



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

FIFTH SECTION

CASE OF SOLOVYEV v. UKRAINE

(Application no. 4878/04)

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 Solovyev 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. 4878/04) against Ukraine lodged with the Court under Article 34 of the Convention for the Protection of Human Rights and Fundamental Freedoms (“the Convention”) by an Israeli national, Mr Nikolay Nikolayevich Solovyev (“the applicant”), on 7 January 2004.

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

3. On 15 March 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 1939 and lives in the town of Bat-Yam, Israel.

5. On 26 June 2001 the Commercial Court of the Kherson Region commenced bankruptcy proceedings against the State Enterprise “Khersonskyy Sudnobudivelnyy Zavod”, the applicant's former employer. According to the Government, these proceedings are still pending.

6. On 4 December 2002 the Komsomolskyy District Court of Kherson ordered that company to pay the applicant UAH 9,879¹ in salary arrears.

7. On 16 January 2003 the Komsomolskyy District Bailiffs' Service of Kherson instituted enforcement proceedings.

8. By letter of 11 September 2003, the Kherson Regional Department of the Ministry of Justice informed the applicant that the judgment in his favour had not been executed due to the substantial number of enforcement proceedings against the debtor company and that the procedure for the forced sale of assets belonging to it had been blocked by the Law on the Introduction of a Moratorium on the Forced Sale of Property of 29 November 2001.

9. On 6 October 2004 the State Property Fund sold 83.61% of the debtor's share capital to a private company. Under the terms of the sales contract, the latter undertook to pay all the salary-related debts of the debtor company.

10. On 22 June 2005 the full amount of the judgment debt was transferred to the deposit account of the Bailiffs' Service. The applicant was invited to submit his bank account details to the Bailiffs' Service. On an unspecified date the applicant received the full amount of the debt.

II. RELEVANT DOMESTIC LAW

11. The relevant domestic law is summarised in the judgment of *Romashov v. Ukraine* (no. 67534/01, §§ 16-18 and 39-41, 27 July 2004).

THE LAW

I. ADMISSIBILITY

A. Complaints about the length of the non-enforcement of the judgment of the Komsomolskyy District Court of Kherson of 4 December 2002

12. The applicant complained about the State authorities' failure to enforce the judgment of the Komsomolskyy District Court of Kherson of 4 December 2002 in due time. He invoked Articles 6 § 1 and 13 of the Convention and Article 1 of Protocol No. 1, which provide, insofar as relevant, as follows:

1. Around 1,923 euros – “EUR”.

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 13

“Everyone whose rights and freedoms as set forth in [the] Convention are violated shall have an effective remedy before a national authority notwithstanding that the violation has been committed by persons acting in an official capacity.”

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”

13. The Government contended that the applicant had not exhausted domestic remedies as he had neither challenged the alleged inactivity of the Bailiffs' Service before the domestic courts, nor lodged a request with the Commercial Court of the Kherson Region to be included in the list of the debtor company's creditors in the course of the bankruptcy proceedings. The Government therefore proposed that the application be declared inadmissible.

14. The Court recalls that it has already dismissed the Government's analogous contentions in similar cases (see, for instance, *Garkusha v. Ukraine*, no. 4629/03, §§ 18-19, 13 December 2005) and finds no reason to reach a different conclusion in the present case.

15. The Court concludes that this part of 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.

B. Other complaints

16. The applicant further complained about a violation of Article 4 § 1 of the Convention, referring to the fact that he was forced to work without receiving remuneration. The Court notes that the applicant performed his work voluntarily and his entitlement to payment has never been denied. The dispute thus involves civil rights and obligations, but does not disclose any element of slavery or forced or compulsory labour within the meaning of this provision (see *Sokur v. Ukraine* (dec.), cited above). In these

circumstances, the Court considers that this part of the application must be rejected as being manifestly ill-founded pursuant to Article 35 §§ 3 and 4 of the Convention.

II. MERITS

17. In their observations on the merits of the applicant's complaints about the length of the non-enforcement of the judgment of the Komsomolsky District Court of Kherson of 4 December 2002, 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).

18. The Government further maintained that, although the debtor company was a State-owned enterprise before 6 October 2004, it was a separate legal entity and the State could not be held responsible for its debts under domestic law. Moreover, on 6 October 2004 the State Property Fund sold 83.61% of the share capital of that company to a private person. Accordingly, the enforcement of the judgment given in the applicant's favour could not be conducted at the expense of the State.

19. The applicant disagreed.

20. The Court recalls that it has already held that the State was liable for the debts of a State-owned company, despite the fact that the company was a separate legal entity, and, therefore, the State was responsible for the ultimate failure to pay to an applicant the amounts awarded to him in the judgments against such company (see, for instance, *Mykhaylenky 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, §§ 43-46, ECHR 2004-XII).

21. Furthermore, the Court considers that the fact that the State sold a large part of its share in the company it owned to a private person could not release the State from its obligation to honour a judgment debt which had arisen before the shares were sold. If the State transfers such an obligation to a new owner of the shares, as it was in the present case (see paragraph 9 above), the State must ensure that the new owner complies with the requirements, inherent in Article 6 § 1 of the Convention and Article 1 of Protocol No. 1, that a final, binding judicial decision does not remain inoperative to the detriment of a party. In view of the above considerations, the Court finds that the State was responsible for the enforcement of the judgment of the Komsomolsky District Court of Kherson of 4 December 2002 throughout the duration of the enforcement proceedings.

22. The Court notes that the judgment at issue remained unenforced for around two years and five months.

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

24. 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.

25. The Court does not find it necessary in the circumstances to examine the same complaint under Article 13 of the Convention (see *Derkach and Palek v. Ukraine*, nos. 34297/02 and 39574/02, § 42, 21 December 2004).

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 USD 10,000¹ in respect of pecuniary damage. He also claimed USD 3,000² in respect of non-pecuniary damage.

28. The Government maintained that the applicant had not substantiated the amounts claimed and submitted that the finding of a violation would constitute sufficient just satisfaction.

29. The Court does not discern any causal link between the violation found and the pecuniary damage alleged; it therefore rejects this claim.

30. 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 the amount of EUR 600.

B. Costs and expenses

31. The applicant also claimed USD 606.9³, which represented the cost of the applicant's travel to Ukraine in August 2005, and UAH 44.45⁴, which included the cost of correspondence and translations.

1. Around EUR 7,975.

2. Around EUR 2,392.

3. Around EUR 484.

4. Around EUR 8.

32. The Government contested this claim.

33. According to the Court's case-law, an applicant is entitled to reimbursement of his costs and expenses only in so far as it has been shown that these have been actually and necessarily incurred and were reasonable as to quantum. In the present case, regard being had to the information in its possession and the above criteria, the Court considers it reasonable to award the applicant the sum of EUR 8 for costs and expenses in the proceedings before the Court.

C. Default interest

34. 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 applicant's complaints under Articles 6 § 1 and 13 of the Convention and Article 1 of Protocol No. 1 admissible, and the remainder of the application inadmissible;
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* that it is not necessary to examine the applicant's complaint under Article 13 of the Convention;
5. *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 following sums, to be converted into the national currency of the respondent State at the rate applicable on the date of payment:
 - (i) EUR 600 (six hundred euros) in respect of non-pecuniary damage;
 - (ii) EUR 8 (eight euros) for costs and expenses;
 - (iii) plus any tax that may be chargeable on the above amounts;
 - (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;

6. *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