



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

1959 · 50 · 2009

FIFTH SECTION

CASE OF NUZHDIYAK v. UKRAINE

(Application no. 16982/05)

JUDGMENT

STRASBOURG

28 May 2009

FINAL

28/08/2009

This judgment may be subject to editorial revision.

In the case of Nuzhdyak 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 5 May 2009,

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

PROCEDURE

1. The case originated in an application (no. 16982/05) 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, Ms Stanislava Tadeushivna Nuzhdyak (“the applicant”), on 22 April 2005.

2. The applicant was represented by Mr I. Melnyk, a lawyer practising in Kamyanets-Podilsky. The Ukrainian Government (“the Government”) were represented by their Agent, Mr Y. Zaytsev.

3. On 13 December 2005 the Court decided to communicate the applicant’s complaints under Article 6 § 1 of the Convention and Article 1 of Protocol No. 1 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 their admissibility.

THE FACTS

I. THE CIRCUMSTANCES OF THE CASE

4. The applicant was born in 1955 and lives in Kamyanets-Podilsky, Khmelnytsky region, Ukraine.

5. On 20 August 2002 the local city council decided to put the applicant’s employer, Pharmacy No. 130 (*комунальне підприємство Аптека № 130*), a municipal enterprise owned and controlled by this council, into liquidation, and the liquidation proceedings were initiated.

6. On 1 June 2004 the Kamyanets-Podilsky City Court awarded the applicant 1,355.41 Ukrainian hryvnias (UAH)¹ in salary arrears and other payments due to her from Pharmacy No. 130.

7. This judgment became final and on 2 September 2004 the State Bailiffs' Service instituted enforcement proceedings.

8. According to the Government, on 22 September 2004 the State Bailiffs' Service, having terminated the enforcement proceedings, returned the writ of enforcement to the applicant on 22 September 2004. According to the Government, the applicant had been instructed to transfer the writ to the liquidation commission for further processing but had failed to do so.

9. On 16 December 2004 the debtor enterprise was removed from the relevant companies' register.

10. The judgment of 1 June 2004 remains unenforced.

II. RELEVANT DOMESTIC LAW

11. The general provisions of domestic legislation on enforcement of judicial decisions are set out in the judgment of 27 July 2004 in the case of *Romashov v. Ukraine* (no. 67534/01, §§ 16-18).

THE LAW

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

12. The applicant complained that the State authorities had failed to enforce the judgment taken in her favour in timely fashion. In this regard she relied on Article 6 § 1 of the Convention and Article 1 of Protocol No. 1, which 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 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

¹ Approximately 214.90 euros (EUR) at the material time.

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

13. The Government submitted that the applicant’s complaints were outside the six-month time-limit, as, in their opinion, that time-limit had started to run on 22 September 2004 when the Bailiffs’ Service had returned the writ of enforcement to the applicant (see paragraph 8 above). On the other hand, they deemed her application incompatible *ratione personae*, as, according to them, the applicant had herself made enforcement of the judgment impossible by having had recourse to the court when the liquidation proceedings were already pending against the debtor enterprise and by her failure to introduce her writ of enforcement to the liquidation proceedings after 22 September 2004.

14. The applicant has failed to submit her observations on the admissibility in time.

15. The Court notes that shifting to an applicant the burden to seek further means of enforcement of a judgment against an entity for which a State is accountable does not relieve that State from its obligation to enforce the judgment. Having regard to the fact that the judgment in favour of the applicant has still not been enforced, the Court reaches the conclusion that the alleged violation of her rights is ongoing and accordingly the applicant may still claim to be a victim of the violation. As a consequence, the Government’s objections must be dismissed.

16. The Court notes that this complaint is not manifestly ill-founded within the meaning of Article 35 § 3 of the Convention. It further notes that it is not inadmissible on any other grounds. It must therefore be declared admissible.

B. Merits

17. In their observations on the merits of the applicant’s claims, the Government contended that there had been no violation of Article 6 § 1 of the Convention or Article 1 of Protocol No. 1.

18. The applicant has failed to submit her observations on the merits in time.

19. The Court notes that the judgment in the applicant’s favour remained unenforced for almost five years.

20. The Court reiterates 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 other authorities, *Kucherenko v. Ukraine*, no. 27347/02, § 27, 15 December 2005).

21. Having examined all the materials 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.

22. There has, accordingly, been a violation of Article 6 § 1 of the Convention and a violation of Article 1 of Protocol No. 1 in respect of the lengthy non-enforcement of the judgment in the applicant's favour in the present application.

II. OTHER ALLEGED VIOLATIONS OF THE CONVENTION

23. The applicant also relied on Articles 1, 4 and 17 of the Convention with respect to the lengthy non-enforcement of the judgment in her favour. She also asserted that the respondent State had violated her rights under the 1961 International Labour Organisation Convention.

24. Having carefully considered the applicant's submissions in the light of all the material in its possession, the Court finds that, in so far as the matters complained of are within its competence, they do not disclose any appearance of a violation of the rights and freedoms set out in the Convention.

25. 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

26. 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, costs and expenses

27. The applicant did not submit a claim for just satisfaction. Accordingly, the Court considers that there is no call to award her any sum on that account.

28. The Court, however, notes that it is undisputed that the State still has an outstanding obligation to enforce the judgment at issue. Accordingly, the

applicant remains entitled to recover the principal amount of the debt awarded to her in the course of the domestic proceedings.

B. Default interest

29. 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 complaint under Article 6 § 1 of the Convention and Article 1 of Protocol No. 1 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* that there has been a violation of Article 1 Protocol No. 1 to the Convention;
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 outstanding debt under the judgment of 1 June 2004;
 - (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.

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