



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

1959 · 50 · 2009

FIFTH SECTION

CASE OF SOLONSKIY v. UKRAINE

(Application no. 39760/05)

JUDGMENT

STRASBOURG

30 July 2009

FINAL

30/10/2009

This judgment may be subject to editorial revision.

In the case of Solonskiy v. Ukraine,

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

Peer Lorenzen, *President*,

Renate Jaeger,

Karel Jungwiert,

Rait Maruste,

Mirjana Lazarova Trajkovska,

Zdravka Kalaydjieva, *judges*,

Stanislav Shevchuk, *ad hoc judge*,

and Stephen Phillips, *Deputy Section Registrar*.

Having deliberated in private on 7 July 2009,

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

PROCEDURE

1. The case originated in an application (no. 39760/05) 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 Pyotr Yakovlevich Solonskiy (“the applicant”), on 20 October 2005.

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

3. On 30 April 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 1938 and lives in the town of Gorlovka.

5. In July 1995 the applicant instituted proceedings in the Tsentralno-gorodskoy District Court of Gorlovka (“the court”) against his former employer, a State company “Kommunalnik” (“the company”), claiming compensation for damages resulting from his work-related disease.

6. On 29 December 1998 the court awarded the applicant UAH 44,273.27¹. By the same judgment he was entitled to receive an allowance of UAH 372.24, to be paid monthly. On 5 February 1999 the Gorlovka Bailiffs' Service ("the Bailiffs' Service") initiated enforcement proceedings.

7. On 10 October 2000 the judgment was enforced in part; the applicant received UAH 127.12.

8. In March 2002 the applicant instituted proceedings in the court against the company and the State Insurance Fund for Work Accidents and Work-Related Diseases ("the Fund") seeking re-calculation of the monthly allowance paid to him for his work-related disability and claiming payment of losses sustained on account of the erroneous calculation.

9. On 11 April 2002 the court allowed the applicant's claims and ordered the company to pay the applicant UAH 30,645.53². By the same judgment he was entitled to receive a monthly allowance of UAH 737.04, to be paid by the Fund as from 1 April 2001. On 30 May 2002 the Bailiffs' Service initiated enforcement proceedings.

10. In November 2005 the applicant instituted court proceedings against the Bailiffs' Service seeking compensation for damages caused to him by the non-enforcement of the judgments. On 29 December 2005 the court found against the applicant. On 27 April 2006 the Donetsk Regional Court of Appeal upheld this judgment. The applicant did not appeal in cassation.

11. On 13 March 2008 the Bailiffs' Service returned the enforcement writs in respect of the judgments of 29 December 1998 and 11 April 2002 to the applicant.

12. The company failed to enforce the judgments of 29 December 1998 and 11 April 2002 in full. The Fund has no judgment debts vis-à-vis the applicant.

II. RELEVANT DOMESTIC LAW

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

¹ EUR 9,764.

² EUR 6,782.43

THE LAW

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

14. The applicant complained under Article 6 § 1 of the Convention and Article 1 of Protocol No. 1 about the non-enforcement of the judgments of 29 December 1998 and 11 April 2002. The above provisions 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 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

15. The Government contended that the applicant had not exhausted domestic remedies as he had not challenged the action taken by the Bailiffs’ Service on 13 March 2008. They also maintained that the applicant had failed to re-lodge the enforcement writs. They asserted in this regard that the applicant was no longer interested in enforcement of the judgments in question.

16. The applicant disagreed.

17. The Court notes that similar objections have already been rejected in a number of judgments adopted by the Court (see *Sychev v. Ukraine*, no. 4773/02, §§ 42-46, 11 October 2005; and *Lizanets v. Ukraine*, no. 6725/03, § 43, 31 May 2007). The Court considers that these objections must be rejected in the instant case for the same reasons.

18. The Court concludes that the applicant’s complaints under Article 6 § 1 of the Convention and Article 1 of Protocol No. 1 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

19. In their observations, the Government contended that there had been no violation of the provisions of the Convention in the applicant's respect. They further maintained that the State authorities had taken all necessary measures to enforce the judgments in question.

20. The applicant disagreed.

21. The Court observes that the judgments of 29 December 1998 and 11 April 2002 remain unenforced.

22. 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*, no. 18966/02, §§ 43 and 55).

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

II. ALLEGED VIOLATION OF ARTICLE 6 § 1 OF THE CONVENTION WITH RESPECT TO THE UNFAIRNESS OF THE PROCEEDINGS

24. The applicant further complained under Article 6 § 1 of the Convention about the outcome of the proceedings in his case against the Bailiffs' Service.

25. The Court notes that the applicant failed to appeal in cassation against the judgment of 29 December 2005 and the ruling of 27 April 2006 (see *Vorobyeva v. Ukraine* (dec.), no. 27517/02, 17 December 2002).

26. It follows that this part of the application must be declared inadmissible for non-exhaustion of domestic remedies, pursuant to Article 35 §§ 1 and 4 of the Convention.

III. 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 claimed UAH 74,918.80 (about EUR 6,981) in respect of pecuniary damage. He requested the Court to adjust this amount in order to take into account inflation rates. The applicant did not provide any calculations of the inflation losses and did not submit any official document in that respect. He further claimed UAH 75,000 (about EUR 7,000) in respect of non-pecuniary damage.

29. The Government contested these claims as unsubstantiated and exorbitant.

30. The Court notes that it is undisputed that the State still has an outstanding obligation to enforce the judgments of 29 December 1998 and 11 April 2002. However, the Court does not discern any causal link between the violation found and the remainder of the pecuniary damage alleged; it therefore rejects this claim. The Court further takes the view that the applicant must have sustained non-pecuniary damage as a result of the violation found. Making its assessment on an equitable basis, as required by Article 41 of the Convention, the Court awards the applicant EUR 2,600 under this head.

B. Costs and expenses

31. The applicant, who was not represented before the Court, claimed UAH 3,700 (about EUR 345) for legal costs incurred before it.

32. The Government contested this claim.

33. According to the Court's case-law, an applicant is entitled to the reimbursement of costs and expenses only in so far as it has been shown that these have been actually and necessarily incurred and 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 200 under this head.

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 concerning the non-enforcement of the judgments admissible and the complaint under Article 6 § 1 of the

Convention about the unfairness of the proceedings against the Bailiffs' Service 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;
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, the debts still owed to the applicant under the judgments of the Tsentralno-gorodskoy District Court of Gorlovka of 29 December 1998 and 11 April 2002 in respect of pecuniary damage as well as EUR 2,600 (two thousand six hundred euros) in respect of non-pecuniary damage, and EUR 200 (two hundred euros) for costs and expenses, plus any tax that may be chargeable to the applicant, to be converted into the national currency of the respondent State 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 30 July 2009, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Stephen Phillips
Deputy Registrar

Peer Lorenzen
President