



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

SECOND SECTION

CASE OF LUPANDIN v. UKRAINE

(Application no. 70898/01)

JUDGMENT

STRASBOURG

20 September 2005

FINAL

15/02/2006

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 Lupandin 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 K. JUNGWIERT,

Mr V. BUTKEVYCH,

Mr M. UGREKHELIDZE,

Mrs A. MULARONI,

Mrs E. FURA-SANDSTRÖM, *judges*,

and Mrs S. DOLLÉ, *Section Registrar*,

Having deliberated in private on 30 August 2005,

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

PROCEDURE

1. The case originated in an application (no. 70898/01) 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 Yevgeniy Ivanovich Lupandin (“the applicant”), on 13 November 2000.

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

3. On 7 October 2003 the Court declared the application partly inadmissible and decided to communicate the complaint concerning the non-enforcement of a court judgment given in the applicant’s favour 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 1948 and is currently serving a prison sentence at Penitentiary No. 8 in Zhytomyr (see in the latter respect *Lupandin v. Ukraine* (dec.), no. 70898/01, 7 October 2003).

5. In September 1995 the applicant had a serious accident at work in the Petrovskaya Mining Company (a State-owned enterprise, hereafter the “PMC”).

6. A year later, in September 1996, the PMC decided to pay the applicant a lump sum in compensation for the injury. However, no payment was made and in early 1997 the applicant sued the PMC for compensation for the industrial injury. On 20 March 1997 the Petrovsky District Court of Donetsk found for the applicant and awarded him UAH 16,445.74¹. No appeal was lodged against the judgment and it became final ten days later, on 30 March 1997.

7. On 10 April 1997 the Petrovsky District Bailiffs' Service (hereafter "the Bailiffs' Service") instituted proceedings to enforce the judgment of 20 March 1997.

8. On 20 March 2002 the Donetsk Regional Court of Arbitration instituted bankruptcy proceedings against the PMC and issued an injunction barring the debt recovery.

9. On 18 April 2002 the Bailiffs' Service stayed the execution proceedings against the Company pending the resolution of the bankruptcy case.

10. In letters of 12 June and 15 and 25 October 2002 the Bailiffs' Service informed the applicant that the enforcement proceedings were impeded by ongoing bankruptcy litigation and the entry into force of the 2001 Law on the Introduction of a Moratorium on the Forced Sale of Property which barred the attachment and sale of the Company's capital assets.

11. On 7 April 2003 the Donetsk Regional Commercial Court discontinued the bankruptcy proceedings against the PMC and, accordingly, the Bailiffs Service resumed the execution proceedings in the applicant's case. However, it appears that the gradual enforcement of the judgment of 20 March 1997 continued even during the period when the proceedings were formally suspended, as by October 2003 (when the case was communicated to the Government for observations) the applicant had been paid a total of UAH 5,712.88² in several instalments, including UAH 100³ on 30 October 2002 and UAH 200⁴ on 6 February 2003.

12. On 7 November and 1 December 2003 the applicant was repaid the remainder of the amount awarded by the judgment of 20 March 1997.

13. On 15 December 2003 the Bailiffs' Service terminated the enforcement proceedings as the judgment in the applicant's favour had been enforced in full.

¹ Approximately EUR 2,700

² Approximately EUR 940

³ Approximately EUR 16.50

⁴ Approximately EUR 33

II. RELEVANT DOMESTIC LAW

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

THE LAW

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

15. The applicant complained about the lengthy non-enforcement of the judgment of 20 March 1997. He referred, in substance, to Article 6 § 1 of the Convention, which insofar as relevant reads as follows:

“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.”

16. The Government contested that argument.

A. Admissibility

17. 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.

18. The applicant did not make any comments.

19. The Court, firstly, observes that the non-enforcement period complained of by the applicant started on 30 March 1997, when the Petrovsky District Court of Donetsk awarding him money against the State Company became final and ended on 1 December 2003 when the said decision was fully enforced. However, the Court's jurisdiction *ratione temporis* covers only the period after the entry into force of the Convention with respect to Ukraine on 11 September 1997. Therefore, the period under consideration lasted six years and three months.

20. The Court further notes with regard to the Government's objection that a similar point has 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. It finds no reason to reach different conclusions in the present case and, therefore, rejects the Government's objection.

21. The Court notes, therefore, that the remainder of the application is not manifestly ill-founded within the meaning of Article 35 § 3 of the Convention. It further notes that it is not inadmissible on any other grounds. It must therefore be declared admissible.

B. Merits

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 stated 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.

23. The applicant disagreed.

24. 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).

25. The Court notes that the judgment of 20 March 1997 remained unenforced for a lengthy period of time. In particular, it was not enforced in full until 15 December 2003, i.e. after the communication of the application to the respondent Government.

26. The Court considers therefore that by failing for six years and three months to take the necessary measures to comply with the aforementioned judgment, the authorities deprived the provisions of Article 6 § 1 of the Convention of much of their useful effect (see, among many others *Sokur v. Ukraine*, no. 29439/02, § 36, 26 April 2005). The Court also finds that there clearly was a delay in the enforcement of the judgment as from the day of the initiation of the enforcement proceedings up to the day of its full enforcement, and the Government have not advanced any justification for this delay (see *Shmalko v. Ukraine*, no. 60750/00, judgment of 20 July 2004, § 45).

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

II. APPLICATION OF ARTICLE 41 OF THE CONVENTION

28. 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

29. The applicant claimed UAH 72,099.80¹ in respect of pecuniary and UAH 1,500,000² for non-pecuniary damage.

30. The Government maintained that the applicant had not specified the nature of the damage caused to him and had not substantiated the amounts claimed.

31. 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 3,000 in respect of non-pecuniary damage.

B. Costs and expenses

32. 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

33. 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.

¹ Approximately EUR 11,794

² Approximately EUR 245,323

FOR THESE REASONS, THE COURT UNANIMOUSLY

1. *Declares* the remainder of 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, EUR 3,000 (three thousand 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;
4. *Dismisses* the remainder of the applicant's claim for just satisfaction.

Done in English, and notified in writing on 20 September 2005, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

S. DOLLÉ
Registrar

J.-P. COSTA
President