



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

1959 · 50 · 2009

FIFTH SECTION

CASE OF SEMENOVYCH v. UKRAINE

(Application no. 9480/06)

JUDGMENT

STRASBOURG

30 July 2009

FINAL

30/10/2009

This judgment may be subject to editorial revision.

In the case of Semenovych v. Ukraine,

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

Peer Lorenzen, *President*,

Karel Jungwiert,

Rait Maruste,

Mark Villiger,

Isabelle Berro-Lefèvre,

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. 9480/06) 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 Sergiy Sergiyovych Semenovych (“the applicant”), on 27 February 2006.

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

3. On 20 May 2008 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 1944 and lives in the town of Chervonograd, Ukraine.

5. On 17 September 2003 the Chervonograd Court awarded the applicant 34,041.65 Ukrainian hryvnas (about EUR 5,887) in salary arrears and other sums, to be paid by the State company Chervonogradske girnichomontazhne upravlinnya.

6. The judgment became final and enforcement proceedings were instituted.

7. On 25 June 2007 the Bailiffs' Service returned the writ of enforcement to the applicant since there was a tax lien over the company's property and it was therefore not possible to attach it. The applicant did not challenge this decision before the domestic courts; nor did he relodge the writ of execution with the Bailiffs' Service.

8. The judgment in the applicant's favour remains unenforced.

II. RELEVANT DOMESTIC LAW

9. 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 ARTICLES 6 § 1 AND 13 OF THE CONVENTION AND OF ARTICLE 1 OF PROTOCOL NO. 1 TO THE CONVENTION

10. The applicant complained about the non-enforcement of the judgment given in his favour and the lack of an effective remedy in that respect. He invoked Articles 6 § 1 and 13 of the Convention and 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 fair and public hearing within a reasonable time by an independent and impartial tribunal established by law."

Article 13

"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..."

A. Admissibility

11. The Government submitted that the applicant had failed to exhaust domestic remedies as required by Article 35 § 1 of the Convention. In particular, they maintained that he had failed to complain to any domestic court about the Bailiffs' Service's allegedly inadequate attempts to enforce the judgment in his favour. They further alleged that the applicant had failed to re-submit the writ of execution.

12. The Court notes that similar objections have already been rejected in a number of judgments adopted by the Court (see *Sokur v. Ukraine* (dec.), no. 29439/02, 16 December 2003; *Sychev v. Ukraine*, no. 4773/02, §§ 42-46, 11 October 2005; and *Kolosenko v. Ukraine*, no. 40200/02, §§ 12-15, 26 April 2007). The Court considers that this objection must be rejected in the instant case for the same reasons.

13. 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

14. In their observations on the merits the Government advanced the arguments they have frequently put forward in cases like the present one (see, for example, the *Romashov* judgment, cited above, § 37).

15. The applicant disagreed.

16. The Court has frequently found violations of Articles 6 § 1 and 13 of the Convention and Article 1 of Protocol No. 1 to the Convention in cases raising similar issues to those in the present case (see *Romashov v. Ukraine*, cited above, § 46, and *Voytenko v. Ukraine*, cited above, §§ 43, 48 and 55).

17. Having examined all the material 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.

18. There has, accordingly, been a violation of Articles 6 § 1 and 13 of the Convention and a violation of Article 1 of Protocol No. 1.

II. APPLICATION OF ARTICLE 41 OF THE CONVENTION

19. 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

20. In respect of pecuniary damage, the applicant claimed payment of the debt still owed to him under the judgment that had been given in his favour. He further claimed EUR 20,000 in respect of non-pecuniary damage.

21. The Government noted that the applicant’s right to have the judgment given in his favour executed had never been contested. They contested the applicant’s claim in respect of non-pecuniary damage.

22. The Court notes that it is undisputed that the State still has an outstanding obligation to enforce the judgment given in the applicant’s favour. It 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 1,800 under this head.

B. Costs and expenses

23. The applicant lodged no claim under this head, the Court therefore makes no award in this respect.

C. Default interest

24. 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 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* that there has been a violation of Article 13 of the Convention;
5. *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 judgment debt still owed to the applicant for pecuniary damage, as well as EUR 1,800 (one thousand eight hundred euros) in respect of non-pecuniary damage, 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;
 - (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.
6. *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