



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

FIFTH SECTION

CASE OF MAS v. UKRAINE

(Application no. 11931/02)

JUDGMENT

STRASBOURG

11 January 2007

FINAL

23/05/2007

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 Mas 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 4 December 2006,

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

PROCEDURE

1. The case originated in an application (no. 11931/02) 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 Vadim Mikhaylovich Mas (“the applicant”), on 15 November 2001.

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

3. On 8 April 2005 the Court decided to communicate the complaints under Articles 6 § 1 and 13 of the Convention and Article 1 of Protocol No. 1 concerning the non-enforcement of the judgments 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 1959 and lives in Kostyantynivka, the Donetsk region.

5. On 30 October 1998 and 27 September 1999 the Mykytivsky District Court of Gorlivka (*Микитівський районний суд м. Горлівка*) ordered the State Company “Gorlivrozvidka” (“the Company,” *ДП “Горліврозвідка”*)

to pay the applicant UAH 4,298.97¹ and UAH 3,939.61,² respectively, in salary arrears and other payments. These judgments became final and the enforcement writs were transferred to the bailiffs' service for enforcement.

6. On 17 May 2002 the Mykytivsky District Bailiffs' Service (*Відділ Державної виконавчої служби Микитівського районного управління юстиції в м. Горлівка*) informed the applicant that the awarded sums could not be paid to him 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. The judgment of 30 October 1998 was enforced in several instalments, the last payment being made on 7 March 2003.

8. On 30 November 2004 the applicant received UAH 1,919.03³ under the judgment of 27 September 1999. The remainder debt is still outstanding to the present day.

II. RELEVANT DOMESTIC LAW

9. A description of the relevant domestic law can be found in *Sokur v. Ukraine* (no. 29439/02, § 17-22, 26 April 2005).

THE LAW

10. The applicant complained about the State authorities' failure to enforce the judgments of 30 October 1998 and 27 September 1999 given in his favour. He invoked Article 6 § 1 of the Convention and Article 1 of Protocol No. 1. The applicant further complained that he had no effective domestic remedies for his complaints under Article 6 § 1 of the Convention and Article 1 of Protocol No. 1 to the Convention. The impugned provisions 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. ..."

1. 1,035.47 euros ("EUR").

2. EUR 832.70.

3. EUR 279.12.

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”

I. ADMISSIBILITY

11. The Government raised objections, contested by the applicant, regarding his victim status and 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. among many others, *Romashov v. Ukraine* no. 67534/01, §§ 25-27, 27 July 2004 and *Mykhaylenky and Others v. Ukraine*, nos. 35091/02 and following, §§ 38-40, ECHR 2004-XII). The Court considers that these objections must be rejected for the same reasons.

12. The Court finds 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 judgments given in his favour 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. For the same reasons, the Court declares admissible the applicant's complaints under Article 13 of the Convention.

II. MERITS**A. The applicant's complaints under Article 6 § 1 of the Convention and Article 1 of Protocol No. 1**

13. In their observations on the merits of the applicant's complaints, the Government contended that there had been no violation of Article 6 § 1 of the Convention or Article 1 of Protocol No. 1.

14. The applicant disagreed.

15. The Court notes that the judgment of 30 October 1998 remained unenforced for four years and four months and the judgment of 27 September 1999 for seven years and eight months.

16. 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 (see, for instance, *Sokur v. Ukraine*, cited above, §§ 36-37 and *Sharenok v. Ukraine*, no. 35087/02, §§ 37-38, 22 February 2005).

17. 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.

18. There has, accordingly, been a violation of Article 6 § 1 of the Convention and Article 1 of Protocol No. 1.

B. The applicant's complaint under Article 13 of the Convention

19. The Government contended that the applicant had had effective channels of complaint on the same basis that they had argued that the applicant had not exhausted domestic remedies. Having rejected the latter argument above (at paragraph 11), the Court concludes that the applicant did not have an effective domestic remedy, as required by Article 13 of the Convention, to redress the damage created by the delay in the present proceedings (see *Voytenko v. Ukraine*, no. 18966/02, § 46-48, 29 June 2004). Accordingly, there has been a breach of this provision.

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 the unsettled judgment debt and an additional sum of UAH 83,337.68 (EUR 13,324) in respect of pecuniary damage. He also claimed UAH 400,000 (EUR 63,950) in respect of non-pecuniary damage.

22. The Government submitted that these claims were exorbitant and unsubstantiated.

23. The Court considers that the Government should pay the applicant the unsettled debt still owed to him, which would constitute full and final settlement of his claim for pecuniary damage.

24. The Court further 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 2,600 in respect of non-pecuniary damage.

B. Costs and expenses

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

C. Default interest

26. 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 13 of the Convention;
4. *Holds* that there has been a violation of Article 1 Protocol No. 1 to 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, the unsettled debt still owed to him, as well as EUR 2,600 (two thousand six 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 11 January 2007, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Claudia WESTERDIEK
Registrar

Peer LORENZEN
President