



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

1959 · 50 · 2009

FIFTH SECTION

CASE OF TERESHCHENKO v. UKRAINE

(Application no. 33959/05)

JUDGMENT

STRASBOURG

30 July 2009

FINAL

30/10/2009

This judgment may be subject to editorial revision.

In the case of Tereshchenko v. Ukraine,

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

Peer Lorenzen, *President*,

Karel Jungwiert,

Rait Maruste,

Mark Villiger,

Isabelle Berro-Lefèvre,

Zdravka Kalaydjieva, *judges*,

Stanislav Shevchuk, *ad hoc judge*,

and Stephen Phillips, *Deputy Section Registrar*,

Having deliberated in private on 7 July 2009,

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

PROCEDURE

1. The case originated in an application (no. 33959/05) 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 Valentyna Pavlivna Tereshchenko (“the applicant”), on 3 September 2005.

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

3. On 11 June 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

4. The applicant was born in 1949 and lives in the town of Zhovti Vody, Ukraine.

5. The applicant and her husband worked for a State company, open joint stock company Electrongaz, (“the company”). By two separate judgments of 12 May 1999, the Zheltovodsky Court awarded the applicant and her husband 3,465.53 and 659.45¹ Ukrainian hryvnas (UAH) respectively. On 10 October 2003 the applicant’s husband died. The applicant inherited the award against the company made by the court in his favour.

¹ EUR 807.54 and 153.67, respectively

6. In a letter of 3 January 2008 the applicant reported that both judgments had been enforced in full in May 2007.

II. RELEVANT DOMESTIC LAW

7. The relevant domestic law regarding enforcement of court decisions is summarised in the judgment of *Voytenko v. Ukraine* (no. 18966/02, §§ 20-25, 29 June 2004).

THE LAW

I. ALLEGED VIOLATION OF ARTICLE 1 OF PROTOCOL NO.1 TO THE CONVENTION

8. The applicant complained that the judgments given in her favour and in favour of her husband were not enforced in good time. She relied on Article 1 of Protocol No. 1 to the Convention of the Convention, which reads as follows:

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.....”

A. Admissibility

9. The Government submitted that the applicant had failed to exhaust domestic remedies as required by Article 35 § 1 of the Convention. In particular, they maintained that she had not availed herself of the opportunity to be registered as creditor in the insolvency proceedings pending against the debtor enterprise.

10. The applicant disagreed.

11. The Court notes that similar objections have already been rejected in a number of judgments adopted by the Court (see *Trykhlid v. Ukraine*, no. 58312/00, §§ 38-43, 20 September 2005, and *Otychenko and Fedishchenko v. Ukraine*, nos. 1755/05 and 25912/06, § 27, 12 March 2009). The Court considers that this objection must be rejected in the instant case for the same reasons.

12. The Court notes that the 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

13. The Government contended that the State bailiffs had taken every action necessary to enforce the judgments in the applicant's favour and in favour of her husband that there had been no violation of Article 1 of Protocol No. 1. They further maintained that these judgments had been enforced in full.

14. The applicant disagreed.

15. The Court observes that it has already found violations of Article 1 of Protocol No. 1 in cases similar to the present one (see *Voytenko v. Ukraine*, cited above; § 55, and *Lopatyuk and Others v. Ukraine*, nos. 903/05 and foll. § 22, 17 January 2008). It finds no ground to depart from its case-law in the present case.

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

II. OTHER ALLEGED VIOLATIONS OF THE CONVENTION

17. In her initial application the applicant also invoked Article 17 of the Convention. In her later submissions which were lodged in January 2009 the applicant also complained under Articles 6 § 1 and 13 about the non-enforcement of the judgments of 12 May 1999 given in her favour and in favour of her husband.

18. The Court has examined the remainder of the applicant's complaints and considers that, in the light of all the material in its possession and 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 or its Protocols. Accordingly, the Court rejects them as manifestly ill-founded, pursuant to Article 35 §§ 3 and 4 of the Convention.

III. APPLICATION OF ARTICLE 41 OF THE CONVENTION

19. 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

20. The applicant claimed UAH 11,000 (about EUR 1,039) in respect of pecuniary damage. She further claimed EUR 20,000 in respect of non-pecuniary damage.

21. The Government contested these claims as unsubstantiated and exorbitant.

22. 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, ruling on an equitable basis, it awards the applicant EUR 2,600 in respect of non-pecuniary damage.

B. Costs and expenses

23. The applicant did not submit any claim under this head; the Court therefore makes no award for costs and expenses.

C. Default interest

24. 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 1 of Protocol No. 1 admissible and the remainder of the application inadmissible;
2. *Holds* that there has been a violation of Article 1 of Protocol No. 1 to 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 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;

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

Done in English, and notified in writing on 30 July 2009, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Stephen Phillips
Deputy Registrar

Peer Lorenzen
President