



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

FIFTH SECTION

CASE OF RAKITIN v. UKRAINE

(Application no. 7675/04)

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 Rakitin 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. 7675/04) against Ukraine lodged with the Court under Article 34 of the Convention for the Protection of Human Rights and Fundamental Freedoms (“the Convention”) by a Ukrainian national, Mr Borys Borysovych Rakitin (“the applicant”), on 18 December 2003.

2. The applicant was represented by Mr Ruslan Anatoliyovych Ulyanov, a lawyer practising in Kremenchuk. The Ukrainian Government (“the Government”) were represented by their Agent, Mr Y. Zaytsev.

3. On 5 December 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 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 1948 and lives in Kremenchuk, the Poltava region.

5. On 8 April 2003 the Kryukivsky District Court of Kremenchuk (the “District Court,” *Крюківський районний суд м. Кременчука Полтавської області*) ordered the Kremenchuk Tax Inspectorate (the “Tax

Inspectorate,” *Кременчуцька об'єднана державна податкова інспекція*) to pay the applicant UAH 113,984.80,¹ the amount of overpaid tax.

6. On 29 May 2003 the Kryukivsky District Bailiffs' Service of Kremenchuk (“the Bailiffs,” *Відділ Державної виконавчої служби Крюківського районного управління юстиції м. Кременчука*) instituted enforcement proceedings in respect of the above judgment.

7. On 4 November 2003 the Tax Inspectorate refused to pay the judgment debt and maintained that it should be due from the State Treasury.

8. On 26 December 2003 the Bailiffs requested the District Court to explain how to enforce the judgment of 8 April 2003.

9. On 29 December 2003 the District Court found that the judgment debt was to be paid directly from the State Budget and ordered the State Treasury of Kremenchuk (the “Treasury,” *Кременчуцьке відділення Державного казначейства України*) to pay the award due to the applicant.

10. At the request of the Treasury, on 20 May 2004 the District Court gave a new explanation as to the enforcement of the judgment of 8 April 2003. In particular, the court ordered that the payment be made from the banking account of the Tax Inspectorate.

11. On 16 March 2005 the Tax Inspectorate informed the Bailiffs that the sum of the tax overpaid by the applicant had been transferred to the State budget and provided the requisites of the respective account managed by the Treasury.

12. At the request of the Bailiffs, on 8 August 2005 the District Court modified its explanation of 20 May 2004 and confirmed that the Bailiffs should collect the award due to the applicant from the above Treasury's account.

13. On 21 June 2006 the judgment of 8 April 2003 was enforced in full.

II. RELEVANT DOMESTIC LAW

14. The relevant domestic law is summarised in the judgment of *Vasylyev v. Ukraine*, (no. 10232/02, §§ 19-22, 13 July 2006).

THE LAW

15. The applicant complained about the State authorities' failure to enforce the judgment of 8 April 2003 in due time. He invoked Article 6 § 1 of the Convention and Article 1 of Protocol No. 1. He further complained that he had no effective domestic remedies for his Convention complaints as

1. 20,629.70 euros.

required by Article 13 of 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. ...”

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

16. The Government raised objections, contested by the applicant, regarding exhaustion of domestic remedies similar to those which the Court has already dismissed in other judgments concerning non-enforcement of judgments against the State entities (see e.g., *Vasylyev v. Ukraine*, cited above, §§ 30-31). The Court considers that the present objections must be rejected for the same reasons.

17. 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 8 April 2003 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 complaint 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

18. 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.

19. The applicant disagreed.

20. The Court notes that the judgment of the Kryukivsky District Court of Kremenchuk of 8 April 2003 remained unenforced for more than three years and two months. It also notes that the judgment debt was paid to the applicant only after the communication of the application to the respondent Government.

21. 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, *Volosyuk v. Ukraine*, no. 60712/00, §§ 37-38, 29 June 2006 and *Vasylyev v. Ukraine*, cited above, §§ 34-36).

22. 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.

23. 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

24. 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 16), 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 *Vasylyev* cited above, § 41). Accordingly, there has been a breach of this provision.

III. APPLICATION OF ARTICLE 41 OF THE CONVENTION

25. 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

1. *Pecuniary damage*

26. The applicant claimed the unsettled judgment debt of UAH 113,984.80 (EUR 18,610.40) in pecuniary damage and an additional sum of UAH 41,481.40 (EUR 6,788.04) for inflation losses. As an alternative to a compensation for inflation losses, the applicant claimed UAH 69,933.70 (EUR 11,418.10) for the loss of profit based on the average interest rate of 16% offered by domestic commercial banks.

27. The Government noted that the judgment debt had been paid to the applicant in full and maintained that the applicant should have claimed compensation for inflation losses at the domestic level. They further submitted that the applicant's claim for the loss of profit was unsubstantiated.

28. The Court recalls that on 21 June 2006 the applicant had received the judgment debt due to him (see paragraph 13 above) and therefore dismisses this part of the claim.

29. As regards the applicant's claim concerning the inflation losses, the Court considers that the applicant was absolved from pursuing the litigation suggested by the Government (see, as a recent authority, *Levin v. Russia*, no. 33264/02, § 31, 2 February 2006). However, the Court notes that the applicant's calculations are not supported by any official documents, which would enable the Court to determine the amount. 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).

30. Finally, as regards the applicant's claim for the loss of profit, the Court finds that the applicant's submissions are speculative and does not discern any causal link between the violations found and the damage alleged. It therefore rejects this part of the claim (see e.g., *Prodan v. Moldova*, no. 49806/99, § 73, ECHR 2004-III (extracts)).

2. *Non-pecuniary damage*

31. The applicant further claimed EUR 15,000 in respect of non-pecuniary damage.

32. The Government maintained that this claim was exorbitant and unsubstantiated.

33. The Court takes the view that the applicant has suffered some non-pecuniary damage as a result of the violations found which cannot be made good by the Court's mere findings. Nevertheless, the 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 1,000 under this head.

B. Costs and expenses

34. The applicant also claimed UAH 45,000 (EUR 7,364) in legal fees.

35. The Government noted that this amount was unsubstantiated and excessive and invited the Court to determine the compensation due to the applicant on an equitable basis.

36. 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 they 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 sum of EUR 600 covering costs under all heads.

C. Default interest

37. 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 of Protocol No. 1;
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 1,000 in respect of non-pecuniary

damage and EUR 600 in respect of costs and expenses, 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 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 11 January 2007, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Claudia WESTERDIEK
Registrar

Peer LORENZEN
President