



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

SECOND SECTION

CASE OF TAMBOVTSEV v. UKRAINE

(Application no. 20625/02)

JUDGMENT

STRASBOURG

8 November 2005

FINAL

08/02/2006

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 Tambovtsev 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 11 October 2005,

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

PROCEDURE

1. The case originated in an application (no. 20625/02) 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 Vasiliy Mikhaylovich Tambovtsev (“the applicant”), on 18 May 2002.

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

3. On 28 August 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 1939 and lives in the town of Novogradovka, the Donetsk Region.

5. On 15 March 2001 the Novogradovka City Court (hereafter “the City Court”) awarded the applicant UAH 4,791.40¹ against the “Novogradovskaya” coal mine (a State-owned enterprise, hereafter “the Coal Mine”) in salary arrears. The judgment became final and was sent to

¹ approximately EUR 800

the Novogrodovka City Bailiffs' Service (hereafter "the Bailiffs' Service") for compulsory enforcement.

6. In June 2001 the applicant instituted proceedings in the City Court against the Bailiffs' Service in respect of its alleged inactivity. On 23 August 2001 the City Court rejected this complaint, stating, *inter alia*, that no fault was attributable to the bailiffs, who had undertaken all necessary measures to secure the execution of the judgment of 15 March 2001 and that the non-enforcement of this judgment was caused by the Coal Mine's lack of funds. The City Court also indicated that the enforcement proceedings were further impeded by a bankruptcy case pending against the Coal Mine before the Donetsk Regional Court of Arbitration, which on 14 May 2001 prohibited the Bailiffs' Service from performing any activity that involved the forced sale of the Coal Mine's assets. On 5 November 2001 the Donetsk Regional Court of Appeal upheld the judgment of the City Court. On 18 February 2002 the Supreme Court rejected the applicant's cassation appeal.

7. On 25 February 2003 the Ministry of Fuel and Energy ordered the merger of the Coal Mine with several others into the Selydivvugilia State Company.

8. In a letter of 21 July 2003, the Bailiffs' Service informed the applicant about the following impediments to the execution of the judgment given in his favour:

- the ruling of the Donetsk Regional Court of Arbitration of 14 May 2001, prohibiting the Bailiffs' Service from performing any activity that involved the forced sale of the Coal Mine's assets;
- the ruling of the Donetsk Regional Commercial Court of 23 February 2002, barring any attachment or sale of the Coal Mine's property (both bans above were lifted on 2 April 2003, when the Donetsk Regional Commercial Court terminated the bankruptcy proceedings against the Coal Mine);
- the moratorium on the forced sale of the property of State-owned enterprises introduced by the 2001 Law.

9. On 1 September 2003, following the transfer of the Coal Mine's funds to the Selydivvugilia State Company, the Bailiffs' Service suspended the enforcement proceedings pending the replacement of the debtor in the applicant's case. On 24 October 2003 the Bailiffs' Service applied to the City Court for a direction to that effect. On 31 October 2003 the City Court ordered that the debtor in the case be replaced by the Selydivvugilia State Company. On 19 November 2003 the enforcement case was transmitted to the Selidvyske City Bailiffs' Service.

10. The sum awarded to the applicant by the judgment of 15 March 2001 was paid to him in two instalments in February and May 2004.

II. RELEVANT DOMESTIC LAW

11. Some of the relevant domestic law is set out in the judgments of 27 July 2004 in the case of *Romashov v. Ukraine* (no. 67534/01, §§ 16-19), of 30 November 2004 in the case of *Dubenko v. Ukraine* (74221/01 §§ 22-29), and of 26 April 2005 in the case of *Sokur v. Ukraine* (no. 29439/02, §§ 18 and 22).

THE LAW

I. ADMISSIBILITY OF THE COMPLAINTS

1. Alleged violation of Articles 2 and 4 § 1 of the Convention

12. The applicant complained that the existing situation infringed his right to life under Article 2 § 1 of the Convention, given his low standard of living. The Court reiterates that, according to its case-law, neither Article 2 nor any other provision of the Convention can be interpreted as conferring on an individual a right to enjoy any given standard of living (*Wasilewski v. Poland*, no. 32734/96, 20.4.1999). Moreover, the applicant has not shown that he suffers such destitution as to put his life at risk (see *Sokur v. Ukraine* (dec.), no. 29439/02, 26 November 2002). It follows that this complaint is incompatible *ratione materiae* with the provisions of the Convention and must be rejected in accordance with Article 35 §§ 3 and 4 of the Convention.

13. The applicant next complained about a violation of Article 4 § 1 of the Convention, referring to the fact that he was forced to work without receiving remuneration. The Court notes that the applicant performed his work voluntarily and his entitlement to payment has never been denied. The dispute thus involves civil rights and obligations, but does not disclose any element of slavery or forced or compulsory labour within the meaning of this provision (see *Sokur v. Ukraine* (dec.), cited above). In these circumstances, the Court considers that this part of the application must be rejected as being manifestly ill-founded pursuant to Article 35 §§ 3 and 4 of the Convention.

2. *Alleged violation of Article 6 § 1 of the Convention*

14. The applicant complained about the State authorities' failure to execute the judgment of the City Court awarding him salary arrears against his employer. He relied on Article 6 § 1 of the Convention, which in so far as relevant provides:

“In the determination of his civil rights and obligations ..., everyone is entitled to a fair and public hearing ... by an independent and impartial tribunal established by law.”

15. The Government maintained that the applicant had failed to exhaust domestic remedies, in that he had not lodged a claim with the domestic courts challenging the inactivity of the Bailiffs' Service and claiming compensation for the irregular enforcement proceedings or for the devaluation of the amounts awarded.

16. The applicant contested that argument, recalling that the main reason for the continued non-enforcement of the judgments given in his favour was the debtor company's difficult economic situation.

17. The Court recalls its case-law on this issue to the effect that an applicant is absolved from lodging complaints against Bailiffs where the non-enforcement of judgments was due to reasons which the Bailiffs could not influence (see, among many others, *Sokur v. Ukraine* (dec.), no. 29439/02, 16 December 2003, and *Mykhaylenky and Others v. Ukraine*, nos. 35091/02, and the following, §§ 38-39, 30 November 2004). It finds no reason to distinguish the present application from the previous cases.

18. The Court observes that this complaint is not manifestly ill-founded within the meaning of Article 35 § 3 of the Convention. It further notes that it is not inadmissible on any other grounds. It must therefore be declared admissible.

II. MERITS

19. The Government submitted that the Bailiffs' Service had taken all measures provided for by the domestic legislation to enforce the judgment given in the applicant's favour. Moreover, they maintained that the long period of non-enforcement of the judgment did not violate the applicant's rights under Article 6 § 1 of the Convention as the delay in enforcement was caused by the difficult financial situation of the enterprise.

20. The applicant reiterated that the State was responsible for the delay in the enforcement of the court judgment in his favour.

21. The Court observes that the judgment in the applicant's favour remained without enforcement for three years and two months.

22. The Court has frequently found violations of Article 6 § 1 of the Convention in cases raising similar issues to the ones in the present case

(*Romashov v. Ukraine*, cited above, § 46, and *Sokur v. Ukraine*, cited above, § 37).

23. Having examined the material submitted to it, the Court notes that the Government have not put forward any fact or argument capable of persuading it to reach a different conclusion in the present case.

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

III. 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 25,403¹ in respect of pecuniary and non-pecuniary damage.

27. The Government contested the applicant’s claims as being unsubstantiated.

28. The Court considers that the applicant’s claims are excessive. Making its assessment on equitable basis, as required by Article 41 of the Convention, the Court awards the applicant 1,520 euros (EUR) in respect of pecuniary and non-pecuniary damage.

B. Costs and expenses

29. The applicant did not submit any claim under this head within the set time-limit; the Court therefore makes no award in this respect.

C. Default interest

30. 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.

¹ approximately EUR 4,221

FOR THESE REASONS, THE COURT UNANIMOUSLY

1. *Declares* the complaint under Article 6 § 1 of the Convention concerning the non-enforcement of a court judgment given in the applicant's favour 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 in accordance with Article 44 § 2 of the Convention, EUR 1,520 (one thousand five hundred and twenty euros) in respect of pecuniary and non-pecuniary damage, to 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;
 - (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;
4. *Dismisses* the remainder of the applicant's claim for just satisfaction.

Done in English, and notified in writing on 8 November 2005, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

S. DOLLÉ
Registrar

J.-P. COSTA
President