



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

SECOND SECTION

CASE OF ZAKHAROV v. UKRAINE

(Application no. 17015/03)

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 Zakharov 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 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. 17015/03) 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 Yuriy Filippovich Zakharov (“the applicant”), on 25 April 2003.

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

3. On 21 January 2005 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 1950 and lives in the town of Belozerskoe, Donetsk region of Ukraine.

5. In 2001 the applicant instituted proceedings in the Dobropolsky Town Court against his former employer, the State-owned “Novodonetskaya” mining company, to recover disability benefit arrears. On 3 June 2002 the

court awarded the applicant UAH 50,822.44¹. On 9 July 2002 the enforcement proceedings were initiated.

6. In September 2002 the applicant lodged a complaint with the Dobropolsky Town Court against the Dobropolsky Town Bailiffs' Service for failure to enforce the judgment of 3 June 2002 expeditiously.

7. On 18 October 2002 the court found for the applicant and ordered the Bailiffs to enforce the judgment immediately.

8. By 7 December 2004 the judgment in the applicant's favour was enforced in full and the Bailiffs' Service terminated the enforcement proceedings on that date.

II. RELEVANT DOMESTIC LAW

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

THE LAW

10. The applicant complained of the failure by the State authorities to execute the decision of 3 June 2002 given in his favour. He 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 or to secure the payment of taxes or other contributions or penalties."

¹ Around 8,262.18 euros ("EUR")

I. ADMISSIBILITY

A. The Government's preliminary objection

11. The Government considered that the applicant could no longer claim to be a victim of a violation of the Convention as he had received full payment of the judgment debt.

12. The applicant did not make any comments.

13. The Court notes that a similar point has already been dismissed in a number of Court judgments (see the aforementioned *Romashov* judgment, § 27). In such cases the Court has found that applicants may still claim to be victims of an alleged violation of Article 6 § 1 in relation to the period during which the decisions of which complaint is made remained unenforced. It finds no reason to reach a different conclusion in the present case and, therefore, rejects the Government's objection.

B. Conclusion

14. In the light of the parties' submissions, the Court concludes that the applicant's complaint under Article 6 § 1 of the Convention 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. For the same reasons, the applicant's complaint under Article 1 of Protocol No.1 cannot be declared inadmissible.

II. MERITS

A. The applicant's complaint under Article 6 § 1 of the Convention

15. The Government maintained that the length of the enforcement proceedings had been caused by the critical financial situation of the debtor company and the large number of proceedings against it. The Government further maintained that the debtor was a separate legal entity and therefore the State's responsibility extended no further than the performance of the Bailiffs' Service. The latter, in the Government's opinion, performed all necessary actions and could not be blamed for the delay. Finally, they submitted that the length of the enforcement proceedings was reasonable.

16. The applicant did not submit any additional arguments to his original complaint.

17. The Court notes that the decision of 3 June 2002 remained unenforced from 9 July 2002 (the date when the enforcement proceedings were instituted) until 7 December 2004 (the date of payment of the awarded amount to the applicant), i.e. a period of about two years and five months.

18. The Court considers that by delaying for more than two years the enforcement of the judgment in the applicant's case, the authorities deprived the provisions of Article 6 § 1 of the Convention of much of their useful effect. The Court finds that the Government have not advanced any convincing justification for this delay (see the aforementioned *Romashov* judgment, § 41).

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

B. The applicant's complaint under Article 1 of Protocol No. 1

20. The Government in their submissions confirmed that the amount awarded to the applicant by the domestic court constituted a possession within the meaning of Article 1 of Protocol No. 1. Nevertheless, the Government maintained that the provision had not been violated for the same reasons as above (paragraphs 11 and 15). In the Government's opinion, the delay in enforcement did not constitute an excessive burden for the applicant.

21. The applicant did not submit any additional arguments to his original complaint.

22. The Court recalls its case-law that the impossibility for an applicant to obtain the execution of a judgment in his or her favour constitutes an interference with the right to the peaceful enjoyment of possessions, as set out in the first sentence of the first paragraph of Article 1 of Protocol No. 1 (see, among other authorities, *Burdov v. Russia*, no. 59498/00, § 40, ECHR 2002-III; *Jasiūnienė v. Lithuania*, no. 41510/98, § 45, 6 March 2003).

23. In the instant case the Court is therefore of the opinion that the impossibility for the applicant to obtain the execution of his judgment for a period of two years and five months constituted an interference with his right to the peaceful enjoyment of his possessions, within the meaning of the first paragraph of Article 1 of Protocol No. 1.

24. By failing to comply with the judgment of the Dobropolsky Town Court promptly, the national authorities prevented the applicant, for a considerable period of time, from receiving in full the money to which he was entitled. The Government have not advanced any convincing justification for this interference, and the Court considers that economic difficulties of the debtor cannot justify such an omission. Accordingly there has also been a violation of Article 1 of Protocol No. 1.

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 the judgment debt of UAH 50,822.44¹ in respect of pecuniary damage and UAH 20,000² in respect of non-pecuniary damage.

27. The Government maintained that the applicant received the judgment debt in full and therefore his claim for pecuniary damage should be rejected. They further maintained that the amount claimed in respect of non-pecuniary damage was exorbitant and unsubstantiated. They contended that the finding of a violation would constitute sufficient just satisfaction in the present case.

28. The Court does not discern any causal link between the violation found and the pecuniary damage alleged; it therefore rejects this claim. However, the Court takes the view that the applicant has suffered some non-pecuniary damage as a result of the violations found which cannot be made good by the Court’s mere findings. Nevertheless, the 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 1,640 in respect of non-pecuniary damage.

B. Costs and expenses

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

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 EUR 8,262.18

² EUR 3,251.39

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 the applicant, within three months from the date on which the judgment becomes final in accordance with Article 44 § 2 of the Convention, EUR 1640 (one thousand six hundred and forty euros) in respect of non-pecuniary damage, plus any tax that may be chargeable;
 - (b) that the above amount shall be converted into the national currency of the respondent State at the rate applicable at 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 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 29 November 2005, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

S. NAISMITH
Deputy Registrar

J.-P. COSTA
President