



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

FIFTH SECTION

CASE OF ASTANKOV v. UKRAINE

(Application no. 5631/03)

JUDGMENT

STRASBOURG

1 June 2006

FINAL

01/09/2006

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 Astankov v. Ukraine,

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

Mr P. LORENZEN, *President*,

Mrs S. BOTOUCHAROVA,

Mr K. JUNGWIERT,

Mr V. BUTKEVYCH,

Mrs M. TSATSA-NIKOLOVSKA,

Mr R. MARUSTE,

Mrs R. JAEGER, *judges*,

and Mrs C. WESTERDIEK, *Section Registrar*,

Having deliberated in private on 9 May 2006,

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

PROCEDURE

1. The case originated in an application (no. 5631/03) 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 Nikolay Ivanovich Astankov (“the applicant”), on 10 February 2003.

2. The applicant was represented by Mr O. Derevyanko, a lawyer practising in the town of Pavlograd. 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.

4. On 1 April 2006 this case was assigned to the newly constituted Fifth Section (Rule 25 § 5 and Rule 52 § 1).

THE FACTS

I. THE CIRCUMSTANCES OF THE CASE

5. The applicant was born in 1944 and lives in the town of Ternivka, the Dnipropetrovsk region.

6. The applicant is the former employee of the Pavlogradska State Mine. He is suffering from an occupational disease.

7. On 8 October 2001 the Ternivka Town Court ordered the Mine to pay the applicant UAH 13,678¹ in occupational disability allowance arrears.

8. On 14 November 2001 the Pavlograd Town Bailiffs' Service instituted enforcement proceedings.

9. According to the Government, the judgment was enforced in instalments: during the periods of November – December 2001, March – December 2002, August – December 2003, and July – November 2004 the applicant received a total of UAH 10,472², and on 21 December 2004 he received UAH 3,206³.

10. The applicant did not contest that the judgment had been enforced in full on the latter date.

II. RELEVANT DOMESTIC LAW

11. 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

A. Complaint about the length of the non-enforcement of the judgment in the applicant's favour

12. The applicant complained about the State authorities' failure to enforce the judgment of the Ternivka Town Court of 8 October 2001 in full and 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...”

1. Around 3,981 euros – “EUR”.

2. Around 1,712 euros – “EUR”.

3. Around EUR 524.

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 ...”

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

14. The Court concludes that this part of the application 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

15. The applicant further complained about a violation of Article 17 of the Convention (prohibition of abuse of rights) without any further specification.

16. The Court finds that this part of the application is unsubstantiated and must therefore be rejected as being manifestly ill-founded, pursuant to Article 35 §§ 3 and 4 of the Convention.

II. MERITS**A. The applicant’s complaints under Article 6 § 1 of the Convention and Article 1 of Protocol No. 1**

17. In their observations, the Government contended that there had been no violation of either Article 6 § 1 of the Convention or Article 1 of Protocol No. 1, as in the cases of *Romashov v. Ukraine* and *Voytenko v. Ukraine* (see *Romashov*, cited above, § 37, and *Voytenko v. Ukraine*, no. 18966/02, § 37, judgment of 29 June 2004).

18. The applicant disagreed.

19. The Court notes that the judgment of the Ternivka Town Court of 8 October 2001 remained unenforced for around three years and two months.

20. 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, *Romashov*, cited above, §§ 42-46, and *Voytenko*, cited above, §§ 53-55).

21. 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

22. 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 13), 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

23. 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

24. The applicant claimed USD 10,000¹ by way of just satisfaction.

25. The Government did not comment on the applicant's claims.

26. The Court, making its assessment on an equitable basis, as required by Article 41 of the Convention, awards the applicant EUR 800 in respect of non-pecuniary damage.

1. Around EUR 8,262.

B. Costs and expenses

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

C. Default interest

28. 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 complaints under Articles 6 § 1 and 13 of the Convention and Article 1 of Protocol No. 1 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* that there has been a violation of Article 1 of Protocol No. 1;
4. *Holds* that there has been a violation of Article 13 of the Convention;
5. *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 800 (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;
6. *Dismisses* the remainder of the applicant's claim for just satisfaction.

Done in English, and notified in writing on 1 June 2006, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Claudia WESTERDIEK
Registrar

Peer LORENZEN
President