



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

FIFTH SECTION

CASE OF BAKHEROV v. UKRAINE

(Application no. 1192/04)

JUDGMENT

STRASBOURG

27 September 2007

FINAL

27/12/2007

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 Bakherov 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 4 September 2007,

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

PROCEDURE

1. The case originated in an application (no. 1192/04) 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 Viktor Andreyevich Bakherov (“the applicant”), on 6 December 2003.

2. The Ukrainian Government (“the Government”) were represented by their Agent, Mrs Valeriya Lutkovska.

3. On 26 May 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 1939 and lives in the town of Dzerzhynsk, Donetsk region.

5. On 3 October 2000 the Dzerzhynsk Court awarded the applicant against the Gagarina coal mine (owned by the Artemvugillya State Company) UAH 107,684 (EUR 22,518) in social benefits arrears and UAH 1,946 (EUR 407) in monthly payments as of 3 October 2000.

6. On 9 November 2000 the Mykytivsky District Bailiffs' Service (hereinafter “the Bailiffs”) instituted the enforcement proceedings and on

the same day suspended them in respect of the social benefits arrears due to the bankruptcy proceedings against the debtor pending before the Donetsk Commercial Court.

7. On 15 November 2000 the enforcement proceedings in the applicant's case were resumed and joined to the other enforcement proceedings against the debtor.

8. On 5 April 2002 the Mykytivsky District Court of Gorlivka rejected the applicant's claim against the alleged Bailiffs' inactivity. On 14 October 2002 and 10 June 2003 the Donetsk Regional Court of Appeal and the Supreme Court, respectively, upheld this decision.

9. On 25 February 2003 the Ministry of Fuel transformed the debtor into a subdivision of the Artemvugillya Company.

10. On 18 September 2003 the applicant was paid UAH 15,000.

11. On 21 July 2004 the applicant was paid UAH 1,000.

12. On 18 October 2004 the applicant was paid UAH 1,617.

13. On 19 November 2004 the applicant was paid UAH 68,916.

14. On 23 December 2004 the applicant was paid the remainder of the debt - UAH 21,345.

15. As to the judgment of 3 October 2000 in part of monthly payments of UAH 1,945 to the applicant, the writ of execution was issued on the same day and the Bailiffs transferred it to the Industrial Accidents Insurance Fund (*Фонд соціального страхування від нещасних випадків на виробництві і професійних захворювань*). The monthly payments are transferred to the applicant without delays.

II. RELEVANT DOMESTIC LAW

16. The relevant domestic law is summarised in the judgment of *Sokur v. Ukraine* (no. 29439/02, § 17-22, 26 April 2005).

THE LAW

I. ALLEGED VIOLATION OF ARTICLES 6 § 1 AND 13 OF THE CONVENTION

17. The applicant complained about the infringement of Articles 6 § 1 and 13 of the Convention caused by the lengthy non-enforcement the judgment of 3 October 2000 in part of social benefits arrears awarded to him. 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.”

A. Admissibility

18. The Government observed that there was no omission by the State authorities as the judgment given in the applicant's favour was enforced in full.

19. The Court observes that the applicant's complaints raise issues of fact and law under the Convention, the determination of which requires an examination of the merits. It finds no ground for declaring the application inadmissible. The Court must therefore declare it admissible.

B. Merits

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

21. The applicant disagreed.

22. The Court notes that the judgment given in the applicant's favour remained unenforced for almost fifty months.

23. The Court recalls that it has already found violation of Article 6 § 1 of the Convention in a number of similar cases (see, for instance, *Sokur v. Ukraine*, cited above and *Mykhalenko and Others v. Ukraine*, nos. 35091/02, 35196/02, 35201/02, 35204/02, 35945/02, 35949/02, 35953/02, 36800/02, 38296/02 and 42814/02, § 45, ECHR 2004).

24. Having examined all the materials 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.

25. There has, accordingly, been a violation of Article 6 § 1 of the Convention.

26. 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. APPLICATION OF ARTICLE 41 OF THE CONVENTION

27. 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

28. The applicant claimed 100,000 euros (EUR) in respect of pecuniary and non-pecuniary damage.

29. The Government found this claim unsubstantiated and exorbitant as the judgment in the applicant's favour was enforced in full.

30. The Court considers that the applicant must have sustained non-pecuniary damage as a result of the violations found (see *Kryachkov v. Ukraine*, no. 7497/02, § 30, 1 June 2006). Making its assessment on an equitable basis, as required by Article 41 of the Convention, the Court awards the applicant EUR 1,600 in this respect.

B. Costs and expenses

31. The applicant also claimed EUR 55 for the costs and expenses incurred before the Court. The Court considers it reasonable to award the applicant this sum.

C. Default interest

32. 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 is no need to examine the complaint under Article 13 of 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, EUR 1,655 (one thousand six hundred and fifty five euros) in respect of non-pecuniary damage and costs and expenses, to 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;

(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 27 September 2007, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Claudia WESTERDIEK
Registrar

Peer LORENZEN
President