



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

SECOND SECTION

CASE OF BAKALOV v. UKRAINE

(Application no. 14201/02)

JUDGMENT

STRASBOURG

30 November 2004

FINAL

28/02/2005

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 Bakalov 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 I. CABRAL BARRETO,

Mr K. JUNGWIERT,

Mr V. BUTKEVYCH,

Mrs A. MULARONI,

Ms D. JOČIENĖ, *judges*,

and Mrs S. DOLLÉ, *Section Registrar*,

Having deliberated in private on 9 November 2004,

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

PROCEDURE

1. The case originated in an application (no. 14201/02) 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 Vadim Fedorovich Bakalov (“the applicant”), on 5 March 2002.

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

3. The applicant's complaints under Articles 6 § 1 and 13 of the Convention were communicated to the respondent Government on 21 April 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 54A).

THE FACTS

5. The applicant, Mr Vadim Fedorovych Bakalov, is a Ukrainian national, who was born on 23 February 1970 and currently resides in Odessa. He is represented before the Court by Aleksandr Kazarnovskiy, a lawyer practicing in Odessa.

I. THE CIRCUMSTANCES OF THE CASE

6. On 24 September 1997 the applicant was apprehended by police officers of the Leninskiy District Police Department of Odessa.

7. On 25 September 1997 the applicant's house was searched, during which ammunition was found.

8. On 30 September 1997 the applicant was charged with storing ammunition (Article 222-1 of the Criminal Code) and a criminal investigation was initiated against him.

9. On 26 December 1997 the investigation was terminated due to lack of proof.

10. On 25 August 1998 the applicant lodged complaints with the Kievsky District Court of Odessa, claiming unlawful detention, and the unlawful search and seizure of some of his property. The applicant alleged that the search was conducted without a warrant and that no ammunition had been found. He also sought compensation for moral damage caused by the unlawful police action.

11. On 16 August 1999 the Kievsky District Court of Odessa allowed the applicant's claims and ordered the State Treasury to pay the applicant UAH 82,472¹ in compensation.

12. On 6 June 2000 the Odessa Regional Court partly quashed this decision as regards compensation for material damage, which it remitted for fresh consideration to the Kievsky District Court of Odessa, which at a later date awarded the applicant UAH 2,020² in compensation for pecuniary damage. It also ordered the State Treasury to pay the applicant UAH 50,000³ in compensation for moral damage.

13. On 31 October 2001 the applicant complained to the State Treasury about the non-execution of the judgment of 6 June 2000 given in his favour.

14. On 15 November 2001 the State Treasury informed the applicant that no funds were available for such payments in the 1999-2001 State budgets.

15. On 29 January 2002 the applicant requested the State Treasury to execute the judgment of 6 June 2000.

16. On 26 February 2002 the State Treasury informed the applicant there was no statutory procedure for the payment of compensation and therefore no payment was possible.

17. On 15 May 2002 the National Bank transferred UAH 2,020 to the applicant in compensation for pecuniary damage.

18. On 10 December 2002 the National Bank transferred UAH 50,000 to the applicant in compensation for non-pecuniary damage.

1. EUR 17,530.3.

2. EUR 383.27.

3. EUR 9,486.76.

II. RELEVANT DOMESTIC LAW

19. The relevant domestic law is set out in the judgment of 27 July 2004 in the case of *Romashov v. Ukraine* (no. 67534/01).

THE LAW

20. The applicant complained of the failure of the State authorities to execute the decision of 6 June 2000 given in his favour. He alleged an infringement of Article 6 § 1 of the Convention and Article 1 of Protocol No. 1 to the Convention, which provide, in so far as relevant, as follows:

Article 6

“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.

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 or to secure the payment of taxes or other contributions or penalties.”

I. THE GOVERNMENT'S PRELIMINARY OBJECTIONS AS TO THE ADMISSIBILITY OF THE APPLICATION

A. The applicant's victim status

21. The Government stressed that, as the decision of 6 June 2000, given in the applicant's favour had been executed in full, 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.

22. The applicant disagreed.

23. The Court does not share the view of the Government. It considers 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 which he complained remained unenforced (see, *Voytenko v. Ukraine*, no. 18966/02, judgment of 6 June 2004, § 35; *Shmalko v. Ukraine*, no. 60750/00, judgment of 20 July 2004, § 34; *Romashov v. Ukraine*, no. 67534/01, judgment of 27 July 2004, § 27).

B. Objection as to the exhaustion of domestic remedies

24. 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 Bailiffs' Service or seek to expedite the enforcement proceedings in his case.

25. The applicant contested this submission.

26. The Court recalls its recent case-law on this issue. It finds that the situation is similar to the cases of *Voytenko*, *Shmalko* and *Romashov* (cited above, paragraphs 28-31, 37-39 and 30-32 respectively), and from which there is no reason to distinguish the present application. It concludes therefore that the applicant was absolved from pursuing the remedy invoked by the Government and has therefore complied with the requirements of Article 35 § 1 of the Convention.

C. Conclusions as to the admissibility of the complaints under Article 6 § 1 of the Convention

27. The Court considers, in the light of the parties' submissions, that the applicant's complaint under Article 6 § 1 of the Convention raises serious issues of fact and law under the Convention, the determination of which requires an examination of the merits. The Court concludes therefore that it is not manifestly ill-founded within the meaning of Article 35 § 3 of the Convention. No other ground for declaring it inadmissible has been established. It must therefore be declared admissible.

D. Admissibility of the applicant's complaints under Article 1 of Protocol No. 1 to the Convention

28. The Court refers to its reasoning under Article 6 § 1 of the Convention in relation to Articles 34 and 35 § 1 (paragraphs 23 and 26 above), which is equally pertinent to the applicant's claim under Article 1 of Protocol No. 1. 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.

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

29. The applicant complains, under Article 6 § 1 of the Convention, about the State authorities' failure to execute the judgment of 16 August 1999, as amended by the ruling of 6 June 2000.

30. The Government repeated that there was no infringement of Article 6 § 1 of the Convention in view of the enforcement of the judgment. They considered that the time taken to enforce the judgment was reasonable. Furthermore, the original non-enforcement of the judgment was caused by the difficult financial situation of the State.

31. The applicant disagreed. In particular, he complained that the execution proceedings lasted a very long time.

32. The Court recalls that the rights secured by Article 6 § 1 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. The 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).

33. 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 it 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.

34. The Court notes that the decision of 16 August 1999, as amended by the ruling of the Odessa Regional Court of 6 June 2000, remained unenforced for a lengthy period of time. There was a clear delay in the enforcement of the judgment from June 2000 until 15 May 2002 for which the Government have not advanced an adequate justification (cf. *Shmalko v. Ukraine*, no. 60750/00, judgment of 20 July 2004, § 45). The debt remained partially unenforced until 10 December 2002 when the final amount was paid.

35. The Court considers therefore that, by failing for more than two and a half years to take the necessary measures to comply with the judgment of 16 August 1999, as amended by the ruling of 6 June 2000, the authorities deprived the provisions of Article 6 § 1 of the Convention of their full effect.

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

III. AS TO THE ALLEGED VIOLATION OF ARTICLE 1 OF PROTOCOL NO. 1 TO THE CONVENTION

37. The applicant alleged that there had been an unjustified interference with his property rights, in breach of Article 1 of Protocol No. 1. The substantial delay in the payment of the debt had deprived him of the actual possession of his property.

38. The Government acknowledged that the judgment debt constituted a possession within the meaning of this provision. Nevertheless, they maintained that Article 1 of Protocol No. 1 had not been breached since the applicant's entitlement to the award was not disputed and he was not deprived of his property. The Government further noted that the delay in payment was due to insufficient State budgetary allocations.

39. The Court recalls its case-law that the impossibility for an applicant to obtain the execution of a judgment in his or her favour constitutes an interference with the right to the peaceful enjoyment of possessions, as set out in the first sentence of the first paragraph of Article 1 of Protocol No. 1 (see *Voytenko v. Ukraine*, no. 18966/02, judgment of 29 June 2004, § 53).

40. The substantial delay of over two and a half years in the payment to the applicant in the present case also constituted such an interference, for which the Government have not advanced any satisfactory explanation. The Court considers that a lack of budget funding cannot justify such an omission. Accordingly there has also been a violation of Article 1 of Protocol No. 1.

IV. APPLICATION OF ARTICLE 41 OF THE CONVENTION

41. 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 and costs and expenses

42. The applicant claimed no pecuniary damage. As to non-pecuniary damage, he requested UAH 120,000 (approximately EUR 20,000). He also claimed UAH 20,000 in costs and expenses as this was the sum he had allegedly paid his representative.

43. The Government submitted that the applicant's claims were unsubstantiated and exorbitant.

44. The Court considers that the applicant's claims are indeed excessive. Making its assessment on equitable basis, as required by Article 41 of the

Convention, the Court awards the applicant EUR 1,200 in non-pecuniary damage and EUR 500 for costs and expenses.

B. Default interest

45. 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 application admissible;
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 of 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 according to Article 44 § 2 of the Convention, EUR 1,200 (one thousand two hundred euros) in respect of non-pecuniary damage and EUR 500 (five hundred euros) in respect of costs and expenses, plus any tax that may be chargeable; these sums are to be converted into the national currency of the respondent State on the date of payment;
 - (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;
5. *Dismisses* the remainder of the applicant's claims for just satisfaction.

Done in English, and notified in writing on 30 November 2004, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

S. DOLLÉ
Registrar

J.-P. COSTA
President