



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

SECOND SECTION

CASE OF POLOVOY v. UKRAINE

(Application no. 11025/02)

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 Polovoy 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 13 September 2005,

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

PROCEDURE

1. The case originated in an application (no. 11025/02) 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 Petr Pavlovich Polovoy (“the applicant”), on 10 August 2001.

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

3. On 23 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 1953 and lives in the town of Konstantynivka, the Donetsk region, Ukraine.

A. First set of proceedings

5. On 22 December 1997 the Kostyantynivskyi Town Court ordered the Avtosklo State Company to pay the applicant UAH 2,462 (406 euros – “EUR”) in salary arrears.

6. On 15 January 1998 the Kostyantynivskyi Town Bailiffs' Service instituted enforcement proceedings in respect of the above judgment.

7. On 22 June 1998 the Donetsk Regional Arbitration Court instituted bankruptcy proceedings against the debtor.

8. On 18 February 2002 the debtor was declared bankrupt and the liquidation proceedings were initiated against it.

9. On 6 February 2003 and 23 February 2004 the applicant was informed by two letters from the Bailiffs' Service that the judgment in his favour was not enforced due to the substantial number of enforcement proceedings against the debtor and the latter's lack of funds. The applicant was also informed 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.

10. The judgment of 22 December 1997 remains unenforced.

B. Second set of proceedings

11. In March 1999 the applicant instituted proceedings in the Kostyantynivskyi Town Court against the Avtosklo State Company seeking compensation for the delay in payment of the judgment debt of 22 December 1997.

12. On 29 March 1999 the court found against the applicant. On 17 May 1999 the Donetsk Regional Court upheld the decision of the first instance court.

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).

THE LAW

14. The applicant complained of an alleged failure by the State authorities to enforce the judgment of the Kostyantynivskyi Town Court of 22 December 1997 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 accordance with the general interest”

I. ADMISSIBILITY

15. The Government contended that the applicant has not exhausted domestic remedies as he did not challenge actions or inactivity of the State Bailiffs' Service before the domestic courts. The Government further submitted that the applicant failed to lodge with the Donetsk Regional Commercial Court a request to be included into the list of the debtor's creditors in the course of bankruptcy proceedings against the debtor. The Government therefore proposed that the application be declared inadmissible or struck out of the Court's list of cases.

16. The applicant disagreed. In particular, he argued that the remedies invoked by the Government were not effective.

17. The Court recalls that it has already dismissed the Government's analogous contentions in similar cases (see, for instance, the aforementioned *Romashov* judgment, §§ 30-33) and finds no reason to reach a different conclusion in the present case. Accordingly, it dismisses the Government's preliminary objections.

18. The Court 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 1 of Protocol No. 1 cannot be declared inadmissible.

II. MERITS

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

19. In their observations, the Government maintained that there was no infringement of Article 6 § 1 of the Convention, as the Bailiffs' Service had taken all measures provided for by the domestic legislation to enforce the judgment of the Kostyantynivskyi Town Court of 22 December 1997. Moreover, the delay in enforcement was caused by the difficult financial situation of the debtor and the bankruptcy proceedings instituted against it.

20. The Court notes that the judgment of the Kostyantynivskyi Town Court of 22 December 1997 remains unenforced for more than seven years and seven months.

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, §§ 30-37, 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 period of more than seven years and seven months the enforcement of the judgment 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 complaints under Article 1 of Protocol No. 1

23. The Government in their submissions confirmed that the amounts awarded to the applicant by the Kostyantynivskyi Town Court constituted a possession within the meaning of Article 1 of Protocol No. 1. Nevertheless, they maintained that the provision had not been violated, since the applicant's entitlement to the award was not disputed and he was not deprived of his property. The Government further noted that the delays in payments were due to the difficult economic situation and, therefore, were justified.

24. The applicant disagreed.

25. The Court considers that, given its case-law on the issue, the impossibility for the applicant to obtain the execution of the judgment given in his favour for over seven years and seven months constitutes a violation

of Article 1 of Protocol No. 1 (see, *Voytenko v. Ukraine*, no. 18966/02, §§ 53-55, 29 June 2004).

III. APPLICATION OF ARTICLE 41 OF THE CONVENTION

26. 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

27. The applicant claimed UAH 5,515 (EUR 910) in respect of pecuniary damage. This amount included the judgment debt, EUR 406, and compensation for the delay in payment. The applicant further claimed UAH 7,000 (EUR 1,155) in respect of non-pecuniary damage.

28. 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.

29. The Court notes that the applicant did not substantiate the whole amount claimed in respect of pecuniary damage. In so far as the applicant claimed the amount awarded to him by the judgment at issue, the Court notes that the State's outstanding obligation to enforce that judgment is not in dispute. Accordingly, the Court considers that, if the Government were to pay the debt owed to the applicant, it would constitute full and final settlement of the case.

30. As for non-pecuniary damage, the Court considers that the applicant has suffered distress as a result of the violations found which cannot be made good by the Court's mere finding of a violation or the payment of the sum requested by the applicant. Making its assessment on an equitable basis, as required by Article 41 of the Convention, the Court, therefore, awards the applicant the sum of EUR 1,155 in respect of non-pecuniary damage.

B. Costs and expenses

31. The applicant did not submit any claim under this head.

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 according to Article 44 § 2 of the Convention, the judgment debt still owed to him, as well as EUR 1,155 (one thousand one hundred and fifty-five euros) in respect of non-pecuniary damage, plus any tax that may be chargeable, to be converted into the national currency of the respondent State at the rate applicable at 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 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