



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

SECOND SECTION

CASE OF GARKUSHA v. UKRAINE

(Application no. 4629/03)

JUDGMENT

STRASBOURG

13 December 2005

FINAL

13/03/2006

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 Garkusha v. Ukraine,

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

Mr A.B. BAKA, *President*,

Mr I. CABRAL BARRETO,

Mr K. JUNGWIERT,

Mr V. BUTKEVYCH,

Mr M. UGREKHELIDZE,

Ms D. JOČIENĖ,

Mr D. POPOVIĆ, *judges*,

and Mrs S. DOLLÉ, *Section Registrar*,

Having deliberated in private on 22 November 2005,

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

PROCEDURE

1. The case originated in an application (no. 4629/03) 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 Vladimir Aleksandrovich Garkusha (“the applicant”), on 16 December 2002.

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 1937 and lives in the town of Dnipryany, the Kherson region.

5. On 15 January 2002 the Nova-Kakhovka Town Court ordered the Joint Stock Company “Pivdenelektronmash”, in which the State held 75% of the share capital, to pay the applicant UAH 4,831.83¹ in salary arrears. At

1. Around 805 euros – “EUR”.

that time there were bankruptcy proceedings pending against the debtor company.

6. On 21 February 2002 the Nova-Kakhovka Town Bailiffs' Service instituted enforcement proceedings.

7. On the same date the Bailiffs' Service suspended the enforcement proceedings because of the fact that the procedure for the forced sale of assets belonging to the debtor had been suspended by the moratorium on the forced sale of property belonging to State enterprises introduced by the Law of 29 November 2001.

8. On 3 June 2002 the Nova-Kakhovka Town Court, following the applicant's request, quashed that decision.

9. On 26 June 2002 the Bailiffs' Service terminated the enforcement proceedings in view of the tax lien placed on the debtor's property and its lack of funds.

10. On 15 October 2002 the same court quashed the decision of the Bailiffs' Service and ordered the latter to resume the enforcement proceedings.

11. On 20 December 2002 the Bailiffs' Service suspended the enforcement proceedings due to the bankruptcy proceedings pending against the debtor company.

12. On 4 February 2003 the same court quashed the decision of 20 December 2002 and ordered the Bailiffs' Service to renew the enforcement proceedings. On 20 May 2003 the Kherson Regional Court of Appeal upheld decision of the first instance court.

13. In November 2003 the applicant was paid UAH 1,635¹.

14. In April 2004 the applicant instituted proceedings in the Nova-Kakhovka Town Court against the Bailiffs' Service, seeking compensation for failure to enforce the judgment given in his favour. On 7 October 2004 the court rejected the applicant's claim as unsubstantiated. The applicant did not appeal against that decision.

15. The judgment in the applicant's favour remains to a large extent unenforced, the outstanding debt being UAH 3,196.83².

II. RELEVANT DOMESTIC LAW

16. The relevant domestic law is summarised in the judgment of *Sokur v. Ukraine* (no. 29439/02, §§ 18-22, 26 April 2005).

1. Around EUR 273.

2. Around EUR 532.

THE LAW

17. The applicant complained about the State authorities' failure to enforce the judgment of the Nova-Kakhovka Town Court of 15 January 2002 in full and in due time. 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”

I. ADMISSIBILITY

18. The Government contended that the applicant has not exhausted domestic remedies as he did not lodge a request with the relevant commercial court to be included in the list of the debtor's creditors in the course of bankruptcy proceedings against the debtor. The Government therefore proposed that the application be declared inadmissible or struck out of the Court's list of cases.

19. The Court recalls that it has already dismissed the Government's analogous contentions in similar cases (see, for instance, *Romashov v. Ukraine*, no. 67534/01, §§ 30-33, 27 July 2004) and finds no reason to reach a different conclusion in the present case.

20. The Court concludes that this 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

21. In their observations, the Government contended that there had been no violation of either 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).

22. The applicant disagreed.

23. The Court notes that the judgment of the Nova-Kakhovka Town Court of 15 January 2002 has remained unenforced for around three years and ten months.

24. 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, and *Sokur v. Ukraine*, no. 29439/02, §§ 30-37, 26 April 2005).

25. 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

26. 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

27. The applicant claimed UAH 3,196.83¹, which was the amount of the judgment outstanding debt. The applicant further submitted that he suffered some pecuniary and non-pecuniary damage because of the length of the non-enforcement of the judgment. However, he was not able to specify the amount of his claim and left the matter to the Court’s discretion.

28. The Government maintained that the applicant’s claim was unsubstantiated and submitted that the finding of a violation would constitute sufficient just satisfaction.

29. In so far as the applicant claimed the remaining amount awarded to him by the judgment at issue, the Court considers that the Government should pay him the outstanding debt in settlement of his pecuniary damage. As to the applicant’s claim for non-pecuniary damage, the Court, making its assessment on an equitable basis, as required by Article 41 of the Convention, awards the applicant EUR 1,840.

1. Around EUR 532.

B. Costs and expenses

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

C. Default interest

31. 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 judgment debt still owed to him, as well as EUR 1,840 (one thousand eight hundred and forty euros) in respect of 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 13 December 2005, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

S. DOLLÉ
Registrar

A.B. BAKA
President