



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

SECOND SECTION

CASE OF SOKUR v. UKRAINE

(Application no. 29439/02)

JUDGMENT

STRASBOURG

26 April 2005

FINAL

26/07/2005

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 Sokur 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 Mr S. NAISMITH, *Deputy Section Registrar*,

Having deliberated in private on 16 December 2003 and 31 March 2005,

Delivers the following judgment, which was adopted on the last-mentioned date:

PROCEDURE

1. The case originated in an application (no. 29439/02) 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 Fedor Aleksandrovich Sokur (“the applicant”), on 25 July 2002.

2. The Ukrainian Government (“the Government”) were represented by their Agents - Mrs V. Lutkovska and Mrs Z. Bortnovska.

3. The applicant alleged, in particular, that the judgment given in his favour was not enforced, in violation of Article 6 § 1 of the Convention.

4. The application was allocated to the Second Section of the Court (Rule 52 § 1 of the Rules of Court). Within that Section, the Chamber that would consider the case (Article 27 § 1 of the Convention) was constituted as provided in Rule 26 § 1.

5. By a decision of 16 December 2003, the Court declared the application partly admissible.

6. The applicant and the Government each filed observations on the merits (Rule 59 § 1). The Chamber having decided, after consulting the parties, that no hearing on the merits was required (Rule 59 § 3 *in fine*), the parties replied in writing to each other’s observations.

7. On 1 November 2004 the Court changed the composition of its Sections (Rule 25 § 1). This case was assigned to the newly composed Second Section (Rule 52 § 1).

THE FACTS

8. The applicant was born in 1940 and lives in the village of Grodovka, the Donetsk region of Ukraine.

I. THE CIRCUMSTANCES OF THE CASE

9. The facts of the case, as submitted by the parties, may be summarised as follows.

10. In 2001 the applicant instituted proceedings in the Novogrodivsky City Court of the Donetsk Region against the “Novogrodivska” Mining Company - a State-owned enterprise - to recover unpaid salary for the years 1998-2000.

11. On 3 May 2001 the Novogrodivsky City Court found in favour of the applicant (*рішення Новогродівського міського суду Донецької області*) and awarded him UAH 7,406.21¹ in salary arrears and compensation for devaluation. The decision became effective on 14 May 2001 and was sent for execution to the Novogrodivsky City Bailiffs’ Service (*Відділ Державної виконавчої служби Новогродівського міського управління юстиції*). However, the decision was not executed, allegedly due to the failure of the Bailiffs’ Service to act in not selling the property of the Mining Company.

12. In the course of the enforcement proceedings, it was established that on 19 November 1998 the Donetsk Regional Arbitration Court (*Арбітражний суд Донецької області*) had instituted bankruptcy proceedings against the “Novogrodivska” Mining Company.

13. The applicant instituted proceedings in the Novogrodivsky City Court of the Donetsk Region against the Novogrodivsky City Bailiffs’ Service for failure to execute the court decision in his favour. On 18 July 2001 the City Court rejected the applicant’s claim, finding no fault had been committed by that Service. The court stated that the Bailiffs’ Service had presented a decision of the Commercial Court of the Donetsk Region of 30 August 2000 to the respondent company. This decision prohibited the enforcement of judgments against the company by selling its property, due to the bankruptcy proceedings which had been initiated against it.

14. On 1 November 2001 the Appellate Court of the Donetsk Region dismissed the applicant’s appeal. On 18 February 2002 the panel of three judges of the Civil Chamber of the Supreme Court of Ukraine rejected the applicant’s request for leave to appeal.

15. On 26 December 2001 the ban on the forced sale of assets belonging to undertakings in which the State holds at least 25% of the share capital

1. Around EUR 1,060.

was entrenched in the Law on the Introduction of a Moratorium on the Forced Sale of Property. On 10 June 2003 the Constitutional Court found the moratorium to be compatible with the provisions of the Constitution.

16. On 12 May 2004 the full amount awarded to the applicant was transferred to his bank account, and on 13 May 2004 the enforcement proceedings were completed.

II. RELEVANT DOMESTIC LAW

1. Law of 14 May 1992 “on the Restoration of a Debtor’s Solvency or the Declaration of Bankruptcy”

17. Under Article 12 of the Law (Закон України “Про відновлення платоспроможності боржника або визнання його банкрутом”), a commercial court is entitled to order a moratorium on debt recovery from a company which is the subject of bankruptcy proceedings. The moratorium implies a prohibition on the Bailiffs’ Service to execute judgments against such a company. The same Article provides that the company protected by moratorium shall be immune from any fines and other sanctions for non-fulfilment or improper fulfilment of its financial obligations during the moratorium.

2. Law of 29 November 2001 “on the Introduction of a Moratorium on the Forced Sale of Property”

18. The Law (Закон України “Про введення мораторію на примусову реалізацію майна”) aims at protecting State interests on the sale of assets belonging to undertakings in which the State holds at least 25% of the share capital. A moratorium on the enforcement of judgment debts has been introduced until such time as the mechanism for the forced sale of the property of such undertakings has been improved. No time-limit has been set. Article 2 of that Law provides that the prohibition on the forced sale of property includes the execution of writs by the State Bailiffs’ Service on property belonging to such companies. The Law therefore stays the execution of all writs by the State Bailiffs’ Service against the assets of or undertakings in which the State holds at least 25% of the share capital.

3. Civil Code

19. Under Article 214 of the Civil Code, in case of delay in the fulfilment of its financial obligations, the debtor must, upon a claim by the creditor, pay the amount of the debt, plus any interest payable at an officially established inflation rate during the default period.

4. Law of 21 April 1999 “on Enforcement Proceedings”

20. Under Article 2 of the Law (Закон України “Про виконавче провадження”), 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 of that Service or with a local court. Article 86 of the Law entitles the creditor to institute court proceedings against a legal person, entrusted with the enforcement of a judgment, for the inadequate enforcement or non-enforcement of that judgment, and to receive compensation.

5. Law of 24 March 1998 “on the State Bailiffs’ Service”

21. Article 11 of the Law (Закон України “Про державну виконавчу службу”) provides for the liability of bailiffs for any inadequate performance of their duties, and compensation for damages 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.

6. Judgment of 10 June 2003 of the Constitutional Court in the case on the moratorium on the forced sale of property

22. In its judgment, the Constitutional Court of Ukraine mentioned in particular:

“The Constitutional Court considers that the Law [on the moratorium] does not violate the constitutional requirement about the binding nature of court judgments. Court judgments on the forced attachment of the property of enterprises, given both prior to and after the Law was adopted, have not been abolished by it; they remain in force, and their enforcement is suspended until the mechanism for the forced sale of property is improved. That means that the Law established an extended term of enforcement during this period....

... the Constitutional Court of Ukraine has decided:

1. To recognise that the Law “on the Introduction of a Moratorium on the Forced Sale of Property” of 29 November 2001 complies with the Constitution of Ukraine (is constitutional). ...”

THE LAW

I. SCOPE OF THE CASE

23. Following the Court's admissibility decision, the applicant made submissions on the merits in which he complains that the non-enforcement of the judgment in his favour violated his right to life (Article 2 of the Convention) and interfered with his property rights (Article 1 of Protocol No. 1).

24. The Government maintained that the applicant had not complained about a violation of his rights under Article 1 of Protocol No. 1 prior to the decision on admissibility and therefore could not submit this complaint after the said decision.

25. The Court recalls that, in its final decision on admissibility of 16 December 2003, it declared admissible the applicant's complaint under Article 6 § 1 of the Convention about the lengthy non-enforcement of the judgment in his favour. At the same time, the applicant's complaint under Article 2 of the Convention was declared inadmissible in the partial decision of 26 November 2002 and the applicant's complaint under Article 1 of Protocol No. 1 was first raised after the final decision on admissibility. Thus, the scope of the case now before the Court is limited to the complaint which has been declared admissible.

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

26. The applicant complained that, due to the non-execution of the judgment in his favour, his right to a fair hearing was violated. He invoked Article 6 § 1 of the Convention which provides as relevant:

"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."

A. Non-enforcement of the judgment

27. The Court notes that the judgment in favour of the applicant was fully enforced on 13 May 2004. In these circumstances, there is no reason for the Court to examine the issue of State liability for the debt to the applicant, as he can no longer claim to be a victim as regards the non-

enforcement as such (see *Voytenko v. Ukraine*, no. 18966/02, § 35, 29 June 2004).

B. Length of the enforcement proceedings

1. Parties' submissions

28. The Government maintained that the length of the enforcement proceedings had been caused by the critical financial situation of the debtor company and the energy sector of the Ukrainian economy in general. The Government further maintained that the Bailiffs' Service performed all necessary actions and cannot be blamed for the delay. The regularity of the enforcement proceedings in the present case was confirmed by the domestic courts. The Government contended that the State annually allocated substantial amounts from its budget to cover part of disability allowances and other compensatory payments to the workers in the mining industry.

29. The applicant put in doubt the willingness of the bailiffs to enforce the judgment in his favour. He maintained that the enforcement proceedings were barred first by the bankruptcy proceedings against the debtor and then by the Law "on the Introduction of a Moratorium on the Forced Sale of Property". The applicant submitted that the steps taken by the State were insufficient and that the legislation in force allowed the bailiff to avoid any responsibility for the non-enforcement of the judgment in his favour.

2. The Court's assessment

30. The Court reiterates that the right of access to court includes a right to have a court decision enforced without undue delay (see *Immobiliare Saffi v. Italy* [GC], no. 22774/93, ECHR 1999-V, § 66). However, a stay of execution of a judicial decision for such period as is strictly necessary to enable a satisfactory solution to be found to public-order problems may be justified in exceptional circumstances (see *Immobiliare Saffi v. Italy*, [GC], no. 22774/93, ECHR 1999-V, § 69).

31. The Court notes that the Government's arguments as to the length of the enforcement proceedings in the instant case are based on the financial difficulties of the respondent company and its economic sector, despite State budgetary allocations.

32. The Court recalls that the principal question to be determined is whether the State is responsible for the delay of three years in the enforcement of the said judgment and whether the restrictions preventing enforcement were justifiable and struck a fair balance between the interests of the State and those of the individual.

33. The Court considers that, given the State's involvement in paying the debts of mining companies, the State is in a position to control and regulate such payments in a timely manner.

34. The Court notes that the Ukrainian legislation foresees two situations when enforcement proceedings against a State-owned company can be stayed indefinitely without any possibility for the creditor to challenge the stay or to request compensation for delays. First, there may be bankruptcy proceedings (see paragraph 17 above). If so, the court can ban any debt retrieval from the debtor, and the latter remains immune from any penalties for the delays in honouring its obligations for the duration of those proceedings. Secondly, there is the ban on the attachment of the property of the State-owned enterprises to cover their debts (see paragraph 18).

35. Both bans were applied in the present case, and the Court cannot deny their general legitimacy. However, the legislation does not offer a creditor, like the applicant, or the bailiff, any possibility to challenge such restrictions in case of their abuse or unjustified application. Nor can a compensation claim be made for the delay in enforcement caused by such restrictions.

36. In these circumstances, the Court considers that by delaying for nearly three years the enforcement of the judgment in the applicant's case, the authorities deprived the provisions of Article 6 § 1 of the Convention of much of their useful effect. The Court finds that the Government have not advanced sufficient justification for this delay.

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

III. APPLICATION OF ARTICLE 41 OF THE CONVENTION

38. 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

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

40. The applicant claimed the UAH 7,406 (the equivalent of 1,060 euros - "EUR") awarded to him by the judgment of 3 May 2001, UAH 2,347.84 (EUR 335) in respect of pecuniary damage, UAH 18,300

(EUR 2,570) in respect of non-pecuniary damage, and EUR 3,000 as just satisfaction.

41. The Government maintained that the applicant had not specified the nature of the damage caused to him and had not substantiated the amounts claimed. The Government noted that the judgment of 3 May 2001 had been enforced, and that the applicant was claiming double just satisfaction. The Government submitted that the finding of a violation would constitute sufficient just satisfaction in the present case.

42. The Court does not discern any causal link between the violation found and the pecuniary damage alleged; it therefore rejects this claim. However, the Court takes the view 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 mere finding of a violation. Nevertheless, the amounts claimed are excessive. Making its assessment on an equitable basis, as required by Article 41 of the Convention, the Court awards the applicant the sum of EUR 1,500 in respect of non-pecuniary damage.

B. Costs and expenses

43. The applicant did not submit any claim under this head within the set time-limit; the Court therefore makes no award in this respect.

C. Default interest

44. 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. *Holds* that there has been a violation of Article 6 § 1 of the Convention;
2. *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 1,500 (one thousand five hundred euros) in respect of non-pecuniary damage, to be converted into the national currency of the respondent State at the rate applicable at the date of settlement, plus any tax that may be chargeable;

(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;

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

Done in English, and notified in writing on 26 April 2005, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

S. NAISMITH
Deputy Registrar

J.-P. COSTA
President