



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

SECOND SECTION

CASE OF GAYDAY v. UKRAINE

(Application no. 18949/03)

JUDGMENT

STRASBOURG

22 November 2005

FINAL

22/02/2006

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 Gayday 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 3 November 2005,

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

PROCEDURE

1. The case originated in an application (no. 18949/03) against Ukraine lodged with the Court under Article 34 of the Convention for the Protection of Human Rights and Fundamental Freedoms (“the Convention”) by Ukrainian nationals, Mr Nikolay Mikhaylovich Gayday (“the first applicant”) and Mr Nikolay Nikolayevich Gayday (“the second applicant”), on 30 May 2003.

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 first applicant was born in 1951 and lives in the city of Zhovti Vody, Ukraine. The second applicant was born in 1980 and lives in the same city. They both were employed by the Electron-Gaz Company, in which the State held 99.96% of the share capital.

A. Judgments given in favour of the first applicant

5. By two decisions of 9 March and 21 December 1999, the Zhovti Vody Town Court ordered the company to pay the first applicant a total amount of UAH 4,118.15¹ in salary arrears.

6. In April 1999 and January 2000, respectively, the Zhovti Vody Town Bailiffs' Service instituted enforcement proceedings in respect of the above judgments.

B. Judgment given in favour of the second applicant

7. On 29 December 1999 the Zhovti Vody Town Court ordered the same company to pay the second applicant UAH 1,164² in salary arrears.

8. On 17 January 2000 the Zhovti Vody Town Bailiffs' Service instituted enforcement proceedings in respect of that judgment.

C. Enforcement of the judgments given in the applicants' favour

9. By a number of letters of 2002 and 2003, the Bailiffs' Service informed the applicants that the judgments given in their favour 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.

10. On 21 December 2004 the Bailiffs' Service terminated the enforcement proceedings in view of the full enforcement of the judgments given in the applicants' favour.

11. According to the applicants, the judgments were fully enforced on 22 December 2004.

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).

1. Around 673 euros – "EUR".

2. Around EUR 190.

THE LAW

13. The applicants complained about the State authorities' failure to enforce the judgments of the Zhovti Vody Town Court of 9 March, 21 and 29 December 1999 in due time. They 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

14. The Government raised objections regarding the applicants' victim status and 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.

15. The Court concludes that the application 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 it inadmissible.

II. MERITS

16. 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).

17. The applicants disagreed.

18. The Court notes that the judgments of the Zhovti Vody Town Court of 9 March, 21 and 29 December 1999 remained unenforced for more than five years eight months and four years eleven months, respectively.

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, *Voytenko*, cited above, §§ 39-43 and 53-55).

20. Having examined all the material submitted to it, the Court considers that the Government have not put forward any fact or convincing 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.

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 first applicant claimed UAH 2,729.61¹ in respect of pecuniary damage and EUR 3,000 in respect of non-pecuniary damage.

23. The second applicant claimed UAH 1,126.99² in respect of pecuniary damage and EUR 1,000 in respect of non-pecuniary damage.

24. The Government did not object to the amounts claimed in respect of non-pecuniary damage.

25. Making its assessment on an equitable basis, as required by Article 41 of the Convention, the Court considers it reasonable to award the first applicant a global sum of EUR 3,000 and the second applicant a global sum of EUR 1,000 in respect of pecuniary and non-pecuniary damage.

B. Costs and expenses

26. The applicants did not submit any claim under this head. The Court therefore makes no award.

1. Around EUR 447.

2. Around EUR 185.

C. Default interest

27. 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, within three months from the date on which the judgment becomes final according to Article 44 § 2 of the Convention, the first applicant EUR 3,000 (three thousand euros) and the second applicant EUR 1,000 (one thousand 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;
5. *Dismisses* the remainder of the applicant's claim for just satisfaction.

Done in English, and notified in writing on 22 November 2005, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

S. DOLLÉ
Registrar

J.-P. COSTA
President