



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

FIFTH SECTION

CASE OF BUGAYEV v. UKRAINE

(Application no. 26168/04)

JUDGMENT

STRASBOURG

29 May 2008

FINAL

29/08/2008

This judgment may be subject to editorial revision.

In the case of Bugayev v. Ukraine,

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

Peer Lorenzen, *President*,
Rait Maruste,
Karel Jungwiert,
Volodymyr Butkevych,
Mark Villiger,
Mirjana Lazarova Trajkovska,
Zdravka Kalaydjieva, *judges*,

and Claudia Westerdiek, *Section Registrar*,

Having deliberated in private on 6 May 2008,

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

PROCEDURE

1. The case originated in an application (no. 26168/04) 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 Sergey Ivanovich Bugayev (“the applicant”), on 9 June 2004.

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

3. On 29 November 2006 the Court decided to communicate the complaints under Articles 6 § 1 and 13 concerning the non-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.

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

4. The applicant was born in 1965 and lives in Lysychansk.

5. On 18 October 2000 the applicant obtained a judgment of the Lysychansk Court (*Лисичанський міський суд Луганської області*) against the Lysychansk Thermo-electric Plant (*Лисичанська ТЕЦ*), awarding him 13,270 hryvnyas (UAH) in salary arrears and other payments.

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

7. On numerous occasions the bailiffs notified the applicant that they were unable to collect the full amount of the debt, citing insufficiency of the debtor's funds and referring to the bankruptcy proceedings pending against it. They further explained that, since the State owned more than 25% of the debtor's share capital, it was therefore subject to the Law of 29 November 2001 "on the Introduction of a Moratorium on the Forced Sale of the State Property".

8. On 19 January 2005 the bailiffs took a decision to terminate the enforcement proceedings, having determined that the applicant had received the full amount of the judgment debt due to him.

9. According to the applicant, fraction of the amount due to him remained outstanding.

II. RELEVANT DOMESTIC LAW

10. The relevant domestic law is summarised in the judgments of *Romashov v. Ukraine* (no. 67534/01, §§ 16-19, 27 July 2004) and *Trykhlid v. Ukraine* (no. 58312/00, §§ 25-32, 20 September 2005).

THE LAW

I. SCOPE OF THE CASE

11. The Court notes that on 3 May 2007, after the case had been communicated to the respondent Government, the applicant additionally invoked Articles 14 and 17 of the Convention and Article 1 of Protocol No. 1 to the facts of the present case.

12. In the Court's view, the new complaints are not an elaboration of the applicant's original complaints to the Court, which had been communicated to the respondent Government. The Court considers, therefore, that it is not appropriate now to consider them (see *Piryanik v. Ukraine*, no. 75788/01, § 20, 19 April 2005).

II. ALLEGED VIOLATION OF ARTICLES 6 § 1 AND 13 OF THE CONVENTION

A. Admissibility

13. The applicant complained about the lengthy non-enforcement of the judgment given in his favour. He invoked Article 13 of the Convention. The

Court finds that the above complaint falls to be examined also under Article 6 § 1 of the Convention. The impugned provisions 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 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.”

14. The Government raised objections regarding exhaustion of domestic remedies similar to those which the Court has already dismissed in other cases (see among many other authorities *Sokur v. Ukraine* (dec.), no. 29439/02, 16 December 2003). The Court considers that these objections must be rejected for the same reasons.

15. The Court concludes that the applicant's complaints raise issues of fact and law under the Convention, the determination of which requires an examination on the merits. It finds no ground for declaring them inadmissible. The Court must therefore declare them admissible.

B. Merits

16. The Government submitted that the judgment given in the applicant's favour had been executed in full and that delay in its enforcement was not unreasonable in light of the circumstances of the case. There was, therefore, no breach of the applicant's Convention rights.

17. The applicant disagreed. He maintained that the delay in payment had exceeded what may be considered reasonable and that the judgment had not been fully enforced.

18. The Court recalls that on 19 January 2005 the bailiffs took a decision to terminate the enforcement proceedings, having determined that the debtor had fully complied with the judgment. The applicant presented no materials in support of his allegation concerning the non-payment of a fraction of the award and was unable to specify the exact amount of his claim. According to the case-file materials, the applicant also did not appeal against the bailiffs' decision. In these circumstances, the Court does not have reasons to doubt the Government's submission and considers that the judgment of 18 October 2000 has been enforced (see e.g., *Gavrilenko v. Ukraine*, no. 24596/02, § 18, 20 September 2005).

19. On the other hand, the Court notes that the period of enforcement of the judgment at issue lasted four years and three months.

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, *Sokur v. Ukraine*, cited above, §§ 36-37 and *Anatskiy v. Ukraine*, no. 10558/03, §§ 21-23, 13 December 2005).

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.

23. The Court does not find it necessary in the circumstances to examine under Article 13 of the Convention the same complaint as under Article 6 § 1.

III. OTHER ALLEGED VIOLATIONS OF THE CONVENTION

24. The applicant additionally complained that the delay in payment of the judgment award amounted to a violation of his rights under Articles 1 and 3 of the Convention.

25. 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 impugned provisions of the Convention.

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

IV. 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 submitted that he had sustained pecuniary damage on account of the lengthy non-enforcement of the judgment given in his favour. However, he was unable to specify the exact amount of this claim. He also claimed 10,000 euros (EUR) in respect of non-pecuniary damage.

29. The Government contested these claims.

30. The Court does not discern any causal link between the violation found and the pecuniary damage alleged; it therefore rejects this claim. On

the other hand, ruling on an equitable basis, it awards the applicant EUR 1,200 in respect of non-pecuniary damage.

B. Costs and expenses

31. The applicant also claimed EUR 1,000 in legal fees. He presented a receipt for the above amount signed by Mr S. Medvedev, an advocate, and a copy of the contract for his representation.

32. The Government contested the claim.

33. According to the Court's case-law, an applicant is entitled to reimbursement of his costs and expenses only in so far as it has been shown that these have been actually and necessarily incurred and they were reasonable as to quantum. In the present case, regard being had to the information in its possession and the above criteria, the Court considers it reasonable to award the sum of EUR 600 in respect of costs and expenses.

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 complaints under Article 6 § 1 and 13 of the Convention concerning the lengthy non-enforcement of the judgment given 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 is no need to examine the complaint under 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 1,200 (one thousand two hundred euros) in respect of non-pecuniary damage and EUR 600 (six hundred euros) in respect of costs and expenses, plus any tax that may be chargeable to the applicant in respect of the above amounts, to be converted into the national currency 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 29 May 2008, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Claudia Westerdiek
Registrar

Peer Lorenzen
President