



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

FIFTH SECTION

CASE OF KOLOSAY v. UKRAINE

(Application no. 25452/03)

JUDGMENT

STRASBOURG

11 January 2007

FINAL

11/04/2007

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 Kolosay 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 J. BORREGO BORREGO,

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. 25452/03) 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 Nikolay Ivanovich Kolosay (“the applicant”), on 15 July 2003.

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

3. On 27 November 2003 the Court decided to communicate 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, a Ukrainian national, was born in 1940 and lives in the town of Nova Kakhovka, Kherson Region, Ukraine. He is a former employee of the State-owned OJSC “Pivdenelektromash” (“the Company,” *BAT “Південелектромаш”*).

5. The background facts for the case are described in the case of *Semenov v. Ukraine* (no. 25463/03, §§ 5-8, 13 December 2005).

6. On 20 March 2003 the Nova Kakhovka City Court (*Новокаховський міський суд Херсонської області*) ordered the Company to pay the

applicant UAH 4,827¹ in salary arrears. This judgment became final and the writs of execution were transferred to the Bailiffs.

7. By letter of 7 July 2003, the Bailiffs' Service informed the applicant that the enforcement proceedings had been suspended due to the proceedings of financial rehabilitation of the debtor.

8. On 15 January 2004 the Bailiffs' Service resumed the execution proceedings in the applicant's case. On 23 January and 10 February 2004, it ordered the seizure of the Company's accounts. However, on 27 February 2004 the Kherson Regional Commercial Court, on the trustee's appeal, quashed these decisions because the Bankruptcy Act envisaged the obligatory suspension of enforcement proceedings pending the resolution of a bankruptcy case.

9. The judgment in the applicant's favour remains unenforced.

II. RELEVANT DOMESTIC LAW

10. The relevant domestic law is summarised in the judgments of *Romashov v. Ukraine* (no. 67534/01, §§ 16-18, 27 July 2004) and *Trykhliv v. Ukraine* (no. 58312/00, §§ 25-32, 20 September 2005).

THE LAW

11. The applicant complained of the failure of the State authorities to execute the judgment of 20 March 2003 given in his favour. He alleged an infringement of Article 6 § 1 of the Convention and Article 1 of Protocol No. 1 to the Convention which provide, in so far as relevant, as follows:

Article 6 § 1 of the Convention

“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.

¹ Around 874 euros (EUR)

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 or to secure the payment of taxes or other contributions or penalties.”

I. ADMISSIBILITY

12. The Government raised objections 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, for example, the aforementioned cases of *Romashov* and *Trykhlil*, §§ 23-32 and 36-42, respectively). The Court considers that these objections must be rejected for the same reasons.

13. The Court concludes that the applicant's complaint under Article 6 § 1 of the Convention about the delay in the enforcement of the judgment of 20 March 2003 raises serious 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. It must therefore be declared admissible. For the same reasons, the Court declares admissible the applicant's complaint under Article 1 of Protocol No. 1.

II. MERITS

14. The Government maintained that the lengthy failure to enforce the judgment in the applicant's favour had been caused by the ongoing bankruptcy proceedings against the debtor Company and its critical financial situation. The Government further maintained that the Bailiffs' Service had performed all necessary actions and cannot be blamed for the delay. The applicant disagreed.

15. The Court notes that the judgment of 20 March 2003 has remained unenforced for the period exceeding three years and seven months.

16. The Court further 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 “Pivdenelektromash” (see, for instance, *Trykhlil v. Ukraine*, cited above, §§ 52-53; *Semenov v. Ukraine*, cited above, §§ 24-25, *Chernyayev v. Ukraine*, no. 15366/03, §§ 19-20 and 23-25, 26 July 2005 and *Anatskiy v. Ukraine*, cited above, §§ 21-22).

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.

III. APPLICATION OF ARTICLE 41 OF THE CONVENTION

19. 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

20. The applicant claimed pecuniary damage corresponding to the sum awarded to him by the judgment of 20 March 2003. He further claimed compensation for non-pecuniary damage, but left the amount to the discretion of the Court.

21. The Government submitted that these claims should be rejected for being unsubstantiated.

22. The Court notes that, as the judgment of 20 March 2003 remains unenforced, the Government should pay the applicant the outstanding debt in order to satisfy his claim for pecuniary damage.

23. 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 1,300 in respect of non-pecuniary damage.

B. Costs and expenses

24. The applicant also claimed UAH 25.83 (EUR 4.3) in postal expenses. He presented postal invoices.

25. The Government did not make any comment in this respect.

26. According to the Court's case-law, an applicant is entitled to reimbursement of his costs and expenses in so far as it has been shown that these have been actually and necessarily incurred and were reasonable as to quantum. The Court therefore awards the claimed amount.

C. Default interest

27. 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 to the Convention;
4. *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 judgment debt still owed to him, as well as EUR 1,304.3 (one thousand three hundred and four euros and thirty cents) in respect of non-pecuniary damage, and costs and expenses;
 - (b) that the above amount shall 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;
 - (c) 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.

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