



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

1959 · 50 · 2009

FIFTH SECTION

CASE OF ROTAR v. UKRAINE

(Application no. 34126/05)

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 Rotar 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,

Mirjana Lazarova Trajkovska,

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. 34126/05) 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 Sergiy Diamedovych Rotar (“the applicant”), on 9 September 2005.

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

3. On 8 September 2008 the Court decided to give notice of the application to the Government. It also decided to examine the merits of the application at the same time as its admissibility (Article 29 § 3).

THE FACTS

4. The applicant was born in 1951 and lives in Oleksandriya.

5. The State owns 26,1% of the share capital in the company Oleksandriyske Avtotransportne Pidpryyemstvo 13506 (“the company”), which is therefore subject to the moratorium on the forced sale of property of entities in which the State holds no less than 25% of the share capital, barring the attachment and sale of its assets.

6. On 17 March 2004 the Kirovograd Regional Commercial Court started insolvency proceedings against the company.

7. On 31 August 2004 the Oleksandriya Court ordered the company to pay the applicant 7,021.29 Ukrainian hryvnas (UAH)¹ in salary arrears and

1. About EUR 1,125.88.

compensation. The amount represented the salary due to the applicant after deduction of income tax. The judgment became final, but remains only partially enforced, the outstanding debt being UAH 6,114.29¹.

THE LAW

I. ALLEGED VIOLATION OF ARTICLES 6 § 1 AND 13 OF THE CONVENTION AND ARTICLE 1 OF PROTOCOL No. 1.

8. The applicant complained about the lengthy non-enforcement of the judgment of 31 August 2004. He alleged an infringement of Articles 6 § 1 and 13 of the Convention and Article 1 of Protocol No. 1 to the Convention which provide, in so far as relevant, as follows:

Article 6 § 1 of the Convention

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

Article 13 of the Convention

“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 or to secure the payment of taxes or other contributions or penalties.”

A. Admissibility

9. The Government submitted that the applicant had failed to exhaust domestic remedies, as required by Article 35 § 1 of the Convention, since he

1. About EUR 864.45.

had failed to challenge the Bailiffs' actions or omissions before any court and had not applied to the Kirovograd Regional Commercial Court for registration as a creditor in the insolvency proceedings against the debtor company. They also submitted that the State was not responsible for the non-enforcement as 73.9% of the share capital of the debtor company was owned by private entities.

10. The applicant disagreed.

11. The Court notes that similar objections by the Government as to non-exhaustion of domestic remedies have already been discussed and dismissed in a number of its previous judgments (see, for example, *Romashov v. Ukraine*, no. 67534/01, §§ 23-32, 27 July 2004, and *Trykhliv v. Ukraine*, no. 58312/00, §§ 36-42, 20 September 2005). It finds no reason to draw different conclusion in the present case and it therefore rejects the Government's objections.

12. Insofar as the Government maintained that they could not be held responsible for the lack of funds of a company in which the State only held 26.1% of the share capital, the Court notes that the debtor company as such attracted the application of the Law on the Introduction of a Moratorium on the Forced Sale of Property 2001, barring the attachment and sale of its assets on the ground that State property was at stake. The applicant was therefore unable to enforce the debt in the usual way because the company's property could not be sold.

13. 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

14. The Government maintained that the lengthy failure to enforce the judgment in the applicant's favour had been caused by the critical financial situation of the debtor company. The Government further maintained that the Bailiffs Service had taken all the necessary steps and could not be blamed for the delay.

15. The applicant disagreed.

16. The Court observes that the delay in enforcement of the judgment in question constitutes about five years and ten months so far.

17. The Court notes that it has already found violations of Article 6 § 1 of the Convention and Article 1 of Protocol No. 1 in a number of similar cases (see, for instance, *Sokur v. Ukraine*, no. 29439/02, §§ 36-37, 26 April 2005, and *Anatskiy v. Ukraine*, no. 10558/03, §§ 21-23, 13 December 2005).

18. 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.

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

20. The Court does not find it necessary in the circumstances of the present case to examine under Article 13 of the Convention the same complaint as under Article 6 § 1.

II. APPLICATION OF ARTICLE 41 OF THE CONVENTION

21. 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

22. The applicant claimed the unpaid judgment debt due to him and EUR 6,000 in respect of non-pecuniary damage.

23. The Government contested that claim.

24. In so far as the applicant claimed the amount awarded to him by the judgment at issue, the Court considers that the Government should pay him the outstanding debt in settlement of his pecuniary damage. As to the remainder of the applicant's just satisfaction claims, the Court, making its assessment on an equitable basis, as required by Article 41 of the Convention, awards the applicant EUR 2,100 in respect of non-pecuniary damage.

B. Costs and expenses

25. The applicant did not submit any claims for costs and expenses; therefore, the Court makes no award.

C. Default interest

26. 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

1. *Declares* the application admissible;
2. *Holds* that there has been a violation of Article 6 § 1 of the Convention;
3. *Holds* that there is no need to examine the complaint under Article 13 of the Convention;
4. *Holds* that there has been a violation of Article 1 of Protocol No.1 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 outstanding judgment debt due to him;
 - EUR 2,100 (two thousand and one hundred euros) in respect of non-pecuniary damage,
 plus any tax that may be chargeable;
 - (b) that the latter amounts shall be converted into the national currency of the respondent State at the rate applicable at the date of settlement;
 - (c) that from the expiry of the above-mentioned three months until settlement simple interest shall be payable on the latter amount 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 15 October 2009, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Claudia Westerdiek
Registrar

Peer Lorenzen
President