



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

FIFTH SECTION

CASE OF FEDORTSI v. UKRAINE

(Application no. 10616/02)

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 Fedortsi v. Ukraine,

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

Peer Lorenzen, *President*,
Karel Jungwiert,
Volodymyr Butkevych,
Margarita Tsatsa-Nikolovska,
Javier Borrego Borrego,
Renate Jaeger,
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. 10616/02) 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 Mikhail Stepanovich Fedortsi (“the applicant”), on 12 February 2002.

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

3. On 7 September 2005 the Court decided to give notice of 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 1933. He died on 2 July 2005. In a letter of 10 March 2006 the applicant's son, Mr Yuriy Mikhaylovych Fedortsi, informed the Court that he wished to pursue the application.

A. Court proceedings concerning disability allowance arrears

5. In December 1999 the applicant brought proceedings against the Moskovska State Mine (ДП “Шахта Московська”, hereafter “the Mine”) seeking recovery of occupational disability allowance arrears.

6. On 22 February 2000 the Shakhtarsk Town Court (*Шахтарський міський суд*, hereafter “the Shakhtarsk Court”) found in part for the applicant and awarded him 2,108.64 Ukrainian Hryvnas¹ (UAH) in compensation for allowance arrears. Considering this sum insufficient, the applicant appealed.

7. On 20 March 2000 the Donetsk Regional Court (*Донецький обласний суд*) partially quashed this judgment and remitted the case for a fresh consideration.

8. On 24 May 2000 the Shakhtarsk Court allowed the applicant's claim in part and awarded him UAH 3,616.63² in compensation for allowance arrears. The applicant again appealed.

9. On 11 September 2000 the Donetsk Regional Court quashed the judgment of 24 May 2000 and remitted the case for a fresh consideration.

10. On 21 November 2000 the Shakhtarsk Court raised the applicant's award up to UAH 3,980.16³. This judgment was not appealed against.

11. In 2001 the applicant lodged with the Supreme Court (*Верховний Суд України*) a request for leave to appeal against the judgment of 21 November 2000 under the new cassation procedure. On 18 September 2001 the panel of three judges of the Supreme Court rejected his request.

B. Enforcement proceedings

12. On 14 December 2002 the Shakhtarsk Town Bailiffs' Service (*Відділ державної виконавчої служби Шахтарського міського управління юстиції*, hereafter “the Shakhtarsk Bailiffs' Service”) instituted enforcement proceedings in respect of the Shakhtarsk Court's judgment of 21 November 2000.

13. On 24 July 2001 the Ministry of Fuel and Energy (*Міністерство палива і енергетики*) decided to wind up the Mine.

14. On 28 August 2001 the Shakhtarsk Bailiffs' Service remitted the applicant's writ of execution and enforcement case-file to the Mine's liquidation commission.

15. On 3 December 2002 the applicant was paid the court award in full. On the same date the enforcement proceedings were terminated.

1. Around 340 euros (EUR).

2. Around EUR 583.

3. Around EUR 642.

II. RELEVANT DOMESTIC LAW

16. The relevant domestic law is summarised in the judgment of *Romashov v. Ukraine* (no. 67534/01, §§ 16-18, 27 July 2004).

THE LAW

I. PRELIMINARY OBSERVATION

17. The applicant died on 2 July 2005, while the case was pending before the Court (see paragraph 5 above). It has not been disputed that his son is entitled to pursue the application on his behalf and the Court sees no reason to hold otherwise (see, *mutatis mutandis*, *Kalló v. Hungary*, no. 30081/02, § 25, 11 April 2006 and *Sildedzis v. Poland*, no. 45214/99, § 30, 24 May 2005).

II. ALLEGED VIOLATION OF ARTICLE 6 § 1 OF THE CONVENTION AND ARTICLE 1 OF PROTOCOL NO. 1

18. The applicant complained about the non-enforcement of the Shakhtarsk Court's judgment of 24 May 2000 in his favour and invoked Article 6 § 1 of the Convention and Article 1 of Protocol No. 1, which in so far as relevant, read 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

19. The Government argued that the applicant lost his victim status after the execution of the court judgment in his favour. They also claimed that the applicant had failed to claim compensation for material damage incurred as the result of continued non-execution of the judgment and thus had failed to exhaust domestic remedies available to him.

20. The Court notes that these objections are similar to those which the Court has already dismissed in a number of judgments (see, for example, *Voytenko v. Ukraine*, no. 18966/02, §§ 27-35, 29 June 2004 and *Romashov v. Ukraine*, no. 67534/01, §§ 26-27, 27 July 2004). The Court considers that the present objections must be rejected for the same reasons.

21. The Court notes that these complaints 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.

B. Merits

22. In their observations, the Government contended that there had been no violation of Article 6 § 1 of the Convention or Article 1 of Protocol No. 1 (as in the cases of *Romashov*, cited above, § 37, and *Voytenko*, cited above § 37).

23. The applicant disagreed.

24. The Court notes that the judgment of the Shakhtarsk Court of 21 November 2000 remained unenforced for two years.

25. 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 raising issues similar to the present application (see, for example *Sokur v. Ukraine*, no. 29439/02, §§ 34-37, 26 April 2005, and *Romashov*, cited above, §§ 42-46).

26. Having examined all the material submitted to it, the Court considers that the Government have not put forward any fact or convincing argument capable of persuading it to reach a different conclusion in the present case. There has, accordingly, been a violation of Article 6 § 1 of the Convention and Article 1 of Protocol No. 1.

III. OTHER ALLEGED VIOLATIONS OF THE CONVENTION

27. The applicant also complained under Article 6 § 1 of the Convention about the outcome of the proceedings before the domestic courts, stating that the amount of the award was insufficient.

28. The Court notes that the final decision, within the meaning of Article 35 § 1 of the Convention, in the applicant's case was given by the Shakhtarsk Court on 21 November 2000 and thus more than six months

before the date on which the application was submitted to the Court. The applicant's appeal to the Supreme Court of Ukraine against the above decision under the new cassation procedure cannot be taken into account, since this procedure is not a remedy within the meaning of Article 35 § 1 of the Convention in respect of the cases finally decided before 29 June 2001 (see *Prystavska v. Ukraine* (dec.), no.21287/02, 17 December 2002). Therefore this part of the application has been submitted too late and must be rejected in accordance with Article 35 §§ 1 and 4 of the Convention.

IV. APPLICATION OF ARTICLE 41 OF THE CONVENTION

29. 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

30. The applicant claimed UAH 100,000 (approximately EUR 13,500) in respect of non-pecuniary damage.

31. The Government considered that the applicant did not suffer any damage and that, in any case, his demands were excessive.

32. Making its assessment on an equitable basis, as required by Article 41 of the Convention, the Court considers it reasonable to award the applicant a global sum of EUR 500 in respect of non-pecuniary damage to be held by Mr Yuriy Mikhaylovykh Fedortsi on behalf of the beneficiaries of the applicant's estate.

B. Costs and expenses

33. The applicant did not submit any claim under this head within the set time-limit; the Court therefore makes no award in this respect.

C. Default interest

34. 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 under Article 6 § 1 of the Convention and Article 1 of Protocol No. 1 concerning the non-enforcement of a court judgment in the applicant's favour 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 1 of Protocol No. 1 to the Convention;
4. *Holds*
that the respondent State is to pay the applicant's son, Mr Yuriy Mikhaylovych Fedortsi to be held on behalf of the beneficiaries of the applicant's estate, within three months from the date on which the judgment becomes final in accordance with Article 44 § 2 of the Convention, EUR 500 (five hundred 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