



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

FIFTH SECTION

CASE OF SINKO v. UKRAINE

(Application no. 4504/04)

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 Sinko v. Ukraine,

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

Mr P. LORENZEN, *President*,

Mrs S. BOTOCHAROVA,

Mr K. JUNGWIERT,

Mr V. BUTKEVYCH,

Mrs M. TSATSA-NIKOLOVSKA,

Mr R. MARUSTE,

Mrs R. JAEGER, *judges*,

and Ms 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. 4504/04) 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 Anatoliy Vasilyevich Sinko (“the applicant”), on 23 December 2003.

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

3. On 24 March 2005 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 1961 and lives in the town of Rodinske, the Donetsk region.

6. In 1998 the applicant instituted proceedings in the Krasnoarmiysk Town Court against the State Enterprise Rodinska Mine (the “MR”), seeking recovery of salary arrears and compensation. By decision of 13 January 1999, the court awarded the applicant UAH 3,204.07¹ in salary arrears and other payments.

7. On 4 February 2003 the Ministry of Fuel and Energy of Ukraine liquidated the MR and appointed the State Enterprise “Krasnoarmiyskvugillya” as the MR’s successor.

8. On 9 October 2003 the Bailiffs’ Service informed the applicant that the judgment in his favour could not be executed due to the lack of funds of the debtor and that the procedure for the forced sale of assets belonging to the debtor was blocked by the Law on the Introduction of a Moratorium on the Forced Sale of Property of 29 November 2001.

9. In 2003 the applicant instituted proceedings in the Krasnoarmiysk Town Court against the State Enterprise “Krasnoarmiyskvugillya” for compensation. By decision of 26 November 2003, the court awarded the applicant UAH 1,312.38² in compensation.

10. On 25 April 2005 the judgments in the applicant’s favour were enforced in full.

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

12. The applicant complained under Article 6 § 1 of the Convention about the State authorities’ failure to enforce the judgments of the Krasnoarmiysk Town Court of 13 January 1999 and 26 November 2003 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 ...”

1. Around 518 euros – “EUR”.

2. Around EUR 212.

I. ADMISSIBILITY

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 considers that 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.

II. MERITS

15. 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 v. Ukraine* (see *Romashov*, cited above, § 37).

16. The applicant disagreed.

17. The Court notes that the judgments of the Krasnoarmiysk Town Court of 13 January 1999 and 26 November 2003 remained unenforced for around six years and three months, and one year and five months, respectively.

18. 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 example, *Romashov*, cited above, §§ 42-46).

19. 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

20. 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

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

1. Around EUR 810.

22. The Government contended that the applicant had not substantiated the amounts claimed in respect of non-pecuniary damage and submitted that the finding of a violation would constitute sufficient just satisfaction.

23. Making its assessment on an equitable basis, as required by Article 41 of the Convention, the Court considers it reasonable to award the applicant the requested amount of EUR 810 in respect of non-pecuniary damage.

B. Costs and expenses

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

C. Default interest

25. 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;
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 810 (eight hundred and ten 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 1 June 2006, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Claudia WESTERDIEK
Registrar

Peer LORENZEN
President