



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

FIFTH SECTION

CASE OF FYODOROV v. UKRAINE

(Application no. 43121/04)

JUDGMENT

STRASBOURG

9 November 2006

FINAL

09/02/2007

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 Fyodorov v. Ukraine,

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

Mr P. LORENZEN, *President*,

Mrs S. BOTOUCHAROVA,

Mr V. BUTKEVYCH,

Mrs M. TSATSA-NIKOLOVSKA,

Mr R. MARUSTE,

Mr J. BORREGO BORREGO,

Mrs R. JAEGER, *judges*,

and Mrs C. WESTERDIEK, *Section Registrar*,

Having deliberated in private on 16 October 2006,

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

PROCEDURE

1. The case originated in an application (no. 43121/04) 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 Dmitriyevich Fyodorov (“the applicant”) on 2 March 2004.

2. The applicant was represented by Mr Vladislav Nikolaeyevich Bychkovskiy, who lives in Miusinsk, Ukraine. The Ukrainian Government (“the Government”) were represented by their Agents, Mrs V. Lutkovska and Mr Y. Zaytsev.

3. On 5 December 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**THE CIRCUMSTANCES OF THE CASE**

5. The applicant, Mr Anatoliy Dmitriyevich Fyodorov, is a Ukrainian national, who lives in the town of Krasniy Lutch, the Lugansk Region.

6. On 28 May 2003 the Krasniy Lutch Town Court ordered the State Enterprise “DA” to pay the applicant UAH 1,124.27¹ in salary arrears (*Решение Краснолучанского суда Луганской области*).

7. On 11 August 2003 the Krasniy Lutch Town Bailiffs' Service (*Відділ Державної виконавчої служби Краснолуцького міського управління юстиції*) instituted enforcement proceedings. By letter of 25 September 2003, it informed the applicant that the judgment could not be enforced due to the debtor's lack of funds.

8. On 27 December 2005 the judgment in the applicant's favour was enforced in full.

II. RELEVANT DOMESTIC LAW

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

THE LAW

10. The applicant complained about the length of the non-enforcement of the judgment in his favour. He invoked Article 6 § 1 of the Convention and Article 1 of Protocol No. 1. These Articles 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. ...”

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”

¹ At the material time around EUR 189.

I. ADMISSIBILITY

11. The Government raised objections regarding the applicant's victim status 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.

12. 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 Krasniy Lutch 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. For the same reasons, the applicant's complaint under Article 1 of Protocol No. 1 cannot be declared inadmissible.

II. MERITS

13. The Government maintained that the length of the enforcement proceedings was not excessive and had been caused by the critical financial situation of the debtor company. The Government contended that the Bailiffs' Service performed all necessary actions and cannot be blamed for the delay.

14. The applicant disagreed.

15. The Court notes that the judgment in the applicant's favour remained unenforced for two years and seven months.

16. 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 like the present application (see, *Sokur v. Ukraine*, cited above, §§ 30-37; *Shmalko v. Ukraine*, no. 60750/00, §§ 55-57, 20 July 2004).

17. Having examined all the materials 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.

18. There has, accordingly, been a violation of Article 6 § 1 of the Convention and of Article 1 of Protocol No. 1.

III. APPLICATION OF ARTICLE 41 OF THE CONVENTION

19. 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

20. The applicant claimed UAH 300¹ in respect of pecuniary damage and UAH 3,000² in respect of non-pecuniary damage.

21. The Government did not object to the amounts claimed in respect of pecuniary and non-pecuniary damage.

22. Given the submissions of the parties and deciding on an equitable basis, the Court awards the applicant the amounts claimed.

B. Costs and expenses

23. 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

24. 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 of Protocol No.1 of the Convention;

¹ Around EUR 50

² Around EUR 500

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, EUR 50 (fifty euros) in respect of pecuniary damage and EUR 500 (five hundred 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.

Done in English, and notified in writing on 9 November 2006, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Claudia WESTERDIEK
Registrar

Peer LORENZEN
President