



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

SECOND SECTION

CASE OF PASTUKHOV v. UKRAINE

(Application no. 20473/02)

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 Pastukhov 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. 20473/02) 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 Sergey Yakovlevich Pastukhov (“the applicant”), on 11 April 2002.

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

3. On 9 May 2003 the Court decided to communicate the application under Article 6 § 1 of the Convention and Article 1 of Protocol No. 1 to the Government. (A question was raised *ex officio* under Article 13 of the Convention which the Court now sets aside, as having been shown to be superfluous). Applying Article 29 § 3 of the Convention, it decided to examine the merits of the application at the same time as its admissibility.

THE FACTS**THE CIRCUMSTANCES OF THE CASE**

4. The applicant was born in 1958 and lives in the town of Novogrodivka, the Donetsk region of Ukraine.

5. In 1999 the applicant instituted proceedings in the Novogrodivka Town Court against the “Novogrodivska” Mining Company - a State-owned enterprise - to recover unpaid salary.

6. On 21 July 1999 the Novogrodivka Town Court found in favour of the applicant (*рішення Новгородівського міського суду Донецької області*) and awarded him UAH 2,567.06¹ in salary arrears and compensation for delay in their payment. The decision was not appealed and became final.

7. On 5 August 1999 the Novogrodivka Town Bailiffs' Service (*Відділ Державної виконавчої служби Новгородівського міського управління юстиції*) initiated enforcement proceedings. However, the decision was not executed.

8. In June 2000 the applicant instituted proceedings in the Novogrodivka Town Court against the Bailiffs' Service for failure to execute the court decision in his favour. On 7 July 2000 the court found for the applicant and ordered the Bailiffs' Service to enforce the judgment of 21 July 1999. Nevertheless, the latter remained unenforced until 2 July 2003, when it was finally executed.

II. RELEVANT DOMESTIC LAW

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

THE LAW

10. The applicant complained of the failure by the State authorities to execute the decision of 21 July 1999 given in his favour. He invoked Article 6 § 1 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 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

¹. Around EUR 430.

accordance with the general interest or to secure the payment of taxes or other contributions or penalties.”

I. ADMISSIBILITY

A. The Government's preliminary objection

11. 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.

12. The applicant maintained that the delay in enforcement of the judgment was excessive and caused him suffering; therefore he considered that he could still claim to be a victim.

13. The Court notes that a similar point has already been dismissed in a number of Court judgments (see the aforementioned *Romashov* judgment, § 27). 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 a different conclusion in the present case and, therefore, rejects the Government's objection.

B. Conclusion

14. 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 complaint under Article 1 of Protocol No. 1 cannot be declared inadmissible.

II. MERITS

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

15. 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 could not be blamed for the delay.

16. The applicant disagreed. He maintained that the Government's arguments could not justify the significant delay in the enforcement of the judgment.

17. The Court notes that the decision of 21 July 1999 remained unenforced from 5 August 1999 (the date when the enforcement proceedings were instituted) until 2 July 2003 (the date of payment of the awarded amount to the applicant), i.e. a period of about three years and eleven months. It further notes that this decision was enforced in full after the communication of the application to the respondent Government.

18. The Court considers that by delaying for nearly four 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 convincing justification for this delay (see *Shmalko v. Ukraine*, no. 60750/00, judgment of 20 July 2004, § 45).

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

B. The applicant's complaints under Article 1 of Protocol No. 1

20. The Government in their submissions confirmed that the amount awarded to the applicant by the domestic court constituted a possession within the meaning of Article 1 of Protocol No. 1. Nevertheless, the Government maintained that the provision had not been violated for the same reasons as above (paragraphs 11 and 15). In the Government's opinion, the delay in enforcement did not constitute an excessive burden for the applicant.

21. The applicant challenged the Government's submissions, stating that his financial situation was also difficult and that he needed the award to pay for his various expenses.

22. The Court recalls its case-law that the impossibility for an applicant to obtain the execution of a judgment in his or her favour constitutes an interference with the right to the peaceful enjoyment of possessions, as set out in the first sentence of the first paragraph of Article 1 of Protocol No. 1 (see, among other authorities, *Burdov v. Russia*, no. 59498/00, § 40, ECHR 2002-III; *Jasiūnienė v. Lithuania*, no. 41510/98, § 45, 6 March 2003).

23. In the instant case the Court is therefore of the opinion that the impossibility for the applicant to obtain the execution of his judgment for a period of three years and eleven months constituted an interference with his right to the peaceful enjoyment of his possessions, within the meaning of the first paragraph of Article 1 of Protocol No. 1.

24. By failing to comply with the judgment of the Novogrodivka Town Court promptly, the national authorities prevented the applicant, for a considerable period of time, from receiving in full the money to which he

was entitled. The Government have not advanced any convincing justification for this interference, and the Court considers that economic difficulties cannot justify such an omission. Accordingly there has also been a violation of Article 1 of Protocol No. 1.

II. 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 30,000 (about EUR 5,000) in respect of non-pecuniary damage.

27. The Government considered the claim was exorbitant and unsubstantiated. They believed that the finding of a violation would constitute sufficient just satisfaction in the present case.

28. 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 1,900 in respect of non-pecuniary damage.

B. Costs and expenses

29. The applicant also claimed UAH 1,200 (about EUR 200) for the costs and expenses incurred before the domestic courts and UAH 300 (about EUR 50) for those incurred before the Court.

30. The Government maintained that the applicant did not substantiate any of the claimed cost and expenses. Therefore they invited the Court to reject these claims.

31. According to the Court's case-law, an applicant is entitled to reimbursement of his costs and expenses only in so far as it has been shown that these have been actually and necessarily incurred and were reasonable as to quantum. In the present case, regard being had to the information in its possession and the above criteria, the Court considers it reasonable to award the sum of EUR 100, covering costs under all heads.

C. Default interest

32. 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 application admissible;
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*
 - (a) that the respondent State is to pay the applicant, within three months from the date on which the judgment becomes final in accordance with Article 44 § 2 of the Convention, EUR 1,900 (one thousand nine hundred euros) in respect of non-pecuniary damage and EUR 100 (one hundred euros) in respect of costs and expenses;
 - (b) that the above amounts shall 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;
 - (c) 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 4 October 2005, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

S. DOLLÉ
Registrar

J.-P. COSTA
President