



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

SECOND SECTION

CASE OF ZOLOTUKHIN v. UKRAINE

(Application no. 11421/03)

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 Zolotukhin 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. 11421/03) 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 Alekseyevich Zolotukhin (“the applicant”), on 21 March 2003.

2. The Ukrainian Government (“the Government”) were represented by their Agents, Mrs V. Lutkovska and Mrs Z. Bortnovska.

3. On 24 October 2003 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 1948 and lives in the village of Myrne, the Autonomous Republic of Crimea (the “ARC”).

5. On 22 November 2000 the Zaliznodorozhnyi District Court of Simferopil (the “Zaliznodorozhnyi Court”) ordered the Zaliznodorozhnyi District Council of Simferopil to pay the applicant UAH 1,371.33¹ in health care allowances and salary arrears.

1. Around 228 euros – “EUR”.

6. On 30 January 2001 the Zaliznodorozhnyi District Bailiffs' Service of Simferopol instituted enforcement proceedings.

7. In August 2001 the applicant instituted proceedings in the same court against the council, seeking compensation for failure to enforce the judgment in his favour. On 25 October 2001 the court rejected his claim as unsubstantiated. The court held that the judgment was not enforced due to the lack of relevant allocations in the council's budget, for which it could not be held responsible. On 21 January and 23 September 2002, respectively, the Court of Appeal of the ARC and the Supreme Court of Ukraine upheld that decision.

8. In 2002 the applicant instituted proceedings in the Zaliznodorozhnyi Court against the Bailiffs' Service for failure to enforce the judgment in his favour. On 15 May 2001 the court found for the applicant and ordered the Bailiffs' Service to apply all the measures envisaged by the law to enforce the judgment.

9. On 1 December 2003 the Bailiffs' Service terminated the enforcement proceedings in view of the debtor's lack of funds.

10. The judgment in the applicant's favour remains unenforced.

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 Zaliznodorozhnyi Court of 22 November 2000 in full and in due time. He invoked Articles 6 § 1 and 13 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 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**A. The Government’s preliminary objections**

13. The Government contended that the applicant has not exhausted domestic remedies as he did not challenge the decision of the Bailiffs’ Service discontinuing the enforcement proceedings. The Government therefore proposed that the application be declared inadmissible.

14. The Court recalls that it has already dismissed the Government’s analogous contentions in similar cases (see, for instance, the *Romashov* judgment, cited above, §§ 30-33) and finds no reason to reach a different conclusion in the present case.

15. The Court concludes that this part of 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.

B. Other complaints

16. The applicant further complained about a violation of Article 2 (right to life), Article 3 (prohibition of torture) and Article 8 (respect for private and family life) of the Convention on account of the non-enforcement of the judgment in his favour.

17. The Court finds that this part of the application is wholly unsubstantiated and must therefore be rejected as being manifestly ill-founded, pursuant to Article 35 §§ 3 and 4 of the Convention.

II. MERITS

A. The applicant's complaints under Article 6 § 1 of the Convention and Article 1 of Protocol No. 1

18. 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).

19. The applicant disagreed.

20. The Court notes that the judgment of the Zaliznodorozhnyi Court of 22 November 2000 has remained unenforced for around five years.

21. 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, *Romashov*, cited above, §§ 42-46, and *Voytenko*, cited above, §§ 53-55).

22. 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.

B. The applicant's complaint under Article 13 of the Convention

23. 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 (at paragraph 14), 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

24. 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, costs and expenses

25. The applicant claimed EUR 300,000 by way of just satisfaction, which included the amount of the judgment debt.

26. The Government maintained that the applicant had not substantiated the amount claimed and submitted that the finding of a violation would constitute sufficient just satisfaction.

27. In so far as the applicant claimed the 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 remainder of the applicant's just satisfaction claim, the Court, making its assessment on an equitable basis, as required by Article 41 of the Convention, awards the applicant EUR 2,400 in respect of non-pecuniary damage.

B. Default interest

28. 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 applicant's complaints under Articles 6 § 1 and 13 of the Convention and Article 1 of Protocol No. 1 admissible, and the remainder of the application inadmissible;
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, the judgment debt still owed to him, as well as EUR 2,400 (two thousand four hundred 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;

6. *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