



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

FIFTH SECTION

CASE OF ARSENENKO v. UKRAINE

(Application no. 6128/04)

JUDGMENT

STRASBOURG

31 January 2008

FINAL

07/07/2008

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 Arsenenko v. Ukraine,

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

Peer Lorenzen, *President*,
Snejana Botoucharova,
Karel Jungwiert,
Volodymyr Butkevych,
Margarita Tsatsa-Nikolovska,
Rait Maruste,
Mark Villiger, *judges*,

and Claudia Westerdiek, *Section Registrar*,

Having deliberated in private on 8 January 2008,

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

PROCEDURE

1. The case originated in an application (no. 6128/04) 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 Volodymyr Mykolayovych Arsenenko (“the applicant”), on 26 January 2004.

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 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 1956 and resides in the town of Gorlivka, Donetsk region, Ukraine.

5. According to the applicant, in 1997 he instituted proceedings in the Tsentralno-Miskyy District Court of Gorlivka against his former employer, the Lenin State Mining Company (*шахта ім. Леніна м. Горлівки*), claiming compensation for damage to his health. On 6 July 2001 the court

awarded the applicant a lump sum of 43,241.61¹ Ukrainian hryvnas (UAH) and monthly payments of UAH 834.31² (*рішення Центрально-міського суду м. Горлівки*). This judgment became final on 3 December 2001.

6. On 23 January 2002 the Tsentralno-Misky District Bailiffs' Service of Gorlivka (*відділ Державної виконавчої служби Управління юстиції Центрально-міського району м. Горлівки*) initiated the enforcement proceedings.

7. By letters of 17 April, 14 May, 27 December 2002 and 21 November 2003, the Bailiffs' Service informed the applicant that it was impossible to sell the debtor's property because, 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 27 February 2003 the applicant was paid UAH 11,546.43. According to the Government, in 2005 the applicant had been paid UAH 1,475.64 in addition to the aforesaid sum. No document in support of this statement has been submitted.

9. The applicant disagreed, stating that he had been paid UAH 11,546.43 only.

10. Both parties agreed that the court judgment remains partly unenforced.

II. RELEVANT DOMESTIC LAW

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

THE LAW

I. THE LENGTH OF THE PROCEEDINGS

12. Relying on Article 13 of the Convention the applicant complained of the lengthy consideration of his case by the court and about the lengthy non-enforcement of the judgment of 6 July 2001, i.e. that the lump sum awarded to him remained unpaid. Article 13 reads as follows:

1. Around 9,593.80 euros (EUR)

2. Around EUR 185.10

“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.”

13. The Court has examined the applicant’s complaints under Article 6 § 1 of the Convention and Article 1 of Protocol No. 1 which 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 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

14. The Government raised objections regarding the exhaustion of domestic remedies similar to those which the Court has already dismissed in the case of *Romashov v. Ukraine* (no. 67534/01, §§ 28-32, 27 July 2004). The Court considers that they must be rejected for the same reasons.

15. The Court notes that the application is not manifestly ill-founded within the meaning of Article 35 § 3 of the Convention. It further notes that it is not inadmissible on any other grounds. It must therefore be declared admissible.

B. Merits

16. The Government maintained that the Bailiffs’ Service had performed all necessary actions in order to enforce the judgment of 6 July 2001 in the applicant’s favour. The Government further contended that the length of enforcement was not unreasonable and was caused by a difficult financial situation of the debtor company.

17. The applicant did not submit any observations in respect of the merits of the cases.

18. The Court reiterates that the court proceedings and the enforcement proceedings are stages one and two in the total course of proceedings (see *Scordino v. Italy (no. 1)* [GC], no. 36813/97, § 197, ECHR 2006-...). Therefore, the enforcement proceedings should not be dissociated from the action and the proceedings are to be examined in their entirety (see *Estima Jorge v. Portugal*, judgment of 21 April 1998, *Reports of Judgments and Decisions* 1998-II, § 35 and, as a recent authority, *Sika v. Slovakia*, no. 2132/02, §§ 24-27, 13 June 2006).

19. The Court notes that the applicant's complaint about the length of the court proceedings in his case is limited to the general statement that his case had been considered by the court for four years. No further specification in support to this complaint has been provided by the applicant.

20. However, the Court observes that the judgment of 6 July 2001 given in the applicant's favour has remained unenforced for more than six years.

21. 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, *Dubenko v. Ukraine*, no. 74221/01, §§ 47 and 51, 11 January 2005).

22. 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.

23. There has, accordingly, been a violation of Article 6 § 1 of the Convention in respect of the lengthy non-enforcement of the judgment in the applicant's favour and a violation of Article 1 of Protocol No. 1 in the present application.

24. The Court does not find it necessary in the circumstances to examine the same complaints 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

25. 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."

Damage, costs and expenses

26. In the present case the applicant failed to submit his claims in time; the Court therefore makes no award.

27. The Court, however, 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.

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* that there is no need to examine the complaint under Article 13 of the Convention.

Done in English, and notified in writing on 31 January 2008, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Claudia Westerdiek
Registrar

Peer Lorenzen
President