



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

SECOND SECTION

CASE OF DROBOTYUK v. UKRAINE

(Application no. 22219/02)

JUDGMENT

STRASBOURG

20 September 2005

FINAL

20/12/2005

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 Drobotyuk 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. 22219/02) 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 Aleksandr Ivanovich Drobotyuk (“the applicant”), on 20 May 2002.

2. The Ukrainian Government (“the Government”) were represented by their Agent, Mrs V. Lutkovska.

3. On 19 November 2004 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 1971 and lives in the town of Pervomaisk, the Kharkiv region, Ukraine.

5. In 1998 and 2001, respectively, the applicant instituted two sets of proceedings in the Pervomaisk Town Court against the Pervomaisk chemical factory “Khimprom” (the “PCFK”) – a State-owned enterprise – to recover unpaid salary. By decision of 2 November 1998, the court awarded the applicant UAH 2,974.79 (473 euros – “EUR”) in salary arrears and other

payments. By another decision of 24 April 2001, the court awarded him UAH 2,307.11 (EUR 358) in salary arrears.

6. On 9 July 2001 the Bailiffs' Service informed the applicant that the judgments given in his favour were not executed due to a large number of enforcement proceedings against the debtor and that the procedure for the forced sale of assets belonging to the debtor was suspended due to the moratorium on the forced sale of property belonging to State enterprises introduced by the President.

7. In July 2001 the applicant instituted proceedings in the Pervomaisk Town Court against the bailiff of the Pervomaisk Town Bailiffs' Service for failure to enforce the judgments in his favour. On 5 September 2001 the court found against the applicant, finding no fault on the part of the bailiff.

8. On 21 November 2001 and 8 April 2002, respectively, the Kharkiv Regional Court of Appeal and the Supreme Court of Ukraine upheld the judgment of the first-instance court.

9. Between 4 September 2003 and 13 January 2004 the enforcement proceedings were suspended due to the initiation of bankruptcy proceedings against the PCFK.

10. On 13 July 2004 the Bailiffs' Service informed the applicant that he was number 44 on the creditors' waiting list in respect of the enforcement of the judgment of 2 November 1998. He was also number 472-474 on the creditors' waiting list in respect of the enforcement of the judgment of 24 April 2001.

11. The judgments in the applicant's favour remain unenforced.

II. RELEVANT DOMESTIC LAW

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

THE LAW

I. ADMISSIBILITY

13. The applicant complained about the State authorities' failure to enforce the judgments of the Pervomaisk Town Court of 2 November 1998 and 24 April 2001 given in his favour. He invoked Articles 6 § 1 and 13 of the Convention, which provide, insofar 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 13

“Everyone whose rights and freedoms as set forth in [the] Convention are violated shall have an effective remedy before a national authority notwithstanding that the violation has been committed by persons acting in an official capacity.”

14. The Court notes that the Government have not raised any objection as to the admissibility of the above complaints.

15. The Court, in the light of its established case-law, considers 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 complaint under Article 13 of the Convention cannot be declared inadmissible.

16. The applicant further complained about a violation of Articles 3, 4 and 17 of the Convention on account of the non-enforcement of the judgment in his favour.

17. The Court finds that this part of the application is wholly unsubstantiated and must therefore be rejected as being manifestly ill-founded, pursuant to Article 35 §§ 3 and 4 of the Convention.

II. MERITS**A. The applicant’s complaint under Article 6 § 1 of the Convention**

18. In their observations on the merits of the applicant’s complaint under Article 6 § 1 of the Convention, the Government maintained that the Bailiffs’ Service had taken all measures provided for by the domestic legislation to enforce the judgments in favour of the applicant. The delay in enforcement was caused by the difficult financial situation of the debtor and the bankruptcy proceedings instituted against it. The Government, accordingly, contended that there was no infringement of Article 6 § 1 of the Convention.

19. The applicant disagreed.

20. The Court notes that the judgments of the Pervomaisk Town Court of 2 November 1998 and 24 April 2001 remain unenforced for more than six and four years, respectively.

21. The Court recalls that it has frequently found violations of Article 6 § 1 of the Convention in cases raising issues similar to the present application (see, for instance, *Sokur v. Ukraine*, no. 29439/02, §§ 30-36, 26 April 2005).

22. Having examined all the material submitted to it, the Court considers that the Government have not put forward any fact or argument capable of persuading it to reach a different conclusion in the present case. Having regard to its case-law on the subject, the Court considers that by delaying for the abovementioned periods of time the enforcement of the judgments in the applicant's favour, the State authorities deprived the provisions of Article 6 § 1 of the Convention of much of their useful effect. There has, accordingly, been a violation of Article 6 § 1 of the Convention.

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

23. The Government noted that the applicant had effective domestic remedies, as he had challenged the alleged inactivity of the Bailiffs before the domestic courts. The courts, however, found that the Bailiffs were not responsible for the delay in enforcement of the judgments at issue.

24. The Court refers to its findings in similar cases, where it has already held that the applicants 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 enforcement caused by the failure of the State authorities to take the necessary budgetary or legislative measures, rather than by a bailiff's misconduct (see, for instance, *Romashov v. Ukraine*, cited above, §§ 30-33). Accordingly, there has also been a breach of this provision.

III. APPLICATION OF ARTICLE 41 OF THE CONVENTION

25. 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

26. The applicant claimed UAH 15,000 (EUR 2,471) in respect of pecuniary damage. This amount included the judgment debts, EUR 851, and compensation for the delay in payment. He further claimed UAH 10,000 (EUR 1,648) in respect of non-pecuniary damage.

27. The Government maintained that the applicant had not substantiated the amounts claimed and submitted that the finding of a violation would constitute sufficient just satisfaction.

28. In so far as the applicant claimed the amounts awarded to him by the judgments at issue, the Court considers that the Government should pay him the outstanding debts. As to the applicant's claim for non-pecuniary damage - EUR 1,648 - the Court considers it reasonable and therefore awards it in full.

B. Costs and expenses

29. The applicant also claimed UAH 550 (EUR 91) in relation to his legal, translation and postal expenses incurred both in the domestic and Convention proceedings. The Government requested the Court to consider only the expenses in respect of which the applicant had submitted supporting documents. Having regard to the information in its possession, the Court awards the applicant EUR 50 in respect of costs and expenses.

C. Default interest

30. 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 applicant's complaints under Articles 6 § 1 and 13 of the Convention admissible 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*
 - (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 judgment debts still owed to him, as well as the following amounts, to be converted into the national currency of the respondent State at the rate applicable at the date of settlement:

- (i) EUR 1,648 (one thousand six hundred and forty-eight euros) in respect of non-pecuniary damage;
- (ii) EUR 50 (fifty euros) in respect of costs and expenses;
- (iii) any tax that may be chargeable on the above amounts;
- (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 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