



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

FIFTH SECTION

CASE OF VILIKANOV v. UKRAINE

(Application no. 19189/04)

JUDGMENT

STRASBOURG

7 December 2006

FINAL

07/03/2007

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 Vilikanov v. Ukraine,

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

Mr P. LORENZEN, *President*,

Mr K. JUNGWIERT,

Mr V. BUTKEVYCH,

Mrs M. TSATSA-NIKOLOVSKA,

Mr J. BORREGO BORREGO,

Mrs R. JAEGER,

Mr M. VILLIGER, *judges*,

and Mrs C. WESTERDIEK, *Section Registrar*,

Having deliberated in private on 13 November 2006,

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

PROCEDURE

1. The case originated in an application (no. 19189/04) 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 Viktor Dmitriyevich Vilikanov (“the applicant”), on 21 February 2004.

2. The applicant was represented by Mr V. Bychkovskiy from Miusinsk. The Ukrainian Government (“the Government”) were represented by Mr Y. 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 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.

THE FACTS**I. THE CIRCUMSTANCES OF THE CASE**

4. The applicant was born in 1954 and lives in Krasnyy Luch, the Lugansk region.

5. In 2001 the applicant instituted civil proceedings in the Krasnyy Luch Court (*Краснолучський міський суд Луганської області*) against his

employer, the OJSC “Krasnyy Luch” (“the Company,” *БАТ “Красний Луч”*), for salary arrears and other payments. At the material time the State owned 100% of the Company's shares. The Company was therefore subject to the Law of 29 November 2001 “on the Introduction of a Moratorium on the Forced Sale of Property.”

6. On 17 January 2002 the Krasnyy Luch Court awarded the applicant UAH 1,435.27.¹ This judgment was not appealed against and became final.

7. On 5 March 2002 the Krasnyy Luch Bailiffs' Service (*Відділ Державної виконавчої служби Краснолуцького міського управління юстиції*) initiated the enforcement proceedings in relation to this judgment.

8. The judgment was enforced on 28 February 2005.

II. RELEVANT DOMESTIC LAW

9. A description of the relevant domestic law can be found in *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 judgment of the Krasnyy Luch Court of 17 January 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.

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. 306.20 euros (“EUR”).

I. ADMISSIBILITY

11. The Government submitted no observations on the admissibility of the applicant's complaints.

12. The Court finds 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 judgment of 17 January 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 on the merits of the applicant's complaints, the Government contended that there had been no violation of Article 6 § 1 of the Convention or Article 1 of Protocol No. 1. The delay in the enforcement of the judgment in the applicant's favour had been caused by the Company's difficult financial situation and the considerable number of enforcement proceedings taken against it.

14. The applicant disagreed.

15. The Court notes that the judgment of the Krasnyy Luch Court of 17 January 2002 remained unenforced for three years and one month.

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

20. The applicant claimed UAH 5,473 (EUR 809.55) in respect of pecuniary and non-pecuniary damage.

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

22. 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 800 in this respect.

B. Costs and expenses

23. The applicant did not submit any separate claim under this head. The Court therefore makes no award.

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 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, EUR 800 (eight hundred euros) in respect of non-pecuniary damage 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;

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

Done in English, and notified in writing on 7 December 2006, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Claudia WESTERDIEK
Registrar

Peer LORENZEN
President