



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

FIFTH SECTION

CASE OF LISNYY v. UKRAINE

(Application no. 4204/03)

JUDGMENT

STRASBOURG

25 October 2007

FINAL

25/01/2008

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 Lisnyy 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,

Mrs R. JAEGER,

Mr M. VILLIGER, *judges*,

and Mrs C. WESTERDIEK, *Section Registrar*,

Having deliberated in private on 2 October 2007,

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

PROCEDURE

1. The case originated in an application (no. 4204/03) 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 Volodymyr Dmytrovych Lisnyy (“the applicant”), on 18 January 2003.

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

3. On 15 November 2006 the Court decided to communicate the complaints concerning the delay in the enforcement of the judgments 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 1936 and lives in Lviv.

5. In 1981 the applicant was convicted of speculating in gold and sentenced to a term of imprisonment. In 1992 his conviction was annulled as unlawful. Subsequently the applicant instituted civil proceedings, seeking various kinds of compensation for his unlawful conviction and punishment.

A. Proceedings concerning compensation for the loss of income

6. On 24 February 1998 the Khust Court (*Хустський районний суд Закарпатської області*) awarded the applicant 3,350.55 hryvnias (UAH)¹ against the Ministry of Finance (“the Ministry”; *Міністерство фінансів України*) in compensation for his loss of income while in detention.

7. This judgment became final and on 3 June 1998 the bailiffs instituted enforcement proceedings. They submitted the enforcement writ to the Ministry of Finance, which redirected it to the State Treasury (*Державне Казначейство України*).

8. On 18 November 2003 the enforcement writ was returned to the applicant unenforced.

B. Proceedings concerning compensation for the confiscated gold

9. On 13 May 1999 the Khust Court awarded the applicant UAH 7,281.70² against the Khust State Treasury Department (“the Khust Treasury”; *Відділ Державного казначейства в Хустському районі Закарпатської області*) in compensation for the gold confiscated from him following his conviction. This decision became final.

10. On 12 November 2002 the Khust Treasury informed the applicant that it could not make the payment without the command of the bailiffs. In connection with this, the Khust Treasury had transferred the applicant's request for enforcement and a copy of the judgment to the bailiffs and had requested the Khust Court to transfer the enforcement writ thereto.

11. On 5 March 2003 the Khust Court informed the applicant that it had never issued the enforcement writ as the applicant personally had never requested the court to do so.

12. The judgment of 13 May 1999 remains unenforced.

C. Proceedings for compensation of moral damage

13. On 2 April 2002 the Lychakivsky District Court of Lviv awarded the applicant UAH 2,000³ against the State Treasury in moral damages for a delay in the enforcement of the judgment of 24 February 1998.

14. This decision became final in October 2002 and on 9 December 2002 the enforcement proceedings were instituted. On several occasions the Treasury informed the applicant that the judgment award could not be paid on account of the lack of budgetary allocations.

1. ECU (EUR) 1,528.30.

2. EUR 1,685.32.

3. EUR 443.99.

15. On 26 January 2004 the Lviv Regional Court of Appeal (“the Regional Court”; *Апеляційний суд Львівської області*) gave the applicant, who sought to obtain a higher amount of compensation, leave to appeal against the judgment of 2 April 2002 out of time.

16. On 15 March 2004 the Regional Court, following the applicant's appeal, reviewed the facts of the case in their entirety and quashed the judgment of 2 April 2002. The court rejected the applicant's claims against the Treasury as lacking statutory basis under domestic law. On 25 September 2006 the Supreme Court rejected the applicant's request for leave to appeal in cassation.

D. Other proceedings

17. The applicant made several unsuccessful attempts to institute civil proceedings against various authorities, seeking compensation for the delays in the enforcement of the judgments in his favour.

II. RELEVANT DOMESTIC LAW

18. The relevant domestic law is summarised in the judgment of *Volosyuk v. Ukraine* (no. 60712/00, §§ 20-24, 29 June 2006).

THE LAW

I. ALLEGED VIOLATION OF ARTICLE 1 OF PROTOCOL No. 1 OF THE CONVENTION

19. The applicant complained about the State authorities' failure to enforce the judgments of 24 February 1998, 13 May 1999 and 2 April 2002 in due time. He invoked Article 1 of Protocol No. 1, which provides, insofar as relevant, as follows:

“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 or to secure the payment of taxes or other contributions or penalties.”

A. Admissibility

20. The Government contended that the applicant had failed to institute enforcement proceedings in respect of the judgment of 13 May 1999 and had therefore not exhausted the remedies available to him under the national law. They submitted no observations on the admissibility of the applicant's complaints concerning the non-enforcement of the other judgments in issue.

21. The applicant disagreed.

22. The Court finds that it is inappropriate to require an individual who has obtained judgment against the State at the end of legal proceedings to then bring enforcement proceedings to obtain satisfaction (see, for example, *Metaxas v. Greece*, no. 8415/02, § 19, 27 May 2004; *Scordino v. Italy (no. 1)* [GC], no. 36813/97, § 198, ECHR 2006-... and *Lizanets v. Ukraine*, no. 6725/03, § 43, 31 May 2007). It therefore rejects the Government's objection.

23. The Court notes that the applicant's complaints concerning the non-enforcement of the judgments 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.

B. Merits

24. In their observations on the merits of the case, the Government contended that there had been no violation of Article 1 of Protocol No. 1.

25. The applicant disagreed.

26. The Court notes that the judgments of 24 February 1998 and 13 May 1999 have remained unenforced for the periods exceeding nine and eight years, respectively. The period of non-enforcement of the judgment of 2 April 2002 was, from the date, on which this judgment became final and until it was quashed, one year and five months.

27. The Court recalls that it has already found violations of Article 1 of Protocol No. 1 in a number of similar cases (see, for instance, *Volosyuk v. Ukraine*, cited above, §§ 37-38, and *Androsov v. Russia*, no. 63973/00, §§ 55-56, 6 October 2005).

28. 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.

29. There has, accordingly, been a violation of Article 1 of Protocol No. 1.

II. OTHER COMPLAINTS

30. Additionally, the applicant invoked Article 17 of the Universal Declaration of Human Rights and Article 9 § 5 of the International Covenant on Civil and Political Rights, complaining about the delay in the enforcement of the judgments and about inadequate compensation for the damage sustained by him on account of the non-enforcement as well as the conviction.

31. The Court recalls that it has examined the lengthy non-enforcement of the judgments in the applicant's favour under Article 1 of Protocol No. 1 (see paragraphs 26-29 above).

32. The remainder of the applicant's complaints are outside the competence of the Court and should therefore be rejected pursuant to Article 35 §§ 3 and 4 of the Convention (see *Kucherenko v. Ukraine*, no. 27347/02, § 28, 15 December 2005).

III. APPLICATION OF ARTICLE 41 OF THE CONVENTION

33. 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

34. The applicant claimed the unsettled debts due to him by the judgments of 24 February 1998 and 13 May 1999 as well as UAH 12,652.50 (EUR 1,975) in inflation losses and UAH 5,868.28 (EUR 916) in statutory default interest by way of pecuniary damage. In support of his claim for inflation losses, the applicant presented a certificate of the Lviv Department of the State Committee for Statistics (*Головне управління статистики у Львівській області*), showing the inflation rates in the reference period. Additionally, the applicant claimed EUR 100,000 in non-pecuniary damage.

35. The Government contested these claims.

36. The Court recalls that the principle underlying the provision of just satisfaction is that the applicant should as far as possible be put in the position he would have enjoyed had the violation found by the Court not occurred (*Kingsley v. the United Kingdom* [GC], no. 35605/97, § 40, ECHR 2002-IV). Turning to the instant case, the Court observes that the judgments given in the applicant's favour have not been enforced and that the adequacy of the compensation would be diminished if the debt were to be paid without reference to various circumstances liable to reduce its value, such as

an extended delay in enforcement (see *e.g. Reynbakh v. Russia*, no. 23405/03, § 35, 29 September 2005).

37. Taking into account the applicant's submissions as regards the inflation rates during the period of non-enforcement and the fact that the Government did not dispute the applicant's method of calculation, the Court finds that the Government should pay the applicant the outstanding judgments debt as well as EUR 1,975 in inflation losses by way of compensation for pecuniary damage. The Court does not discern any causal link between the violation found and the default interest alleged and considers that the applicant remains entitled to raise the relevant claim in the course of domestic proceedings. The Court therefore dismisses the claim for default interest.

38. The Court further takes the view that the applicant has suffered some non-pecuniary damage as a result of the violation found. Making its assessment on an equitable basis, as required by Article 41 of the Convention, the Court awards the applicant the sum of EUR 2,600 in respect of non-pecuniary damage.

B. Costs and expenses

39. The applicant also claimed UAH 15,000 (EUR 2,340) for the costs and expenses incurred before the domestic courts and before the Court. He presented no supporting documents.

40. The Government submitted that the applicant had failed to substantiate his claim.

41. The Court reiterates that, in order for costs and expenses to be included in an award under Article 41, it must be established that they were actually and necessarily incurred in order to prevent or obtain redress for the matter found to constitute a violation of the Convention and were reasonable as to quantum (see, among many other authorities, *Nilsen and Johnsen v. Norway* [GC], no. 23118/93, § 62, ECHR 1999-VIII).

42. The Court considers that these requirements have not been met in the instant case. It notes that the applicant's submissions do not specify his costs incurred in connection with the violation found. However, the applicant must have incurred some costs and expenses in connection with his Convention complaints. Regard being had to the information in its possession and to the above considerations, the Court finds it reasonable to award the applicant EUR 50 for costs and expenses (see *e.g., Belanova v. Ukraine*, no. 1093/02, § 41, 29 November 2005).

C. Default interest

43. 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 complaint concerning Article 1 Protocol No. 1 admissible and the remainder of the application inadmissible;
2. *Holds* that there has been a violation of Article 1 of Protocol No. 1 of the Convention;
3. *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 outstanding debts under the judgments of 24 February 1998 and 13 May 1999 as well as EUR 4,625 (four thousand six hundred and twenty-five euros) in respect of inflation losses, non-pecuniary damage, 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;
4. *Dismisses* the remainder of the applicant's claim for just satisfaction.

Done in English, and notified in writing on 25 October 2007, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Claudia WESTERDIEK
Registrar

Peer LORENZEN
President