



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

FIFTH SECTION

CASE OF GARASHCHENKO v. UKRAINE

(Application no. 26873/05)

JUDGMENT

STRASBOURG

16 April 2009

FINAL

16/07/2009

This judgment may be subject to editorial revision.

In the case of Garashchenko 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,

Zdravka Kalaydjieva, *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. 26873/05) 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 Valentyn Mykolayovych Garashchenko (“the applicant”), on 21 June 2005.

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

3. On 7 September 2006 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 1952 and lives in Cherkasy, Ukraine.

5. The applicant is a lawyer. In 1998 he provided a private company, “D.”, with legal assistance according to an agreement between them; however, the latter failed to pay for the services.

6. By judgments of 14 July 2000 and 26 October 2000 the Cherkasy Regional Arbitration Court (after June 2001 – the Cherkassy Regional

Commercial Court) ordered the company “D.” to pay the applicant 308,332.67 Ukrainian hryvnias (UAH)¹.

7. Those judgments became final and on 24 November and 4 December 2000 the State Bailiffs’ Service (hereafter “the Bailiffs’ Service”) instituted enforcement proceedings. In the course of those proceedings a total of UAH 4,000 was paid to the applicant.

8. Being dissatisfied with the lengthy non-enforcement of the judgments, on 25 May 2001 the applicant lodged a claim with the Cherkassy Regional Arbitration Court against the Bailiffs’ Service, seeking compensation for pecuniary damage caused by its inactivity.

9. On 10 April 2002 the court found for the applicant, noting that the Bailiffs’ Service had failed to take measures to enforce the judgments of 14 July 2000 and 26 October 2000, and awarded him UAH 308,332.67² in damages to be paid from the State budget. It further noted that the Bailiffs’ Service could still collect these damages from company “D.” to cover the expenses. On 29 October 2002 and 25 September 2003 the Kyiv Commercial Court of Appeal and the Higher Commercial Court of Ukraine, respectively, rejected the defendant’s appeals against the judgment. Subsequently, in 2005-2007, the State Treasury of Ukraine, being an administrator of the State budget, also attempted to appeal against the judgment, but the courts found that it lacked standing to that end.

10. On 22 November 2002 the applicant requested the Bailiffs’ Service to institute enforcement proceedings. However, according to the applicant, those proceedings were instituted only after he had made several pertinent complaints to the court. Later on, the applicant’s writ of enforcement was transferred from one department of the Bailiffs’ Service to another for various reasons; once it was also transmitted to the State Treasury of Ukraine for further processing but was subsequently remitted back to the Bailiffs’ Service. Furthermore, the latter terminated and resumed the enforcement proceedings several times. The applicant lodged numerous complaints with the courts alleging inactivity and omissions on the part of the Bailiffs’ Service; the courts found those complaints well-founded on a number of occasions (for example, by decisions of 28 February 2003, 13 December 2004, 22 April and 2 June 2005).

11. In August 2008 the applicant instituted proceedings in the Cherkassy Commercial Court against the Bailiffs’ Service, seeking additional compensation for pecuniary damage (namely, inflation losses, exemplary damages based on a 3% interest rate and legal costs) caused by its inactivity. On 28 November 2008 the court allowed the claim and awarded the applicant UAH 292,720.63³ to be paid by the State Treasury of Ukraine

¹ Approximately 68,492.20 euros (EUR) at the material time.

² Approximately EUR 68,200.30 at the material time.

³ Approximately EUR 32,355.20 at the material time.

from the State budget. The Bailiffs' Service appealed and the proceedings apparently are pending before the Kyiv Commercial Court of Appeal.

12. In December 2008 the applicant requested the local department of the Bailiffs' Service to resume the enforcement proceedings upon the judgment of 10 April 2002. On 4 December 2008 the Bailiffs' Service dismissed the request for lack of territorial jurisdiction.

13. In the meantime the judgment of 10 April 2002 remains unenforced.

II. RELEVANT DOMESTIC LAW

14. The relevant domestic law is summarised in the judgment of *Romashov v. Ukraine* (no. 67534/01, §§ 16-19, 27 July 2004).

THE LAW

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

15. Relying on Articles 6 § 1 and 13 of the Convention and Article 1 of Protocol No. 1, the applicant complained about the lengthy non-enforcement of the judgment of 10 April 2002.

The Court will examine these complaints under Article 6 § 1 of the Convention and of Article 1 of Protocol No. 1 which provide, in so far as relevant, as follows:

Article 6 § 1

“In the determination of his civil rights and obligations ... everyone is entitled to a ... hearing within a reasonable time by [a] ... tribunal ...”

“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.”

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. Referring to the proceedings pending at that time before the domestic courts upon the appeal by the State Treasury of Ukraine against the judgment of 10 April 2002 (see paragraph 9 above), the Government contended that that judgment was not yet final and to this end requested the Court to reject the present application as premature.

17. The applicant disagreed, asserting that the judgment of 10 April 2002 was final and subject to enforcement.

18. The Court notes that the attempts by the State Treasury of Ukraine to appeal against the judgment in question proved to be unsuccessful. Accordingly it dismisses the Government's objection.

19. The Court notes that the application 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

20. The Government did not make any observations on the merits of the present application.

21. The Court reiterates 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, for example, *Lysenko v. Ukraine*, no. 18219/02, § 26, 7 June 2007). The Court finds no ground to depart from its case-law in the present case.

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

II. APPLICATION OF ARTICLE 41 OF THE CONVENTION

23. 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

24. The applicant claimed the outstanding debt under the judgment of 10 April 2002 and inflation losses in the amount of UAH 149,030.67⁴ by way of compensation for pecuniary damage. In support of his last-mentioned claim, the applicant presented detailed calculations based on inflation rates issued by the State Statistics Committee (*Державний комітет статистики України*). He further claimed UAH 300,000⁵ in respect of non-pecuniary damage.

25. The Government contested these claims as excessive and unsubstantiated. With respect to the claim for inflation losses, they argued that this claim should be rejected as there had been an effective domestic remedy available which the applicant, in their view, had failed to use.

26. The Court notes that it is undisputed that the State still has an outstanding obligation to enforce the judgment at issue.

27. As to the claim for inflation losses, the Court finds no need to examine it at this stage of the proceedings, having regard the ongoing proceedings before the domestic courts aimed to establish the amount of these losses incurred as the result of the Bailiffs' inactivity (see paragraph 11 above).

28. The Court further takes the view that the applicant must have sustained 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 the applicant EUR 2,000 in respect of non-pecuniary damage.

B. Costs and expenses

29. The applicant claimed UAH 160.95⁶ for postal expenses. In support of his claim he provided copies of the relevant vouchers.

30. The Government did not object to the amount claimed by the applicant.

31. Having regard to the Government's position, the Court awards the applicant EUR 22 under this head.

C. Default interest

32. 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.

⁴ About EUR 20,380.

⁵ About EUR 41,025.90.

⁶ About EUR 22.

FOR THESE REASONS, THE COURT UNANIMOUSLY

1. *Declares* the application admissible;
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;
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 under the judgment of 10 April 2002;
 - (ii) EUR 2,000 (two thousand euros) in respect of non-pecuniary damage and EUR 22 (twenty-two euros) for 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 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 16 April 2009, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Claudia Westerdiek
Registrar

Rait Maruste
President