



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

SECOND SECTION

CASE OF VARANITSA v. UKRAINE

(Application no. 14397/02)

JUDGMENT

STRASBOURG

5 April 2005

FINAL

05/07/2005

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 Varanitsa 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 15 March 2005,

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

PROCEDURE

1. The case originated in an application (no. 14397/02) 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 Ivan Trofimovich Varanitsa (“the applicant”), on 26 February 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 Article 6 § 1 and Article 1 of Protocol No. 1 to the Convention were communicated to the respondent Government on 2 July 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 case be considered together. The Court also decided to give priority to the application under Rule 41 of the Rules of the Court in view of the applicant’s age.

4. The applicant and the Government each filed observations on admissibility and merits (Rule 54A).

THE FACTS

5. The applicant, Mr Ivan Trofimovich Varanitsa, is a Ukrainian national, who was born in 1934 and currently resides in Krasnoarmeysk, in the Donetsk Region.

I. THE CIRCUMSTANCES OF THE CASE

6. On 19 January 2000 the Krasnoarmeysk City Court ordered the State mine “Rodinskaya” (the “Mine”) to pay the applicant UAH 2,961.35¹ in compensation for salary arrears. On the same date the court delivered writs of execution to the applicant. The judgment became final on 31 January 2000.

7. On 14 February 2000 the Krasnoarmeysk City Bailiffs initiated the enforcement of the judgment of 19 January 2000. The enforcement was suspended on the same date due to the bankruptcy proceedings concerning the Mine pending before the Donetsk Regional Court of Arbitration.

8. On 6 June 2000 the Krasnoarmeysk City Bailiffs reinitiated the enforcement proceedings in the applicant’s case.

9. On 10 April 2001 the Donetsk Regional Court of Arbitration declared the Mine bankrupt. On 19 June 2001 this decision was quashed by the same court.

10. On 18, 20 and 25 March 2002 the Krasnoarmeysk City Department of Justice, the Department of Justice for the Donetsk Region, informed the applicant that the judgment could not be executed due to the Mine’s lack of funds.

11. On 9 April 2002 the Krasnoarmeysk City Department of Justice informed the applicant that the Mine had been receiving funds from the State budget in order to pay salary arrears. It also informed the applicant that the Mine’s property could not be attached and that the Execution Service was presently executing earlier writs issued against the Mine in 1998.

12. On 21 August 2002 the applicant was paid UAH 58.26.²

13. On 23 August 2002 the applicant received UAH 25.52³. The remainder of the unpaid debt was therefore UAH 2,877.57⁴.

14. In August 2003 the mine paid the remainder of the debt to the applicant, which was by then UAH 2,961.35⁵.

15. On 11 August 2003 the Krasnoarmeysk City Department of Justice terminated the enforcement proceedings in view of the full execution of the judgment of 19 January 2000.

16. On 8 October 2003 the applicant informed the Court that the judgment given in his favour had been enforced in full. However, he still requested compensation for moral damage for the State’s failure to enforce the judgment for three years and eight months.

1. EUR 523.88.

2. 11.56 euros (EUR).

3. EUR 5.12.

4. EUR 577.18.

5. By then worth EUR 509.58.

II. RELEVANT DOMESTIC LAW AND PRACTICE

17. The relevant domestic law is summarised in the judgment of *Romashov v. Ukraine* (no. 67534/01, §§ 16-18, 27 July 2004).

THE LAW

18. The applicant complained of the failure of the State authorities to execute the judgment of 19 January 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 § 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...”

I. ADMISSIBILITY

19. The Government contended that the applicant could no longer claim to be a victim of a violation of the Convention as he had received full payment of the judgment debt. They also contended that the applicant had not exhausted domestic remedies regarding the Bailiffs’ Service and the expedition of proceedings.

20. The applicant disagreed.

21. The Court notes that these objections have already been dismissed in a number of Court judgments (see the aforementioned *Romashov* judgment, § 41). In such cases the Court has found that applicants may still claim to be victims of an alleged violation of Article 6 § 1 in relation to the period during which the decisions of which complaint is made remain unenforced, and that the applicants were absolved from pursuing the remedies invoked by the Government. It finds no reason to reach different conclusions in the present case and, therefore, rejects the Government’s objections.

Accordingly, it dismisses the Government's preliminary objections as to admissibility. It further considers, in the light of the parties' submissions, that the applicant's complaints under Article 6 § 1 of the Convention and Article 1 of Protocol No. 1 raise serious issues of fact and law under the Convention, the determination of which requires an examination of the merits. It finds no ground for declaring the application inadmissible.

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

22. The applicant complained, under Article 6 § 1 of the Convention about the State authorities' lengthy failure to execute the judgment of 19 January 2000.

23. 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 it was reasonable. Furthermore, the original non-enforcement of the judgment was caused by the difficult financial situation of the State. The State Bailiffs took all necessary steps under domestic legislation to enforce the judgment.

24. The Court notes that the judgment of 19 January 2000 remained partially unenforced until 11 August 2003, when the full amount of the debt was transferred to the applicant's bank account and the enforcement proceedings were terminated, after the communication of the application to the respondent Government. However, the Court considers that the applicant should not have been prevented from benefiting from the decision given in his favour, which was of major importance to him, on the ground of the alleged financial difficulties of the Mine, for whose debts the State was liable (see the aforementioned *Romashov v. Ukraine* judgment, § 41).

25. The Court considers therefore that by failing for three years and eight months to take the necessary measures to comply with the judgment of 19 January 2000, the State authorities deprived the provisions of Article 6 § 1 of the Convention of much of their useful effect. It further considers that the Government have not advanced any valid justification for the delay in the enforcement of the judgment (cf. the *Shmalko v. Ukraine*, judgment of 20 July 2004, no. 60750/00, § 45).

26. 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

27. 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.

28. The Government acknowledged that the judgment debt constituted a possession within the meaning of Article 1 of Protocol No. 1. Nevertheless, they maintained that the provision had not been violated since the applicant's entitlement to the award was not disputed and he was not deprived of his property. They further noted that the delay in payment was due to the insufficient funds of the defendant company.

29. 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 (the *Voytenko v. Ukraine* judgment, of 29 June 2004, no. 18966/02, § 53).

30. The substantial delay of over three years and eight months to pay the judgment debt to the applicant is an interference of this kind, for which the Government have not advanced any satisfactory explanation. The Court considers that the alleged lack of funds of a State-owned enterprise cannot justify such an omission. Accordingly, there has been a violation of Article 1 of Protocol No. 1.

IV. APPLICATION OF ARTICLE 41 OF THE CONVENTION

31. 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

32. The applicant claimed pecuniary damage for the loss in value of the original judgment debt amounting to UAH 776.59 (EUR 118.16). He also claimed non-pecuniary damage amounting to UAH 5,000 (EUR 761).

33. The Government contested these claims as being unsubstantiated. Furthermore, they maintained that, as the judgment given in the applicant's favour had been enforced, there was no need to make a just satisfaction award.

34. The Court finds that the applicant has not established any pecuniary loss, account being taken of the interim payments, albeit small, and the final sum he received. However, making its assessment on equitable basis, as required by Article 41 of the Convention, the Court considers that the applicant's claim for non-pecuniary damage is reasonable and awards him EUR 761.

B. Default interest

35. 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 761 (seven hundred and sixty one euros) in respect of non-pecuniary damage, plus any tax that may be chargeable; this sum is to be converted into the national 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 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 5 April 2005, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

S. DOLLÉ
Registrar

J.-P. COSTA
President