



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

1959 · 50 · 2009

FIFTH SECTION

CASE OF GVOZDETSKIY v. UKRAINE

(Application no. 28070/04)

JUDGMENT

STRASBOURG

15 October 2009

FINAL

01/03/2010

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 Gvozdetzkiy 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. 28070/04) 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 Aleksandr Ivanovich Gvozdetzkiy (“the applicant”), on 3 July 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 1954 and lives in the town of Starokostantiniv, Ukraine.

5. The applicant is a former military serviceman. In November 1999 he was transferred to the reserve force.

6. On 21 April 2000 the Starokostantiniv Court ordered military unit A-2502 to pay the applicant UAH 1,151.24¹ in compensation for uniform expenses.

7. On 5 May 2000 the Starokostantiniv Bailiffs' Service instituted enforcement proceedings.

8. In December 2003 the Bailiff's Service informed the applicant that the military unit was unable to enforce the judgment of 21 April 2000 because it did not have the necessary funds.

9. The judgment remains unenforced.

II. RELEVANT DOMESTIC LAW

10. The relevant domestic law is summarised in the judgment of *Romashov v. Ukraine* (no. 67534/01, §§ 16-18, 27 July 2004).

THE LAW

I. ALLEGED VIOLATION OF ARTICLE 1 OF PROTOCOL No.1 AND ARTICLE 13 OF THE CONVENTION

11. The applicant complained about the non-enforcement of the judgment given in his favour and the lack of an effective remedy in that connection. He invoked Article 1 of Protocol No. 1 and Article 13 of the Convention, which provide, in so far as relevant, as follows:

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 ... ”

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.”

¹ About EUR 224.90 at the material time

A. Admissibility

12. The Government submitted that the applicant's complaint under Article 1 of Protocol No. 1 should be declared inadmissible since no complaint about non-enforcement has been raised under Article 6 § 1 of the Convention and no violation of Article 6 § 1 in that respect has been found by the Court. They further alleged that Article 13 of the Convention was inapplicable since no issue arose under Article 1 of Protocol No. 1.

13. The applicant disagreed.

14. The Court refers to its case-law that the impossibility for an applicant to obtain the execution of a judgment in his or her favour constitutes an interference with the right to the peaceful enjoyment of possessions, as set out in the first sentence of the first paragraph of Article 1 of Protocol No. 1 (see, among other authorities, *Burdov v. Russia*, no. 59498/00, § 40, ECHR 2002-III, and *Jasiūnienė v. Lithuania*, no. 41510/98, § 45, 6 March 2003). Therefore, the Court dismisses the Government's objections.

15. 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

16. The Government made no observation on the merits of the case.

17. The applicant submitted that the judgment was not enforced.

18. The Court notes that the judgment given in the applicant's favour has remained unenforced for more than eight years and three months.

19. The Court reiterates that it has already found violations of Article 1 of Protocol No. 1 and Article 13 in a substantial number of cases raising issues similar to the present application (see, for example, *Bondar and Others v. Ukraine*, no. 12380/05, § 13, 19 February 2009, and *Lozynskyy and Others v. Ukraine*, no. 28562/02, §§ 25 and 28, 6 September 2007).

20. 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. There has, accordingly, been a violation of Article 1 of Protocol No. 1 and Article 13 of the Convention.

II. ALLEGED VIOLATION OF ARTICLE 17 OF THE CONVENTION

21. The applicant finally invoked Article 17 of the Convention, referring to the above facts.

22. Having regard to all the material in its possession, and in so far as this complaint falls within its competence, the Court finds that it does not disclose any appearance of a violation of Article 17 of the Convention. It follows that this part of the application is manifestly ill-founded and must be rejected in accordance with Article 35 §§ 3 and 4 of the Convention.

III. 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.”

24. 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. The Court, however, notes that it is undisputed that the State still has an outstanding obligation to enforce the judgment at issue. Accordingly, the applicant remains entitled to recover the principal amount of the debt awarded to him in the course of the domestic proceedings.

FOR THESE REASONS, THE COURT UNANIMOUSLY

1. *Declares* the complaints concerning the non-enforcement and lack of an effective remedy admissible and the complaint under Article 17 inadmissible;
2. *Holds* that there has been a violation of Article 1 of Protocol No. 1 to the Convention;
3. *Holds* that there has been a violation of Article 13 of the Convention.

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