



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

SECOND SECTION

CASE OF VLADIMIRSKIY v. UKRAINE

(Application no. 2518/03)

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 Vladimirskiy 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 11 October 2005,

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

PROCEDURE

1. The case originated in an application (no. 2518/03) 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 Anatoliy Vyacheslavovich Vladimirskiy (“the applicant”), on 8 January 2003.

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 1957 and lives in the city of Bryanka-1, Ukraine.

A. First set of proceedings

5. On 27 May 2002 the Bryanka City Court ordered the State Company “Shakhtoupravlinnya No. 17” to pay the applicant UAH 9,970.16¹ in salary arrears and other payments.

6. On 8 July 2002 the Shakhtarsk City Bailiffs’ Service instituted enforcement proceedings in respect of that judgment.

7. On 25 October 2002 the Bailiffs’ Service informed the applicant that the judgment of 18 June 2002 could not be enforced due to the large number of enforcement proceedings against the debtor and the fact that the procedure for the forced sale of assets belonging to the debtor had been suspended because of the moratorium on the forced sale of property belonging to State enterprises introduced by the Law of 29 November 2001.

8. On 25 December 2003, 7 September and 29 December 2004, respectively, the full amount of the judgment debt was paid to the applicant in three instalments of UAH 1,195.74², 1,727.84³ and 7,053.58⁴.

B. Second set of proceedings

9. In November 2003 the applicant instituted proceedings in the Bryanka City Court against the same company seeking the amendment of his retirement date and compensation for the failure to pay him the judgment debt of 27 May 2002.

10. On 4 November 2004 the court found against the applicant. On 12 January 2005 the Lugansk Regional Court of Appeal upheld the decision of 4 November 2004. The applicant’s appeal in cassation is still pending before the Supreme Court of Ukraine.

1. Around 1,640 euros – “EUR”.

2. Around EUR 197.

3. Around EUR 285.

4. Around EUR 1,158.

II. RELEVANT DOMESTIC LAW

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

THE LAW

12. The applicant complained about the State authorities' failure to enforce the judgment of the Bryanka City Court of 27 May 2002 in due time. He invoked Articles 6 § 1 and 13 of the Convention and Article 1 of Protocol No. 1, which provide, in so far 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

13. The Government raised objections regarding the applicant's victim status and the exhaustion of domestic remedies similar to those which the Court has already dismissed in the case of *Romashov v. Ukraine* (see the *Romashov* judgment, cited above, §§ 23-33). The Court considers that the present objections must be rejected for the same reasons.

14. The Court concludes that the applicant's complaint under Article 6 § 1 of the Convention about the delay in the enforcement of the judgment of the Bryanka City Court of 27 May 2002 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 complaint 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

15. In their observations, the Government contended that there had been no violation of Article 6 § 1 of the Convention or Article 1 of Protocol No. 1 (as in the cases of *Romashov*, cited above, § 37, and *Voytenko v. Ukraine*, no. 18966/02, § 37, judgment of 29 June 2004).

16. The applicant disagreed.

17. The Court notes that the judgment of the Bryanka City Court of 27 May 2002 remained unenforced for more than two years and five months. It also notes that, notwithstanding the fact that the debts were paid to the applicant in instalments, a substantial amount of the award against the debtor company was fully paid to the applicant only after the communication of the application to the respondent Government.

18. 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, *Sharko v. Ukraine*, no. 72686/01, §§ 40-42, 19 April 2005, and *Voytenko*, cited above, §§ 53-55).

19. 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

20. The Government contended that the applicant had had effective channels of complaint on the same basis that they had argued that the applicant had not exhausted domestic remedies. Having rejected the latter argument above (paragraph 13), the Court concludes 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 present proceedings (see *Voytenko* cited above, §§ 46-48). Accordingly, there has been a breach of this provision.

III. APPLICATION OF ARTICLE 41 OF THE CONVENTION

21. 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

22. The applicant claimed UAH 42,365.99¹ in respect of pecuniary damage, as compensation for the delay in payment of the judgment debt. The applicant further claimed EUR 10,000 in respect of non-pecuniary damage.

23. 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.

24. Making its assessment on an equitable basis, as required by Article 41 of the Convention, the Court considers it reasonable to award the applicant a global sum of EUR 1,440 in respect of pecuniary and non-pecuniary damage.

B. Costs and expenses

25. The applicant did not submit any claim under this head. The Court therefore makes no award.

C. 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;

1. Around EUR 6,970.

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 1,440 (one thousand four hundred and forty euros) in respect of pecuniary and non-pecuniary damage, 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 8 November 2005, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

S. DOLLÉ
Registrar

J.-P. COSTA
President