



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

SECOND SECTION

CASE OF GOLOVIN v. UKRAINE

(Application no. 3216/02)

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 Golovin 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. 3216/02) 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 Pavlovich Golovin (“the applicant”), on 25 December 2001.

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

3. On 9 September 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 Genichesk, the Kherson region, Ukraine.

A. Proceedings against a private person

5. In 1999 the applicant instituted proceedings in the Genicheskyi District Court against Mr S. (a private person) seeking recovery of a debt.

On 20 August 1999 the court found for the applicant and ordered Mr S. to pay him UAH 6,975 (around 1,152 euros – “EUR”).

6. On 30 August 1999 the Genicheskyi District Bailiffs' Service instituted enforcement proceedings in respect of the judgment of 20 August 1999.

7. According to the applicant, the judgment of 20 August 1999 has been enforced in part and he was paid UAH 3,000 (around EUR 496).

B. Proceedings against the Bailiffs' Service

8. In December 2000 the applicant lodged a complaint with the Genicheskyi District Court about the Bailiffs' Service's inactivity in respect of the enforcement of the judgment of 20 August 1999. On 16 January 2001 the court found for the applicant, declared the Bailiffs' Service's inactivity unlawful and ordered the immediate seizure of the property of Mr. S.

9. In March 2001 the applicant instituted proceedings in the Genicheskyi District Court against the Bailiffs' Service seeking compensation for non-pecuniary damage allegedly caused by the failure of the Bailiffs' Service to enforce the judgments of 20 August 1999 and 16 January 2001.

10. On 4 May 2001 the court found for the applicant and ordered the Bailiffs' Service to pay the applicant UAH 5,500 (EUR 909) in compensation for non-pecuniary damage. The court held that due to the failure of the Bailiffs' Service to immediately seize the property of Mr S., as it had been ordered by the judgment of 16 January 2001, the latter had sold a substantial part of his property. The court further held that the Bailiffs' Service had failed to sell the part of the debtor's property, which had been seized.

C. Enforcement proceedings in respect of the judgment of 4 May 2001

11. On 25 May 2001 the Genicheskyi District Bailiffs' Service instituted enforcement proceedings in respect of the judgment of 4 May 2001. On 20 November 2001 the Kherson Regional Department of Justice appointed the Novotroitskyi District Bailiffs' Service to be responsible for the enforcement of the aforementioned judgment.

12. On 29 July 2002 the Novotroitskyi Bailiffs' Service informed the applicant that the Genicheskyi Bailiffs' Service was being funded from the State Budget and it did not have its own assets suitable for seizure.

13. On 14 June 2002 the Novotroitskyi Bailiffs' Service applied to the Genicheskyi District Court seeking the interpretation of the way in which the judgment of 4 May 2001 should be enforced. On 7 August 2002 the court refused this application, stating that the judgment needed no further interpretation or clarification.

14. On 29 December 2002 the Novotroitskyi Bailiffs' Service discontinued the enforcement proceedings and returned the execution writ to the applicant on the grounds that the Genicheskyi Bailiffs' Service did not have its own assets and was financed by the Ministry of Justice.

15. The applicant did not challenge the decision of the Novotroitskyi District Bailiffs' Service of 29 December 2002 before the domestic courts.

16. The judgment of 4 May 2001 remains unenforced.

II. RELEVANT DOMESTIC LAW

17. 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

18. The applicant complained in substance under Article 6 § 1 of the Convention about the State authorities' failure to enforce the judgment of the Genicheskyi District Court of 4 May 2001. Article 6 § 1 of the Convention provides, 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. ...”

A. The Government's preliminary objections

19. The Government contended that the applicant had not exhausted domestic remedies as he had neither challenged the decision of the Novotroitskyi District Bailiffs' Service of 29 December 2002 before the domestic courts nor resubmitted the execution writ to the Bailiffs' Service for the enforcement proceedings to be resumed. The Government therefore proposed that the application be declared inadmissible or struck out of the Court's list of cases.

20. The applicant disagreed, submitting that he had not been aware of the decision of the Bailiffs' Service of 29 December 2002 before he had received a copy of the Government's observations.

21. The Court observes that it is not necessary to decide whether the applicant was informed about the decision of 29 December 2002, as it has

already dismissed the Government's similar contentions in the cases in which the non-enforcement of judgments against State bodies was prevented because of the failure of the State to take any budgetary or legislative measures, rather than by a bailiff's misconduct (see, for instance, *Voytenko v. Ukraine*, no. 18966/02, § 30-31, 29 June 2004).

22. The Court finds no reason to reach a different conclusion in the present case. Accordingly, it dismisses the Government's preliminary objections.

B. Other complaints

1. Complaint about the non-enforcement of the judgment against a private person

23. The applicant further complained in substance under Article 6 § 1 of the Convention about the non-enforcement of the judgment of the Genicheskyi District Court of 20 August 1999.

24. The Court notes that the above complaint concerns two different periods of time, in particular, the period prior to 4 May 2001, i.e. the date on which the Genicheskyi District Court ruled on his complaint about the inactivity of the Bailiffs' Service in respect of enforcement of the judgment of 20 August 1999, and the period after 4 May 2001. Therefore, the complaint should be examined separately in respect of each period of time.

a. Non-enforcement of the judgment against a private person prior to 4 May 2001

25. The Court notes that the applicant has already raised this complaint before the Genicheskyi District Court. The latter held the conduct of the Bailiffs' Service to be unlawful and awarded compensation to be paid to the applicant. The Court finds no indication that the relevant decision was arbitrary or unfair in any other way; nor does the applicant complain that the amount of the compensation was insufficient. Therefore, with respect to the period prior to 4 May 2001, the applicant cannot be considered a "victim" of a violation of his rights guaranteed by Article 6 § 1 of the Convention as he received redress at the domestic level.

b. Non-enforcement of the judgment against a private person after 4 May 2001

26. The Court refers to its findings at paragraphs 21 and 25 and notes the applicant had effective domestic remedies in respect of his complaint about the non-enforcement of the judgment against a private person, unlike in respect of his complaint about the non-enforcement of the judgment against the Bailiffs' Service. Accordingly, he could apply to the domestic courts to challenge the Bailiffs for their alleged omissions or inactivity in respect of

the enforcement of the judgment against the private person after 4 May 2001 as well. The applicant, however, failed to do so. He, therefore, cannot be regarded as having exhausted all the domestic remedies available to him under Ukrainian law (see *Dzizin v. Ukraine* (dec.), no 1086/02, 24 June 2003). It follows that this part of the application must be rejected pursuant to Article 35 §§ 1 and 4 of the Convention.

2. Complaint under Article 3 of the Convention

27. The applicant finally complained under Article 3 of the Convention that the failure of the State authorities to enforce the judgments given in his favour caused him severe moral and physical suffering.

28. The Court observes that it does not appear that the suffering that the applicant might have experienced was sufficient to amount to inhuman and degrading treatment under Article 3 of the Convention (see *Ireland v. the United Kingdom*, judgment of 18 January 1978, Series A no. 25, § 162). Therefore, this part of the application must be declared inadmissible as being manifestly ill-founded in accordance with Article 35 §§ 3 and 4 of the Convention.

C. Conclusion

29. The Court concludes that the applicant's complaint under Article 6 § 1 of the Convention about the non-enforcement of the judgment of the Genicheskyi District Court of 4 May 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 part of the application inadmissible.

II. MERITS

30. The applicant complained about the non-enforcement of the judgment of the Genicheskyi District Court of 4 May 2001.

31. In their observations, the Government maintained that the State was not responsible for the enforcement of the judgment of 4 May 2001 as the Novotroitskyi District Bailiffs' Service had found that the debtor did not have in its possession assets suitable for seizure and the enforcement proceedings were discontinued. The Government further argued that the applicant was not interested in the enforcement of the judgment in his favour.

32. The applicant disagreed.

33. The Court notes that the judgment of the Genicheskyi District Court of 4 May 2001 remains unenforced for more than four years and four months.

34. The Court recalls that it has frequently found violations of Article 6 § 1 of the Convention in cases raising similar issues to the present application (see, for example, *Voytenko v. Ukraine*, no. 18966/02, §§ 39-43, 29 June 2004).

35. 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 four years and four 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.

III. APPLICATION OF ARTICLE 41 OF THE CONVENTION

36. 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

37. The applicant claimed UAH 5,500 (EUR 909), which is the amount awarded to him by the judgment of the Genicheskyi District Court of 4 May 2001, in respect of pecuniary damage. The applicant further claimed EUR 55,500 in respect of non-pecuniary damage.

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

39. In so far as the applicant claimed the amount awarded to him by the judgment at issue, the Court notes that the applicant is still entitled to recover the amount of this judgment debt. 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.

40. As for non-pecuniary damage, the Court considers that the applicant has suffered distress as a result of the violation found which cannot be made good by the Court's mere finding of a violation. Nevertheless, the particular amount claimed is 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 2,000 in respect of non-pecuniary damage.

B. Costs and expenses

41. The applicant also claimed EUR 500 in relation to his legal and postal expenses incurred both in the domestic and Convention proceedings. The Government maintained that the applicant had provided documentary evidence only in support of the amount of UAH 126 (EUR 21). Having regard to the information in its possession, the Court awards the applicant EUR 21 in respect of cost and expenses.

C. Default interest

42. 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 Article 6 § 1 of the Convention about the non-enforcement of the judgment of the Genicheskyi District Court of 4 May 2001 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*
 - (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 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 2,000 (two thousand euros) in respect of non-pecuniary damage;
 - (ii) EUR 21 (twenty-one 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;
4. *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