



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

FIFTH SECTION

CASE OF SIDNEV v. UKRAINE

(Application no. 15145/05)

JUDGMENT

STRASBOURG

7 February 2008

FINAL

07/05/2008

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 Sidnev 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 15 January 2008,

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

PROCEDURE

1. The case originated in an application (no. 15145/05) 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 Yevgen Anatoliyovych Sidnev (“the applicant”), on 5 April 2005.

2. The Ukrainian Government (“the Government”) were represented by their Agents, Mrs V. Lutkovska and Mr Y. Zaytsev.

3. On 7 September 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 1959 and resides in the village of Blagodatne, Donetsk region, Ukraine.

5. In April 2004 the applicant instituted proceedings in the Volnovahskyy District Court against his employer, the Donetskugol State Mining Company (ДП «Донецьквугілля»), for different payments due to

him. On 22 June 2004 the court awarded the applicant 38,524.28¹ Ukrainian hryvnas (UAH) (*рішення Волновахського районного суду*).

6. In September 2004 the Voroshylovskiy District Bailiffs' Service of Donetsk (*відділ державної виконавчої служби Ворошиловського районного управління юстиції м. Донецька*) initiated enforcement proceedings.

7. In December 2004 the applicant instituted proceedings in the Voroshylovskyy District Court of the Donetsk Region against the Bailiffs' Service for the non-enforcement of the judgment in his favour. On 5 April 2005 the court found for the applicant and ordered the Bailiffs' Service to enforce the judgment in question.

8. Between August 2005 and March 2006 the judgment of 22 June 2004 was enforced in full.

II. RELEVANT DOMESTIC LAW

9. 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 ARTICLE 6 § 1 OF THE CONVENTION AND ARTICLE 1 OF PROTOCOL NO. 1

10. The applicant complained about the lengthy non-enforcement of the judgment of 22 June 2004. The Court will examine these 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

1. At the material time 6,139.34 euros (EUR)

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

11. The Government raised objections regarding the applicant's victim status similar to those which the Court has already dismissed in the case of *Romashov v. Ukraine* (no. 67534/01, §§ 23-27, 27 July 2004). The Court considers that they must be rejected for the same reasons.

12. The Government further contended that the applicant had not exhausted all the remedies available to him under Ukrainian law since he had not lodged complaints with the domestic judicial authorities seeking compensation for losses incurred due to inflation as the enforcement of the judgment was delayed.

13. The Court recalls that the rule of exhaustion of domestic remedies referred to in Article 35 § 1 of the Convention obliges applicants to use the remedies that are sufficient in the domestic legal system to enable them to obtain redress for the breaches alleged. The Court notes that the applicant's complaint concerns the lengthy non-enforcement of the judgment against a State-owned company. In these circumstances, the Court does not see how the remedy, suggested by the Government, would have expedited the enforcement proceedings or grant full redress for his complaint. The Court, therefore, concludes that the applicant was absolved from pursuing the remedy invoked by the Government and has complied with the requirements of Article 35 § 1.

14. 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

15. In their observations on the merits of the case, the Government contended that there had been no violation of Article 6 § 1 of the Convention and Article 1 of Protocol No. 1.

16. The applicant disagreed.

17. The Court notes that the judgment given in the applicant's favour remained unenforced for one year and nine months.

18. 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 like the present

application (see, among other authorities, *Voytenko v. Ukraine*, no. 18966/02, §§ 43 and 55, 29 June 2004 and *Dubenko v. Ukraine*, no. 74221/01, §§ 47 and 51, 11 January 2005). The Court finds no ground to depart from its case-law in the present case.

19. 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.

II. APPLICATION OF ARTICLE 41 OF THE CONVENTION

20. 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

21. The applicant claimed EUR 300 in respect of pecuniary damage and EUR 5,000 in respect of non-pecuniary damage.

22. The Government found these claims unsubstantiated and exorbitant as the judgment in the applicant's favour was enforced in full.

23. The Court does not discern any causal link between the violations found and the pecuniary damage alleged; it therefore rejects this claim. On the other hand, it considers that the applicant must have sustained 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 EUR 200 in this respect.

B. Costs and expenses

24. The applicant did not submit any claim under this head. The Court therefore makes no award.

C. Default interest

25. 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 has been a violation of Article 1 of Protocol No. 1;
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 200 (two 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 7 February 2008, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Claudia Westerdiek
Registrar

Peer Lorenzen
President