



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

FIFTH SECTION

CASE OF MAKSIMIKHA v. UKRAINE

(Application no. 43483/02)

JUDGMENT

STRASBOURG

14 December 2006

FINAL

14/03/2007

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 Maksimikha 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 20 November 2006,

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

PROCEDURE

1. The case originated in an application (no. 43483/02) 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 Nikolay Aleksandrovich Maksimikha (“the applicant”), on 12 November 2002.

2. The Ukrainian Government (“the Government”) were represented by their Agents, Mrs V. Lutkovska succeeded by Mr Y. Zaytsev.

3. On 28 April 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 1941 and lives in Krasnoperekopsk, the Autonomous Republic of Crimea.

5. On 27 February 1997 the Krasnoperekopsk Court (*Красноперекопський міський суд*) ordered the State-owned Construction Company “Budivselne Upravlinnya-50” (the “Company,” *Будівельне*

управління №50 Тресту „Перекопхімбуд” ТБО „Кримбуд” Корпорації „Укрбуд”) to pay the applicant UAH 157,197¹ in damages for a breach of their contract for construction of a house. This judgment became final and the enforcement writ was transferred to the Bailiffs' Service for enforcement.

6. On 22 April 1997 the Bailiffs' Service attached the Company's assets to secure the execution of the judgment.

7. On 22 July 1997 and 13 July 1998 the applicant received the total of UAH 14,848.²

8. On 6 August 1997 the State Property Fund of the Crimea (the “Fund,” *Фонд державного майна Автономної республіки Крим*) leased the Company's production unit to a third party.

9. On 28 May 1998 the Ministry of Building and Investments of the Crimea (*Міністерство будівництва і інвестицій Автономної республіки Крим*) ordered liquidation of the Company and established a liquidation commission for this purpose.

10. On 22 October 1998 the liquidation commission adopted the Company's liquidation balance, which certified that the Company lacked assets to pay its outstanding debt to the applicant.

11. In January 2001 the applicant challenged the Fund's decision to lease the Company's production unit, alleging that it had infringed his rights as a creditor and the attachment order of 22 April 1997.

12. On 2 April 2001 the Kyivsky District Court of Simferopol (the “Kyivsky Court,” *Київський районний суд м. Сімферополя*) found for the applicant and declared the Fund's decision null and void. On 22 June 2001 the court issued an additional judgment, ordering the Fund to sell a part of the Company's property of a value sufficient to repay the applicant UAH 267,389.56³ of the judgment debt adjusted to inflation. The Fund appealed, and on 24 October 2001 the Court of Appeal of the Crimea (*Апеляційний суд Автономної Республіки Крим*) upheld these judgments.

13. On 16 May 2002 the Supreme Court overruled the judgments of 2 April, 22 June and 24 October 2001 and remitted the case for a fresh consideration.

14. On 21 January 2003 the Kyivsky Court left the applicant's claims without consideration due to his repetitive failures to appear for the hearings. According to the applicant, he had not been duly summoned for the hearings in question. He did not appeal against the court decision of 21 January 2003.

15. The Krasnoperekopsk Court's judgment of 27 February 1997 remains largely unenforced to the present day.

1. EUR (ECU) 74,398.

2. EUR (ECU) 5,890.

3. EUR 42,307.97.

II. RELEVANT DOMESTIC LAW

16. The relevant domestic law is briefly summarised in the judgment of *Romashov v. Ukraine* (no. 67534/01, §§ 16-19, 27 July 2004).

THE LAW

17. The applicant complained about the State authorities' failure to enforce the judgment of 27 February 1997. He invoked Article 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”

I. ADMISSIBILITY

18. 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 of judgments against the State-owned companies (see, for instance, the aforementioned *Romashov* judgment, §§ 30-32). The Court considers that these objections must be rejected for the same reasons.

19. The Court concludes that the applicant's complaints under Article 6 § 1 of the Convention and Article 1 of Protocol No. 1 about the delay in the enforcement of the judgment of 27 February 1997 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

20. In their observations on the merits of the applicant's claims, the Government contended that there had been no violation of Article 6 § 1 of the Convention or Article 1 of Protocol No. 1.

21. The applicant disagreed.

22. The Court notes that the judgment of the Krasnoperekopsk Court of 27 February 1997 remains unenforced for more than nine years and nine months, out of which nine years and three months fall within the Court's jurisdiction *ratione temporis*.

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 a number of similar cases, (see, for instance, *Romashov v. Ukraine*, cited above, §§ 42-46, and *Mykhaylenko and Others v. Ukraine*, nos. 35091/02, 35196/02, 35201/02, 35204/02, 35945/02, 35949/02, 35953/02, 36800/02, 38296/02 and 42814/02, §§ 60-64, ECHR 2004-XII).

24. 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.

25. 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

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 the unsettled judgment debt due to him and UAH 230,890 (EUR 36,530) in compensation for inflation losses in respect of pecuniary damage. In support of his claim for inflation losses, the applicant presented calculations based on the average consumer prices inflation index and certified by the Crimean Department of the State Committee for Statistics (*Головне управління статистики в Автономній республіці Крим Державного комітету статистики України*). Additionally, the applicant claimed UAH 320,000 (EUR 50,037) in non-pecuniary damage.

28. The Government submitted that the applicant's claims should be rejected.

29. The Court recalls that the judgment of 27 February 1997 remains unenforced and notes that the applicant presented a detailed calculation of his losses caused by inflation, together with supporting documents. Regard being had to the circumstances of the case and the Court's case-law, the Court finds that the Government should pay the applicant the outstanding judgment debt and an additional sum of EUR 36,530 for inflation losses in compensation for pecuniary damage (see *Reynbakh v. Russia*, no. 23405/03, §§ 34-35, 29 September 2005; *Romanchenko v. Ukraine*, no. 5596/03, § 30, 22 November 2005 and *Levin v. Russia*, no. 33264/02, §§ 31-34, 2 February 2006).

30. The Court further takes the view that the applicant has suffered some non-pecuniary damage as a result of the violations found. Nevertheless, the particular amount claimed is excessive. Making its assessment on an equitable basis, as required by Article 41 of the Convention, the Court awards the applicant EUR 2,000 in respect of non-pecuniary damage.

B. Costs and expenses

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

C. Default interest

32. 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 to 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 judgment debt due to him and an additional sum of EUR 36,530 (thirty six thousand five hundred thirty euros) in respect of pecuniary and EUR 2,000 (two thousand

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 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 14 December 2006, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Claudia WESTERDIEK
Registrar

Peer LORENZEN
President