



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

FIFTH SECTION

CASE OF TARNAVSKIY v. UKRAINE

(Application no. 6693/03)

JUDGMENT

STRASBOURG

12 October 2006

FINAL

12/01/2007

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 Tarnavskiy 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 M. VILLIGER, *judges*,

and Mrs C. WESTERDIEK, *Section Registrar*,

Having deliberated in private on 18 September 2006,

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

PROCEDURE

1. The case originated in an application (no. 6693/03) 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 Yuriy Ivanovich Tarnavskiy (“the applicant”), on 3 February 2003.

2. The Ukrainian Government (“the Government”) were represented by their Agent, Mr Yu. Zaytsev.

3. On 13 December 2005 the Court decided to communicate the complaints under Article 6 § 1 of the Convention and Article 1 of Protocol No. 1 concerning the non-enforcement of the judgments 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.

THE FACTS

I. THE CIRCUMSTANCES OF THE CASE

4. The applicant was born in 1936 and lives in Dnepryany, the Kherson region. He is a former employee of the State-controlled OJSC “Pivdennelektromash” (“the Company,” BAT “Південелектромаши”).

5. The background facts for the case are described in the case of *Anatskiy v. Ukraine* (no. 10558/03, §§ 5-8, 13 December 2005). The

circumstances of the present case, as submitted by the parties, may be summarised as follows.

6. On 11 January 2000 the Company's labour disputes commission ("the Commission," *комісія з трудових спорів ВАТ "Південелектромаш"*) ordered the Company to pay the applicant UAH 1,519¹ in salary arrears.

7. On 19 January 2000 the Nova Kakhovka Bailiffs' Service ("the Bailiffs," *Відділ Державної виконавчої служби Новокаховського міського управління юстиції*) initiated the enforcement proceedings for the above decision.

8. On 10 January 2002 the Nova Kakhovka Court (*Новокаховський міський суд Херсонської області*) ordered the Company to pay the applicant an additional amount of UAH 3,193.70². This judgment became final and the enforcement writs were transferred to the Bailiffs.

9. On 26 June 2002 the Bailiffs returned the execution writs in respect of the judgment of 10 January 2002 to the applicant unenforced. They stated that the judgment could not be enforced for the debtor's lack of funds. They further advised the applicant of his right to resubmit these writs at any time, but until 26 July 2005. On 18 February 2004 the applicant resubmitted the writs and on 19 February 2004 the Bailiffs initiated the enforcement proceedings.

10. As of 15 March 2006, the applicant was no. 4,916 in the creditors' waiting list in respect of the enforcement of the Commission's decision and no. 4,918 in respect of the enforcement of the court judgment. Both of them remain unenforced to present day.

II. RELEVANT DOMESTIC LAW

11. The relevant domestic law is summarised in the judgments of *Romashov v. Ukraine* (no. 67534/01, §§ 16-18, 27 July 2004) and *Trykhlid v. Ukraine* (no. 58312/00, §§ 25-32, 20 September 2005).

THE LAW

12. The applicant complained about the State authorities' failure to enforce the decision of 11 January 2000 and the judgment of 10 January 2002. He invoked Article 6 § 1 of the Convention and Article 1 of Protocol No. 1, which provide, insofar as relevant, as follows:

1. EUR 264.60.

2. EUR 674.70.

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

13. The Government raised objections, contested by the applicant, regarding exhaustion of domestic remedies similar to those already dismissed in a number of the Court's judgments regarding non-enforcement against the State-owned companies (see e.g. among many others, *Mykhaylenky and Others v. Ukraine*, nos. 35091/02 and following, §§ 38-39, ECHR 2004-XII). The Court considers that these objections must be rejected for the same reasons.

14. The Court concludes that the applicant's complaint under Article 6 § 1 of the Convention about the delay in the enforcement of the decision of 11 January 2000 and the judgment of 10 January 2002 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 complaint inadmissible. It must therefore be declared admissible. For the same reasons, the Court declares admissible the applicant's complaint under Article 1 of Protocol No. 1.

II. MERITS

15. In their observations, the Government contended that there had been no violation of Article 6 § 1 of the Convention or Article 1 of Protocol No. 1.

16. The applicant disagreed.

17. The Court notes that the decision of 11 January 2000 has remained unenforced for the period exceeding six years and nine months and the judgment of 10 January 2002 – for the period exceeding four years and nine months.

18. The Court recalls that it has already found violations of Article 6 § 1 of the Convention and Article 1 of Protocol No. 1 in a number of similar cases, including the cases concerning the same State-owned debtor – the OJSC “Pivdenelektromash” (see, for instance, *Trykhliv v. Ukraine*, cited above, §§ 52-53; *Chernyayev v. Ukraine*, no. 15366/03, §§ 19-20 and 23-25, 26 July 2005 and *Anatskiy v. Ukraine*, cited above, §§ 21-22).

19. Having examined all the material in its possession, 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.

20. 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

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 the unsettled debts due to him under the decision and the judgment at issue by way of compensation for pecuniary damage. Additionally, he claimed EUR 11,290 (eleven thousand two hundred ninety euros) in respect of non-pecuniary damage.

23. The Government submitted that these claims should be rejected.

24. The Court notes that, as the decision of the labour disputes commission of 11 January 2000 and the judgment of the Nova Kakhovka Court of 10 January 2002 remain unenforced, the Government should pay the applicant the outstanding debt in order to satisfy his claim for pecuniary damage.

25. The Court further takes the view that the applicant has suffered some non-pecuniary damage as a result of the violations found. Making its assessment on an equitable basis, as required by Article 41 of the Convention, the Court awards the applicant the sum of EUR 2,600 in respect of non-pecuniary damage.

B. Costs and expenses

26. The applicant also claimed EUR 300 in postal and other expenses and EUR 600 in legal fees. In support of his claims, he presented only a

copy of his contract with Mr F. for legal representation in the matters related to the applicant's unspecified entrepreneurial activity.

27. The Government maintained that the applicant did not substantiate his claims. They also mentioned that the above contract did not relate to the applicant's Convention proceedings.

28. Regard being had to the Court's case-law and the information in its possession, the Court awards the applicant EUR 100 under this head (see *mutatis mutandis*, *Romanchenko v. Ukraine*, no. 5596/03, § 38, 22 November 2005).

C. Default interest

29. 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* that there has been a violation of Article 1 Protocol No. 1 of the Convention;
4. *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 unsettled debt still owed to him, as well as EUR 2,600 (two thousand six hundred euros) in respect of non-pecuniary damage and EUR 100 (one hundred euros) in respect of costs and expenses to 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;
 - (b) that from the expiry of the above-mentioned three months until settlement simple interest shall be payable on the above amounts at a rate equal to the marginal lending rate of the European Central Bank during the default period plus three percentage points;
5. *Dismisses* the remainder of the applicant's claim for just satisfaction.

Done in English, and notified in writing on 12 October 2006, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Claudia WESTERDIEK
Registrar

Peer LORENZEN
President