



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

1959 · 50 · 2009

FIFTH SECTION

CASE OF ZHUSHMAN v. UKRAINE

(Application no. 13223/05)

JUDGMENT

STRASBOURG

28 May 2009

FINAL

28/08/2009

This judgment may be subject to editorial revision.

In the case of Zhushman 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,

Mark Villiger,

Isabelle Berro-Lefèvre, *judges*,

Stanislav Shevchuk, *ad hoc judge*,

and Claudia Westerdiek, *Section Registrar*,

Having deliberated in private on 28 May 2009,

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

PROCEDURE

1. The case originated in an application (no. 13223/05) 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 Leonid Makarovych Zhushman (“the applicant”), on 31 March 2005.

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

3. On 20 May 2008 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

4. The applicant was born in 1943 and lives in the town of Oleksandriya, Ukraine.

5. On 13 June 2004 the Oleksandriya Court ordered the State company Oleksndriyavugillya to pay the applicant UAH 7,849.69¹ in salary arrears and other payments.

¹ EUR 1,257

6. The judgment was enforced only in part, the remaining debt being UAH 1,252.29¹.

II. RELEVANT DOMESTIC LAW

7. The relevant domestic law is summarised in the judgments of *Romashov v. Ukraine*, no. 67534/01, §§ 16-19, 27 July 2004, and *Voytenko v. Ukraine*, no. 18966/02, §§ 20-25, 29 June 2004.

THE LAW

I. ALLEGED VIOLATION OF ARTICLES 6 § 1 AND 13 OF THE CONVENTION AND ARTICLE 1 OF PROTOCOL No. 1 TO THE CONVENTION

8. Relying on Articles 6 § 1 and 13 of the Convention and Article 1 of Protocol No. 1, the applicant complained about the lengthy non-enforcement of the judgment given in his favour. These Articles provide, in so far 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 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...”

¹ EUR 123

A. Admissibility

9. The Government raised objections regarding non-exhaustion of the domestic remedies by the applicant similar to those which the Court has already dismissed in the case of *Voytenko v. Ukraine*, no. 18966/02, §§ 27-31, 29 June 2004. The Court considers that the present objections must be rejected for the same reasons.

10. The Court notes that the applicant's 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

11. In their observations on the merits of the applicant's complaints, the Government contended that there had been no violation of Articles 6 § 1 and 13 of the Convention or Article 1 of Protocol No. 1 to the Convention.

12. The applicant disagreed.

13. The Court notes that the judgment of 13 June 2004 has remained unenforced for about four years and nine months.

14. 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*, cited above, § 46, and *Voytenko*, cited above, §§ 43 and 55).

15. 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.

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

17. The Court does not find it necessary in the circumstances to examine the same complaint under Article 13 of the Convention (see *Derkach and Palek v. Ukraine*, nos. 34297/02 and 39574/02, § 42, 21 December 2004).

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 payment of the remaining debt under the judgment of 13 June 2004 in respect of pecuniary damage. He further claimed EUR 7,000 in respect of non-pecuniary damage.

20. The Government agreed to pay the applicant the unsettled court award still owed under the judgment of 13 June 2004. The Government found the applicant’s claim in respect of non-pecuniary damage unsubstantiated and exorbitant.

21. The Court finds that, as the judgment given in the applicant’s favour remains unenforced, the Government should pay him the debt still owed under the judgment of 13 June 2004 in order to satisfy his claims for pecuniary damage. In addition, ruling on an equitable basis, the Court finds it reasonable to award the applicant EUR 1,400 in respect of non-pecuniary damage

B. Costs and expenses

22. The applicant, who was not represented before the Court, claimed UAH 763.56¹ for costs and expenses. He produced postal receipts for mailing correspondence to this Court amounting to UAH 63.56² and a receipt evidencing payment of UAH 700 to a lawyer in respect of unspecified legal services.

23. With respect to the postal expenses amounting to UAH 63.56, the Government left the matter to the Court’s discretion. They contested the remainder of the applicant’s claims under this head since he had failed to submit documents in their support.

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 are reasonable as to quantum. Regard being had to the information in its possession and to the above criteria, the Court awards the applicant EUR 10 in respect of costs

¹ EUR 75

² EUR 7

and expenses, plus any tax that may be chargeable to him, and dismisses the remainder of his claims under this head.

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 to the Convention;
4. *Holds* that there is no need to examine the 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 the applicant under the judgment of 13 June 2004, as well as EUR 1,400 (one thousand four hundred euros) in respect of non-pecuniary damage, and EUR 10 (ten 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;

6. *Dismisses* the remainder of the applicant's claim for just satisfaction.

Done in English, and notified in writing on 28 May 2009, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Claudia Westerdiek
Registrar

Peer Lorenzen
President