



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

FIFTH SECTION

CASE OF VORONA v. UKRAINE

(Application no. 44372/02)

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 Vorona 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 16 October 2006,

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

PROCEDURE

1. The case originated in an application (no. 44372/02) 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 Aleksey Grigoryevich Vorona (“the applicant”), on 23 October 2002.

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

3. On 2 June 2004 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 1949 and resides in the town of Novogrodivka, Donetsk region, Ukraine.

5. The applicant instituted two sets of proceedings in the Novogrodivskyy Town Court of Donetsk Region against the “Novogrodivska” Mining Company - a State-owned enterprise - to recover salary arrears and compensation due to him.

6. On 23 March and 20 April 2001 the Novogradivsky Town Court found in favour of the applicant (*Рішення Новогродівського міського суду Донецької області*) and awarded him 2,958.73¹ Ukrainian hryvnias (“UAH”) and UAH 3,114.24², respectively. These judgments were sent for enforcement to the Novogradivsky Town Bailiffs' Service (*Відділ Державної виконавчої служби Новогродівського міського управління юстиції*).

7. In May 2001 the applicant instituted proceedings in the Novogradivsky Town Court of the Donetsk Region against the Novogradivsky Town Bailiffs' Service for failure to enforce the judgment of 23 March 2001 in his favour. On 14 August 2001 the Town Court rejected the applicant's claim, finding no fault had been committed by the Bailiffs' Service. The court stated that the Bailiffs' Service had acted properly in enforcing the judgment of 23 March 2001. However, by a number of decisions of the Commercial Court of the Donetsk Region, the Bailiffs' Service had been prohibited from selling the property of the Mining Company, due to the bankruptcy proceedings which had been initiated against the company. On 5 November 2001 the Court of Appeal of the Donetsk Region dismissed the applicant's appeal. On 23 May 2002 the Supreme Court of Ukraine rejected the applicant's appeal in cassation.

8. In October 2001, the applicant instituted another set of proceedings in the Novogradivsky Town Court of the Donetsk Region against the Novogradivsky Town Bailiffs' Service for failure to enforce the judgment of 20 April 2001 in his favour. On 17 October 2001, the Town Court rejected the applicant's claim, for the same reasons as before. On 11 February 2002 the Court of Appeal of the Donetsk Region dismissed the applicant's appeal. On 18 March 2002 the Novogradivsky Town Court of the Donetsk Region fixed a time-limit until 30 March 2002 for the applicant to bring a cassation appeal in compliance with the procedural formalities prescribed by law. The parties did not submit any further information about these proceedings.

9. On 26 December 2001, the ban on the forced sale of assets belonging to undertakings in which the State holds at least 25% of the share capital was entrenched in the Law on the Introduction of a Moratorium on the Forced Sale of Property.

10. In February 2003 the Novogradivska Mining Company was reorganised and became a structural subdivision of the Selidovugol State Mining Company. As the latter thereby became the debtor, in February 2004 the enforcement proceedings were transferred to the Selidivsky Town Bailiffs' Service (*Відділ Державної виконавчої служби Селідівського міського управління юстиції*).

1. At the material time around 615.88 euros (“EUR”).

2. At the material time around EUR 641.54.

11. By 31 August 2004 the judgments in the applicant's favour were enforced in full.

12. The applicant instituted proceedings in the Selidivskyy Town Court of the Donetsk region against the Selidivskyy Town Bailiffs' Service claiming compensation for material and moral damage caused to him by the non-enforcement of the judgments in his favour. On 27 December 2004 the court found against the applicant. The applicant appealed against this judgment. The parties did not provide any further information about these proceedings.

13. The applicant instituted other proceedings in the Novogrodivskyy Town Court of Donetsk Region against the "Novogrodivska" Mining Company claiming further salary arrears allegedly due to him for the period of the non-enforcement by the Company of the judgments in his favour. On 19 January 2005 the court found against the applicant. The applicant appealed against this judgment. The parties did not provide any further information about these proceedings.

II. RELEVANT DOMESTIC LAW

14. A description of the relevant domestic law can be found in *Sokur v. Ukraine* (no. 29439/02, § 17-22, 26 April 2005).

THE LAW

I. ALLEGED VIOLATION OF ARTICLES 2 AND 4 OF THE CONVENTION

15. 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* (dec.), 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.

16. The applicant next complained about a violation of Article 4 § 1 of the Convention, referring to the fact that he had been 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.

II. ALLEGED VIOLATION OF ARTICLE 6 § 1 OF THE CONVENTION AND ARTICLE 1 OF PROTOCOL NO. 1

17. The applicant complained about the length of the non-enforcement of the judgments 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”

A. Admissibility

18. 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, §§ 23-27, 27 July 2004). The Court considers that the present objections must be rejected for the same reasons.

19. The Court concludes that the applicant's complaint under Article 6 § 1 of the Convention about the delay in the enforcement of the judgments of the Novogrodivskyy Town Court raises 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. For the same reasons, the applicant's complaint under Article 1 of Protocol No. 1 cannot be declared inadmissible.

B. Merits

20. The Government maintained that the judgments in the applicant's favour were enforced in full. They further 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 further 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 disability allowances and other compensatory payments to the workers in the mining industry.

21. The applicant disagreed.

22. The Court notes that the judgments in the applicants' favour remained non-enforced for more than three years and five months and for more than three years and four months, respectively.

23. 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 applications (see, *Sokur v. Ukraine*, judgment cited above, §§ 30-37; *Shmalko v. Ukraine*, no. 60750/00, §§ 55-57, 20 July 2004).

24. 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.

25. 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

26. 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

27. The applicant claimed EUR 6,509 in respect of pecuniary and non-pecuniary damage.

28. The Government maintained that the applicant had not substantiated his claims.

29. 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 EUR 1,300 in respect of non-pecuniary damage.

B. Costs and expenses

30. 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

31. 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 and Article 1 of Protocol No. 1 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* that there has been a violation of Article 1 of Protocol No. 1;

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 1,300 (one thousand three hundred euros) in respect of non-pecuniary damage, plus any tax that may be chargeable;

(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;

(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.

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

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