



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

FIFTH SECTION

CASE OF SUKHOY v. UKRAINE

(Application no. 18860/03)

JUDGMENT

STRASBOURG

21 December 2006

FINAL

21/03/2007

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 Sukhoy 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,

Mrs R. JAEGER,

Mr M. VILLIGER, *judges*,

and Mrs C. WESTERDIEK, *Section Registrar*,

Having deliberated in private on 27 November 2006,

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

PROCEDURE

1. The case originated in an application (no. 18860/03) 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 Aleksandr Grigoryevich Sukhoy (“the applicant”), on 20 May 2003.

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

3. On 21 June 2004 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 1955 and lives in Zhovti Vody, the Dnipropetrovsk region. He is a former employee of the OJSC “Electron-Gaz” (“the Company,” *BAT “Електрон-Газ”*). At the material time the State owned 99.96% of the Company's 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 6 October 2000 the Zhovti Vody Court (*Жовтоводський міський суд Дніпропетровської області*) ordered the Company to pay the applicant UAH 12,514.76¹ in salary arrears. This judgment became final and the enforcement writ was transferred to the Zhovti Vody Bailiffs' Service (“the Bailiffs,” *Відділ Державної виконавчої служби Жовтоводського міського управління юстиції*) for enforcement.

6. On 26 December 2002 the Bailiffs informed the applicant that the enforcement of the judgment of 6 October 2000 was delayed on account of the Company's lack of funds. It also stated that the attachment of the Company's property was impeded by the Law of 2001 “on the Introduction of a Moratorium on the Forced Sale of Property.”

7. On 7 March 2003 the Dnipropetrovsk Commercial Court (*Господарський суд Дніпропетровської області*) instituted bankruptcy proceedings against the Company and on 10 October 2003 ordered its rehabilitation to be completed by 10 October 2004.

8. On 21 October 2004 the applicant received the debt due to him by the judgment of 6 October 2000.

II. RELEVANT DOMESTIC LAW

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

THE LAW

I. ADMISSIBILITY

A. Complaints under Article 6 § 1 and Article 1 of Protocol No. 1

10. The applicant complained about the State authorities' failure to enforce the judgment of 6 October 2000. He invoked Article 6 § 1 of the Convention (in substance) and Article 1 of Protocol No. 1, which provide, insofar as relevant, as follows:

1. EUR 2,634.57.

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”

11. 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 against the State-owned companies (see e.g. among many others, *Trykhliv v. Ukraine*, no. 58312/00, §§ 38-43, 20 September 2005 and *Mykhaylenko and Others v. Ukraine*, nos. 35091/02 and following, §§ 38-39, ECHR 2004-XII). The Court considers that these objections must be rejected for the same reasons.

12. 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 6 November 2000 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.

B. Complaint under Article 17 of the Convention

13. The applicant additionally complained that the introduction of the 2001 Law, barring the sale of the assets of the State-owned enterprises, violated Article 17 of the Convention. The Court finds no evidence whatsoever in the case file which might disclose any appearance of a breach of this provision (see, e.g., *Kosareva v. Ukraine*, no. 17304/03, § 10, 13 December 2005). The Court, therefore, rejects this part of the application, in accordance with Article 35 §§ 3 and 4 of the Convention, as being manifestly ill-founded

II. MERITS

14. 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.

15. The applicant disagreed.

16. The Court notes that the judgment of 6 October 2000 remained unenforced for four years.

17. 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, including the cases concerning the same State-owned debtor - the OJSC "Electron-Gaz" (see, for instance, *Ilchenko v. Ukraine*, no. 17303/03, §§ 23-26, 29 November 2005 and *Oleynik and Baybarza v. Ukraine*, no. 5384/03, §§ 18-21, 20 December 2005).

18. 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.

19. 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

20. 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

21. The applicant claimed UAH 2,500 (EUR 403) in respect of pecuniary damage relating to the loss of value of the judgment debt. This claim was not based on any calculation. He further claimed EUR 3,000 in respect of non-pecuniary damage.

22. The Government maintained that the applicant's claims were unsubstantiated and submitted that the finding of a violation, if any, would constitute sufficient just satisfaction.

23. As regards the applicant's claim for the loss of value, the Court notes that the applicant's calculations are not supported by any documents. Consequently, it rejects this part of the claim (see e.g., *Glova and Bregin v. Ukraine*, nos. 4292/04 and 4347/04, § 29, 28 February 2006). However, the Court considers that the applicant must have sustained non-pecuniary damage. 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 1,200 in respect of non-pecuniary damage.

B. Costs and expenses

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

C. Default interest

25. 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 complaints under Article 6 § 1 of the Convention and Article 1 of Protocol No. 1 to the Convention admissible and the complaint under Article 17 of the Convention inadmissible;
2. *Holds* that there has been a violation of Article 6 § 1 of the Convention;
4. *Holds* that there has been a violation of Article 1 Protocol No. 1 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 in accordance with Article 44 § 2 of the Convention, EUR 1,200 (one thousand two hundred 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 amount 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 21 December 2006, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Claudia WESTERDIEK
Registrar

Peer LORENZEN
President