



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

SECOND SECTION

CASE OF TRIBUNSKIY v. UKRAINE

(Application no. 30177/02)

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 Tribunskiy 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 12 December 2005,

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

PROCEDURE

1. The case originated in an application (no. 30177/02) 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 Nikolay Petrovich Tribunskiy (“the applicant”), on 1 August 2002.

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

3. On 9 September 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 1946 and lives in the town of Dniprodzerzhynsk.

5. In 2000 the applicant instituted proceedings in the Bagaliyskyy District Court of Dniprodzerzhynsk (the “Bagaliyskyy Court”) against the Bagaliyskyy Municipal Housing Enterprise, seeking the recovery of salary arrears.

6. On 18 December 2000 the court found for the applicant and ordered the entity to pay him UAH 2543.49 (around 421 euros – “EUR”).

7. On 23 December 2000 the Bagaliyskyy District Bailiffs' Service of Dniprodzerzhynsk instituted enforcement proceedings.

8. On 18 June 2002 the Bailiffs' Service informed the applicant that the judgment was not enforced due to the large number of enforcement proceedings against the debtor and its lack of funds.

9. On 6 June 2002 the Bailiffs' Service applied to the Bagaliyskyy Court to have the debtor in the enforcement proceedings replaced, as the latter's property had been transferred to the Dniprodzerzhynsk Housing Municipal Enterprise (the "DHME") pursuant to the decision of the Dniprodzerzhynsk Town Council.

10. On 17 June 2002 the court granted the request of the Bailiffs' Service and ruled that the DHME was responsible for the payment of the judgment debt of 18 December 2000 to the applicant.

11. On 29 September 2004 the DHME transferred the amount of the award to the deposit account of the Bailiffs' Service.

12. On 30 September 2004 the Bailiffs' Service requested the applicant to provide them with his bank account details in order that they transfer the amount of the award.

13. According to the Government, the applicant failed to provide the Bailiffs with the information requested.

14. The applicant did not contest this submission.

II. RELEVANT DOMESTIC LAW

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

THE LAW

I. ADMISSIBILITY

16. The applicant complained in substance under Article 6 § 1 of the Convention about the State authorities' failure to enforce the judgment of the Bagaliyskyy Court of 18 December 2000 in due time. Article 6 § 1 of the Convention provides, 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. ..."

A. The Government's preliminary objections

17. The Government submitted that, in line with the Court's case-law, an applicant who has obtained reparation at the national level for an alleged violation of the Convention can no longer be considered a victim for the purposes of Article 34 of the Convention (see, *Marchenko v. Ukraine* (dec.), no. 63520/01, 17 September 2002). Accordingly, as the sum of the award has been deposited with the Bailiffs' Service and will be transferred to the applicant, provided he informs the Bailiffs about his banking details, the judgment of the Bagaliyskyy Court of 18 December 2000 has been enforced and the applicant can no longer be considered a victim of a violation of his rights under Article 6 § 1.

18. The Government further contended that the applicant had not exhausted domestic remedies as he had not challenged the actions or inactivity of the State Bailiffs' Service before the domestic courts.

19. The Government therefore proposed that the application be declared inadmissible or struck out of the Court's list of cases.

20. The applicant disagreed.

21. The Court agrees with the Government in that the judgment in the applicant's favour was enforced in full. The Court, however, recalls that it has already dismissed the Government's similar contentions about the applicant's victim status and exhaustion of domestic remedies in other non-enforcement cases (see, for instance, the *Romashov* judgment, cited above, §§ 26, 27, 30-33) in respect of the delay in that enforcement. It finds no reason to reach a different conclusion in the present case. Accordingly, it dismisses the Government's preliminary objections.

22. The Court considers 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.

B. Other complaints

23. The applicant further complained about a violation of Article 2 of the Convention (right to life) on account of the non-enforcement of the judgment in his favour.

24. 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

25. In their observations, the Government contended that there had been no violation of Article 6 § 1 of the Convention (as in the case of *Romashov*, cited above, § 37).

26. The applicant did not comment on this.

27. The Court notes that the judgment of the Bagaliyskyy Court of 18 December 2000 remained unenforced for some three years and nine months.

28. The Court recalls that it has frequently found violations of Article 6 § 1 of the Convention in cases raising similar issues to the present application (see, for instance, *Romashov*, cited above, §§ 42-46).

29. 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.

III. APPLICATION OF ARTICLE 41 OF THE CONVENTION

30. 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

31. The applicant claimed UAH 2,543.49 (around EUR 421) in respect of pecuniary damage and USD 75,000 (around EUR 61,830) in respect of non-pecuniary damage.

32. The Government contended that the applicant had not substantiated the amounts claimed and submitted that the finding of a violation would constitute sufficient just satisfaction.

33. Making its assessment on an equitable basis, as required by Article 41 of the Convention, the Court considers it reasonable to award the applicant EUR 1,800 in respect of non-pecuniary damage.

B. Costs and expenses

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

C. Default interest

35. 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 complaint under Article 6 § 1 of the Convention 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*
 - (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, EUR 1,800 (one thousand eight 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;
4. *Dismisses* the remainder of the applicant's claim for just satisfaction.

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