



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

1959 · 50 · 2009

FIFTH SECTION

CASE OF GLUSHKO v. UKRAINE

(Application no. 22358/06)

JUDGMENT

STRASBOURG

15 October 2009

FINAL

15/01/2010

This judgment will become final in the circumstances set out in Article 44 § 2 of the Convention. It may be subject to editorial revision.

In the case of Glushko v. Ukraine,

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

Peer Lorenzen, *President*,

Renate Jaeger,

Karel Jungwiert,

Rait Maruste,

Isabelle Berro-Lefèvre,

Mirjana Lazarova Trajkovska, *judges*,

Mykhaylo Buromenskiy, *ad hoc judge*,

and Claudia Westerdiek, *Section Registrar*,

Having deliberated in private on 22 September 2009,

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

PROCEDURE

1. The case originated in an application (no. 22358/06) 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 Vladimir Grigoryevich Glushko (“the applicant”), on 7 April 2006. The applicant having died on 10 September 2008, his mother, Mrs Glushko Evgeniya Fedorovna, expressed the wish to pursue the application.

2. The Ukrainian Government (“the Government”) were represented by their Agent, Mr Y. Zaytsev. The applicant and Mrs Glushko Evgeniya Fedorovna were represented by the applicant's brother, Mr Glushko Eduard Grigiryevich.

3. On 5 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

I. THE CIRCUMSTANCES OF THE CASE

4. The applicant was born in 1954 and died on 10 September 2008.

5. On 3 April 1994 the applicant had a work-related accident. Subsequently, he received the status of a partially disabled person.

6. The applicant's former employer, the State company "Makeyivvugillya" ("the company") paid the applicant a lump sum accident benefit and awarded him a monthly allowance for his disability.

7. In 2003 the applicant instituted proceedings in the Tsentralno-gorodskoy Court of Makeyevka against the company and the State Insurance Fund for Industrial Accidents and Diseases ("the Fund"). He sought re-calculation of the above allowances and claimed compensation for losses sustained due to erroneous calculation.

8. On 29 October 2003 the court found for the applicant and awarded him 42,970.19¹ Ukrainian hryvnas (UAH), to be paid by the company, and UAH 12,485.76² to be paid by the Fund.

9. On 25 February 2004 the Tsentralno-gorodskoy District Bailiffs' Service of Makeyevka instituted enforcement proceedings.

10. On an unspecified date the Fund paid the applicant the full amount awarded under the judgment.

11. In the period from 24 December 2004 to 26 July 2005 the company partly paid its debt. The judgment remains unenforced.

II. RELEVANT DOMESTIC LAW

12. The relevant domestic law is summarised in the *Romashov v. Ukraine* judgment (no. 67534/01, §§ 16-19, 27 July 2004).

THE LAW

I. LOCUS STANDI OF THE APPLICANT'S MOTHER

13. The applicant died on 10 September 2008. On 11 December 2008 the applicant's mother, Mrs Glushko Evgeniya Fedorovna, informed the Court that she wished to pursue the application.

14. The Government left the issue to the Court's discretion, but pointed out that any award in the event of a finding of a violation could only be received by the applicant's lawful heirs.

15. The Court notes that the present application concerns a property right which is in principle transferable to the heirs, and that there is a next of kin of the applicant who wishes to pursue the application. In these circumstances the Court considers that the applicant's mother has standing to continue the present proceedings in his stead (see *Sharenok v. Ukraine*,

¹ About EUR 7,106 at the material time

² About EUR 2,065 at the material time

no. 35087/02, §§ 10-12, 22 February 2005). However, reference will still be made to the applicant throughout the text.

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

16. The applicant complained under Article 6 § 1 of the Convention and Article 1 of Protocol No. 1 of the company's failure to comply with the judgment that had been given in his favour. The above provisions 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 and subject to the conditions provided for by law and by the general principles of international law...”

A. Admissibility

17. The Court notes that the application 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

18. In their observations on the merits the Government advanced the arguments they have frequently put forward in cases like the present one (see, for example, the *Romashov* judgment, cited above, § 37).

19. The applicant disagreed.

20. The Court has frequently found violations of Article 6 § 1 and Article 1 of Protocol No. 1 to the Convention in cases raising similar issues to those in the present case (see *Romashov v. Ukraine*, cited above, § 46, and *Voytenko v. Ukraine*, no. 18966/02, §§ 46 and 55, 29 June 2004).

21. Having examined all the material submitted to it, 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 have, accordingly, been violations of Article 6 § 1 and Article 1 of Protocol No. 1 to 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. In respect of pecuniary damage, the applicant claimed payment of the debt still owed to him under the judgment given in his favour. He also asked that the judgment debt be indexed to the rate of inflation, though he did not indicate the sums in question. Lastly, he requested that the Court award him compensation for non-pecuniary damage. He left the determination of the amount of the award in that respect to the Court's discretion

25. The Government stated that they had no objections to enforcing the judgment given in the applicant's favour. They left the question of compensation for non-pecuniary damage to the Court's discretion.

26. The Court finds that the Government should pay the applicant the outstanding debt under the judgment given in his favour by way of compensation for pecuniary damage. It further dismisses the claim for inflation adjustment as unsubstantiated (see, *a contrario*, *Maksimikha v. Ukraine*, no. 43483/02, § 29, 14 December 2006). The Court further takes the view that the applicant must have sustained non-pecuniary damage as a result of the violations found. Making its assessment on an equitable basis, as required by Article 41 of the Convention, it awards the applicant EUR 2,300 under this head.

B. Costs and expenses

27. The applicant requested that the Court award him compensation for the cost of postage. He left the determination of the amount of the award in that respect to the Court's discretion

28. The Government left this question to the Court's discretion.

29. 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 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 10 for the cost of postage.

C. Default interest

30. 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. *Holds* that Mrs Glushko Evgeniya Fedorovna has standing to continue the present proceedings in the applicant's stead;
2. *Declares* the application admissible;
3. *Holds* that there has been a violation of Article 6 § 1 of the Convention;
4. *Holds* that there has been a violation of Article 1 of Protocol No. 1 to the Convention;
5. *Holds*
 - a) that the respondent State is to pay the applicant's mother, Mrs Glushko Evgeniya Fedorovna, to be held by her for all the applicant's heirs, if other than herself, within three months from the date on which the judgment becomes final in accordance with Article 44 § 2 of the Convention the following sums:
 - (i) the debt still owed to the applicant under the judgment of the Tsentralno-gorodskoy District Court of Makeyevka of 29 October 2003;
 - (ii) EUR 2,300 (two thousand three hundred euros) in respect of non-pecuniary damage and EUR 10 (ten euros) for postage expenses, plus any tax that may be chargeable to the applicant, 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 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 15 October 2009, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Claudia Westerdiek
Registrar

Peer Lorenzen
President