



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

SECOND SECTION

CASE OF NIKISHIN v. UKRAINE

(Application no. 22993/02)

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 Nikishin 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. 22993/02) 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 Boris Yuryevich Nikishin (“the applicant”), on 17 August 2001.

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 1961 and lives in the city of Lysychansk, the Lugansk region, Ukraine.

5. On 20 April 2001 the Lysychansk City Court ordered the Melnikova State Mine to pay the applicant UAH 3,727.39 (around EUR 488) in salary arrears.

6. On 3 May 2001 the Lysychansk City Bailiffs' Service instituted enforcement proceedings in respect of the above judgment.

7. On 4 March 2002 the Bailiff's Service informed the applicant that the Mine's property has been under a tax lien since 1998 and it lacked funds to pay the judgment debt.

8. On 30 May 2003 the Lugansk Regional Commercial Court initiated bankruptcy proceedings against the Mine.

9. According to the Government, on 28 November 2003 the sum awarded by the judgment at issue was transferred to the applicant's bank account.

10. According to the applicant, he received that amount on 15 December 2003.

11. On 1 December 2003 the Bailiffs' Service discontinued the enforcement proceedings on the ground that the judgment of the Lysychansk City Court of 20 April 2001 had been enforced in full.

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

13. The applicant complained about the State authorities' failure to enforce the judgment of the Lysychansk City Court of 20 April 2001 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”

I. ADMISSIBILITY

14. The Government raised objections similar to those which the Court dismissed 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.

15. The Court concludes that the applicant's complaint under Article 6 § 1 of the Convention about the delay in enforcement of the judgment of the Lysychansk City Court of 20 April 2001 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 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.

II. MERITS

A. The applicant's complaints under Article 6 § 1 of the Convention and Article 1 of Protocol No. 1

16. 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).

17. The applicant disagreed.

18. The Court notes that the judgment of the Lysychansk City Court of 20 April 2001 remained unenforced for more than two years and six months.

19. 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, *Sokur v. Ukraine*, no. 29439/02, §§ 30-37, 26 April 2005; and *Voytenko v. Ukraine*, no. 18966/02, §§ 53-55, 29 June 2004).

20. 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

21. The Court refers to its findings (at paragraph 14 above) concerning the Government's argument regarding domestic remedies. For the same reasons, the Court finds that the applicant 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 proceedings. Accordingly, there has also been a breach of this provision.

III. APPLICATION OF ARTICLE 41 OF THE CONVENTION

22. 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

23. The applicant claimed UAH 1,851.21 (around EUR 308) by way of just satisfaction. He stated that he had suffered pecuniary loss and distress as a result of the failure of the domestic authorities to enforce the judgment given in his favour.

24. The Government maintained that the applicant had not substantiated the amount claimed and submitted that his claim for just satisfaction should be rejected.

25. 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. The Court considers that the applicant's claim is reasonable and therefore awards him the EUR 308 claimed.

B. Default interest

26. 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* 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 308 (three hundred and eight 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