



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

FIFTH SECTION

CASE OF LYSENKO v. UKRAINE

(Application no. 18219/02)

JUDGMENT

STRASBOURG

7 June 2007

FINAL

12/11/2007

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 Lysenko v. Ukraine,

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

Mr P. LORENZEN, *President*,

Mrs S. BOTOCHAROVA,

Mr V. BUTKEVYCH,

Mrs M. TSATSA-NIKOLOVSKA,

Mr R. MARUSTE,

Mr J. BORREGO BORREGO,

Mrs R. JAEGER, *judges*,

and Mrs C. WESTERDIEK, *Section Registrar*,

Having deliberated in private on 15 May 2007,

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

PROCEDURE

1. The case originated in an application (no. 18219/02) 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 Vasyl Vasylyovych Lysenko (“the applicant”), on 8 April 2002.

2. The Ukrainian Government (“the Government”) were represented by their Agent, Mr Yuriy Zaytsev.

3. On 27 June 2005 the Court decided to communicate the complaint concerning the non-enforcement of the judgment given in the applicant's favour against the Bailiffs' Service 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 Mykolayiv.

A. Proceedings against the “Scherbany” Agricultural Company

5. On 26 August 1998 the Voznesensk Court ordered the “Scherbany” private agricultural company (hereafter “the Company”) to pay the applicant his share of UAH 32,112¹.

6. Between 12 October 1998 and December 1999 the Voznesensk City Bailiffs' Service (hereafter “the Bailiffs”) attached and sold three cars belonging to the Company, following which the applicant was paid UAH 7,130.40².

7. On 26 September 2002 the Voznesensk Court, following the applicant's complaint, declared the Bailiffs' failure to enforce in total the above-mentioned judgment unlawful.

8. On 4 November 2003 the Mykolaiv Regional Department of Justice informed the applicant that the judgment of 26 August 1998 had not been enforced in full due to the Company's lack of funds. The above-mentioned judgment remains unenforced until present.

B. Proceedings against the Bailiffs

9. In November 2002 the applicant instituted proceedings against the Bailiffs seeking compensation for damage caused by unreasonable delay in execution of the judgment given in his favour.

10. On 15 February 2003 the Voznesensk Court allowed the applicant's claim and awarded him UAH 925³ in compensation for moral damage. The judgment was not appealed within a statutory one-month time-limit and entered into force on 17 March 2003.

11. On 27 March 2003 the Bailiffs opened the enforcement proceedings and on 13 May 2003 the writ of execution was sent to the Voznesensk Department of the State Treasury.

12. On 19 September 2003 the writ of execution was returned to the applicant due to the lack of the debtor's funds.

13. On 29 December 2003 the Voznesensk Court, upon the applicant's claim, found unlawful the Bailiffs' failure to enforce the judgment of 15 February 2003 and ordered to reinstate the enforcement proceedings.

14. On 8 July 2004 the Bailiffs transferred UAH 925 to the applicant's bank account and the enforcement proceedings were terminated on 15 July 2004.

1. EUR 5,267.

2. EUR 1,170.

3. EUR 152.

II. RELEVANT DOMESTIC LAW

15. The relevant domestic law is summarised in the judgment of *Romashov v. Ukraine* (no. 67534/01, §§ 16-19, 27 July 2004).

THE LAW

I. ALLEGED VIOLATION OF ARTICLES 6 § 1 AND 13 OF THE CONVENTION AND ARTICLE 1 OF PROTOCOL No. 1

16. The applicant complained about the infringement of Articles 6 § 1 and 13 of the Convention and Article 1 of Protocol No. 1 caused by the lengthy non-enforcement the judgment of 15 February 2003 given in his favour. The above 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”

A. Admissibility

17. The Government observed that there was no omission by the State authorities and the judgment of 15 February 2003 given in the applicant's favour was enforced in full.

18. The applicant disagreed.

19. The Court observes that it has already dismissed the Government's similar contentions in the cases in which the non-enforcement of judgments against State bodies was prevented because of the failure of the State to take any measures, rather than by a Bailiff's misconduct (see, for instance, *Voytenko v. Ukraine*, no. 18966/02, § 30-31, 29 June 2004).

20. The Court finds no reason to reach a different conclusion in the present case and concludes that the applicant's complaints raise 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 part of the application inadmissible.

B. Merits

21. In their observations, the Government contended that there had been no violation of the provisions of the Convention in the applicant's respect.

22. The applicant disagreed.

23. The Court notes that the judgment given in the applicant's favour against the Bailiffs remained unenforced for almost sixteen months.

24. 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, *Romashov*, cited above, §§ 42-46, and *Voytenko*, cited above, §§ 53-55).

25. 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.

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

27. The Court does not find it necessary in the circumstances to examine the same complaint under Article 13 of the Convention (see *Derkach and Palek v. Ukraine*, nos. 34297/02 and 39574/02, § 42, 21 December 2004).

II. OTHER COMPLAINTS

28. The applicant further complained under Articles 6 § 1 and 13 of the Convention and Article 1 of Protocol No. 1 about the lengthy non-enforcement of the judgment of 26 August 1998 given in his favour.

29. However, in the light of all the materials in its possession, the Court finds that they do not disclose any appearance of a violation of the rights and freedoms set out in the Convention or its Protocols.

30. It follows that these parts of the application must be declared inadmissible as being manifestly ill-founded, pursuant to Article 35 §§ 1, 3 and 4 of the Convention.

III. APPLICATION OF ARTICLE 41 OF THE CONVENTION

31. 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

32. The applicant claimed EUR 4,097 in respect of pecuniary and EUR 4,300 in respect of non-pecuniary damage.

33. The Government maintained that the applicant's claims were exorbitant and non-substantiated.

34. The Court, making its assessment on an equitable basis, as required by Article 41 of the Convention, awards the applicant EUR 200 (two hundred euros) in respect of non-pecuniary damage.

B. Costs and expenses

35. In the present case the applicant failed to submit any claims; the Court therefore makes no award.

FOR THESE REASONS, THE COURT UNANIMOUSLY

1. *Declares* the complaints under Articles 6 § 1 and 13 of the Convention and Article 1 of Protocol No. 1 about the non-enforcement of the judgment given against the State Bailiffs' Service admissible and the remainder of the application inadmissible;
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* that it is not necessary to examine the applicant's complaints under Article 13 of 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, EUR 200 (two hundred euros) in respect of non-pecuniary damage;

(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;

6. *Dismisses* the applicant's claim for just satisfaction.

Done in English, and notified in writing on 7 June 2007, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Claudia WESTERDIEK
Registrar

Peer LORENZEN
President