



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

FIFTH SECTION

CASE OF SUDYIN v. UKRAINE

(Application no. 5082/05)

JUDGMENT

STRASBOURG

24 April 2008

FINAL

24/07/2008

This judgment may be subject to editorial revision.

In the case of Sudyin v. Ukraine,

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

Peer Lorenzen, *President*,

Karel Jungwiert,

Volodymyr Butkevych,

Rait Maruste,

Mark Villiger,

Isabelle Berro-Lefèvre,

Mirjana Lazarova Trajkovska, *judges*,

and Claudia Westerdiek, *Section Registrar*,

Having deliberated in private on 25 March 2008,

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

PROCEDURE

1. The case originated in an application (no. 5082/05) 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 Yuriy Yuriyevich Sudyin (“the applicant”), on 5 August 2004.

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

3. On 22 September 2005 the Court decided to communicate the complaint concerning the non-enforcement of the final judgment 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 1974 and lives in Donetsk. At the material time he was a tax inspector.

5. On 4 July 1997 the Kyivsky District Court of Donetsk (hereinafter “the District Court”) fined the applicant UAH 225 under an administrative procedure for a corruption offence. The applicant was consequently dismissed from his position.

6. On 17 November 1997 the Donetsk Regional Court quashed this judgment and terminated the proceedings.

7. On 22 May 2000 the District Court awarded the applicant UAH 500 in compensation for moral damage to be paid by the State Treasury of Ukraine.

8. This judgment was not appealed and became final on 2 June 2000.

9. In June 2000 the Kyivsky Office of the Bailiffs' Service in Donetsk initiated the enforcement proceedings.

10. On 22 October 2004 the writ of execution was transferred to the Pechersky Office of the Bailiffs' Service in Kyiv, which on 7 December 2004 refused to open the enforcement proceedings and transferred the writ to the Department of the Bailiffs' Service of the Ministry of Justice (hereinafter "the Department").

11. On 24 January 2005 the Department refused to open the enforcement proceedings on the ground that it fell outside of its competence.

12. Since May 2005 the enforcement proceedings are pending before the Donetsk Department of the Bailiffs' Service.

13. The judgment of 22 May 2000 remains unenforced.

II. RELEVANT DOMESTIC LAW

14. The relevant domestic law is summarised in the judgment of *Voytenko v. Ukraine* (no. 18966/02, §§ 20-25, 29 June 2004).

THE LAW

I. ALLEGED VIOLATION OF ARTICLE 6 § 1 OF THE CONVENTION AND ARTICLE 1 OF PROTOCOL No. 1

15. Relying on Article 6 § 1 of the Convention and Article 1 of Protocol No. 1 the applicant complained about the non-enforcement of the judgment given in his favour. These Articles 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

16. The Court notes that this complaint 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

17. The Government abstained from submitting observations in the case.

18. The Court notes that the judgment of 22 May 2000 remains unenforced.

19. The Court recalls that it has already found violation 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 instance, *Voytenko v. Ukraine*, cited above, §§ 39-43 and 53-55).

20. 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.

21. There has, accordingly, been a violation of Article 6 § 1 of the Convention and Article 1 of Protocol No. 1.

II. OTHER ALLEGED VIOLATIONS OF THE CONVENTION

22. Lastly, the applicant complained under Article 3 of Protocol No. 7 about an impossibility to receive compensation for a wrongful conviction.

23. However, in the light of all the materials in its possession, the Court finds that these submissions do not disclose any appearance of a violation of the rights and freedoms set out in the Convention or its Protocols.

24. 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.

III. 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.”

A. Damage

26. The applicant claimed the amount of the judgment’s debt owed to him indexed at the inflation rate. He also claimed 10,000 euros (EUR) in respect of non-pecuniary damage.

27. The Government rejected these claims.

28. In so far as the applicant claimed the amount awarded to him by the judgment at issue, the Court considers that the Government should pay him the outstanding debt (see paragraph 7 above) in settlement of his pecuniary damage.

29. As regards the applicant’s claim concerning the inflation losses, the Court notes that it is not supported by any official documents, which would enable the Court to determine the amount. Consequently, it rejects this part of the claim (see e.g., *Glova and Bregin v. Ukraine*, nos. 4292/04 and 4347/04, § 29, 28 February 2006).

30. As to the remainder of the applicant’s just satisfaction claims, the Court, making its assessment on an equitable basis, as required by Article 41 of the Convention, awards the applicant EUR 2,000 (two thousand euros) in respect of his non-pecuniary damage.

B. Costs and expenses

31. The applicant also claimed EUR 30 for the costs and expenses incurred before the Court.

32. The Court considers it reasonable to award the applicant the sum requested.

C. Default interest

33. 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 the non-enforcement of the judgment of 22 May 2000 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;
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, the judgment's debt still owed to him, as well as EUR 2,030 (two thousand and thirty euros), plus any tax that may be chargeable, in respect of non-pecuniary damage and costs and expenses, to be converted into the national currency of the respondent State at the rate applicable at the date of settlement;
 - (b) that from the expiry of the above-mentioned three months until settlement simple interest shall be payable on the above amounts 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 24 April 2008, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Claudia Westerdiek
Registrar

Peer Lorenzen
President