



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

FIFTH SECTION

CASE OF GUBENKO v. UKRAINE

(Application no. 22924/02)

JUDGMENT

STRASBOURG

10 August 2006

FINAL

10/11/2006

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 Gubenko 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,
Mr J. BORREGO BORREGO, *judges*,
and Mrs C. WESTERDIEK, *Section Registrar*,

Having deliberated in private on 10 August 2006,

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

PROCEDURE

1. The case originated in an application (no. 22924/02) 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 Valeriy Konstantinovich Gubenko (“the applicant”), on 28 May 2002.

2. The Ukrainian Government (“the Government”) were represented by their Agents, Mrs V. Lutkovska and Mr Y. Zaytsev.

3. On 24 March 2005 the Court decided to communicate the applicant’s complaint under Article 6 § 1 of the Convention concerning the non-enforcement of the judgment in the applicant’s favour 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 1952 and resides in the town of Novogradovka, Donetsk region, Ukraine.

6. In 2000 the applicant instituted proceedings in the Novogradovskiyy Town Court against the Novogradovskaya Mining Company No. 1/3 - a State-owned enterprise - to recover compensation for work related injuries

and other payments. By decision of 20 March 2000, the court awarded the applicant UAH 18,092.56¹.

7. On 18 April 2000 the Bailiffs' Service suspended the enforcement proceedings in the applicant's case. On 12 May 2000 the Novogradovskiy Town Court ordered the Bailiffs' Service to resume the enforcement proceedings.

8. By decisions of 30 August 2000 and 14 May 2001, in the course of bankruptcy proceedings against the debtor, the Commercial Court of the Donetsk Region imposed a ban on the seizure and sale of the debtor's assets.

9. In 2001 the applicant instituted proceedings in the Novogradovskiy Town Court against the Bailiffs' Service for failure to enforce the judgment in his favour. On 3 September 2001 the court found against the applicant, finding no fault on the part of the bailiff. On 5 November 2001 the Court of Appeal of the Donetsk Region upheld the decision of the first-instance court. On 26 March 2002 the judge of the Novogradovskiy Town Court adjourned consideration of the applicant's appeal in cassation for failure to comply with procedural requirements and to pay the court fees. The parties did not submit any information with regard to the outcome of these proceedings.

10. In February 2003 the Novogradovskaya Mining Company was reorganised and became a structural subdivision of the Selidovugol Mining Company. As the latter thereby became the debtor, in February 2004 the enforcement proceedings were transferred to the Selidovskiy Town Bailiffs' Service (*Отдел Государственной исполнительной службы Селидовского городского управления юстиции*).

11. The applicant instituted proceedings in the Selidovskiy Town Court against the Selidovskiy Town Bailiffs' Service claiming compensation for material and moral damage caused by a lengthy non-enforcement of the judgment in his favour. On 30 June 2005 the Selidovskiy Town Court asked the applicant to pay a court fee. The parties did not submit any further information about these proceedings.

12. The judgment of 20 March 2000 has been enforced in part and the applicant was paid UAH 11,903², the remaining debt being UAH 6,189.56³.

II. RELEVANT DOMESTIC LAW

13. The relevant domestic law is summarised in the judgment of *Sokur v. Ukraine* (no. 29439/02, § 17-22, 26 April 2005).

¹ At the material time around 2,592.39 euros (EUR)

² Around EUR 1,705.52.

³ Around EUR 886.87.

THE LAW

I. SCOPE OF THE CASE

14. The Court notes that, after the communication of the case to the respondent Government, the applicant introduced a new complaint, alleging a violation of Article 1 of Protocol No. 1 on account of the non-enforcement of the judgment in his favour.

15. In the Court's view, the new complaint is not an elaboration of the applicant's original complaint under Article 6 § 1 of the Convention, lodged with the Court approximately two years earlier, on which the parties have commented. The Court considers, therefore, that it is not appropriate now to take these matters up separately (see *Piryanik v. Ukraine*, no. 75788/01, § 20, 19 April 2005).

II. ADMISSIBILITY

A. Complaints under Articles 2 § 1 and 4 § 1 of the Convention

16. The applicant complained that the existing situation infringed his right to life under Article 2 § 1 of the Convention, given his low standard of living. The Court reiterates that, according to its case-law, neither Article 2 nor any other provision of the Convention can be interpreted as conferring on an individual a right to enjoy any given standard of living (*Wasilewski v. Poland*, no. 32734/96, 20 April 1999). Moreover, the applicant has not shown that he suffers such destitution as to put his life at risk (see *Sokur v. Ukraine* (dec.), no. 29439/02, 26 November 2002). It follows that this complaint is incompatible *ratione materiae* with the provisions of the Convention and must be rejected in accordance with Article 35 §§ 3 and 4 of the Convention.

17. The applicant next complained about a violation of Article 4 § 1 of the Convention, referring to the fact that he was forced to work without receiving remuneration. The Court notes that the applicant performed his work voluntarily and his entitlement to payment has never been denied. The dispute thus involves civil rights and obligations, but does not disclose any element of slavery or forced or compulsory labour within the meaning of this provision (see *Sokur v. Ukraine* (dec.), cited above). In these circumstances, the Court considers that this part of the application must be rejected as being manifestly ill-founded pursuant to Article 35 §§ 3 and 4 of the Convention.

B. Complaint under Article 6 § 1 of the Convention

18. The applicant complained about the length of the non-enforcement of the judgment in his favour. He invoked Article 6 § 1 of the Convention, which 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. ...”

19. The Government raised objections regarding the exhaustion of domestic remedies similar to those which the Court has already dismissed in the case of *Romashov v. Ukraine* (no. 67534/01, §§ 28-32, 27 July 2004). The Court considers that the present objections must be rejected for the same reasons.

20. The Court concludes that the applicant's complaint under Article 6 § 1 of the Convention about the delay in the enforcement of the judgment of the Novogradovskiy Town Court is not manifestly ill-founded within the meaning of Article 35 § 3 of the Convention. It further notes that it is not inadmissible on any other grounds. It must therefore be declared admissible.

III. MERITS

21. The Government maintained that the responsibility of the State in this situation was limited to the organisation and proper conduct of enforcement proceedings and that the length of the enforcement proceedings had been caused by the critical financial situation of the debtor company and the energy sector of the Ukrainian economy in general. The Government contended that the Bailiffs' Service performed all necessary actions and cannot be blamed for the delay. The regularity of the enforcement proceedings in the present case was confirmed by the domestic courts. The Government argued that the State could not be considered responsible for the debts of its enterprises and that the State annually allocated substantial amounts from its budget to cover part of the disability allowances and other compensatory payments to the workers in the mining industry.

22. The applicant disagreed.

23. The Court notes that the judgment in the applicant's favour has not been fully enforced for more than six years and three months.

24. The Court recalls that it has already found violations of Article 6 § 1 of the Convention in cases like the present application (see, among others, *Sokur v. Ukraine*, cited above, §§ 30-37).

25. Having examined all the material submitted to it, the Court considers that the Government have not put forward any fact or argument capable of persuading it to reach a different conclusion in the present case.

26. There has, accordingly, been a violation of Article 6 § 1 of the Convention.

IV. APPLICATION OF ARTICLE 41 OF THE CONVENTION

27. 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

28. The applicant claimed 8,921 EUR in respect of pecuniary and non-pecuniary damage.

29. The Government maintained that the applicant has not substantiated his claims.

30. The Court does not discern any causal link between the violation found and the pecuniary damage alleged; it therefore rejects this claim.

31. However, in so far as the judgment in the applicant's favour has not been enforced in full (paragraph 12 above), the Court considers that, if the Government were to pay the remaining judgment debt owed to the applicant, it would constitute full and final settlement of his claim for pecuniary damage.

32. The Court further considers that the applicant must have sustained non-pecuniary damage, and awards him EUR 2,000 in this respect.

B. Costs and expenses

33. The applicant did not submit any claim under this head within the set time-limit; the Court therefore makes no award in this respect.

C. Default interest

34. 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 complaint under Article 6 § 1 of the Convention 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*
 - (a) that the respondent State is to pay the applicant, within three months from the date on which the judgment becomes final in accordance with 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;
 - (b) that the above amount shall be converted into the national currency of the respondent State at the rate applicable at the date of settlement, plus any tax that may be chargeable;
 - (c) 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 10 August 2006, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Claudia WESTERDIEK
Registrar

Peer LORENZEN
President