



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

FIFTH SECTION

CASE OF SUKHOPAR v. UKRAINE

(Application no. 16267/04)

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 Sukhopar 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. 16267/04) 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 Mykola Petrovych Sukhopar (“the applicant”) on 23 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 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 was born in 1955 and lives in the town of Bogodukhiv, Kharkiv region, Ukraine.

5. In 1980 the applicant was seriously injured while working in the Mushketivska State Mine. As a result, he became an invalid.

6. On 22 August 2003 the Bogodukhiv Town Court ordered the Ukrvuglerestrukturyzatsiya State Company to pay the applicant a lump sum of UAH 4,418.63¹ in occupational disability arrears and other payments.

1. Around EUR 736.

It also ordered the Bogodukhiv Town Social Security Fund to pay the applicant a monthly allowance of UAH 405.07¹.

7. On 4 November 2003 the Kharkiv Regional Court of Appeal partly changed the decision of 22 August 2003. It awarded the applicant a lump sum of UAH 7,380.56² against the company and a monthly allowance of UAH 415.64³ from the fund, to be calculated from 1 September 2003.

8. On 26 November 2003 the Bogodukhiv Town Court sent the writ of execution in respect of the aforementioned judgment to the Voroshilovskiy District Bailiffs' Service of Donetsk.

9. On 29 May 2005 the Bailiffs' Service informed the applicant that the Ukrvuglerestrukturyzatsiya State Company had been restructured, and invited the applicant to specify name of the Mine where he worked, in order to determine the debtor's successor in the applicant's case.

10. The judgment of 4 November 2003 remains unenforced.

II. RELEVANT DOMESTIC LAW

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

THE LAW

I. ADMISSIBILITY

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

12. The applicant complained about the State authorities' failure to enforce the judgment of the Kharkiv Regional Court of Appeal of 4 November 2003. He invoked Article 6 § 1 of the Convention and Article 1 of Protocol No. 1, which 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. Around EUR 68.
2. Around EUR 1,230.
3. Around EUR 70.

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”

13. The Government maintained that the applicant had not exhausted the available domestic remedies as he failed to submit the writ of execution to the Bailiffs' Service. Accordingly, the Bailiffs' Service could not be blamed for alleged inactivity, as they were deprived of a possibility to enforce the judgment in the applicant's favour due to the latter's omission.

14. The applicant contended that this objection was fully unsubstantiated. He maintained that on 26 November 2003 the Town Court had sent the writ of execution to the Bailiffs' Service, which, at its turn, in May 2005 informed the applicant about further developments in the enforcement proceedings (paragraphs 8 and 9).

15. Assuming that the applicant had to turn to the Bailiffs' Service for the purposes of exhausting domestic remedies, the Court notes that the applicant submitted copies of the aforementioned Town Court's letter to the Bailiffs' Service and the latter's letter to the applicant. The copies of these documents were sent to the Government, which did not make any comment in this respect. Furthermore, having obtained a judgment and an execution order against a particular State authority the applicants should not be required to institute, on their own initiative, other proceedings against different State agency to meet their claims (see, *Vasylyev v. Ukraine*, no. 10232/02, § 30, 13 July 2006). Therefore, the Government's objection should be dismissed.

16. The Court concludes that the application 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 it inadmissible.

B. Complaint under Article 14 of the Convention

17. The applicant further complained under Article 14 of the Convention that he had been discriminated against on account of the non-enforcement of the judgment given in his favour.

18. The Court finds no indication in the case-file which might disclose any appearance of a violation of this provision. 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

19. In their observations, the Government contended that there had been no violation of either Article 6 § 1 of the Convention or Article 1 of Protocol No. 1 since the applicant had failed to submit the writ of execution to the Bailiffs' Service.

20. The Court dismisses this argument referring to its finding above (see, paragraph 15).

21. The Court further notes that the judgment of the Kharkiv Regional Court of Appeal of 4 November 2003 has remained unenforced for around three years so far.

22. 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, *Romashov*, cited above, §§ 42-46, and *Voytenko v. Ukraine*, no. 18966/02, §§ 53-55, 29 June 2004).

23. 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 and Article 1 of Protocol No. 1.

III. APPLICATION OF ARTICLE 41 OF THE CONVENTION

24. 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

25. The applicant claimed UAH 649,489¹, including the amount of the judgment debt, in respect of pecuniary damage caused by violation of Article 6 § 1 and Article 1 of Protocol No.1, and UAH 600,000² in respect of non-pecuniary damage.

26. The Government maintained that the applicant's claim had to be rejected as unsubstantiated.

27. In so far as the applicant claimed the amounts awarded to him by the judgment at issue, the Court considers that the Government should pay him in full the judgment debt with understanding that the monthly payment should be paid regularly. As to the rest of the applicant's claim for pecuniary

1. Around EUR 200,000.

2. Around EUR 94,786.

damage, the Court does not discern any causal link between the violation found and the pecuniary damage alleged; it therefore rejects this part of the claim.

28. As to the applicant's claim in respect of non-pecuniary damage - UAH 600,000 - the Court considers this sum excessive. Making its assessment on an equitable basis as required by Article 41 of the Convention, the Court awards the applicant the sum of EUR 1,000 in respect of non-pecuniary damage.

B. Costs and expenses

29. The applicant also claimed UAH 200¹ in costs and expenses. However he did not submit any document in this respect.

30. The Government maintained that this claim should be dismissed as unsubstantiated.

31. 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 were reasonable as to quantum.

32. The Court notes that the applicant did not submit any evidence of his expenses. However, the applicant may have incurred some costs and expenses in connection with his Convention proceedings. Regard being had to the Court's case-law and the information in its possession, the Court awards the amount he claimed (see, *mutatis mutandis*, *Romanchenko v. Ukraine*, no. 5596/03, § 38, 22 November 2005).

C. Default interest

33. 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 remainder of the application inadmissible;
2. *Holds* that there has been a violation of Article 6 § 1 of the Convention;

1. Around EUR 31.6.

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 debts still owed to him, as well as EUR 1,031.6 (one thousand and thirty-one euros and sixty cents) in respect of non-pecuniary damage, and costs and expenses;
 - (b) that the above amounts 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 amounts at a rate equal to the marginal lending rate of the European Central Bank during the default period plus three percentage points;
5. *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