



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

SECOND SECTION

CASE OF PIRYANIK v. UKRAINE

(Application no. 75788/01)

JUDGMENT

STRASBOURG

19 April 2005

FINAL

19/07/2005

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 Piryanik v. Ukraine,

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

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

Mr I. CABRAL BARRETO,

Mr R. TÜRMEŖEN,

Mr V. BUTKEVYCH,

Mr M. UGREKHELIDZE,

Mrs E. FURA-SANDSTRÖM,

Ms D. JOČIENĖ, *judges*,

and Mrs S. DOLLÉ, *Section Registrar*,

Having deliberated in private on 22 March 2005,

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

PROCEDURE

1. The case originated in an application (no. 75788/01) 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 Sergey Alekseyevich Piryanik (“the applicant”), on 17 May 2001.

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 of the Convention were communicated to the respondent Government 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 admissibility and merits (Rule 54A).

THE FACTS

5. The applicant is a Ukrainian national who was born in 1970 and currently resides in Privolye, the Lugansk Region.

I. THE CIRCUMSTANCES OF THE CASE

6. The applicant is an employee of the Kapustin mine of the State-owned *Lysychanskugol* Company (hereafter “the mine”), which is a structural division of the Ministry of Fuel and Energy of Ukraine.

7. According to the Government, all of the property of the mine has been in a tax lien since 24 July 1998. Moreover, since August 1997 the mine experienced financial difficulties and therefore salaries were not paid regularly to its employees.

8. On 25 January 2001 the labour disputes commission of the mine (“the commission”) ordered it to pay the applicant UAH 4,037.60¹ in compensation for unpaid salary for the period of 1997-2000.

9. Following this decision, the applicant complained to the Lysychansk City Court (the “Lysychansk Court”), seeking to institute proceedings against the mine in order to recover his salary. On 2 February 2001 the Lysychansk Court refused to consider the applicant’s complaints since the commission had already allowed his claims and awarded compensation in his favour.

10. On 12 February 2001 the Lysychansk Execution Service (the “bailiffs’ ”) initiated execution proceedings. On 5 March 2001 the bailiffs informed the applicant that the commission’s decision could not be executed due to the mine’s lack of funds. On 3 May 2001 the Lugansk Regional Department of Justice confirmed this.

11. On 29 May 2001 the Arbitration Court of Lugansk instituted bankruptcy proceedings against the mine on the basis of the application lodged by the *Luganskoblenergo* Company. On 17 July 2001 the Lugansk Regional Commercial Court upheld the settlement reached by the parties in the case and discontinued the bankruptcy proceedings.

12. On 16 October 2001 the Lugansk Regional Commercial Court instituted bankruptcy proceedings against the mine on the basis of the application lodged by the *Gorlivka Engineering Plant*. These proceedings were also discontinued, on 23 September 2002, after a settlement.

13. On 28 November 2003 the mine transferred UAH 4,037.60² to the applicant’s account in the Lysychansk Branch of the Savings Bank of Ukraine.

14. On 8 December 2003 the bailiffs’ terminated the enforcement proceedings in the case in view of their completion.

15. On 12 June 2003 the commission awarded the applicant UAH 2,789.26³ in compensation for salary arrears for the period of 2001-2003.

16. On 14 May 2004 the bailiffs’ terminated the ensuing enforcement proceedings in view of their completion on 12 June 2003.

1. EUR 806.44.

2. See above.

3. EUR 458.31.

II. RELEVANT DOMESTIC LAW AND PRACTICE

17. The relevant domestic law and practice is set out in the judgments of *Romashov v. Ukraine* (no. 67534/01, §§ 16-18, 27 July 2004) and *Dubenko v. Ukraine* (no. 74221/01, §§ 21-23, 11 January 2005).

THE LAW

18. The applicant complained about the non-enforcement of the decisions of the labour disputes commission of 25 January 2001 and 12 June 2003, given in his favour against the “Kapustin” State-owned mine. He alleged an infringement of Article 6 § 1 of the Convention. This provision in so far as relevant reads as follows:

“In the determination of his civil rights and obligations or of any criminal charge against him, everyone is entitled to a fair and public hearing within a reasonable time by an independent and impartial tribunal established by law.”

I. SCOPE OF THE CASE

19. The Court notes that the applicant introduced new complaints about the failure of the domestic authorities to enforce the second decision of the commission of 12 June 2003 after the communication of the case to the respondent Government. This decision was anyway enforced in full in less than a year, on 14 May 2004.

20. In the Court’s view, the new complaints are not an elaboration of the applicant’s original complaint to the Court, lodged three years earlier, about the failure of the mine to comply with a previous decision of the commission for the payment of salary arrears to the applicant, and on which the parties have commented. The Court considers, therefore, that it is not appropriate now to take these matters up separately (see *Skubenko v. Ukraine* (dec.), no. 41152/98, 6 April 2004).

II. ADMISSIBILITY

A. The applicant’s victim status

21. The Government stressed that, as the commission’s decision of 25 January 2001 had been executed by the national authorities in full, the applicant could 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 notes that this issue has already been examined in a number of its judgments (see *Voytenko v. Ukraine*, no. 18966/02, judgment of 29 June 2004, § 35; *Shmalko v. Ukraine*, no. 60750/00, judgment of 20 July 2004, § 34). In these cases the Court found 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 complaint is made remained unenforced (see the aforementioned *Skubenko* decision). It therefore rejects the Government's objection as to the present applicant's lack of victim status.

C. 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 challenging the inactivity of the State Bailiffs' Service or seeking 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 (see the *Voytenko* and *Shmalko* judgments cited above, §§ 28-31 and 37-39, respectively). It finds no reason to distinguish the present application from these previous decisions. 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.

D. Conclusions as to the admissibility of the application

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 the application cannot be rejected as being manifestly ill-founded within the meaning of Article 35 § 3 of the Convention. No other ground for declaring it inadmissible has been established.

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

28. The Government suggested that there was no infringement of Article 6 § 1 of the Convention in view of the enforcement of the judgment.

29. The applicant disagreed.

30. The Court observes that the State is liable for the debts of the enterprise at issue and that the commission's decision is the equivalent of a judgment (see *Romashov v. Ukraine*, §§ 39-41, cited above). It notes that a

delay in the execution of a judgment may be justified in particular circumstances, but 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, on the ground of the State's alleged financial difficulties.

31. The Court notes that the decision of 25 January 2001 remained unenforced for a lengthy period of time (two years and ten months). It remained so until 28 November 2003 when the full amount of the debt was finally paid to the applicant and the enforcement proceedings were terminated (8 December 2003). It further notes that this decision was enforced only after the communication of the application to the respondent Government.

32. The Court considers therefore that by failing for two years and ten months to take the necessary measures to comply with the aforementioned decision, the authorities deprived the provisions of Article 6 § 1 of the Convention of much of their useful effect. The Court also finds that there was clearly a delay in enforcement of the decision as from January 2001 until the date of communication of the application to the respondent Government for observations. It further considers that the Government have not advanced any justification for this delay (see *Shmalko v. Ukraine*, no. 60750/00, judgment of 20 July 2004, § 45).

33. There has, accordingly, been a violation of Article 6 § 1 of the Convention in respect of the non-enforcement of the commission's decision of 25 January 2001.

III. APPLICATION OF ARTICLE 41 OF THE CONVENTION

34. 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

35. The applicant, who was not legally represented before the Court, claimed pecuniary damage relating to the loss of value of the award due to inflation following the lengthy non-enforcement of the decision in his favour. He claimed UAH 30,000 (EUR 5,000) in compensation.

36. The Government submitted that the applicant should not be awarded just satisfaction as the judgment was enforced and there was no causal link between the violation found and the damage alleged.

37. Making its assessment on equitable basis, as required by Article 41 of the Convention, the Court awards the applicant the global sum of EUR 1,400 in respect of all his claims and expenses in pursuing his application before the Court.

B. Default interest

38. 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*
 - (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, the global sum of EUR 1,400 (one thousand four hundred euros), plus any tax that may be chargeable;
 - (b) that this amount shall be converted into the national currency of the respondent State at the rate applicable at the date of settlement;
 - (c) 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;
4. *Dismisses* the remainder of the applicant's claim for just satisfaction.

Done in English, and notified in writing on 19 April 2005, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

S. DOLLÉ
Registrar

J.-P. COSTA
President