



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

SECOND SECTION

CASE OF ROMASHOV v. UKRAINE

(Application no. 67534/01)

JUDGMENT

STRASBOURG

27 July 2004

FINAL

15/12/2004

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 Romashov v. Ukraine,

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

Mr J.-P. COSTA, *President*,

Mr A.B. BAKA,

Mr L. LOUCAIDES,

Mr K. JUNGWIERT,

Mr V. BUTKEVYCH,

Mrs W. THOMASSEN,

Mr M. UGREKHELIDZE, *judges*,

and Mrs S. DOLLÉ, *Section Registrar*,

Having deliberated in private on 6 July 2004,

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

PROCEDURE

1. The case originated in an application (no. 67534/01) 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 Viktor Petrovich Romashov (“the applicant”), on 21 November 2000.

2. The Ukrainian Government (“the Government”) were represented by their Agents, Ms Valeria Lutkovska, succeeded by Ms Zoryana Bortnovska.

3. The applicant’s complaint under Article 6 § 1 of the Convention was communicated on 9 May 2003. On the same date the Court decided that Article 29 § 3 of the Convention should be applied and the admissibility and merits of the complaint be considered together.

4. The applicant and the Government each filed observations on the merits (Rule 59 § 1).

THE FACTS

5. The applicant, Mr Viktor Petrovich Romashov, is a Ukrainian national, who was born in 1954 and currently resides in Lysychansk, Ukraine. The applicant is a pensioner.

I. THE CIRCUMSTANCES OF THE CASE

6. In May 1998 the applicant filed an application with the labour disputes commission of the *Lysychans’ke Derzhavne Shakhtobudivne*

Upravlinnia (the “DSU”) to recover unpaid salary from a State-run coal mine.

7. On 16 June 1998 the labour disputes commission of the DSU allowed his claims and ordered the DSU to pay the applicant UAH 8,783.39¹ in compensation. On the same date the commission issued a certificate to the applicant, which had the same status as a writ of execution.

8. On 27 July 1998 the DSU’s property was attached by the tax inspectorate.

9. On 9 June, 7 July and 19 November 1999 the applicant was paid UAH 500², UAH 300³ and UAH 210⁴ respectively.

10. On 30 April 2000 the Lysychansk Department of Justice informed the applicant that there was a tax lien over the DSU’s property and it was therefore not possible to attach it. It also informed the applicant that there was no funding in the State budget to execute the decision of 16 June 1998.

11. On 14 June 2000 the applicant was informed that the labour commission decision of 16 June 1998 could not be executed due to the Coal Mining Ministry’s lack of funds.

12. On 23 January 2002 the Lysychansk City Court awarded the applicant UAH 2,282.21 to compensate for the loss of value of the sum awarded to him due to inflation. The applicant submitted that this judgment has remained unenforced.

13. On 10 January 2003 the applicant informed the Court that the execution proceedings in his case were still pending.

14. On 28 November 2003 the DSU paid the applicant the full amount of the debt awarded by the decision of 16 June 1998.

15. On 1 December 2003 the Execution Service terminated the enforcement proceedings as the judgment of 16 June 1998 had been enforced in full (UAH 8,783.39⁵).

II. RELEVANT DOMESTIC LAW AND PRACTICE

1. Constitution of Ukraine, 1996

16. Article 124 of the Constitution provided as follows:

“... Judicial decisions are adopted by the courts in the name of Ukraine and are mandatory for execution throughout the entire territory of Ukraine.”

1. EUR 1,369.75.

2. EUR 77.97.

3. EUR 46.78.

4. EUR 32.75.

5. EUR 1,369.75.

2. *Law of Ukraine of 21 April 1999 “on Enforcement Proceedings”*

17. Under Article 2 of the Law, the enforcement of judgments is entrusted to the State Bailiffs’ Service. Under Article 85 of the Law, the creditor may file a complaint against actions or omissions of the State Bailiffs’ Service with the head of the competent department for that Service or with a local court. Article 86 of the Law entitles the creditor to institute court proceedings against a legal person responsible for the enforcement of a judgment, for inadequate enforcement or non-enforcement of a judgement, and to receive compensation.

3. *Law of Ukraine of 24 March 1998 “on the State Bailiffs’ Service”*

18. Article 11 of the Law provides for the liability of bailiffs for any inadequate performance of their duties, as well as compensation for damage caused by a bailiff when enforcing a judgment. Under Article 13 of the Law, acts and omissions of the bailiff can be challenged before a superior official or the courts.

4. *Regulations of the State Treasury of Ukraine of 5 October 2001 “on the procedure for the forced recovery of funds from the accounts of institutions and organisations, opened by the bodies of the State Treasury”*

19. Under clause 3.6 of the regulations, the forced recovery of funds must be executed from the same account as that of ordinary payments.

COMPLAINTS

20. The applicant complains about the lengthy non-execution of the decision of the labour disputes commission of 16 June 1998 given in his favour. He also alleges that he was not provided with compensation for depreciation of the value of the sum awarded to him, as ordered by the judgment of the Lysychansk City Court on 23 January 2002. He alleges an infringement of Articles 13 and 17 of the Convention. In substance, however, he invokes Article 6 § 1 of the Convention.

THE LAW

21. The applicant complained about the State authorities' failure to execute the decision of 16 June 1998 and the judgment of 23 January 2002 in due time. He relied on Article 6 § 1 of the Convention, which in so far as relevant provides:

"In the determination of his civil rights and obligations ..., everyone is entitled to a fair and public hearing ... by an independent and impartial tribunal established by law."

22. The applicant further alleged that non-execution of the judgment given in his favour constituted an infringement of Articles 13 and 17 of the Convention. These provisions read, respectively:

"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."

"Nothing in [the] Convention may be interpreted as implying for any State, group or person any right to engage in any activity or perform any act aimed at the destruction of any of the rights and freedoms set forth herein or at their limitation to a greater extent than is provided for in the Convention."

I. ADMISSIBILITY

A. The Government's preliminary objections

1. *The applicant's victim status*

23. The Government stressed that, in accordance with the Court's case-law, an applicant who has obtained reparation at the national level for an alleged violation of the Convention can no longer be considered a victim for the purposes of Article 34 of the Convention (see, *Marchenko v. Ukraine* (dec.), no. 63520/01, 17 September 2002). Accordingly, as the decision of 16 June 1998 had been executed, the applicant can no longer be considered a victim of a violation of his rights under Article 6 § 1. They therefore proposed that the application be declared inadmissible or struck out of the Court's list of cases.

24. The applicant disagreed. In particular, he stated that the decision remained unenforced for an unreasonably long period of time. He further stated that the value of the sum awarded to him by the decision of 16 June 1998 has decreased. Furthermore, he had not been paid the compensation for depreciation of the sum awarded to him by the judgment of 23 January 2002.

25. The Court notes that, under Article 34 of Convention, it “may receive applications from any person, non-governmental organisation or group of individuals claiming to be the victim of a violation by one of the High Contracting Parties of the rights set forth in the Convention or the Protocols thereto ...”.

26. According to the Court’s established case-law, the word “victim” in the context of Article 34 denotes the person directly affected by the act or omission in issue, the existence of a violation of the Convention being conceivable even in the absence of prejudice. Consequently, a decision or measure favourable to the applicant is not in principle sufficient to deprive him of his status as a “victim” unless the national authorities have acknowledged, either expressly or in substance, and then afforded redress for, the breach of the Convention (see, *Dalban c. Roumanie* [GC], no. 28114/95, § 44, ECHR 1999–VI).

27. The Court agrees with the Government that the execution of the decision given in the applicant’s favour redressed the issue of non-execution as such. However, the delayed execution of the decision has not replied to the applicant’s complaint about the undue length of that procedure. Reparation was not made by the authorities as the judgment of 23 January 2002 remained unenforced. The Court considers, therefore, that the applicant may still claim to be a victim of an alleged violation of the rights guaranteed by Article 6 § 1 in relation to the period during which the decision of 16 June 1998 remained unexecuted (see, *Skubenko v. Ukraine* (dec.), no. 41152/98, 6 April 2004). Moreover, he can be considered a victim in relation to the non-enforcement of the judgment of 23 January 2002, which indexed the award made by the decision of 16 June 1998 in order to take account of inflation.

2. Objection as to the exhaustion of domestic remedies

28. The Government contended that the applicant has not exhausted domestic remedies as he did not lodge a claim with the domestic courts to challenge the inactivity of the State Execution Service or seek to expedite the enforcement proceedings in his case.

29. The applicant contested this submission, stating that he had used all remedies available to him to complain about the non-enforcement of the judgment. Moreover, there were no effective remedies that would have enabled him to expedite the enforcement of the judgment since its non-enforcement had been the result of the lack of funds of the State-owned DSU company that failed to comply with both the decision and the judgment given in his favour.

30. The Court recalls that the purpose of Article 35 § 1 of the Convention is to afford the Contracting States the opportunity to prevent or put right the violations alleged against them before those allegations are submitted to the Court. However, the only remedies to be exhausted are

those which are effective. It is incumbent on the Government claiming non-exhaustion to satisfy the Court that the remedy was an effective one, available in theory and in practice at the relevant time (see *Khokhlich v. Ukraine*, no. 41707/98, § 149, judgment of 29 April 2003).

31. The Government have referred to the opportunity for the applicant to challenge any inactivity or omissions on the part of the Bailiffs' Service and the Treasury, and to seek compensation for pecuniary and non-pecuniary damage caused by these authorities. In the present case, however, the debtor is a State body and the enforcement of judgments against it, as it appears from the case file, can only be carried out if the State foresees and makes provision for the relevant expenditure in the State Budget of Ukraine by taking the appropriate legislative measures. The facts of the case show that, throughout the period under consideration, the enforcement of the judgment in question was prevented precisely because of the failure to take any budgetary measures, rather than by a bailiff's misconduct. The applicant cannot therefore be reproached for not having taken proceedings against the Bailiffs' Service (see *Shestakov v. Russia* (dec.), no. 48757/99, 18 June 2002). Moreover, the Court notes that the Government have maintained that there were no irregularities in the way the Bailiffs' Service and the Treasury had conducted the enforcement proceedings.

32. In these circumstances, the Court concludes that the applicant was absolved from pursuing the remedy invoked by the Government and has therefore complied with the requirements of Article 35 § 1. Accordingly, it dismisses the Government's preliminary objection.

3. Conclusions as to admissibility

33. The Court considers, in the light of the parties' submissions, that the applicant's complaints under Article 6 § 1 of the Convention raise serious issues of fact and law under the Convention, the determination of which requires an examination of the merits. The Court concludes therefore that the complaints cannot be rejected for non-exhaustion of domestic remedies within the meaning of Article 35 § 1 of the Convention. No other ground for declaring them inadmissible has been established.

B. Admissibility of the complaints under Articles 13 and 17 of the Convention

1. Complaint under Article 13 of the Convention

34. The applicant next complained that he had no effective remedies in respect of his complaint under Article 6 § 1 of the Convention. He invoked Article 13 of the Convention, which provides as follows:

“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.”

35. The Court refers to its reasoning under Article 6 § 1 of the Convention in relation to Article 35 § 1 (paragraphs 29-34 above), which is equally pertinent to the applicant’s Article 13 claim. Consequently, the Court finds that this complaint is not manifestly ill-founded or indeed inadmissible on any other ground cited in Article 35 of the Convention. It must therefore be declared admissible.

2. Complaint under Article 17 of the Convention

36. As to the complaint under Article 17 of the Convention, the Court considers that it is wholly unsubstantiated. It follows that this complaint is manifestly ill-founded and must be rejected in accordance with Article 35 §§ 3 and 4 of the Convention.

II. MERITS OF THE APPLICANT’S COMPLAINTS

A. The submissions of the parties

37. The Government submitted that they had taken all measures provided for by the domestic legislation to enforce the judgment given in the applicant’s favour. Moreover, they maintained that the non-enforcement of the judgment in the period from 16 June 1998 until the present moment did not violate the applicant’s rights under Article 6 § 1 of the Convention. The delay in enforcement was caused by the difficult financial and economic situation in Ukraine. They reiterated that the decision given in the applicant’s favour was executed in full.

38. The applicant replied that the execution proceedings lasted 5 years, 5 months and 15 days. He further stated that the sum awarded to him had decreased in value since 1998 due to inflation and he was not compensated for that as the judgment of 23 January 2002 remained unenforced.

B. The Court’s assessment

1. Preliminary considerations as to the status of the decision of labour disputes commission

39. The Court notes that Article 221 of the Labour Code provides that “disputes pertaining to labour relations shall be dealt with by: 1) the labour disputes commissions; 2) the district (city) courts.” An applicant has to have recourse to the labour disputes commission for the adjudication of a labour

dispute (Article 224 of the Code). Its decision may be appealed to the court (Article 228 of the Code). The Court considers that in the area of labour disputes the commission is a first stage dispute-resolution body to be used in accordance with Article 35 § 1 of the Convention (see *Yasa v. Turkey*, judgment of 2 September 1998, *Reports of Judgments and Decisions* 1998-VI, p. 2431, § 71; *Selmouni v. France* [GC], no. 25803/94, §§ 74-75, ECHR 1999-V). The Court is of the opinion that an appeal to a labour disputes commission, as in the instant case, offered the applicant the possibility of securing redress for his complaints concerning the recovery of wages which were due to him.

40. According to Article 230 of the Labour Code the State Bailiffs' service shall issue a resolution on the initiation of the execution proceedings (*постанова про відкриття виконавчого провадження*) on the basis of the labour disputes commission's decision.¹ According to Article 230 of this Code the decision of the labour disputes commission is equal to a writ of execution (*виконавчий лист*) issued by the State Bailiffs' service on the basis of a judgment of a court. In accordance with Article 3-11 of the Law on Execution proceedings the decisions of the labour disputes commissions fall to be executed by the State Bailiffs' service.

41. The Court considers that the decision of the labour disputes commission in the applicant's case can be equated to a court decision, and that the State bears responsibility for its non-execution. Furthermore, the State Bailiffs' service initiated execution proceedings on the basis of the commission's decision and therefore took responsibility for its execution. It also notes that the execution proceedings constitute an integral part of the judicial proceedings that were replaced in the instant case by the proceedings before the labour disputes commission. It also observes that the mine at issue is a State-owned enterprise and that the State is responsible for the debts of the legal entities controlled by it financially or administratively.

2. As to the infringement of Article 6 § 1 of the Convention

42. The Court reiterates that Article 6 § 1 secures to everyone the right to have any claim relating to his civil rights and obligations brought before a court or tribunal; in this way it embodies the "right to a court", of which the right of access, that is the right to institute proceedings before courts in civil matters, constitutes one aspect. However, that right would be illusory if a Contracting State's domestic legal system allowed a final, binding judicial decision to remain inoperative to the detriment of one party. It would be inconceivable that Article 6 § 1 should describe in detail procedural guarantees afforded to litigants – proceedings that are fair, public and expeditious – without protecting the implementation of judicial decisions; to

1. This may be done if the decision of the labour disputes commission has not been executed voluntarily by the enterprise or institution concerned.

construe Article 6 as being concerned exclusively with access to a court and the conduct of proceedings would be likely to lead to situations incompatible with the principle of the rule of law which the Contracting States undertook to respect when they ratified the Convention. Execution of a judgment given by any court must therefore be regarded as an integral part of the “trial” for the purposes of Article 6 (see *Hornsby v. Greece*, judgment of 19 March 1997, *Reports* 1997-II, p. 510, § 40).

43. It is not open to a State authority to cite lack of funds as an excuse for not honouring a judgment debt. Admittedly, a delay in the execution of a judgment may be justified in particular circumstances. But the delay may not be such as to impair the essence of the right protected under Article 6 § 1 (see *Immobiliare Saffi v. Italy* [GC], no. 22774/93, § 74, ECHR 1999-V). In the instant case, the applicant should not have been prevented from benefiting from the decision given in his favour, which was of major importance to him and his family, on the ground of the State’s alleged financial difficulties.

44. The Court notes that the decision of the labour disputes commission of 16 June 1998 remained unenforced wholly or at least in part until 1 December 2003 when the principal amount of the sum awarded on 16 June 1998 was paid to the applicant. It also notes that this decision was enforced only after the communication of the application to the respondent Government. It further notes that the judgment of 23 January 2002 of the Lysychansk City Court awarding the applicant compensation for inflation still remains to be enforced.

45. By failing for 5 years, 5 months and 15 days to take the necessary measures to comply with the decision of the labour disputes commission, and by failing to pay the applicant the compensation ordered by the judgment of 23 January 2002, the authorities deprived the provisions of Article 6 § 1 of the Convention of all useful effect.

46. There has, accordingly, been a violation of Article 6 § 1 of the Convention.

2. As to the infringement of Article 13 of the Convention

47. The Court refers to its findings (at paragraphs 43-47 above) in the present case concerning the Government’s argument regarding domestic remedies. For the same reasons, the Court concludes that the applicant did not have an effective domestic remedy, as required by Article 13 of the Convention, to redress the damage created by the delay in the present proceedings (see *Voytenko v. Ukraine*, no. 18966/02, judgment of 29 June 2004, §§ 46-48). Accordingly, there has been a breach of this provision.

III. APPLICATION OF ARTICLE 41 OF THE CONVENTION

48. 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

49. The Court points out that under Rule 60 of the Rules of the Court, any claim for just satisfaction must be itemised and submitted in writing together with the relevant supporting documents or vouchers, “failing which the [Court] may reject the claim in whole or in part”.

50. The applicant was invited by the Registry to submit his claims for just satisfaction. He submitted his claims on 3 March 2004. However, he did not provide any documents in support of his claims, nor has he particularised them.

51. The Government maintained that the applicant did not suffer any pecuniary or non-pecuniary damage. They suggested that a finding of a violation would of itself constitute sufficient just satisfaction.

52. The Court makes no award in respect of pecuniary damage as the applicant has not substantiated any such loss. However, it considers that the applicant has suffered some non-pecuniary damage as a result of the violations found which cannot be made good by the Court’s finding of a violation alone. Making its assessment on an equitable basis, as required by Article 41 of the Convention, the Court awards the applicant the sum of EUR 3,000.

B. Default interest

53. 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 concerning the non-enforcement of the final judicial decision in the applicant's case and the lack of effective remedies in this respect 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*
 - (a) that the respondent State is to pay the applicant, within three months from the date on which the judgment becomes final according to Article 44 § 2 of the Convention, EUR 3,000 (three thousand euros) in respect of non-pecuniary damage, plus any tax that may be chargeable, to be converted into the currency of the respondent State at the rate applicable on 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;
5. *Dismisses* the remainder of the applicant's claim for just satisfaction.

Done in English, and notified in writing on 27 July 2004, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

S. DOLLÉ
Registrar

J.-P. COSTA
President