



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

SECOND SECTION

CASE OF BERESTOVYY v. UKRAINE

(Application no. 35132/02)

JUDGMENT

STRASBOURG

28 February 2006

FINAL

28/05/2006

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 Berestovyy 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 V. BUTKEVYCH,

Mrs A. MULARONI,

Mrs E. FURA-SANDSTRÖM,

Ms D. JOČIENĖ,

Mr D. POPOVIĆ, *judges*,

and Mrs S. DOLLÉ, *Section Registrar*,

Having deliberated in private on 7 February 2006,

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

PROCEDURE

1. The case originated in an application (no. 35132/02) 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 Ivan Ivanovych Berestovyy (“the applicant”), on 27 June 2001.

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 1942 and lives in the town of Chervonograd, Lviv region, Ukraine.

5. On 8 February 2001 the Chervonogradskyy Town Court of the Lviv Region awarded the applicant UAH 23,351, UAH 4,553.56 and UAH 50 in compensation for pecuniary and non-pecuniary damage, and for legal aid respectively, against the State Mining Enterprise No. 7 “Velykomostivska”.

6. In 2001 – 2003 the judgment was enforced by instalments, the final amount being paid on 14 February 2003.

II. RELEVANT DOMESTIC LAW

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

THE LAW

8. The applicant complained about the State authorities' failure to enforce the judgment of the Chervonogradskyy Town Court of 8 February 2001 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

9. 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* (see the *Romashov* judgment, cited above, §§ 23-33). The Court considers that the present objections must be rejected for the same reasons.

10. The Court concludes that the applicant's complaints under Articles 6 § 1 and 13 of the Convention raise 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 them inadmissible. For the same reasons, the applicant's complaint under Article 1 of Protocol No. 1 cannot be declared inadmissible.

II. MERITS

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

11. In their observations, the Government contended that there had been no violation of Article 6 § 1 of the Convention (as in the cases of *Romashov*, cited above, § 37, and *Voytenko v. Ukraine*, no. 18966/02, § 37, judgment of 29 June 2004). They further insisted that there had been no violation of Article 1 of Protocol No.1 because the judgment in the applicant's favour had been enforced in full.

12. The applicant disagreed.

13. The Court notes that the judgment of the Chervonogradsky Town Court of 8 February 2001 remained unenforced for two years.

14. 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 v. Ukraine*, cited above, §§ 39-43 and 53-55).

15. 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

16. 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 9), 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

17. 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.”

18. The applicant submitted a claim for just satisfaction out of time.

19. The Court observes that the applicant failed to comply with the requirements set out in Rule 60 § 2 of the Rules of Court. In these circumstances, it makes no award under this head (Rule 60 § 3).

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* that there has been a violation of Article 1 of Protocol No.1;
5. *Dismisses* the applicant's claim for just satisfaction.

Done in English, and notified in writing on 28 February 2006, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

S. DOLLÉ
Registrar

J.-P. COSTA
President