



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

FIFTH SECTION

CASE OF MARTYNOV v. UKRAINE

(Application no. 36202/03)

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 Martynov 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 20 November 2006,

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

PROCEDURE

1. The case originated in an application (no. 36202/03) 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 Ivan Nikolayevich Martynov (“the applicant”), on 14 October 2003.

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 complaint under Article 6 § 1 of the Convention 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 1975 and lives in Dniprodzerzhynsk. At the material time he was an employee of the CJSC “Dniprovsky Zavod Mineralnykh Dobryv” (“the Company,” *ЗАТ “Дніпровський завод мінеральних добрив”*), in which the State owned 40% of the share capital. The company was therefore subject to the Law of 29 November 2001 “on the Introduction of a Moratorium on the Forced Sale of Property.”

5. On 10 April 2003 the Bagliysky District Court of Dniprodzerzhynsk (*Багліїський районний суд м. Дніпродзержинська*) ordered the Company to pay the applicant UAH 3,047.03¹ in salary arrears and various payments. This judgment was not appealed against and became final.

6. On 14 April 2003 the Bagliysky District Bailiffs' Service ("the Bailiffs," *Відділ Державної виконавчої служби Багліївського районного управління юстиції в м. Дніпродзержинську*) instituted enforcement proceedings in respect of the above judgment.

7. On 21 October 2003 the Bailiffs informed the applicant that the delay in the enforcement of the judgment of 10 April 2003 was due to the large number of enforcement proceedings taken against the Company, the holding of its property in a tax lien and a statutory moratorium on the forced sale of State property.

8. On 7 April 2004 the Dnipropetrovsk Commercial Court (*Господарський суд Дніпропетровської області*) instituted bankruptcy proceedings against the Company and introduced a moratorium on payment of its debts.

9. On 30 May 2005 the applicant received the award due to him less UAH 200². This part of the judgment remains unenforced to the present day.

II. RELEVANT DOMESTIC LAW

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

THE LAW

I. SCOPE OF THE CASE

11. The Court notes that, after the communication of the case to the respondent Government, the applicant introduced a new complaint under Article 4 § 2 of the Convention with regard to the facts of the present case.

12. In the Court's view, the new complaint is not an elaboration of the applicant's original complaint under Article 6 § 1 of the Convention, lodged with the Court approximately two years and three months earlier, on which the parties have commented. The Court considers, therefore, that it is not

1. 547.87 euros ("EUR").

2. EUR 33.22.

appropriate now to take this matter up (see *Skubenko v. Ukraine* (dec.), no. 41152/98, 6 April 2004).

II. ADMISSIBILITY

A. The applicant's complaint under Article 6 § 1 of the Convention

13. The applicant complained about the State authorities' failure to enforce the judgment of 10 April 2003 in due time. He invoked, in substance, Article 6 § 1 of the Convention, which provides, 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. ..."

14. 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 e.g. *Romashov v. Ukraine*, no. 67534/01, §§ 30-32, 27 July 2004 and *Trykhlil v. Ukraine*, no. 58312/00, §§ 39-43, 20 September 2005). The Court considers that these objections must be rejected for the same reasons.

15. 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 10 April 2003 raises issues of fact and law under the Convention, the determination of which requires an examination on the merits. It finds no ground for declaring this complaint inadmissible. The Court must therefore declare it admissible.

B. Other complaints

16. The applicant further complained about a violation of Articles 2 and 53 of the Convention on account of the non-enforcement of the judgment in his favour.

17. The Court finds that this part of the application is wholly unsubstantiated and must therefore be rejected as being manifestly ill-founded, pursuant to Article 35 §§ 3 and 4 of the Convention (see e.g., *Komar and Others v. Ukraine*, nos. 36684/02, 14811/03, 26867/03, 37203/03, 38754/03 and 1181/04, §§ 18-19, 28 February 2006).

III. MERITS

18. In their observations on the merits of the applicant's complaint, the Government contended that there had been no violation of Article 6 § 1.

19. The applicant disagreed.

20. The Court notes that the judgment of 10 April 2003 has remained unenforced for the period exceeding three years and eight months.

21. The Court recalls that it has already found violations of Article 6 § 1 of the Convention in a number of similar cases (see, for instance, *Sokur v. Ukraine*, cited above, §§ 36-37).

22. 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.

23. There has, accordingly, been a violation of Article 6 § 1 of the Convention.

IV. APPLICATION OF ARTICLE 41 OF THE CONVENTION

24. 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

25. The applicant claimed the global sum of USD 10,000 (EUR 8,373) in respect of pecuniary and non-pecuniary damage.

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

27. The Court recalls that the judgment of 10 April 2003 remains partly unenforced and finds that the Government should pay the applicant the outstanding debt in order to satisfy his claim for pecuniary damage. Further, the Court considers that the applicant must have sustained non-pecuniary damage as a result of the violation found. Making its assessment on an equitable basis, as required by Article 41 of the Convention, the Court awards the applicant EUR 1,000 (one thousand euros) in respect of non-pecuniary damage.

B. Costs and expenses

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

C. Default interest

29. 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 admissible and the complaints under Articles 2 § 1 and 53 of the Convention inadmissible;
2. *Holds* that there has been a violation of Article 6 § 1 of the Convention;
3. *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 still owed to him as well as EUR 1,000 (one thousand euros) in respect of non-pecuniary damage, to 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;
 - (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;
4. *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