



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

SECOND SECTION

CASE OF SKUBENKO v. UKRAINE

(Application no. 41152/98)

JUDGMENT

STRASBOURG

29 November 2005

FINAL

29/02/2006

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 Skubenko v. Ukraine,

The European Court of Human Rights (Second Section), sitting as a Chamber composed of:

Mr J.-P. COSTA, *President*,

Mr A.B. BAKA,

Mr R. TÜRMESEN,

Mr K. JUNGWIERT,

Mr V. BUTKEVYCH,

Mr M. UGREKHELIDZE,

Mrs A. MULARONI, *judges*,

and Mr S. NAISMITH, *Deputy Section Registrar*,

Having deliberated in private on 8 November 2005,

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

PROCEDURE

1. The case originated in an application (no. 41152/98) against Ukraine lodged with the European Commission of Human Rights (“the Commission”) under former Article 25 of the Convention for the Protection of Human Rights and Fundamental Freedoms (“the Convention”) by a Ukrainian national, Mr Nikolay Skubenko (“the applicant”), on 15 April 1998.

2. The Ukrainian Government (“the Government”) were represented by their Agent, Ms Zoryana Bortnovska, succeeded by Ms Valeria Lutkovska. The applicant was originally represented by Ms Nelli Karpukhina, an advocate practicing in the Crimea, replaced by Mr Konstantin Buzadzhi and Ms Olga Zhukovska, lawyers practising in Kyiv.

3. The applicant alleged, in particular, that the enforcement proceedings were unreasonably long, contrary to the requirements of Article 6 § 1 as to the reasonable length of proceedings.

4. The application was transmitted to the Court on 1 November 1998, when Protocol No. 11 to the Convention came into force (Article 5 § 2 of Protocol No. 11).

5. The application was allocated to the Second Section of the Court (Rule 52 § 1 of the Rules of Court). Within that Section, the Chamber that would consider the case (Article 27 § 1 of the Convention) was constituted as provided in Rule 26 § 1.

6. By a decision of 6 April 2004 the Court declared the application partly admissible. It also decided, under Rule 59 § 3 of the Rules of the Court, that the discharge of its functions did not require a hearing to be held.

7. On 1 November 2004 the Court changed the composition of its Sections (Rule 25 § 1). This case was assigned to the newly composed Second Section (Rule 52 § 1).

8. The applicant and the Government each filed observations on the merits (Rule 59 § 1).

THE FACTS

9. The applicant was born in 1953 and lives in Kyiv. He is a former employee of the Institute of Semiconductor Physics of the Academy of Sciences of Ukraine (the “ASU”).

I. THE CIRCUMSTANCES OF THE CASE

10. Between 1991 and 1995 the applicant, who was already a tenant of studio No. 35/5 in a communal apartment, petitioned various Ukrainian authorities seeking the right to reside in studio No. 35/6, which had become vacant in January 1995. By a decree of 10 July 1995, the Leningradsky District Council of Kyiv (the “LDC”) granted Mrs V.M.K. (a private person) the right to use that studio.

11. On 30 August 1995 the applicant lodged complaints with the Leningradsky District Court of Kyiv (the “Leningradsky Court”), seeking Mrs V.M.K.’s eviction from the studio. He also requested the court to issue him with a certificate granting him the right to occupy it.

12. On 22 November 1996 the Leningradsky Court rejected the applicant’s claims as being unsubstantiated. On 5 February 1997 the Kyiv City Court quashed this judgment and remitted the case for fresh consideration.

13. In December 1997 the applicant lodged his complaints with the Leningradsky Court against the ASU and the LDC, seeking to quash the decree of 10 July 1995 and to be allocated studio No. 35/6. By a judgment of 4 December 1997, the court quashed the decree of 10 July 1995 and recognized the applicant’s right to use the studio. The court ordered the respondents to take all necessary measures for the applicant’s enjoyment of his residential premises and the enforcement of the judgment of 4 December 1997. The judgment became final on 14 December 1997.

14. In January 1998 the applicant lodged the writ of execution with the Leningradsky District Execution Service of Kyiv. As a result, the certificate of Mrs V.M.K. granting her the use of studio No. 35/6 was annulled.

15. On 6 February 1998 the applicant lodged the writ of execution with the Starokyivsky District Execution Service of Kyiv (the “Starokyivsky Execution Service”) to oblige the ASU, one of the owners of the apartment,

to certify that he could use studio No. 35/6. The execution proceedings were instituted on 23 February 1998.

16. Between April 1998 and February 1999, the applicant lodged several complaints with the Leningradsky Court, the Starokyivsky District Court of Kyiv (the “Starokyivsky Court”), the Kyiv City Court, the General Prosecution Service and the Kyiv Department of the Ministry of Justice, complaining about the failure of the Execution Service to enforce the judgment of 4 December 1997.

17. On 1 September 1998 the Starokyivsky Execution Service initiated administrative proceedings against the Logistics Director of the ASU who had failed to execute the judgment given in the applicant’s favour.

18. On 10 September 1998 the Logistics Department of the ASU informed the applicant and the Starokyivsky Court that the applicant had received the keys and free access to studio No. 35/6 in May 1998.

19. On 23 September 1998 the Starokyivsky Court fined the Logistics Director of the ASU for failure to comply with the judgment of 4 December 1997.

20. The Director appealed against this decision as he did not have the power to issue a certificate for the use of the apartment, which power lay with the LDC. The Kyiv City Court allowed the Director’s appeal on 4 November 1998. On 29 December 1998 the Starokyivsky Court dismissed the petition of the Starokyivsky Execution Service of 1 September 1998 by which it had initiated administrative proceedings against the Logistics Director of the ASU.

21. On 5 August 1999 the applicant was dismissed from his position at the ASU for alleged failure to appear at work for a lengthy period of time.

22. On 6 August 1999 the ASU issued resolution No. 1041 granting the applicant the use of studios Nos. 35/5 and 35/6. They also petitioned the LDC to issue a certificate (*ордер*) for the applicant’s use of those studios.

23. On 28 September 1999 the LDC issued decree No. 1329 authorising the applicant to use apartments Nos. 5 and 6 situated at 14, Dobrokhотов Street in Kyiv.

24. On 12 October 1999 the Kyiv Department of Justice informed the applicant about the execution of the judgment of 4 December 1997.

25. On 20 October 1999 the LDC issued a certificate (*ордер на квартиру*) to the applicant recognising his right to use the aforementioned apartments.

26. On 29 October 1999 the applicant informed the Court that the certificate for the use of the apartment was invalid as it concerned apartments No. 5 and 6, but not studios Nos. 35/5 and 35/6, specified in the judgment of the Leningradsky Court.

27. In January 2001 the ownership title of apartment No. 35 belonging to the ASU was transferred to the LDC.

28. In July 2003 the applicant was informed by the Communal Residence Department of the LDC that he would be provided with a certificate for his residential premises.

29. On 7 August 2003 the LDC issued decree No. 1411 acknowledging the applicant's right to use studio No. 35/6 and issued him with a certificate of use on 2 September 2003.

II. RELEVANT DOMESTIC LAW AND PRACTICE

30. The relevant provisions of the domestic law and practice are cited in the judgment of *Romashov v. Ukraine* (no. 67534/01, §§ 16-19, 27 July 2004) and the admissibility decision in the present case (*Skubenko v. Ukraine*, no. 41152/98, 6 April 2004).

THE LAW

I. SCOPE OF THE CASE

31. The Court notes that after the case was declared admissible the applicant lodged a new complaint based on an alleged infringement of Article 34 of the Convention. He also repeated his complaints about the alleged infringement of Article 13 of the Convention and Article 1 of Protocol No. 1 to the Convention.

32. The Court recalls that, in its decision of 6 April 2004 in the present case, it declared admissible the applicant's complaint under Article 6 § 1 of the Convention concerning the lengthy non-enforcement of the judgment of the Leningradsky District Court of Kyiv of 4 December 1997. It also considered, referring to the judgment in *Nuray Şen v. Turkey* (no. 25354/94, § 200, 30 March 2004), that it was not appropriate to consider the additional complaints separately as they were not an elaboration of the original matter lodged with the Court in April 1998.

33. The Court notes that the scope of the case now before the Court is limited to the complaint which has been declared admissible, as the Court, being bound by its admissibility decision, has no jurisdiction to consider the aforementioned complaints on their merits (see *L.C.B. v. the United Kingdom*, judgment of 9 June 1998, *Reports of Judgments and Decisions* 1998-III, § 35).

II. ALLEGED VIOLATION OF ARTICLE 6 § 1 OF THE CONVENTION

34. The applicant complained that, due to the lengthy non-execution of the judgment in his favour, his right to a fair hearing was violated. He invoked Article 6 § 1 of the Convention which provides, insofar as relevant, as follows:

“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.”

35. The Government maintained that there had been no violation of Article 6 § 1 of the Convention in the applicant's case. In particular, they referred to a technical mistake made in the applicant's papers, i.e. the reference to a different studio. Moreover, the enforcement proceedings have been discontinued as the judgment was executed and the applicant received a certificate of use for the studio in question. They also indicated that the applicant showed no willingness to facilitate the enforcement of the judgment, and did not address the competent State authorities responsible for its actual enforcement, including the local housing department and council.

36. The applicant maintained that the execution proceedings had lasted an unreasonably long time and that there was no mechanism for the enforcement of judgments like the one at issue. In particular, he claimed that there were no adequate legislative guarantees for the enforcement of final judgments in domestic law that were also effective in practice.

37. The Court notes that, in the instant case, the delay in the enforcement of the judgment was about five years and nine months, as the judgment in the applicant's case was given on 4 December 1997 and finally enforced on 2 September 2003, after the case was communicated to the respondent Government. The Government have not advanced any convincing justification for the delays.

38. The Court, having regard to its extensive case-law on the matter of non-enforcement (see, among many other authorities, *Romashov v. Ukraine*, no. 67534/01, § 46, 27 July 2004) finds a violation of Article 6 § 1 of the Convention in respect of the unreasonable length of the enforcement proceedings in the applicant's case.

II. APPLICATION OF ARTICLE 41 OF THE CONVENTION

39. 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

40. The applicant claimed pecuniary damage of EUR 1,012.63, i.e. the sum that he had had to pay in rent for other accommodation. He further claimed EUR 20,903.52 in compensation for non-pecuniary damage, allegedly caused by the distress and emotional strain due to the State’s unlawful failure to enforce the judgment and for impeding his communications with the Court.

41. The Government maintained that the applicant did not suffer any pecuniary damage as there was no causal link between the violation found and the pecuniary damage claimed. As to non-pecuniary damage, they proposed to reject the claim or to allow a reasonable amount based on the Court’s case-law, the economic situation of the country and the principle that applications lodged with the Court cannot serve as a basis for unjustified enrichment.

42. The Court finds that in the circumstances of the case no causal link has been established between the violation found and the pecuniary damage alleged by the applicant. Consequently, there is no justification for making an award in that respect. The Court deciding on an equitable basis, as required by Article 41 of the Convention, awards the applicant EUR 2,720 in non-pecuniary damages.

B. Costs and expenses

43. The applicant further claimed EUR 652.72 in postal and legal fees, the translation of legal documents and the forensic examination of the amount of non-pecuniary damage.

44. The Government submitted that the claims relating to postal expenses and the translations of documents were not necessarily incurred as the applicant had provided no proof in that respect. They also contested any award for the costs of the forensic examination as they were not convinced that these costs had been necessary.

45. Having regard to the information in its possession, the fact that the applicant had representatives who submitted observations to the Court, and that he did incur some expenses in the proceedings before it, the Court, deciding on an equitable basis, as required by Article 41 of the Convention,

awards the applicant EUR 400 for the costs and expenses incurred by the applicant for his legal representation.

C. Default interest

46. 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. *Holds* that there has been a violation of Article 6 § 1 of the Convention;
2. *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 2,720 (two thousand seven hundred and twenty euros) in respect of non-pecuniary damage and EUR 400 (four hundred euros) for costs and expenses, plus any tax that may be chargeable;
 - (b) that these sums are to be converted into the currency of the respondent State at the rate applicable on the date of settlement;
 - (c) 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;
3. *Dismisses* the remainder of the applicant's claim for just satisfaction.

Done in English, and notified in writing on 29 November 2005, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

S. NAISMITH
Deputy Registrar

J.-P. COSTA
President