of Article 6 § 1 of the Convention in cases raising similar issues to the ones in the present case (see *Romashov v. Ukraine*, cited above, § 46; *Sokur v. Ukraine*, cited above, § 37; and *Kozachek v. Ukraine*, no. 29508/04, § 33, 7 December 2006).

18. Having examined the material submitted to it, the Court notes that the Government have not put forward any fact or argument capable of persuading it to reach a different conclusion in the present case.

19. There has accordingly been a violation of Article 6 § 1 of the Convention.

II. OTHER ALLEGED VIOLATIONS OF THE CONVENTION

20. The applicant additionally complained under Article 6 § 1 about the outcome and the length of the proceedings against the Bailiffs’ Service.

21. Having carefully examined these submissions in the light of all the materials in its possession and in so far as the matters complained of are within its competence, the Court finds that they do not disclose any appearance of a violation of the impugned provisions of the Convention.

22. It follows that this part of the application must be declared inadmissible as being manifestly ill-founded, pursuant to Article 35 §§ 3 and 4 of the Convention.

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 5,132¹ in respect of pecuniary damage. She further claimed UAH 50,000² in respect of non-pecuniary damage.

25. The Government contested the applicant’s claims as being unsubstantiated.

26. The Court does not discern any causal link between the violation found and the pecuniary damage alleged; it therefore rejects this claim. On the other hand, it awards the applicant EUR 1,200 in respect of non-pecuniary damage.

B. Costs and expenses

27. The applicant did not submit any claim under this head; the Court therefore makes no award in this respect.

C. Default interest

28. 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.

¹ Around EUR 640

² Around EUR 6,239

FOR THESE REASONS, THE COURT UNANIMOUSLY

1. *Declares* the complaint concerning the non-enforcement of the judgment given in the applicant's favour admissible and the remainder of the application inadmissible;
2. *Holds* that there has been a violation of Article 6 § 1 of the Convention;
3. *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, EUR 1,200 (one thousand two hundred euros), plus any tax that may be chargeable, in respect of non-pecuniary damage, to be converted into 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;
4. *Dismisses* the remainder of the applicant's claim for just satisfaction.

Done in English, and notified in writing on 19 February 2009, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Claudia Westerdiek
Registrar

Peer Lorenzen
President