



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

FIFTH SECTION

CASE OF YARMOLA v. UKRAINE

(Application no. 7060/04)

JUDGMENT

STRASBOURG

16 April 2009

FINAL

16/07/2009

This judgment may be subject to editorial revision.

In the case of Yarmola v. Ukraine,

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

Rait Maruste, *President*,
Karel Jungwiert,
Renate Jaeger,
Mark Villiger,
Isabelle Berro-Lefèvre,
Mirjana Lazarova Trajkovska, *judges*,
Stanislav Shevchuk, *ad hoc judge*,

and Claudia Westerdiek, *Section Registrar*,

Having deliberated in private on 24 March 2009,

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

PROCEDURE

1. The case originated in an application (no. 7060/04) 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 Stanislav Kazimirovich Yarmola (“the applicant”), on 10 November 2003.

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

3. On 26 November 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 1948 and lives in the town of Yevpatoriya, Ukraine.

5. On 8 December 1999 the Chornomorsk District Court of the Autonomous Republic of Crimea (“the District Court”) fined the applicant UAH 136 for having exercised commercial activity without a licence and ordered the confiscation of 268.5 tonnes of the waste metal collected by him.

6. On 22 December 1999 the same court, following the protest of the Chornomorsk District Prosecutor of the Autonomous Republic of Crimea, quashed this decision and terminated the administrative proceedings against the applicant. The case file was transferred to the Chornomorsk District Prosecutor's Service of the Autonomous Republic of Crimea for a decision on account of the applicant's criminal liability for tax evasion.

7. On 22 January 2000 the Head of the Chornomorsk Tax Inspectorate refused to institute criminal proceedings against the applicant.

8. On 27 January 2000 the District Court examined the same case file again and fined the applicant UAH 136 for having exercised commercial activity without a licence and ordered the confiscation of 268.5 tonnes of the waste metal collected by him. The applicant lodged an appeal with the Supreme Court of the Autonomous Republic of Crimea.

9. On 27 April 2000 the Chornomorsk Bailiffs' Service, noting that proceedings were pending before the Supreme Court of the Autonomous Republic of Crimea, ordered the suspension of the enforcement proceedings in respect of the decision of 27 January 2000. However, the Yevpatoriya Tax Inspectorate sold the waste metal.

10. On 10 May 2000 the Supreme Court of the Autonomous Republic of Crimea quashed the decision of 27 January 2000 and terminated the proceedings on the ground that the same facts had already been examined by the court.

11. On 19 April 2002 the District Court ordered the restitution of the 268.5 tonnes of the waste metal to the applicant.

12. On 20 August 2002 the same court, following the applicant's request, modified the ruling of 19 April 2002 and ordered the State Treasury to pay the applicant UAH 89,410¹ in compensation for the waste metal sold by the Tax Inspectorate.

13. The applicant challenged the Bailiff's inactivity in enforcing the ruling of 19 April 2002 on numerous occasions before the domestic authorities.

14. In September 2002 the applicant lodged his claim for compensation for damage caused by the administrative proceedings against him and the confiscation of his property with the District Court. On 10 December 2003 the District Court ordered the State Treasury to pay the applicant UAH 3,000. On 14 July 2004 the Court of Appeal of the Crimea modified this decision and ordered the same amount to be paid to the applicant from the State Budget.

15. The ruling of 19 April 2002, as amended by the ruling of 20 August 2002, and the judgment of 10 December 2003 were enforced in August 2004.

1. EUR 17,820

II. RELEVANT DOMESTIC LAW

16. The relevant domestic law is summarised in the judgments of *Romashov v. Ukraine*, no. 67534/01, §§ 16-19, 27 July 2004, and *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 TO THE CONVENTION

17. The applicant complained about the lengthy non-execution of the ruling of 19 April 2002. He relied on Article 6 § 1 of the Convention and Article 1 of Protocol No. 1 to the Convention, which provide 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.....”

A. Admissibility

18. The Government raised objections regarding the applicant’s victim status similar to those which the Court has already dismissed in the case of *Voytenko v. Ukraine*, no. 18966/02, §§ 32-35, 29 June 2004. The Court considers that the present objections must be rejected for the same reasons.

19. The Court notes that the applicant's complaints are not manifestly ill-founded within the meaning of Article 35 § 3 of the Convention. It further notes that they are not inadmissible on any other grounds. They must therefore be declared admissible.

B. Merits

20. The Government stressed that they had taken all the measures provided for by domestic legislation to enforce the judgment given in the applicant's favour. They further submitted that the judgment was enforced in full.

21. The applicant made no comments in that respect.

22. The Court observes that the judgment in the applicant's favour remained unenforced for two years and four months.

23. The Court has frequently found violations of Article 6 § 1 of the Convention and Article 1 of Protocol No. 1 to the Convention in cases raising similar issues to the ones in the present case (see *Romashov v. Ukraine*, cited above, § 46, and *Voytenko v. Ukraine*, cited above, §§ 33 and 55).

24. Having examined the material submitted to it, the Court notes that the Government have not put forward any fact or argument capable of persuading it to reach a different conclusion in the present case.

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

II. OTHER ALLEGED VIOLATIONS OF THE CONVENTION

26. The applicant complained under Articles 6 § 1 and 13 of the Convention and Article 1 of Protocol No. 1 about the lengthy non-enforcement of the judgment of 10 December 2003. He also complained under Article 6 § 1 of the Convention about the lengthy consideration of his claim lodged in September 2002. He finally complained under Articles 3 and 4 of Protocol No. 7 that he had been sentenced twice for the same offence and that the compensation awarded to him was not paid within a reasonable period of time.

27. Having carefully examined the applicant's submissions in the light of all the material in its possession, and in so far 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.

28. 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.

III. APPLICATION OF ARTICLE 41 OF THE CONVENTION

29. 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.”

30. The applicant did not submit a claim for just satisfaction. Accordingly, the Court considers that there is no call to award him any sum on that account.

FOR THESE REASONS, THE COURT UNANIMOUSLY

1. *Declares* the complaint concerning the non-enforcement of the ruling of 19 April 2002 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 to the Convention.

Done in English, and notified in writing on 16 April 2009, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Claudia Westerdiek
Registrar

Rait Maruste
President