



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

FIFTH SECTION

CASE OF GOGIN v. UKRAINE

(Application no. 10398/04)

JUDGMENT

STRASBOURG

11 December 2008

FINAL

11/03/2009

This judgment may be subject to editorial revision.

In the case of Gogin 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,

Mark Villiger,

Mirjana Lazarova Trajkovska, *judges*,

and Claudia Westerdiek, *Section Registrar*,

Having deliberated in private on 18 November 2008,

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

PROCEDURE

1. The case originated in an application (no. 10398/04) 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 Valeriy Adolfovyh Gogin (“the applicant”), on 26 February 2004.

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

3. On 18 September 2007 the President of the Fifth Section decided to give notice of the application to the Government. It was also decided to examine the merits of the application at the same time as its admissibility (Article 29 § 3).

THE FACTS

I. THE CIRCUMSTANCES OF THE CASE

4. The applicant was born in 1962 and lives in the town of Debaltseve, in the Donetsk region, Ukraine.

A. Non-enforcement of the judgments in the applicant’s favour

5. On 15 July 1998 the Dokuchayevsk Court ordered the State-owned mining company “Yuzhnodonbassakya-3” (“the company”) to pay the

applicant 2,147.72¹ Ukrainian hryvnias (UAH) in salary arrears and other payments. By another decision adopted on the same day the court ordered the company to pay the applicant UAH 312.11² for loss of salary and to rectify the records in his work book (*трудова книжка*) about the date and the reason of his dismissal.

6. On 1 September 1998 the same court ordered the company to pay the applicant UAH 949.90³ for loss of salary and other payments. By the same judgment the court ruled again to rectify the records in his work book about the date of his dismissal.

7. On 6 January 1999 the same court ordered the company to pay the applicant UAH 1,438.42⁴ for loss of salary and other payments. By the same judgment the court ruled to rectify the records in his work book about the date of his dismissal.

8. On 26 February 1999 the same court ordered the company to enforce the judgments of 15 July 1998.

9. On 1 October 1999 the same court ordered the company to provide the applicant with an apartment, as stipulated in his employment contract. On 4 March 2002 the same court, upon the applicant's request, modified the manner of enforcement of the judgment of 1 October 1999 and ordered the company to pay the applicant UAH 13,137⁵ instead of providing him with an apartment.

10. All the above judgments became final and the enforcement proceedings were instituted by the Vugledar Bailiffs Service ("the Bailiffs Service").

11. On 22 February 2000 the Bailiffs Service informed the applicant that the enforcement proceedings had been suspended due to bankruptcy proceedings pending against the company.

12. In September 2003 the applicant instituted proceedings in the Vugledar Court against the Bailiffs Service seeking compensation for damage caused to him due to the non-enforcement of the above judgments. On 10 June 2004 the Vugledar Court rejected the applicant's complaints against the alleged inactivity of the Bailiffs Service. On 26 August 2004 the Donetsk Regional Court of Appeal quashed the decision and remitted the case to the first-instance court for a new consideration. According to the applicant's submissions, the proceedings are still pending.

¹ Approximately EUR 923

² Approximately EUR 134

³ Approximately EUR 316

⁴ Approximately EUR 303

⁵ Approximately EUR 2,968

B. The civil proceedings against municipal company Donetskoblvodokanal and Dokuchaevsk Water and Sewerage Company

13. The applicant rented a house owned by Mr. Ch. In December 2001 the applicant instituted proceedings against the municipal company Donetskoblvodokanal (*ДОКП Донецькоблводоканал*), and the Dokuchaevsk Water and Sewerage Company (*Докучаєвське управління водопровідно каналізаційного господарства*) claiming UAH 2,000⁶ in compensation for non-pecuniary damage, alleging that the water supply to the house rented by him was unsatisfactory. The applicant also sought a recalculation of his water rates.

14. On 13 September 2002 the Dokuchayevsk Court allowed the applicant's claims in part. On 5 December 2002 the Donetsk Regional Court of Appeal quashed that decision and remitted the case to the Dokuchayevsk Court for a fresh consideration by another judge.

15. On 6 May 2003 the Dokuchayevsk Court allowed the applicant's claim in part and awarded him UAH 1,000⁷ in compensation for non-pecuniary damage. On 21 July 2003 the Donetsk Regional Court of Appeal quashed this decision and remitted the case to the Dokuchaevsk Court for a fresh consideration by another judge.

16. On 13 August 2003 the President of the Dokuchayevsk Court requested that the Donetsk Regional Court of Appeal transfer the applicant's case to another court on the ground that it only had two judges, who had both already considered the case. On 19 August 2003 the Court of Appeal granted the request and transferred the case to the Volnovakha Court.

17. Meanwhile, the applicant appealed in cassation against the ruling of the court of appeal of 21 July 2003. On 15 June 2005 the Supreme Court rejected the applicant's cassation appeal.

18. On 8 February 2006 Mr Ch. entered the proceedings as a third party. On 22 February 2006 he requested that the Volnovakha Court suspend the proceedings in the applicant's case since he had instituted other proceedings against the municipal company "Donetskvlodokanal" in the Dokuchaevsk Court, and their outcome would have a bearing on the consideration of the case. On the same date the court granted the request. On 31 May 2006 the Dokuchaevsk Court left Mr Ch.'s claim unexamined because it lacked jurisdiction over the case. On 23 July 2006 the Volnovakha Court renewed proceedings in the applicant's case.

19. On 7 November 2006 the Volnovakha Court allowed the applicant's claim in part and awarded him UAH 200⁸ in compensation for non-

⁶ Approximately EUR 417

⁷ Approximately EUR 171

⁸ Approximately EUR 32

pecuniary damage. On 13 March 2007 the Donetsk Regional Court of Appeal upheld that decision.

20. On 19 September 2007 the Supreme Court dismissed the applicant's appeal in cassation.

21. According to the materials in the case file, out of around forty-one scheduled hearings, seven were adjourned due to the absence or at the request of the defendants' representatives. Four were adjourned because of the absence of both parties; four were adjourned because of the absence of the applicant or at his request; and one was adjourned due to the judge's illness.

C. The proceedings against the Volnovakha Tax Inspection Office

22. On 29 March 2002 the Volnovakha Tax Inspection Office fined the applicant with UAH 170 because he had submitted his VAT declaration out of time.

23. In May 2002 the applicant lodged a complaint with the Dokuchayevsk Court.

24. On 22 July 2002 the applicant's complaint was transferred to the Volnovakha Court, which left it unexamined on the ground that the dispute fell within the jurisdiction of the commercial courts. On 4 November 2002 and 29 August 2003 the Donetsk Regional Court of Appeal and the Supreme Court, respectively, upheld that ruling.

D. The refusal to allow the applicant to act as a legal assistant in a criminal case

25. On 2 March 2004 the investigator of the Debaltseve Department of the Interior appointed the applicant, acting as a legal advisor, as legal assistant to a minor, B., who was charged with robbery. On 5 March 2004 the Public Prosecutor of Debaltseve annulled this appointment; on 16 March 2003 B.'s mother cancelled the legal aid contract.

26. The applicant alleged that the Vice-President of the Donetsk Regional Court of Appeal ordered that lawyers without an advocate's licence were not to be appointed as legal assistants.

II. RELEVANT DOMESTIC LAW

27. The relevant domestic law is summarised in the judgments of *Sokur v. Ukraine* (no. 29439/02, §§ 17-22, 26 April 2005) and *Voytenko v. Ukraine* (no. 18966/02, §§ 20-25, 29 June 2004).

THE LAW

I. ALLEGED VIOLATION OF ARTICLE 6 § 1 OF THE CONVENTION IN RESPECT OF THE NON-ENFORCEMENT OF THE JUDGMENTS

28. The applicant complained about the State authorities' failure to enforce the judgments given in his favour. He invoked Article 6 § 1 of the Convention, which provides 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. ..."

A. Admissibility

29. The Government contended that the applicant had failed to institute enforcement proceedings in respect of the judgments given in his favour in the period prior to 1 October 1999 and had therefore not exhausted the remedies available to him under the national law.

30. The applicant disagreed.

31. The Court finds that it is inappropriate to require an individual who has obtained judgment against the State at the end of legal proceedings to then bring enforcement proceedings to obtain satisfaction (see, for example, *Metaxas v. Greece*, no. 8415/02, § 19, 27 May 2004; *Scordino v. Italy (no. 1)* [GC], no. 36813/97, § 198, ECHR 2006-...; and *Lizanets v. Ukraine*, no. 6725/03, § 43, 31 May 2007). It therefore rejects the Government's objection.

32. The Court notes that the applicant's 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

33. The Government maintained that the Bailiffs' Service had taken all the necessary steps to enforce the ruling of 4 March 2002 given in the applicant's favour. The Government further contended that the length of the enforcement proceedings in respect of that ruling was not unreasonable and had been caused by the difficult financial situation of the debtor company. They made no observations on the merits in respect of the applicant's

complaints about the non-enforcement of the rest of the judgments given in his favour.

34. The applicant disagreed.

35. The Court has already found violations of Article 6 § 1 of the Convention in cases like the present application (see, among others, *Romashov v. Ukraine*, no. 67534/01, § 42-46, 27 July 2004; and *Shmalko v. Ukraine*, no. 60750/00, § 55-57, 20 July 2004).

36. Having examined all the materials submitted to it, 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.

37. There has, accordingly, been a violation of Article 6 § 1 of the Convention.

II. ALLEGED VIOLATION OF ARTICLE 6 § 1 OF THE CONVENTION IN RESPECT OF THE LENGTH OF PROCEEDINGS

38. The applicant complained under Article 6 § 1 about the length of the civil proceedings in his civil case against the municipal company Donetskoblvodokanal and the Dokuchaevsk Water and Sewerage Company.

A. Admissibility

39. The Government did not comment on the admissibility of this complaint.

40. 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

41. The Government contested the applicant's complaint, stating that there were no significant periods of inactivity attributable to the State. They maintained that the case had been complex and that the judicial authorities had acted with due diligence. According to the Government, the parties, by making demands to provide additional documents and hold examinations, by challenging a judge in the case, by failing to appear before the domestic courts, and by appealing against the judgment before higher courts had significantly delayed the proceedings. The Government finally maintained that the length of the proceedings in the applicant's case had not been unreasonable.

42. The applicant disagreed. In particular, he contended that he could only be held accountable for two adjournments.

43. The Court notes that the proceedings at issue began in December 2001 and ended on 19 September 2007. Therefore, the proceedings lasted for five years and ten months for three levels of jurisdiction.

44. The Court reiterates that the reasonableness of the length of proceedings must be assessed in the light of the circumstances of the case and with reference to the following criteria: the complexity of the case, the conduct of the applicant and the relevant authorities and what was at stake for the applicant in the dispute (see, among many other authorities, *Frydlender v. France* [GC], no. 30979/96, § 43, ECHR 2000-VII).

45. The Court finds that the case concerned a simple dispute over water supply. Therefore, the Court concludes that the subject matter of the litigation at issue could not be considered complex.

46. As regards the Government's contentions that the applicant was responsible for some delays in the impugned proceedings, the Court is of the opinion that there is no evidence in the case file that the applicant significantly contributed to the overall length of the case proceedings, as his absences during the hearings and motions and requests lodged in the course of the examination of the case cannot account for the overall excessive duration of the proceedings.

47. However, even assuming that there were some periods of delay which could be attributed to the applicant, the Court considers that the protracted length of the proceedings was to a large extent caused by the domestic authorities. In this respect the Court notes first the repeated re-examination of the case and transferral of the case to another court for consideration (see paragraphs 14-16). The Court further notes the lengthy consideration of the applicant's appeal in cassation by the Supreme Court (see paragraph 17). Finally, the Court observes that most of the adjournments in the case were attributable to the conduct (requests and absences) of the defendants in the case – State companies (see paragraph 21).

48. The Court has frequently found violations of Article 6 § 1 of the Convention in cases raising issues similar to the one in the present case (see, for example, *Yakymenko v. Ukraine*, no. 19142/03, §§ 32-39, 29 May 2008; *Pavlyulynets v. Ukraine*, no. 70767/01, §§ 46-53, 6 September 2005; and *Golovko v. Ukraine*, no. 39161/02, § 61-65, 1 February 2007).

49. In sum, having regard to the circumstances of the instant case, the Court considers that the length of the proceedings was excessive and failed to meet the "reasonable time" requirement.

There has accordingly been a violation of Article 6 § 1.

III. OTHER ALLEGED VIOLATIONS OF THE CONVENTION

50. The applicant complained under Article 6 §1 of the Convention about unfairness of the proceedings against the Bailiffs Service; about the

refusal of the domestic courts to examine his complaint against the Volnovakha Tax Inspection Office; and about the refusal to appoint him as legal assistant in the criminal case against B. He also complained under Articles 13 and 11 of the Convention that there was a lack of domestic remedies in this respect and of a violation of his right to a freedom of association respectively. Lastly, he complained under Article 14 of discrimination.

51. Having carefully examined the applicant's 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 rights and freedoms set out in the Convention.

52. 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

53. 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

54. The applicant claimed UAH 34,996⁹ in respect of pecuniary damage allegedly caused to him by the non-enforcement of the judgments given in his favour in the period prior to 1 October 1999. This amount included the unsettled court awards, adjusted to take into account inflation rates, and the losses allegedly sustained due to an increase in the minimum wage during the relevant period. He further claimed EUR 86,400 in respect of the pecuniary damage allegedly caused to him by the non-enforcement of the judgment of 1 October 1999, as amended by the ruling of 4 March 2002.

Additionally, the applicant claimed EUR 25,000 in respect of non-pecuniary damage allegedly caused to him by the non-enforcement of the judgments given in his favour.

55. Lastly, the applicant claimed 5,000 EUR in compensation for non-pecuniary damage allegedly caused to him due to the lengthy consideration of his claims against the municipal company Donetskoblvodokanal and the Dokuchaevsk Water and Sewerage Company.

56. The Government found these claims unsubstantiated and exorbitant.

⁹ Approximately EUR 5,077

57. The Court notes that, as the judgments given in the applicant's favour remain unenforced, the Government should pay him the unsettled court awards under the judgments of the Dokuchayevsk Court of 15 July 1998 (two judgments), 1 September 1998, 6 January 1999, and the judgment of 1 October 1999, as amended by the ruling of 4 March 2002, in order to satisfy his claims for pecuniary damage.

As to the remainder of the applicant's pecuniary claims, the Court considers that the applicant has failed to substantiate any causal link between the violation it has found and the pecuniary damage alleged. Accordingly it cannot make any award in these respects.

58. The Court further takes the view that the applicant has suffered non-pecuniary damage as a result of the violations found. Making its assessment on an equitable basis, as required by Article 41 of the Convention, the Court awards him EUR 2,600 in respect of non-pecuniary damage.

B. Costs and expenses

59. The applicant made no separate claims as to costs and expenses. Therefore, the Court makes no award under that head.

C. Default interest

60. 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 of the Convention concerning the length of the proceedings and the non-enforcement of the judgments admissible and the remainder of the application inadmissible;
2. *Holds* that there has been a violation of Article 6 § 1 of the Convention in respect of the non-enforcement of the judgments given in the applicant's favour;
3. *Holds* that there has been a violation of Article 6 § 1 of the Convention in respect of the length of the civil proceedings;

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 unsettled court awards still owed to the applicant under the judgments of 15 July 1998 (two judgments), 1 September 1998, 6 January 1999, and 1 October 1999 as amended by a ruling of 4 March 2002, in respect of pecuniary damage;

(ii) EUR 2,600 (two thousand six hundred euros) in respect of non-pecuniary damage, to be converted into the national currency of Ukraine 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 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 11 December 2008, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Claudia Westerdiek
Registrar

Peer Lorenzen
President