



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

SECOND SECTION

CASE OF MALINOVSKIY v. UKRAINE

(Application no. 6028/02)

JUDGMENT

STRASBOURG

31 January 2006

FINAL

31/04/2006

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 Malinovskiy 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 10 January 2006,

Delivers the following judgment, which was adopted on the above-mentioned date:

PROCEDURE

1. The case originated in an application (no. 6028/02) 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 Stanislav Nikolayevich Malinovskiy (“the applicant”), on 22 January 2002.

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

3. On 9 September 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 1949 and lives in the town of Krasnoarmeysk, Donetsk region, Ukraine.

5. On 10 January 2000 the Dimitrov Town Court ordered the Central Mine, a State enterprise, to pay the applicant UAH 1,074.52 in salary arrears. The applicant failed to inform the Court whether he appealed against this judgment or not.

6. In January 2000 the Dimitrov Town Bailiffs' Service opened the enforcement proceedings.

7. On 22 September 2003 the judgment was enforced in full and the Bailiffs' Service terminated the enforcement proceedings.

II. RELEVANT DOMESTIC LAW

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

THE LAW

9. The applicant complained about an unfair hearing and the State authorities' failure to enforce the judgment of the Dimitrov Town Court of 10 January 2000 in due time. He invoked Article 6 § 1 of the Convention, which provides, in so far as relevant, as follows:

“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. ...”

I. ADMISSIBILITY

A. Non-enforcement of judgment

10. The Government raised objections regarding the applicant's victim status and exhaustion of domestic remedies similar to those which the Court has already dismissed in the case of *Romashov v. Ukraine* (cited above, §§ 23-33). The Court considers that the present objections must be rejected for the same reasons.

11. The Court concludes that the applicant's complaint of non-enforcement 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

12. The Court notes that, even assuming that the applicant appealed against the judgment of 10 January 2000, his complaint about an unfair hearing is presented in a very general manner and the Court is not called upon to examine alleged errors of facts and law committed by the domestic judicial authorities, in so far as no unfairness of the proceedings can be detected and the decisions reached cannot be considered arbitrary. Within

the framework of the proceedings, the applicant was able to put forward all necessary arguments in defence of his interests, and the judicial authorities gave them due consideration. It follows that this part of the application is manifestly ill-founded and must be rejected in accordance with Article 35 §§ 3 and 4 of the Convention.

II. MERITS

13. 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).

14. The applicant disagreed.

15. The Court notes that the judgment of the Dimitrov Town Court of 10 January 2000 remained unenforced for more than three years and eight months. It also notes that the judgment was enforced in full only after the communication of the application to the respondent Government.

16. The Court recalls that it has already found a violation of Article 6 § 1 of the Convention in cases raising issues similar to the present application (see, among others, *Romashov v. Ukraine*, cited above, §§ 42-46).

17. 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

18. 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

19. The applicant claimed UAH 5,000¹ in respect of non-pecuniary damage.

20. The Government maintained that the applicant had not substantiated his claim, and submitted that the finding of a violation would constitute sufficient just satisfaction.

21. Making its assessment on an equitable basis, as required by Article 41 of the Convention, the Court considers it reasonable to award the

1. Around 829 euros (“EUR”)

applicant the requested sum of EUR 829 in respect of non-pecuniary damage.

B. Costs and expenses

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

C. Default interest

23. 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* admissible the applicant's complaint about the delay in the enforcement of the judgment in his favour, and inadmissible the remainder of the application;
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 829 (eight hundred and twenty-nine 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.

Done in English, and notified in writing on 31 January 2006, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

S. DOLLÉ
Registrar

J.-P. COSTA
President