



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

FIFTH SECTION

CASE OF KOLOSENKO v. UKRAINE

(Application no. 40200/02)

JUDGMENT

STRASBOURG

26 April 2007

FINAL

26/07/2007

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 Kolosenko v. Ukraine,

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

Mr P. LORENZEN, *President*,

Mr K. JUNGWIERT,

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 March 2007,

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

PROCEDURE

1. The case originated in an application (no. 40200/02) 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 Leonid Ivanovich Kolosenko (“the applicant”), on 18 October 2002.

2. The applicant was represented before the Court by Mr Igor Arturovich Voron, a lawyer, practising in the town of Dniprodzerzhynsk, the Dnipropetrovsk region, Ukraine. The Ukrainian Government (“the Government”) were represented by their Agents, Mrs V. Lutkovska and Mr Y. Zaytsev.

3. On 1 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 1951 and resides in the town of Dniprodzerzhynsk, the Dnipropetrovsk region, Ukraine.

5. On 12 October 2000 the Zavodskyy District Court of Dniprodzerzhynsk awarded the applicant 1,804.61¹ Ukrainian hryvnias (UAH) in salary arrears and in compensation for moral damage against the Dniprodzerzhynskmiskelektrotrans Municipal Company (*Комунальне експлуатаційне підприємство «Дніпродзержинськміськелектротранс»*).

6. The Government submitted that in 2001 the applicant received UAH 895, the rest of the debt amount remaining unpaid.

7. The applicant contested this submission and stated that the above amount had been received by him in enforcement of another judgment in his favour adopted on 18 March 1999 against the same debtor.

8. On 26 June 2002 the Bailiffs' Service returned the writ of enforcement to the applicant. In particular, it was stated that the applicant had been proposed to take some property items (equipment, an administrative building etc.) from the debtor in enforcement of the judgment in his favour. As the applicant failed to inform the Bailiffs' Service whether he wanted to take any property, the Bailiffs' Service discontinued the enforcement proceedings.

9. On 17 June 2003 the Dnipropetrovsk Region Commercial Court declared the debtor enterprise bankrupt.

II. RELEVANT DOMESTIC LAW AND PRACTICE

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

THE LAW

11. The applicant complained under Article 6 § 1 of the Convention and Article 1 of Protocol No. 1 about the lengthy non-enforcement of the judgment in his favour. These Articles 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. At the material time approximately 381.66 euros (EUR)

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

12. The Government raised objections regarding exhaustion of domestic remedies. In particular, the Government stressed that the applicant had failed to reintroduce the writ of enforcement or to appeal against the decision to discontinue the enforcement proceedings in his case. They further maintained that the applicant had failed to join the bankruptcy proceedings as a creditor and therefore had deprived himself of a possibility to recover the debt owned to him.

13. The Court reiterates that on numerous occasions it has already pointed out that 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 a different State agency to meet their claims (see, *mutatis mutandis*, *Plotnikovy v. Russia*, no. 43883/02, § 16, 24 February 2005; *Vasylyev v. Ukraine*, no. 10232/02, §§ 24-33, 13 July 2006).

14. Therefore, the Court finds that, the applicant cannot be reproached for not using the remedies invoked by the Government and has therefore complied with the requirements of Article 35 § 1. Accordingly, the Court dismisses the Government's contentions.

15. The Court further concludes that the applicant's complaints under Article 6 § 1 of the Convention and Article 1 of Protocol No. 1 are not manifestly ill-founded within the meaning of Article 35 § 3 of the Convention. It further notes that they are not inadmissible on any other grounds. They must therefore be declared admissible.

II. MERITS

16. The Government maintained that the debtor in the present case was a municipal enterprise and, therefore, the State could not be considered responsible for its debts. They further submitted that the judgment in the applicant's favour had been enforced in part and that the Bailiffs' Service had performed all necessary actions for its enforcement.

17. The applicant disagreed. In particular, the applicant insisted that he had received UAH 895 in enforcement of another judgment in his favour adopted on 18 March 1999. The applicant further stated that he had refused to take the property in enforcement of the judgment as this property (an old tramway car, a ruined building etc.) had been in a very bad condition and its value had in several times exceeded the amount of the debt so that he would have had to pay the difference.

18. The Court notes that the Government failed to provide any substantiation for their statement that the amount of UAH 895 received by the applicant was paid in enforcement of the judgment of 12 October 2000. In particular, the payment slip provided by the Government does not contain any reference to the enforcement proceedings concerning the judgment of 12 October 2000. The Court further considers that the proposition to take property items in enforcement of the judgment in the applicant's favour could, in the circumstances of the present case, not be considered as an enforcement of a judgment with a purely monetary award.

19. Therefore, the judgment in the applicant's favour remained unenforced for more than six years and five months.

20. 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 like the present applications (see, *Raisa Tarasenko v. Ukraine*, no. 43485/02, 7 December 2006; *Shmalko v. Ukraine*, no. 60750/00, § 55-57, 20 July 2004).

21. Having examined all the material submitted to it, 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.

22. 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

23. 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

24. The applicant claimed USD 10,000¹ in respect of non-pecuniary damage.

25. The Government contested the applicant's claims, which they alleged were exorbitant.

1. Around EUR 7,612.78

26. Making its assessment on an equitable basis, as required by Article 41 of the Convention, the Court awards the applicant EUR 2,000 in respect of his non-pecuniary claim.

27. The Court further notes that it is undisputed that the State still has an outstanding obligation to enforce the judgment at issue. Accordingly, the applicant remains entitled to recover the principal amount of the debt awarded to him in the course of the domestic proceedings.

B. Costs and expenses

28. The applicant did not submit any claims under this head; the Court, therefore, makes no award.

C. Default interest

29. 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;
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, EUR 2,000 (two thousand euros) in respect of non-pecuniary damage, 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;
5. *Dismisses* the remainder of the applicant's claim for just satisfaction.

Done in English, and notified in writing on 26 April 2007, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Claudia WESTERDIEK
Registrar

Peer LORENZEN
President