



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

FIFTH SECTION

CASE OF ZOZULYA v. UKRAINE

(Application no. 17466/04)

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 Zuzulya v. Ukraine,

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

Mr P. LORENZEN, *President*,

Mrs S. BOTOCHAROVA,

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 27 November 2006,

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

PROCEDURE

1. The case originated in an application (no. 17466/04) against Ukraine lodged with the Court under Article 34 of the Convention for the Protection of Human Rights and Fundamental Freedoms (“the Convention”) by Mr Yuriy Olegovich Zuzulya (“the applicant”) on 28 April 2004.

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

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**THE CIRCUMSTANCES OF THE CASE**

4. The applicant, a Ukrainian national, was born in 1980 and lives in the village of Pryberezhne, the Autonomous Republic of Crimea.

5. In 1998 the applicant was seriously injured due to the fault of his teacher. As a result, he became an invalid.

A. First judgment in the applicant's favour

6. On 3 July 2000 the Saky Town Court (the “Saky Court”) ordered the State College of Audit and Economics of Kharkiv (the “College”), to pay the applicant a lump sum of UAH 32,178.02¹ and a monthly payment of UAH 519.75² in compensation. On 27 September 2000 the Supreme Court of the Autonomous Republic of Crimea upheld the decision of the first-instance court. The judgment became final and was enforced in full on 6 March 2001.

7. On 6 December 2001 the Supreme Court of Ukraine rejected the appeal lodged against the above decisions under the new cassation procedure. On 5 March 2004 the panel of three judges of the Supreme Court rejected the request of the College for review of the case in the light of newly discovered circumstances.

B. Second judgment in the applicant's favour

8. On 28 March 2002 the Saky Court ordered the College to pay the applicant a lump sum of UAH 38,575.35³ and a monthly payment of UAH 750.20⁴ in compensation.

9. On 10 May 2002 the Zhovtneviy District Bailiffs' Service of Kharkiv instituted enforcement proceedings.

10. In December 2002 the Bailiffs' Service informed the applicant that the judgment could not be enforced due to the lack of State budgetary allocations in respect of the College's expenditure.

11. On 11 July 2003 the Bailiffs' Service discontinued the enforcement proceedings on the ground that the debtor lacked funds.

12. In April 2004 the applicant received a total of UAH 2,250⁵ in payment of the allowance for three months.

13. On 4 May 2005 the judgment was enforced in full.

C. Third judgment in the applicant's favour

14. On 3 June 2003 the Saky Court awarded the applicant UAH 20,757.74⁶ against the College in compensation.

15. On 26 November 2003 the Court of Appeal of the Autonomous Republic of Crimea upheld the decision of the first instance court. The enforcement proceedings commenced in June 2004.

¹ Around EUR 5,361.

² Around EUR 87.

³ Around EUR 6,427.

⁴ Around EUR 125.

⁵ Around EUR 375.

⁶ Around EUR 3,459.

16. On 30 May 2005 the judgment was enforced in full.

D. Forth judgment in the applicant's favour

17. In 2004 the applicant instituted proceedings in the same court against the College, seeking compensation for his medical, hygienic, and food expenses, and for loss of income. On 19 May 2004 the court endorsed the friendly settlement agreement between the applicant and the College, according to which the latter was to pay the applicant a lump sum of UAH 1,770¹ and a monthly payment of UAH 1,435² in compensation.

18. On 28 January 2005 the judgment was enforced in full.

E. Proceedings against the Bailiffs' Service

19. In January 2003 the applicant lodged a complaint with the Zhovtneviy District Court of Kharkiv (the “Zhovtneviy Court”) against the Bailiffs' Service for failure to enforce the judgment of 28 March 2002. On 4 April 2003 the court rejected the applicant's complaint, finding no fault on the part of the Bailiffs' Service. It held that the judgment could not be enforced due to the lack of State budgetary allocations in respect of the College's expenditure, for which the Bailiffs' Service was not responsible.

20. On 17 June 2003 the Kharkiv Regional Court of Appeal quashed the decision of 4 April 2003 and remitted the case for a fresh consideration.

21. On 3 September 2003 the Zhovtneviy Court found against the applicant on grounds similar to those on which it based its decision of 4 April 2003.

22. On 3 December 2003 the Kharkiv Regional Court of Appeal upheld the decision of 3 September 2003.

23. The applicant's appeal in cassation is still pending before the Supreme Court.

II. RELEVANT DOMESTIC LAW

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

¹ Around EUR 295.

² Around EUR 239.

THE LAW

25. The applicant complained about the State authorities' failure to enforce the judgments of the Saky Court of 28 March 2002, 3 June 2003, and 19 May 2004 in due time. He invoked 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. ...”

I. ADMISSIBILITY

26. The Government raised objections regarding the applicant's victim status similar to those which the Court has already dismissed in the case of *Romashov v. Ukraine* (see *Romashov*, cited above, §§ 23-27) The Court considers that the present objections must be rejected for the same reasons.

27. The Government further maintained that the enforcement proceedings had not been unreasonably long and that the Bailiffs' Service had acted with due promptness.

28. The applicant disagreed. He emphasised that he was an invalid who could not survive without the necessary treatment, costs for which had been awarded by the domestic courts, and therefore, even small delays in the enforcement could lead to irreparable consequences.

A. Non-enforcement of the judgments of 28 March 2002 and 3 June 2003

29. The Court concludes that the applicant's complaint under Article 6 § 1 of the Convention about the delay in the enforcement of the judgments of 28 March 2002 and 3 June 2003 in his favour 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 this complaint inadmissible.

B. Non-enforcement of the judgment of 19 May 2004

30. The Court further notes that the period of enforcement of the judgment of 19 May 2004 (see paragraphs 17-18) in the applicant's favour lasted around seven months. The Court further notes that even bearing in mind the special circumstances of the applicant's case, this period cannot be considered so excessive as to disclose an appearance of a violation of the Convention. It follows that this complaint is manifestly ill-founded within the meaning of Article 35 § 3, and must be rejected pursuant to Article 35 § 4 of the Convention.

II. MERITS

31. In their observations, the Government contended that there had been no violation of Article 6 § 1 of the Convention (as in the case of *Romashov*, cited above, § 37). The Government maintained that the length of the enforcement proceedings in the applicant's case was reasonable and that the Bailiffs' Service performed all necessary actions and cannot be blamed for the delay.

32. The applicant disagreed.

33. The Court notes that the judgments of the Saky Court of 28 March 2002 and 3 June 2003 remained unenforced for around three years and one month, and one year and six months, respectively.

34. The Court recalls that it has already found violations of Article 6 § 1 of the Convention in cases raising issues similar to the present application (see, for instance, *Romashov*, cited above, §§ 42-46).

35. 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.

III. APPLICATION OF ARTICLE 41 OF THE CONVENTION

36. 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

37. The applicant claimed UAH 100,000¹ in respect of non-pecuniary damage.

38. The Government submitted that this claim should be rejected.

39. The Court takes the view that the applicant has suffered some non-pecuniary damage as a result of the violations found. Making its assessment on an equitable basis, as required by Article 41 of the Convention, the Court awards the applicant the sum of EUR 1,500 in respect of non-pecuniary damage.

B. Costs and expenses

40. The applicant did not submit any claim under this head within the set time-limit; the Court therefore makes no award under this head.

C. Default interest

41. 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 concerning the lengthy non-enforcement of the court judgments of 28 March 2002 and 3 June 2003 in the applicant's favour admissible and the remainder of the application inadmissible;
2. *Holds* that there has been a violation of Article 6 § 1 of the Convention;

¹ Around EUR 15,800

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 EUR 1,500 (one thousand five 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;

4. *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