



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

FIFTH SECTION

CASE OF PROKHOROV v. UKRAINE

(Application no. 43138/04)

JUDGMENT

STRASBOURG

30 November 2006

FINAL

28/02/2007

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 Prokhorov v. Ukraine,

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

Mr P. LORENZEN, *President*,

Mrs S. BOTOCHAROVA,

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 6 November 2006,

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

PROCEDURE

1. The case originated in an application (no. 43138/04) 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 Vladimir Alekseyevich Prokhorov (“the applicant”), on 2 March 2004.

2. The applicant was represented by Mr V. Bychkovskiy from Miusinsk. The Ukrainian Government (“the Government”) were represented by Mr Yu. Zaytsev, their Agent, and Mrs I. Shevchuk, Head of the Office of the Government Agent before the European Court of Human Rights.

3. On 8 November 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 1942 and lives in Krasnyy Luch, the Lugansk region.

5. The facts of the case, as submitted by the parties, may be summarised as follows.

6. On 3 December 1999 and 6 February 2002 the Krasnyy Luch Court (*Краснолучський міський суд Луганської області*) awarded the applicant UAH 1,380.34¹ and UAH 397.35² respectively in salary arrears and other payments against his former employer, the State Open Joint Stock Company “Krasnolutska Avtobaza” (*ДВАТ “Краснолучька автобаза” ДХК „Донбасантрацит”*). These judgments became final and the enforcement writs were transferred to the Krasnyy Luch Bailiffs' Service (*Відділ Державної виконавчої служби Краснолучького міського управління юстиції*) for enforcement.

7. The applicant received the debt due to him by the judgment of 3 December 1999 on 1 November 2004 and on 14 February 2005 - by the judgment of 6 February 2002.

8. On 14 February 2005 the Bailiffs' Service explained to the applicant that the delays in the enforcement of the judgments in his favour had been caused by the debtor's reorganization, the holding of its assets in a tax lien and the statutory moratorium on the forced sale of State property.

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 State authorities' failure to enforce the judgments of 3 December 1999 and 6 February 2002 in due time. He invoked Articles 6 § 1 of the Convention and Article 1 of Protocol No. 1, which 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.

1. EUR 269.21.

2. EUR 89.61.

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

11. The Government raised objections, contested by the applicant, regarding the applicant's victim status, similar to those already dismissed in a number of the Court's judgments regarding non-enforcement of judgments against the State-owned companies (see e.g. among many others, *Romashov v. Ukraine* (no. 67534/01, §§ 23-27, 27 July 2004). The Court finds no reason to depart from its case-law in the present case and accordingly dismisses these objections.

12. The Court concludes that the applicant's complaints under Article 6 § 1 of the Convention and Article 1 of Protocol No. 1 to the Convention about the delay in the enforcement of the judgments of 3 December 1999 and 6 February 2002 raise issues of fact and law under the Convention, the determination of which requires an examination on the merits. It finds no ground for declaring these complaints inadmissible. The Court must therefore declare them admissible.

II. MERITS

13. 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.

14. The applicant disagreed.

15. The Court notes that the judgment of 3 December 1999 remained unenforced for four years and eleven months and the judgment of 6 February 2002 for three years and two weeks.

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 a number of similar cases (see, for instance, *Sokur v. Ukraine*, cited above, §§ 36-37 and *Sharenok v. Ukraine*, no. 35087/02, §§ 37-38, 22 February 2005).

17. 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.

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, costs and expenses

20. The applicant claimed the global sum of UAH 13,847.46 (EUR 2,145) by way of just satisfaction.

21. The Government raised no objections against paying the aforementioned sum in the event of the Court's finding a violation.

22. Regard being had to the circumstances of the case and the submissions of the parties, the Court awards the applicant EUR 2,145 (two thousand one hundred forty five euros) by way of just satisfaction.

B. Default interest

23. 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 according to Article 44 § 2 of the Convention, the global sum of EUR 2,145 (two thousand one hundred forty five euros) by way of just satisfaction, to be converted into the currency of the respondent State at the rate applicable on 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 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 30 November 2006, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Claudia WESTERDIEK
Registrar

Peer LORENZEN
President