



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

FIFTH SECTION

CASE OF FYODOROV v. UKRAINE

(Application no. 23906/05)

JUDGMENT

STRASBOURG

22 July 2008

FINAL

22/10/2008

This judgment may be subject to editorial revision.

In the case of Fyodorov 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,
Renate Jaeger,
Mirjana Lazarova Trajkovska,
Zdravka Kalaydjieva, *judges*,

and Claudia Westerdiek, *Section Registrar*,

Having deliberated in private on 24 June 2008,

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

PROCEDURE

1. The case originated in an application (no. 23906/05) 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 Kronid Ivanovich Fyodorov (“the applicant”), on 18 June 2005.

2. The Ukrainian Government (“the Government”) were represented by their Agent, 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 1930 and resides in the town of Zhovti Vody, Dnipropetrovsk region, Ukraine.

5. On an unspecified date the applicant instituted three separate sets of proceedings in the Zhovti Vody Town Court of Dnipropetrovsk Region against his employer, a State-owned company, the Zhovti Vody Construction Department (*Жовтоводське управління будівництва*), for salary arrears and other payments.

6. On 13 December 2000 and 31 July 2001 the court found for the applicant and awarded him a total of 4,694.11¹ Ukrainian hryvnyas (UAH). On 12 March 2002 the court dismissed the applicant's third claim as time-barred.

7. In 2001 the Zhovti Vody Town Bailiffs' Service initiated enforcement proceedings.

8. The applicant received UAH 2,142, but the remainder of the awards remains unpaid.

9. On 5 October 2004 the Ministry of Fuel and Energy liquidated the debtor enterprise and the writs of enforcement were transferred to the liquidation commission.

II. RELEVANT DOMESTIC LAW

10. The relevant domestic law is summarised in the judgment of *Sokur v. Ukraine* (no. 29439/02, § 17-22, 26 April 2005).

THE LAW

I. SCOPE OF THE CASE

11. The Court observes that after communication of the application to the respondent Government and in response to the Government's observations as to the merits of the application, the applicant submitted a further complaint under Article 13 of the Convention, alleging that he had no remedies against the lengthy non-enforcement of the judgments of 13 December 2000 and 31 July 2001.

12. In the Court's view, the new complaint does not constitute an elaboration of the applicant's original complaint to the Court, which is limited to the alleged lengthy non-enforcement of the judgments in question. The Court considers, therefore, that it is not appropriate now to take these matters up separately in the context of the present application (see *Piryanik v. Ukraine*, no. 75788/01, § 20, 19 April 2005).

II. THE LENGTHY NON-ENFORCEMENT OF THE JUDGMENTS IN THE APPLICANT'S FAVOUR

13. In his initial submission the applicant complained under Article 17 of the Convention and Article 1 of Protocol No. 1 about the lengthy non-

¹ At the material time 1,003.54 euros (EUR)

enforcement of the judgments of 13 December 2000 and 31 July 2001 and that he could not recover the debts due to him from the State-owned company in accordance with the judgments at issue. Subsequently he also referred to Article 6 § 1 of the Convention.

14. The Court will examine the applicant's complaint about the lengthy non-enforcement of the judgments in question 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 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

15. The parties did not submit any observations in respect of the admissibility of this complaint.

16. The Court notes that the applicant's complaint about the lengthy non-enforcement of the judgments in question 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. 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.

18. The Court notes that the judgments given in the applicant's favour have remained unenforced for seven years and six months and six years and eleven months, respectively.

19. 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, §§ 39-43 and 53-55, 29 June 2004 and *Dubenko v. Ukraine*, no. 74221/01, §§ 44-47 and 50-51, 11 January 2005). The Court finds no ground to depart from its case-law in the present case.

20. There has, accordingly, been a violation of Article 6 § 1 of the Convention in respect of the lengthy non-enforcement of the judgments in the applicant's favour and a violation of Article 1 of Protocol No. 1 in the present application.

III. APPLICATION OF ARTICLE 41 OF THE CONVENTION

21. 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

22. The applicant claimed the unsettled judgment debts in respect of pecuniary damage. He also claimed EUR 1,000 in respect of non-pecuniary damage.

23. The Government submitted that they did not question the necessity to enforce the judgments in the applicant's favour. However, they found the claim in respect of non-pecuniary damage exorbitant and unsubstantiated.

24. The Court notes that, as the judgments given in favour of the applicant remain unenforced, the Government should pay the applicant the outstanding debts. The Court further takes the view that the applicant must have sustained non-pecuniary damage as a result of the violations found. The Court, accordingly, awards the applicant the amount claimed.

B. Costs and expenses

25. The applicant also claimed UAH 31.85² for the costs and expenses incurred in the proceedings before the Court.

26. The Government did not object.

27. The Court considers it reasonable to award the applicant EUR 5 in this respect.

² Around EUR 5

C. Default interest

28. 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 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,
 - (i) the outstanding debt in accordance with the judgments of 13 December 2000 and 31 July 2001;
 - (ii) EUR 1,000 (one thousand euros) in respect of non-pecuniary damage and EUR 5 (five euros) for the costs and expenses, 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 to the applicant;
 - (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.

Done in English, and notified in writing on 22 July 2008, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Claudia Westerdiek
Registrar

Peer Lorenzen
President