



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

SECOND SECTION

CASE OF ZYTS v. UKRAINE

(Application no. 29570/02)

JUDGMENT

STRASBOURG

4 October 2005

FINAL

04/01/2006

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 Zyts 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 V. BUTKEVYCH,

Mrs A. MULARONI,

Mrs E. FURA-SANDSTRÖM,

Ms D. JOČIENĖ,

Mr D. POPOVIĆ, *judges*,

and Mrs S. DOLLÉ, *Section Registrar*,

Having deliberated in private on 13 September 2005,

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

PROCEDURE

1. The case originated in an application (no. 29570/02) 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 Volodymyr Vasylyovych Zyts (“the applicant”), on 10 July 2002.

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

3. On 2 July 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 1959 and lives in the city of Novovolynsk, the Volyn region, Ukraine.

5. On 2 August 2000 the applicant suffered an industrial injury and lost 80% of his capacity to work.

6. On 30 January 2002 the Novovolynsk City Court ordered the Novovolynska State Mine (the “Mine”) to pay the applicant

UAH 65,767.80¹ in compensation for the applicant's occupational disability. By the same decision, the court ordered the Novovolynsk Department of the Social Security Fund to pay the applicant a lump sum of UAH 2,301.30² and a monthly allowance of UAH 615.05³ for a period of one year in compensation for loss of earnings.

7. On 22 March 2002 the Novovolynsk City Bailiffs' Service instituted enforcement proceedings against the Mine.

8. On 18 April 2002 the Bailiffs' Service informed the applicant that the judgment was not enforced due to a large number of enforcement proceedings against the Mine and its lack of funds. The Bailiffs also informed her that the procedure for the forced sale of assets belonging to the debtor was blocked by the Law on the Introduction of a Moratorium on the Forced Sale of Property of 29 November 2001.

9. In 2002 the applicant lodged a complaint with the Novovolynsk City Court about the inactivity of the Head of the Bailiffs' Service in respect of the enforcement of the judgment at issue. On 26 November 2002 the court found for the applicant, declared the Bailiffs' Service's inactivity unlawful and ordered its Head to carry out supervision of the enforcement of the judgment by the Bailiffs' Service.

10. On 27 December 2002, 24 March, 15 August and 19 December 2003 the applicant was paid a total of UAH 3,200⁴ in the course of the enforcement of the award against the Mine.

11. On 28 January 2004 the sum of UAH 58,917.80⁵ was transferred to the applicant's bank account, out of which the applicant's bank deducted a fee of UAH 589.04⁶.

12. On 26 March, 28 April and 17 June 2004 the applicant received UAH 2,550⁷, UAH 900⁸ and UAH 200⁹, respectively.

13. On 17 June 2004 the Bailiffs' Service discontinued the enforcement proceedings on the ground that the judgment of the Novovolynsk City Court of 30 January 2002 in the part concerning the award against the Mine had been enforced in full.

14. The applicant did not challenge the decision of the Bailiffs' Service of 17 June 2004 before the domestic courts.

1. Around 10,860 euros – “EUR”.

2. Around EUR 380.

3. Around EUR 102.

4. Around EUR 530.

5. Around EUR 9,730.

6. Around EUR 98.

7. Around EUR 422.

8. Around EUR 149.

9. Around EUR 34.

II. RELEVANT DOMESTIC LAW

15. 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

16. The applicant complained about the State authorities' failure to enforce the judgment of the Novovolynsk City Court of 30 January 2002 in the part concerning the award against the Mine in full and in due time. He invoked Articles 6 § 1 and 13 of the Convention and Article 1 of Protocol No. 1, 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.”

Article 1 of Protocol No. 1

“Every natural or legal person is entitled to the peaceful enjoyment of his possessions. No one shall be deprived of his possessions except in the public interest and subject to the conditions provided for by law and by the general principles of international law.

The preceding provisions shall not, however, in any way impair the right of a State to enforce such laws as it deems necessary to control the use of property in accordance with the general interest”

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

18. The Court further notes that the above complaints consist of two parts: one concerns the non-enforcement of the judgment, and the other concerns the length of the enforcement proceedings in respect of that judgment. Each aspect should be examined separately.

A. The applicant's complaint about the non-enforcement of the judgment

19. The applicant argued that the judgment had not been enforced in full, as the Bailiffs' Service had still to pay him the amount of the bank fee paid by the applicant for the transfer of a part of the judgment award to his bank account.

20. The Court observes that on 17 June 2004 the Bailiffs' Service established that the amounts due under the judgment at issue had been paid to the applicant in full. The applicant did not contest this decision at the national level. He therefore cannot be regarded as having exhausted all domestic remedies available to him under Ukrainian law. It follows that this complaint must be rejected pursuant to Article 35 §§ 1 and 4 of the Convention.

B. The applicant's complaint about the length of the enforcement proceedings

21. The Court, in the light of its established case-law, considers that the applicant's complaint under Article 6 § 1 of the Convention about the State authorities' failure to enforce the judgment given in the applicant's favour in due time 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 and Article 1 of Protocol No. 1 cannot be declared inadmissible.

C. Other complaints

22. The applicant further complained about a violation of Article 17 of the Convention and Article 2 of Protocol No. 1, as he could not afford the expenses for his children's education due to the non-enforcement of the judgment in his favour.

23. 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 complaints under Article 6 § 1 of the Convention and Article 1 of Protocol No. 1

24. In their observations, the Government put forward arguments similar to those in the cases of *Romashov v. Ukraine* and *Voytenko v. Ukraine*, contending that there was no violation of Article 6 § 1 of the Convention or Article 1 of Protocol No. 1 (see, the *Romashov* judgment, cited above, § 37; and *Voytenko v. Ukraine*, no. 18966/02, § 37, 29 June 2004).

25. The applicant disagreed.

26. The Court notes that the judgment of the Novovolynsk City Court of 30 January 2002 remained unenforced for more than two years and two months. It also notes that, notwithstanding the fact that the debts were paid to the applicant in instalments, a substantial amount of the award against the Mine was fully paid to the applicant only after the communication of the application to the respondent Government.

27. The Court recalls that it has already found violations of Article 6 § 1 of the Convention and Article 1 of Protocol No. 1 in cases raising issues similar to the present application (see, for instance, *Sharko v. Ukraine*, no. 72686/01, §§ 40-42, 19 April 2005, and *Voytenko v. Ukraine*, cited above, §§ 53-55).

28. 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. There has, accordingly, been a violation of Article 6 § 1 of the Convention and Article 1 of Protocol No. 1.

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

29. The Government's objections under this heading were similar to those dismissed by the Court in the case of *Romashov v. Ukraine* (see the *Romashov* judgment, cited above, §§ 28-33). The Court considers that these objections must therefore be rejected. Accordingly, there has also been a breach of Article 13 of the Convention.

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.”

A. Damage, costs and expenses

31. The applicant claimed a total sum of EUR 4,000 in respect of pecuniary damage and in relation to his legal, translation and postal expenses. He also claimed EUR 5,000 in respect of non-pecuniary damage. He stated that he had suffered pecuniary loss and distress as a result of the failure of the domestic authorities to enforce the judgment in due time.

32. The Government contended that the applicant had not substantiated the amount claimed in respect of pecuniary and non-pecuniary damage and submitted that the finding of a violation would constitute sufficient just satisfaction. The Government also maintained that the applicant's postal expenses were justified.

33. Making its assessment on an equitable basis, as required by Article 41 of the Convention, the Court considers it reasonable to award the applicant a global sum of EUR 1,500 in respect of pecuniary and non-pecuniary damage, costs and expenses.

B. Default interest

34. 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 complaint under Articles 6 § 1 and 13 of the Convention and Article 1 of Protocol No. 1 about the delay in enforcement of the judgment of the Novovolynsk City Court of 30 January 2002 in the part concerning the award against the Mine 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 1 of Protocol No. 1;
4. *Holds* that there has been a violation of Article 13 of the Convention;
5. *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 pecuniary and non-pecuniary damage, costs and expenses, plus any tax that may be chargeable, to be converted into the currency of the respondent State at the rate applicable on the date of settlement;
 - (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;
6. *Dismisses* the remainder of the applicant's claim for just satisfaction.

Done in English, and notified in writing on 4 October 2005, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

S. DOLLÉ
Registrar

J.-P. COSTA
President