



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

---

1959 · 50 · 2009

FIFTH SECTION

**CASE OF KUTSENKO v. UKRAINE**

*(Application no. 41936/05)*

JUDGMENT

STRASBOURG

10 December 2009

**FINAL**

*10/03/2010*

*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 Kutsenko 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,

Zdravka Kalaydjieva, *judges*,

Mykhaylo Buromenskiy, *ad hoc judge*,

and Claudia Westerdiek, *Section Registrar*,

Having deliberated in private on 17 November 2009,

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

## PROCEDURE

1. The case originated in an application (no. 41936/05) 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, Mrs Tamara Ananyevna Kutsenko (“the applicant”), on 10 January 2005. The applicant having died in June 2008, Mr Oleg Mykolayovych Kutsenko, her widower, expressed the wish to pursue the application.

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

3. The applicant alleged, in particular, that her Convention rights were infringed on account of the lengthy non-enforcement of a judgment given in her favour.

4. On 19 January 2009 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

5. The applicant was born in 1960 and lived in Dniprodzerzhynsk.

6. On 14 May 2004 the Dniprovsky District Court of Dniprodzerzhynsk awarded the applicant 2,000 hryvnias (UAH) against the

Dniprodzerzhynskteplomerezha municipal company and UAH 1,000 against the Dnipropdzerzhynska Teploelectrotsentral State-controlled OJSC.

7. On 12 August 2004 this judgment became binding for enforcement.

8. In September 2004 enforcement proceedings were instituted to collect the debts. By 7 July 2005 the first debtor had paid its debt. As regards the second debtor, on several occasions enforcement proceedings were suspended on various grounds (such as insolvency proceedings against the debtor and introduction of a moratorium according to the 2005 Law of Ukraine “On Measures to Ensure the Stable Operation of Fuel and Energy Sector Enterprises”). Currently the proceedings are suspended and the debt remains outstanding.

9. On 17 June 2008 the applicant died. By a letter of 28 November 2008 the applicant's widower informed the Court of his wish to pursue the application.

## II. RELEVANT DOMESTIC LAW

10. The relevant domestic law is summarised in the judgments of *Sokur v. Ukraine* (no. 29439/02, § 17-22, 26 April 2005, and *Kryshchuk v. Ukraine*, no. 1811/06, § 10, 19 February 2009).

## THE LAW

### I. AS TO THE *LOCUS STANDI* OF MR KUTSENKO

11. The respondent Government submitted that as the applicant had died the application should be struck out of the Court's list. They did not advance any specific objections as to Mr Kutsenko's standing to pursue the application.

12. Having regard to the circumstances of the case and the information in its possession, the Court considers that the applicant's widower has standing to continue the present proceedings in her stead (see *Sharenok v. Ukraine*, no. 35087/02, §§ 10-12, 22 February 2005). However, reference will still be made to the applicant throughout the ensuing text.

## II. ALLEGED VIOLATIONS OF ARTICLES 6 § 1 AND 13 OF THE CONVENTION AND ARTICLE 1 OF PROTOCOL NO. 1

13. The applicant complained about the lengthy non-enforcement of the judgment given in her favour and that there were no effective remedies in that respect. She invoked Articles 6 § 1 and 13 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 ... hearing within a reasonable time by [a] ... tribunal ...”

### 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.

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

14. The Government submitted that the applicant had not exhausted domestic remedies in respect of her complaints, as she had never instituted any proceedings against the State bailiffs.

15. The applicant disagreed.

16. The Court reiterates that it has already dismissed similar objections in other cases concerning the non-enforcement of judgments against the State-controlled companies (see, for example, *Kozachek v. Ukraine*, no. 29508/04, §§ 19-25, 7 December 2006). The Court considers that these objections must be rejected for the same reasons.

17. The Court finds that the above 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

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 *Sokur* judgment, cited above, § 28).

19. The applicant asked the Court to find violations of the invoked Articles.

20. The Court reiterates that it has already found violations of Articles 6 § 1 and 13 of the Convention and Article 1 of Protocol No. 1 in cases like the present application (see, for example, *Kryshchuk*, cited above, § 19).

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 has, accordingly, been a violation of Articles 6 § 1 and 13 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.

## III. OTHER ALLEGED VIOLATIONS OF THE CONVENTION

23. The applicant additionally invoked Articles 1, 2, 3, 8, 17 and 34 in respect of the facts of the present case.

24. Having carefully examined these submissions by the applicant in the light of all the material 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 rights and freedoms set out in the Convention.

25. It follows that this part of the application must be declared inadmissible as manifestly ill-founded, pursuant to Article 35 §§ 1, 3 and 4 of the Convention.

## IV. 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**

27. The applicant claimed 50,000 euros (EUR) in respect of non-pecuniary damage.

28. The Government contended that this amount was exorbitant and unsubstantiated.

29. The Court notes that the State still has an outstanding obligation to enforce the court decision at issue in the present case. Accordingly, the applicant's heirs remain entitled to recover the principal amount of the debt awarded to the applicant in the course of the domestic proceedings. The Court further considers that the applicant must have sustained non-pecuniary damage. Ruling on an equitable basis, it awards EUR 1,800 to the applicant's estate in this respect.

### **B. Costs and expenses**

30. The applicant did not lodge any claim under this head. The Court therefore makes no award.

### **C. Default interest**

31. 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 complaints under Articles 6 § 1 and 13 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 13 of the Convention;
4. *Holds* that there has been a violation of Article 1 of Protocol No. 1;
5. *Holds*
  - (a) that the respondent State is to pay the applicant's estate, within three months from the date on which the judgment becomes final in accordance with Article 44 § 2 of the Convention, EUR 1,800 (one thousand eight hundred euros), plus any tax that may be chargeable, in

respect of non-pecuniary damage, to be converted into the national currency of Ukraine 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;

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

Done in English, and notified in writing on 10 December 2009, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Claudia Westerdiek  
Registrar

Peer Lorenzen  
President