



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

SECOND SECTION

CASE OF GAPONENKO v. UKRAINE

(Application no. 9254/03)

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 Gaponenko v. Ukraine,

The European Court of Human Rights (Second Section), sitting as a Chamber composed of:

Mr J.-P. COSTA, *President*,

Mr A.B. BAKA,

Mr I. CABRAL BARRETO,

Mr R. TÜRMEŇ,

Mr V. BUTKEVYCH,

Ms D. JOČIENĚ,

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. 9254/03) 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 Leonid Stepanovych Gaponenko (“the applicant”), on 6 March 2003.

2. The Ukrainian Government (“the Government”) were represented by their Agent, Mrs V. 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 1953 and lives in the city of Chernigiv, Ukraine.

5. In 1999 the applicant instituted proceedings in the Desnyanskyy District Court against the State Company “Atomspetsbud” to recover unpaid salary. On 5 August 1999 the court awarded him 10,353 Ukrainian hryvnas (UAH) in salary arrears.

6. At the end of 2001, the applicant instituted proceedings in the Pecherskyy District Court of Kyiv against the President of Ukraine, the

Cabinet of Ministers of Ukraine, the Ministry of Energy and the Ministry of Justice, for compensation of pecuniary and non-pecuniary damage caused by the non-enforcement of the judgment in his favour. On 29 January 2002 the court found against the applicant, stating that the applicant could have lodged appropriate claims for damages against the State Bailiffs' Service and not against the above defendants, whose responsibility for the non-enforcement of the judgment had not been proved by the claimant. The applicant did not appeal against this decision under the ordinary appellate and cassation procedures.

7. By an order of 27 June 2002, the debtor company was liquidated and all the writs of execution were forwarded to the liquidation commission which had been established.

8. By a letter dated 4 January 2003 from the Ministry of Justice to other creditors, the applicant became aware that the judgment of 5 August 1999 would not be enforced due to the large number of enforcement proceedings against the debtor. In addition, the Ministry had stated that the enforcement of the judgment by an attachment of property required the special authorisation of the Ministry of Emergencies due to the location of the debtor's property in the Chernobyl area, contaminated by radioactivity.

9. The judgment apparently remains unexecuted.

II. RELEVANT DOMESTIC LAW

10. A description of the relevant domestic law can be found in *Mykhaylenko and Others v. Ukraine* (nos. 35091/02 and following, §§ 24-33, ECHR 2004-XII).

THE LAW

11. The applicant complained about the non-enforcement of the judgment in his favour. He invoked Article 6 § 1 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 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

12. The Government raised objections similar to those in the case of *Mykhaylenky and Others v. Ukraine* cited above. However, for the same reasons relied on in that case, the Court considers that these objections must be rejected.

13. The Court concludes that the complaint of the applicant 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. For the same reasons, the applicant’s complaint under Article 1 of Protocol No. 1 cannot be declared inadmissible.

II. MERITS

14. In their observations, the Government put forward arguments similar to those in previous cases, contending that there was no violation of Article 6 § 1 of the Convention or Article 1 of Protocol No. 1 (see, the *Mykhaylenky and Others* judgment, cited above, §§ 48-49, 58; *Sharenok v. Ukraine*, no. 35087/02, §§ 23 and 32, 22 February 2005).

15. The Court notes that the judgment in the applicant’s favour has not been enforced for a considerable period of time – some six years and six months.

16. 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 like the present application (see, the *Mykhaylenky and Others* judgment, cited above, §§ 55 and 64; *Sharenok v. Ukraine*, cited above, §§ 29 and 38).

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 and Article 1 of Protocol No. 1.

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 10,353 in respect of pecuniary damage, which represented the amount of the judgment debt¹, and UAH 100,000² in respect of non-pecuniary damage.

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

21. 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 claims, the Court, making its assessment on an equitable basis, as required by Article 41 of the Convention, awards the applicant EUR 2,000 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* the application admissible;

¹ At the time of adoption of the judgment in the applicant’s favour this amount corresponded to 2,156.98 euros (“EUR”)

² Approximately EUR 16,796.9

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*
 - (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 2,000 (two thousand 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 28 February 2006, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

S. DOLLÉ
Registrar

J.-P. COSTA
President