



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

FIFTH SECTION

CASE OF IVASHCHENKO v. UKRAINE

(Application no. 22215/04)

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 Ivashchenko v. Ukraine,

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

Mr P. LORENZEN, *President*,

Mrs S. BOTOUCHAROVA,

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 20 November 2006,

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

PROCEDURE

1. The case originated in an application (no. 22215/04) 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 Yevgeniy Ivanovich Ivashchenko (“the applicant”), on 11 June 2004.

2. The applicant was represented by Mr V. Bytchkovkiy. The Ukrainian Government (“the Government”) were represented by their Agent, Mr Y. Zaitsev.

3. On 5 December 2005 the Court decided to give notice of the application 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 1951 and lives in the town of Krasnyy Lutch, the Lugansk Region.

5. By two judgments of 17 October 2001 and 27 March 2002, the Krasnyy Lutch Town Court ordered the Novopavlivska State Mine to pay

the applicant UAH 5,120.50¹ in salary arrears and to supply him with 11,800 kg of coal, respectively.

6. On 26 November 2001 and 17 May 2002 the Krasnyy Lutch Town Bailiffs' Service instituted enforcement proceedings concerning the judgments of 17 October 2001 and 27 March 2002, respectively.

7. The judgment of 17 October 2001 was partly enforced and the applicant was paid UAH 3,721.7², the outstanding debt being UAH 1,398.8³. The judgment of 27 March 2002 remains unenforced.

II. RELEVANT DOMESTIC LAW

8. The relevant domestic law is summarised in the judgment of *Romashov v. Ukraine* (no. 67534/01, §§ 16-18, 27 July 2004).

THE LAW

9. The applicant complained about the State authorities' failure to enforce the judgments of the Krasnyy Lutch Town Court of 17 October 2001 and 27 March 2002 in full and in due time. 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”

1. Around 1,056 euros – “EUR”.

2. Around EUR 768.

3. Around EUR 288.

I. ADMISSIBILITY

10. The Court notes that the Government have not raised any objection as to the admissibility of the application.

11. The Court considers that the application 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 it inadmissible.

II. MERITS

12. In their observations, the Government put forward arguments similar to those in the cases of *Romashov v. Ukraine* and *Voytenko v. Ukraine*, contending that there had been no violation of either Article 6 § 1 of the Convention or Article 1 of Protocol No. 1 (see *Romashov*, cited above, § 37, and *Voytenko v. Ukraine*, no. 18966/02, 29 June 2004, § 37).

13. The applicant disagreed.

14. The Court notes that to date the judgments of the Krasnyy Lutch Town Court of 17 October 2001 and 27 March 2002 have remained unenforced for around four years and eleven months, and four years and seven months, respectively.

15. 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 raising issues similar to the present application (see, for instance, *Romashov*, cited above, §§ 42-46, and *Voytenko*, cited above, §§ 53-55).

16. Having examined all the material submitted to it, the Court considers that the Government have not put forward any fact or convincing argument capable of persuading it to reach a different conclusion in the present case. 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

17. 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

18. The applicant claimed UAH 12,712.87¹ in respect of pecuniary damage, which included the amount of the judgment debt of 17 October

1. Around EUR 2,109.

2001 and the sums to which the applicant has allegedly been entitled due to the non-payment of this debt. Under the same head, he sought to be provided with 11,800 kg of coal. The applicant further claimed UAH 12,712.87¹ in respect of non-pecuniary damage.

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

20. In so far as the applicant claimed the amounts of money and coal which he was awarded under the judgments at issue, the Court considers that the Government should pay him the outstanding debt under the judgment of 17 October 2001 and enforce the judgment of 27 March 2002.

21. As to the applicant's claim in respect of non-pecuniary damage, the Court, making its assessment on an equitable basis, as required by Article 41 of the Convention, awards the applicant EUR 2,100 under this head.

B. Costs and expenses

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

C. 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 of Protocol No. 1;
4. *Holds*
 - (a) that, within three months from the date on which the judgment becomes final according to Article 44 § 2 of the Convention, the respondent State is to pay the applicant the judgment debt of 17 October 2001 still owed to him, and EUR 2,100 (two thousand one hundred euros) in respect of non-pecuniary damage, plus any tax that may be

1. Around EUR 2,109.

chargeable, to be converted into the currency of the respondent State at the rate applicable on the date of settlement, as well as to enforce the judgment of the Krasnyy Lutch Town Court of 27 March 2002;

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

Claudia WESTERDIEK
Registrar

Peer LORENZEN
President