



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

SECOND SECTION

CASE OF VASILENKOV v. UKRAINE

(Application no. 19872/02)

JUDGMENT

STRASBOURG

3 May 2005

FINAL

03/08/2005

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 Vasilenkov v. Ukraine,

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

Mr A.B. BAKA, *President*,

Mr I. CABRAL BARRETO,

Mr R. TÜRMEŃ,

Mr V. BUTKEVYCH,

Mr M. UGREKHELIDZE,

Mrs E. FURA-SANDSTRÖM,

Ms D. JOČIENĚ, *judges*,

and Mrs S. DOLLĚ, *Section Registrar*,

Having deliberated in private on 5 April 2005,

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

PROCEDURE

1. The case originated in an application (no. 19872/02) 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 Valeriy Pavlovich Vasilenkov (“the applicant”), on 4 May 2002.

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

3. On 5 December 2003 the Court decided to communicate the application to the Government. Under the provisions of Article 29 § 3 of the Convention, it decided to examine the merits of the application at the same time as its admissibility.

THE FACTS

I. THE CIRCUMSTANCES OF THE CASE

4. The applicant was born in 1949 and lives in the town of Novogradovka, in the Donetsk Region, Ukraine.

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

6. On 24 May 2001, the Novogradovsky City Court found in favour of the applicant and awarded him UAH 3,786.07¹ in salary arrears and compensation. The decision became effective the same day and was sent for execution to the Novogradovsky City Bailiffs' Service.

7. The applicant instituted proceedings in the Novogradovsky City Court of the Donetsk Region against the Novogradovsky City Bailiffs' Service for failure to execute the court decision in his favour. On 19 September 2001, the City Court rejected the applicant's claim, finding that no fault had been committed by the Bailiffs' Service. The court stated that the Bailiffs' Service had presented the decisions of the Commercial Court of 30 August 2000 and 14 May 2001 to the respondent company. These decisions prohibited the enforcement of decisions against the company by selling its property, due to the bankruptcy proceedings which had been initiated against it.

8. 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.

9. 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, was entrenched in the Law on the Introduction of a Moratorium on the Forced Sale of Property.

10. On 23 December 2002 the Donetsk Regional Economic Court prohibited the Bailiffs from enforcing the judgments against the debtor company due to the bankruptcy proceedings. This prohibition was lifted in April 2003.

11. On 13 January 2004 the Bailiffs' Service, following the restructuring of the debtor company, replaced the debtor by its legal successor, the Selydivvugillya State-owned Company. The same day the enforcement proceedings were transferred accordingly to another Local Bailiffs' Service for further actions.

12. According to the Government, on 12 May 2004 the awarded amount was paid to the applicant in full and the enforcement proceedings were completed.

II. RELEVANT DOMESTIC LAW

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

¹ Around EUR 540.

THE LAW

I. ADMISSIBILITY

A. The Government's preliminary objections

14. The Government considered 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.

15. The applicant did not make any comments.

16. The Court notes that similar points 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.

B. The applicant's complaint under Article 2 § 1 of the Convention

17. The applicant complained that his right to life was violated, invoking Article 2 § 1 of the Convention, which provides as relevant:

"Everyone's right to life shall be protected by law."

18. The Court reiterates that according to its case-law neither Article 2 nor any other provision of the Convention can be interpreted as conferring on an individual a right to enjoy any given standard of living (*Wasilewski v. Poland*, no. 32734/96, 20.4.1999). Moreover, the applicant did not show that he suffered such destitution as to put his life at risk. It follows that this complaint is incompatible *ratione materiae* with the provisions of the Convention and must be rejected in accordance with Article 35 §§ 3 and 4 of the Convention.

C. The applicant's complaint under Article 4 § 1 of the Convention

19. The applicant complained of slavery, invoking Article 4 § 1 of the Convention, which provides as relevant:

"No one shall be held in slavery or servitude."

20. The Court notes that the applicant's allegations under Article 4 § 1 derive from the fact that he did not receive remuneration for work he had performed. The Court further notes that the applicant performed his work voluntarily and his entitlement to payment has never been denied. The dispute thus involves civil rights and obligations, but does not disclose any element of slavery within the meaning of this provision (see *Sokur v. Ukraine* (dec.), no. 29439/02, 26 November 2002). In these circumstances, the Court considers that this part of the application must be rejected as being manifestly ill-founded pursuant to Article 35 §§ 3 and 4 of the Convention.

D. Conclusion

21. In the light of the parties' submissions, the Court concludes 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. It finds no ground for declaring this part of the application inadmissible. For the same reasons, the applicant's complaints under Article 13 of the Convention cannot be declared inadmissible.

II. MERITS

A. The applicant's complaints under Article 6 § 1 of the Convention

22. The Government maintained that the Bailiffs performed all necessary actions to enforce the judgment and could not be liable for the delays in the enforcement proceedings. They further suggested that there was no infringement of Article 6 § 1 of the Convention in view of the enforcement of the judgment.

23. The applicant did not submit any additional arguments to his original complaint.

24. The Court notes that the decision of 24 May 2001 remained unenforced from 24 May 2001 (the date when the writ of execution was issued) until 12 May 2004 (the date of payment of the awarded amount to the applicant), i.e. a period of nearly three years. It further notes that this decision was enforced in full after the communication of the application to the respondent Government.

25. 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 any justification for this delay (see *Shmalko v. Ukraine*, no. 60750/00, judgment of 20 July 2004, § 45).

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

B. The applicant's complaints under Article 13 of the Convention

27. The Government maintained that the applicant had at his disposal effective remedies explicitly provided for by domestic legislation in order to challenge the non-enforcement of the court judgment given in his favour. They referred to their earlier argument on exhaustion of domestic remedies.

28. The applicant did not submit any additional comments.

29. The Court refers to its findings (at paragraph 16 above) 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. Accordingly, there has also been a breach of this provision.

III. APPLICATION OF ARTICLE 41 OF THE CONVENTION

30. 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.”

31. The applicant did not submit a claim for just satisfaction within the set time-limit. Accordingly, the Court considers that there is no call to award him any sum on that account and that, in these circumstances, the finding of a violation constitutes sufficient just satisfaction.

FOR THESE REASONS, THE COURT UNANIMOUSLY

1. *Declares* admissible the complaints concerning the non-enforcement of the judgment and lack of effective remedies, 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* that the finding of a violation constitutes sufficient just satisfaction in the circumstances of the case;

5. *Dismisses* the applicant's claim for just satisfaction.

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

S. DOLLÉ
Registrar

A.B. BAKA
President