



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

1959 · 50 · 2009

FIFTH SECTION

CASE OF SOLOMATIN v. UKRAINE

(Application no. 8191/04)

JUDGMENT

STRASBOURG

15 October 2009

FINAL

15/01/2010

This judgment will become final in the circumstances set out in Article 44 § 2 of the Convention. It may be subject to editorial revision.

In the case of Solomatin 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,

Mark Villiger,

Zdravka Kalaydjieva, *judges*,

Mykhaylo Buromenskiy, *ad hoc judge*,

and Claudia Westerdiek, *Section Registrar*,

Having deliberated in private on 22 September 2009,

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

PROCEDURE

1. The case originated in an application (no. 8191/04) 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 Konstantin Vasilyevich Solomatin (“the applicant”), on 11 February 2004.

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

3. On 22 October 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 1979 and lives in the city of Kyiv, Ukraine.

5. The applicant is a former military serviceman. In October 2001 he was transferred to the reserve.

6. On an unspecified date the applicant instituted proceedings in the Tsentralno-Gorodskoy District Court of Gorlovka (“the court”) against the Tsentralno-Gorodskoy District Military Enlistment Office of Gorlovka (“the enlistment office”) claiming payment of a single-payment allowance due to

him, compensation for non-pecuniary damage and 51 Ukrainian hryvnias (UAH) in compensation for the court fees.

7. While the proceedings were still pending, the enlistment office paid the allowance. Therefore, the applicant withdrew his claims regarding payment of the allowance and compensation for non-pecuniary damage.

8. On 24 April 2003 the court awarded the applicant UAH 51¹ in compensation for the court fees, to be paid by the enlistment office. The judgment was not appealed against and became final.

9. On an unspecified date the Tsentralno-Gorodskoy District Bailiffs' Service of Gorlovka ("the Bailiffs' Service") initiated enforcement proceedings in respect of that judgment.

10. On 15 July 2003 the Bailiffs' Service suspended enforcement proceedings since the court had not indicated the debtor's account in the enforcement writ.

11. Later the enlistment office was closed down. The latter's debts were transferred to its successor, the Gorlovsky City Enlistment Office. On 4 May 2006 the court granted the applicant's request and changed the debtor in the enforcement proceedings. The applicant re-lodged the enforcement writ with the Bailiffs' Service.

12. The judgment remains unenforced.

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).

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 that the judgment given in his favour had not been enforced. He relied on Article 6 § 1 of the Convention and Article 1 of Protocol No. 1, which read 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."

¹ Approximately 9 euros (EUR)

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 Bailiffs' actions. They also maintained that the applicant, while re-submitting the enforcement writ, had failed to comply with the procedural formalities prescribed by law. They asserted in this regard that he was no longer interested in the enforcement of the judgment in question.

16. The applicant disagreed.

17. As regards the Government's objection that the applicant failed to re-submit the enforcement writ, the Court notes that in the instant case the applicant has obtained a final and enforceable judgment against the State, namely the enlistment office. The Court reiterates that it is inappropriate to require an individual who has obtained a judgment against the State at the end of legal proceedings to then bring enforcement proceedings to obtain satisfaction (see *Lizanets v. Ukraine*, no. 6725/03, § 43, 31 May 2007 and the case-law referred to therein). In respect to the Government's objection that the applicant had failed to exhaust domestic remedies, the Court notes that similar objections have already been rejected in a number of judgments adopted by the Court (see *Voytenko v. Ukraine*, no. 18966/02, §§ 27-31). The Court considers that the present objections must be rejected 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 respect of the applicant. They further maintained that the State authorities had taken all necessary measures to enforce the judgment in question.

20. The applicant disagreed.

21. The Court observes that the judgment given in the applicant's favour remains 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*, cited above, §§ 43 and 55).

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

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

II. OTHER ALLEGED VIOLATIONS OF THE CONVENTION

25. The applicant complained that the judge sitting in his case lacked impartiality and that she was not independent. Lastly, he complained that the police refused to employ him. The applicant did not refer to any Article of the Convention or Protocols thereto.

26. 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. 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

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 payment of the outstanding debt under the judgment given in his favour. He further claimed 2,000 euros (EUR) in respect of non-pecuniary damage.

29. The Government did not object to paying the outstanding debt under the judgment given in the applicant's favour. They contested the applicant's claim in respect of non-pecuniary damage.

30. The Court finds that the Government should pay the applicant the outstanding judgment debt by way of compensation for pecuniary damage.

31. As to the sum claimed by the applicant in respect of non-pecuniary damage, the Court considers that in the circumstances of the case a mere finding of a violation constitutes sufficient just satisfaction.

B. Costs and expenses

32. The applicant lodged no claim in respect of costs and expenses. Therefore, the Court makes no award under this head.

C. Default interest

33. 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 and Article 1 of Protocol No. 1 concerning the non-enforcement of the judgment of 24 April 2003 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;
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 outstanding debt owed to the applicant under the judgment of the Tsentralno-Gorodskoy District Court of Gorlovka of 24 April 2003 by way of compensation for pecuniary damage;
 - (b) that from the expiry of the above-mentioned three months until settlement simple interest shall be payable on the above amount at a rate equal to the marginal lending rate of the European Central Bank during the default period plus three percentage points;
 - (c) that the finding of a violation constitutes sufficient just satisfaction for any non-pecuniary damage which the applicant may have suffered;
5. *Dismisses* the remainder of the applicant's claim for just satisfaction.

Done in English, and notified in writing on 15 October 2009, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Claudia Westerdiek
Registrar

Peer Lorenzen
President