



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

FIFTH SECTION

CASE OF KONOTENKO v. UKRAINE

(Application no. 7725/04)

JUDGMENT

STRASBOURG

31 January 2008

FINAL

30/04/2008

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 Konotenko v. Ukraine,

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

Peer Lorenzen, *President*,
Snejana Botoucharova,
Volodymyr Butkevych,
Margarita Tsatsa-Nikolovska,
Rait Maruste,
Javier Borrego Borrego,
Renate Jaeger, *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. 7725/04) 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 Russian national, Mr Igor Vasilyevich Konotenko (“the applicant”), on 2 February 2004.

2. The Ukrainian Government (“the Government”) were represented by Mr Y. Zaytsev, their Agent, and Mrs I. Shevchuk, Head of the Office of the Government Agent before the European Court of Human Rights.

3. On 30 May 2006 the Court decided to communicate the complaints concerning the delay in the enforcement of a judgment given 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.

4. In accordance with Article 36 § 1 of the Convention, the Russian Government were invited to exercise their right to intervene in the proceedings, but they declined to do so.

THE FACTS**I. THE CIRCUMSTANCES OF THE CASE**

5. The applicant was born in 1963 and lives in Sidorovka, in the Rostov region of the Russian Federation.

6. On 18 May 1999 the Rovenky Court (*Ровеньківський міський суд Луганської області*) awarded the applicant 8,895.36 hryvnias (UAH) against his former Ukrainian employer, the State-owned OJSC Mine “Dzerzhynskogo” (*Державне відкрите акціонерне товариство «Шахта ім. Дзержинського»*), in disability benefits and other payments.

7. This judgment was not appealed against, became final, and enforcement proceedings were instituted to collect the debt.

8. The debt was paid to the applicant in numerous small instalments, the last payment of UAH 363.46 having been made on 17 June 2005.

9. As explained by the bailiffs' service, the enforcement of the judgment had been delayed on account of numerous reasons, including a prolonged reorganization of the debtor, insufficient funds and a tax lien imposed on its property, as well as a statutory moratorium on the forced sale of the State property.

II. RELEVANT DOMESTIC LAW

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

THE LAW

I. ADMISSIBILITY

A. Complaints about the length of the enforcement of a judgment given in the applicant's favour

11. The applicant complained under Article 6 § 1 about the State authorities' failure to enforce the judgment given in his favour in due time. He further complained under Article 13 of the Convention that he had no effective remedies for his complaint under Article 6 § 1. The impugned 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.

12. The Government provided no observations on the admissibility of the above complaints.

13. The Court finds that these complaints are not manifestly ill-founded within the meaning of Article 35 §§ 1, 3 and 4 of the Convention. It further notes that they are not inadmissible on any other grounds. They must therefore be declared admissible.

B. Other complaints

14. The applicant additionally complained under Article 6 § 1 of the Convention that in its judgment of 18 May 1999, the Rovenky Court had allowed only a part of his claims. Lastly, the applicant invoked Articles 1, 33 and 34 of the Convention to the facts of the present case.

15. Having carefully examined these submissions in the light of all the material in its possession and insofar as the matters complained of are within its competence, the Court finds that they do not disclose any appearance of a violation of the rights and freedoms set out in the Convention.

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

II. MERITS

A. The applicant's complaint under Article 6 § 1 of the Convention

17. The Government contended that the bailiffs had taken every action necessary to enforce the judgment in the applicant's favour and that there had been no violation of Article 6 § 1.

18. The applicant disagreed.

19. The Court notes that the period of debt recovery in the applicant's case was six years and one month.

20. The Court recalls that it has already found violations of Article 6 § 1 of the Convention in a number of similar cases (see, for instance, *Romashov v. Ukraine*, cited above, § 46).

21. 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.

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

B. The applicant's complaint under Article 13 of the Convention

23. The Government contended that the applicant had had effective channels of complaint, in particular, he could have challenged omissions of the bailiffs in the course of the enforcement proceedings.

24. The applicant did not comment on this issue.

25. The Court recalls that it had already found ineffective the remedy, referred to by the Government, in other similar cases (see e.g., *Voytenko v. Ukraine*, no. 18966/02, § 46-48, 29 June 2004). It finds no reason to depart from its case-law in the present case.

26. Accordingly, there has been a breach of Article 13 of the Convention.

III. 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 50,000 euros (EUR) in respect of pecuniary and non-pecuniary damage.

29. The Government submitted that the applicant had failed to substantiate his claims and left the matter to the Court's discretion.

30. The Court recalls that the judgment given in the applicant's favour has been enforced in full. It does not discern any causal link between the violation found and the pecuniary damage alleged, and dismisses the applicant's claim for pecuniary damage as unsubstantiated. However, it finds that the applicant must have suffered non-pecuniary damage on account of the delay in collection of the payment due to him. Ruling on an equitable basis, the Court awards the applicant EUR 2,000 in respect of non-pecuniary damage.

B. Costs and expenses

31. The applicant did not submit any separate claim under this head; the Court therefore makes no award in this respect.

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 complaints under Article 6 § 1 and 13 of the Convention concerning the delay in the enforcement 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 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 2,000 (two thousand euros) in respect of non-pecuniary damage, 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 31 January 2008, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Claudia Westerdiek
Registrar

Peer Lorenzen
President