



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

FIFTH SECTION

CASE OF LOGVINOV v. UKRAINE

(Application no. 1371/03)

JUDGMENT

STRASBOURG

14 June 2007

FINAL

14/09/2007

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 Logvinov v. Ukraine,

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

Mr P. LORENZEN, *President*,
Mrs S. BOTOUCHAROVA,
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 22 May 2007,

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

PROCEDURE

1. The case originated in an application (no. 1371/03) 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 Kuzmich Logvinov (“the applicant”), on 2 November 2002.

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

3. On 15 March 2005 the Court decided to communicate the complaints under Article 6 § 1 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 resides in Kharkiv, Ukraine.

5. On an unidentified date the applicant instituted proceedings in the Poltavsky District Court against the Makarenko Scientific and Research Company (*Науково-дослідницьке господарство ім. Макаренка*), which was at the material time owned by the State, claiming compensation for pecuniary and non-pecuniary damage. On 29 May 2001 the court awarded

the applicant 19,344.85¹ Ukrainian hryvnas (UAH) (*Рішення Полтавського районного суду Полтавської області*).

6. On 19 September 2001 the Poltava District Bailiffs' Service (*Відділ Державної виконавчої служби Полтавського районного управління юстиції*) initiated the enforcement proceedings.

7. By letters of 10 and 14 May 2002 the Bailiffs' Service informed the applicant that it was not possible to sell the debtor's property as, according to the Law on the Introduction of a Moratorium on the Forced Sale of Property, on 26 December 2001 a ban on the forced sale of assets belonging to undertakings in which the State holds at least 25% of the share capital had been introduced.

8. On an unidentified date before July 2003 the enterprise was privatised.

9. On 14 November 2003 the judgment of 29 May 2001 was enforced in full.

II. RELEVANT DOMESTIC LAW

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. Relying on Articles 6 § 1 and 13 of the Convention, and Article 1 of Protocol No. 1 the applicant complained about the lengthy non-enforcement of the judgment given 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. ...”

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.”

¹ At the material time around 4,157.89 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 the applicant's victim status and exhaustion of domestic remedies similar to those which the Court has already dismissed in the case of *Romashov v. Ukraine* (no. 67534/01, §§ 23-33, 27 July 2004). The Court considers that the present objections must be rejected for the same reasons.

13. The Court finds that the applicant's complaints about the delay in the enforcement of the judgment of the Poltavsky District Court fall to be examined under Article 6 § 1 of the Convention and Article 1 of Protocol No. 1. They are not manifestly ill-founded within the meaning of Article 35 § 3 of the Convention. It further notes that these complaints are not inadmissible on any other grounds. They must therefore be declared admissible.

II. MERITS

14. The Government argued that the State could not be responsible for the lengthy non-enforcement of the judgment in the applicant's favour since the debtor enterprise was not owned by the State. They further maintained that the judgment in the applicant's favour had been enforced in full and that the length of the enforcement proceedings had been caused by the critical financial situation of the debtor company. Moreover, the length of the enforcement in the present case could not be considered as unreasonable.

15. The applicant disagreed.

16. The Court further notes that the judgment in the applicant's favour was not enforced for more than two years and five months.

17. 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 application (see, *Solovyev v. Ukraine*, no. 4878/04, §§ 20-24, 14 December 2006; *Sokur v. Ukraine*, no. 29439/02, 26 April 2005).

18. Having examined all the materials 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.

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

III. APPLICATION OF ARTICLE 41 OF THE CONVENTION

20. 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

21. The applicant claimed UAH 6,976.89¹ in respect of pecuniary damage and UAH 5,000² in respect of non-pecuniary damage.

22. The Government contested the applicant's claims, which they alleged were unsubstantiated and exorbitant.

23. The Court does not discern any causal link between the violation found and the pecuniary damage alleged; it therefore rejects this claim. However, the Court considers that the applicant must have sustained non-pecuniary damage, and, deciding on an equitable basis, awards him EUR 600 in this respect.

B. Costs and expenses

24. The applicant claimed UAH 147.19³ for costs and expenses incurred in the Convention proceedings.

25. The Government considered the applicant's claims unsubstantiated.

26. The Court considers that the applicant may have incurred some costs and expenses before the Court. Regard being had to the information in its possession and to the above considerations, the Court awards the applicant EUR 23 for costs and expenses.

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.

¹ Around EUR 1,083.08

² Around EUR 776.19

³ Around EUR 23

FOR THESE REASONS, THE COURT UNANIMOUSLY

1. *Declares* the applicant's complaints under Article 6 § 1 of the Convention and Article 1 of Protocol No. 1 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 600 (six hundred euros) in respect of non-pecuniary damage and EUR 23 (twenty three euros) in 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;
5. *Dismisses* the remainder of the applicant's claim for just satisfaction.

Done in English, and notified in writing on 14 June 2007, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Claudia WESTERDIEK
Registrar

Peer LORENZEN
President