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

SECOND SECTION

CASE OF RATNIKOV v. UKRAINE

(Application no. 25664/02)

JUDGMENT

STRASBOURG

17 January 2006

FINAL

17/04/2006

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 Ratnikov 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 Mrs S. DOLLÉ, *Section Registrar*,

Having deliberated in private on 13 December 2006,

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

PROCEDURE

1. The case originated in an application (no. 25664/02) 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 Gennadiy Aleksandrovich Ratnikov ("the applicant"), on 20 June 2002.

2. The Ukrainian Government ("the Government") were represented by their Agent, Ms Valeria 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 1962 and lives in the village of Razdalovka, the Donetsk Region.

5. On 12 April 2001 the Mykytivsky District Court of Gorlovka (hereafter "the District Court") awarded the applicant a total of UAH 41,992[1] against the Komsomolskaya Coal Mine (a State-owned entity; hereafter "the Coal Mine") for arrears of industrial disease benefits. The

1. approximately 6,170 euros (EUR).

judgment became final and was sent to the Mykytivsky District Bailiffs' Service (hereafter "the Bailiffs' Service") for compulsory enforcement.

6. According to a letter of the Donetsk Regional Department of Justice of 20 December 2001, the enforcement of the judgment was impeded by the moratorium on the forced sale of property of State owned enterprises which barred the attachment and sale of the Company's capital assets.

7. On 25 February 2003 the Ministry of Fuel and Energy ordered a merger of the Coal Mine with several others to form the Artemvugilia State Company (hereafter "the Company").

8. On 8 July 2003 the Bailiffs' Service applied to the District Court for directions regarding the replacement of the debtor in the applicant's case.

9. On 1 September 2004 the Bailiffs' Service terminated the compulsory enforcement proceedings following the applicant's withdrawal of his writ of execution. The applicant alleged that he had done so under pressure from the Ministry of Fuel and Energy's officials.

10. The award was paid to the applicant in two instalments on 19 and 20 November 2004.

II. RELEVANT DOMESTIC LAW

11. The relevant domestic law is set out in the judgments of 27 July 2004 in the case of *Romashov v. Ukraine* (no. 67534/01, §§ 16-19), of 30 November 2004 in the case of *Dubenko v. Ukraine* (74221/01 §§ 22-29), and of 26 April 2005 in the case of *Sokur v. Ukraine* (no. 29439/02, §§ 18 and 22).

THE LAW

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

12. The applicant complained of the failure of the State authorities to execute the judgment of 12 April 2001 given in his favour. He alleged an infringement of Article 6 § 1 of the Convention, which provides, in so far as relevant, as follows:

Article 6

> "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. ..."

A. Admissibility

1. The applicant's victim status

13. The Government objected that the applicant could no longer be considered a victim, for the purposes of Article 34 of the Convention, as on 1 September 2004 he withdrew his writ of execution and, consequently, from that time onwards the State was not responsible for the enforcement of the award. The Government also indicated that the judgment in the applicant's favour had been enforced.

14. The applicant disagreed, stating that he had been forced to withdraw his writ by State officials.

15. The Court first recalls that the withdrawal of the writ of execution from the Bailiffs' Service does not in itself discharge the State from the responsibility to pay the awards given against a State authority or a State-owned enterprise (see, *mutatis mutandis*, *Teteriny v. Russia*, no. 11931/03, §§ 43 and 51, 30 June 2005, and *Chizhov v. Ukraine*, no. 6962/02, § 41, 17 May 2005). In the instant case the judgment was given against the State-owned Coal Mine and the Artemvugilia State Company. As it appears from the case file (see paragraph 10 above), the debt owed to the applicant was not extinguished following the withdrawal of the writ from the Bailiffs' Service. The Court in many instances has found Ukraine directly responsible for debts of State-owned enterprises in similar circumstances (see, among many others, *Chernobryvko v. Ukraine*, no. 11324/02, §§ 23 and 24, 13 September 2005). Thus, leaving aside the applicant's allegation that he was forced to withdraw the writ, the State's liability continued to exist after the formal termination of the enforcement proceedings.

16. The Court further recalls its case-law to the effect that, whilst the execution of the decision given in the applicant's favour redressed the non-execution as such, it could not in itself remedy the undue length of the enforcement procedure (see *Sokur v. Ukraine*, cited above, § 27). The Court considers, therefore, that the applicant may still claim to be a victim of an alleged violation of the rights guaranteed by Article 6 § 1 in relation to the period during which the judgment in his favour remained unexecuted.

2. Objection as to the exhaustion of domestic remedies

17. The Government submitted that the applicant had failed to exhaust domestic remedies as required by Article 35 § 1 of the Convention, since he had not challenged the Bailiffs' inactivity or omissions before the domestic courts.

18. The applicant contested this submission, alleging that none of the indicated remedies afforded him any prospect of success.

19. The Court recalls its recent case-law on this issue to the effect that the applicant is absolved from lodging complaints against Bailiffs where the

non-enforcement of judgments was due to reasons beyond the Bailiffs' control (see, among many others, *Mykhaylenky and Others v. Ukraine*, nos. 35091/02, 35196/02, 35201/02, 35204/02, 35945/02, 35949/02, 35953/02, 36800/02, 38296/02 and 42814/02, §§ 38-39, ECHR 2004-…. It finds no reason to distinguish the present application from these previous cases.

20. Therefore, the applicant was absolved from pursuing the remedies referred to by the Government and has complied with the requirements of Article 35 § 1.

3. Conclusion

21. The Court concludes that this part of the application is not manifestly ill-founded within the meaning of Article 35 § 3 of the Convention. It further notes that it is not inadmissible on any other grounds. It must therefore be declared admissible.

B. Merits

22. The Government maintained that the Bailiffs' Service performed all necessary actions to enforce the judgment and could not be held liable for the delays in the enforcement proceedings. They further suggested that there was no infringement of Article 6 § 1 of the Convention in view of the enforcement of the judgments.

23. The applicant did not raise any arguments distinct from those he had previously made.

24. The Court notes that the judgment of 12 April 2001 remained unenforced until 20 November 2004, i.e. for a period of over three years and seven months. It further notes that this judgment was enforced in full after the communication of the application to the respondent Government.

25. The Court considers that, by delaying the enforcement of the judgments 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, among many others, *Romashov v. Ukraine*, cited above, § 46).

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

II. ALLEGED VIOLATION OF ARTICLE 13 OF THE CONVENTION

27. The applicant next complained that he had no effective remedies in respect of his complaint under Article 6 § 1 of the Convention. He invoked Article 13 of the Convention, which provides as follows:

> "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."

28. The Court notes that this complaint is linked to the issues examined above, and must therefore be declared admissible.

29. The Government maintained that the applicant had at his disposal effective remedies explicitly provided for by domestic legislation in order to challenge the non-enforcement of the court judgment given in his favour. They referred to their arguments on exhaustion of domestic remedies.

30. The applicant contested this submission.

31. The Court refers to its findings above (paragraphs 17-20), rejecting the Government's argument regarding domestic remedies. For the same reasons, 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 caused by the delay in the present proceedings. Accordingly, there has been a breach of this provision.

III. APPLICATION OF ARTICLE 41 OF THE CONVENTION

32. 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

33. In his rather confused submissions the applicant left the award of compensation for his moral and material suffering to the discretion of the Court.

34. The Government considered that the applicant did not present any legible claim for just satisfaction.

35. The Court takes the view that the applicant has suffered some pecuniary and non-pecuniary damage as a result of the violations found which cannot be made good by the Court's mere finding of a violation. Making its assessment on an equitable basis, as required by Article 41 of the Convention, the Court awards the applicant the global sum of 1,720 euros (EUR) in pecuniary and non-pecuniary damage.

B. Costs and expenses

36. The applicant did not submit any claim under this head within the set time-limit; the Court therefore makes no award in this respect.

C. Default interest

37. 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 13 of the Convention;

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 1,720 (one thousand seven hundred and twenty euros) in respect of pecuniary and non-pecuniary damage, to be converted into the national currency of the respondent State at the rate applicable at the date of settlement, plus any tax that may be chargeable;
   (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.

Done in English, and notified in writing on 17 January 2006, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

S. DOLLÉ
Registrar

J.-P. COSTA
President