



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

FIFTH SECTION

CASE OF NEDBAYEV v. UKRAINE

(Application no. 18485/04)

JUDGMENT

STRASBOURG

FINAL

15/09/2006

15 June 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 Nedbayev 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 22 May 2006,

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

PROCEDURE

1. The case originated in an application (no. 18485/04) 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 Dmitriy Fomich Nedbayev (“the applicant”), on 5 May 2004.

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 1949 and lives in the town of Krasnoarmiysk, the Donetsk region.

6. In 1997 the applicant instituted proceedings in the Dimitrivsk Town Court against the Mine Construction Department of the Vuglebud State Joint Stock Company, seeking recovery of salary arrears and compensation.

By decision of 20 June 1997, the court awarded the applicant UAH 8,317.13¹ in salary arrears and other payments.

7. On 23 March 2004 the Bailiffs' Service informed the applicant that the judgment in his favour had not been executed due to the substantial number of enforcement proceedings against the debtor and the debtor's lack of funds.

8. In the years of 1997 – 1999 the applicant was paid UAH 4,868.29² in instalments. In June 2004 he was paid UAH 2,725.29³.

9. On 22 August 2005 the applicant was paid the remaining amount (UAH 723.55⁴) of the judgment debt.

II. RELEVANT DOMESTIC LAW

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

THE LAW

I. SCOPE OF THE CASE

11. The Court notes that, after the communication of the case to the respondent Government, the applicant introduced a new complaint under Article 1 of Protocol No. 1 with regard to the facts of the present case.

12. In the Court's view, the new complaint is not an elaboration of the applicant's original complaint under Article 6 of the Convention, lodged with the Court approximately one year and a half earlier, on which the parties have commented. The Court considers, therefore, that it is not appropriate now to take these matters up separately (see *Skubenko v. Ukraine* (dec.), no. 41152/98, 6 April 2004).

II. ADMISSIBILITY

13. The applicant complained under Article 6 § 1 of the Convention about the State authorities' failure to enforce the judgment of the Dimitrivsk Town Court of 20 June 1997 in due time. Article 6 § 1 of the Convention provides, insofar as relevant, as follows:

1. Around 1,341 euros.

2. Around EUR 785.

3. Around EUR 439.

4. Around EUR 117.

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. ...”

14. The Government raised objection regarding exhaustion of domestic remedies similar to one which the Court has already dismissed in the case of *Romashov v. Ukraine* (see *Romashov*, cited above, §§ 30-33). The Court considers that the present objection must be rejected for the same reasons.

15. 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.

III. MERITS

16. In their observations, the Government put forward arguments similar to those in the case of *Romashov v. Ukraine*, contending that there had been no violation of Article 6 § 1 of the Convention (see *Romashov*, cited above, § 37).

17. The applicant disagreed.

18. The Court notes that the judgment of the Dimitrivsk Town Court of 20 June 1997 remained unenforced for more than eight years, out of which the period of seven years and nine months falls within the Court's competence *ratione temporis*.

19. 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).

20. 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.

IV. APPLICATION OF ARTICLE 41 OF THE CONVENTION

21. 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

22. The applicant claimed UAH 20,460.14¹ in respect of pecuniary damage relating to the loss of value of the judgment debt. This claim was not based on a detailed calculation. He further claimed UAH 5,000² in respect of non-pecuniary damage.

23. The Government maintained that the applicant's claims were unsubstantiated and submitted that the finding of a violation would constitute sufficient just satisfaction.

24. The Court does not discern any causal link between the violation found and the pecuniary damage alleged; it therefore rejects this claim. However, the Court considers that the applicant must have sustained non-pecuniary damage, and awards him the sum claimed in respect of non-pecuniary damage (EUR 806).

B. Costs and expenses

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

C. Default interest

26. 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;

1. Around EUR 3,298.

2. Around EUR 806.

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 806 (eight hundred and six 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;

4. *Dismisses* the remainder of the applicant's claim for just satisfaction.

Done in English, and notified in writing on 15 June 2006, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Claudia WESTERDIEK
Registrar

Peer LORENZEN
President