



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

1959 · 50 · 2009

FIFTH SECTION

CASE OF STOROZHUK v. UKRAINE

(Application no. 2387/06)

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 Storozhuk 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,
Isabelle Berro-Lefèvre,
Mirjana Lazarova Trajkovska, *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. 2387/06) 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 Petro Antonovych Storozhuk (“the applicant”), on 31 December 2005.

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 1951 and lives in the town of Chervonograd, Ukraine.

5. On 10 November 2003 the Chervonograd Court ordered the State company Lvivvugilllya to pay the applicant 42,000¹ Ukrainian hryvnias (UAH) in compensation for the non-pecuniary damage caused by the company's failure to provide him with an apartment.

¹ Approximately 7,042 euros (EUR) at the material time.

6. On 17 December 2003 the State Bailiffs' Service initiated enforcement proceedings in respect of the above judgment.

7. On 30 December 2005 the enforcement proceedings were terminated in accordance with the Law of Ukraine on Measures to ensure the Stable Operation of Fuel and Energy Sector Enterprises.

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

II. RELEVANT DOMESTIC LAW

9. The Law of 23 June 2005 on Measures to ensure the Stable Operation of Fuel and Energy Sector Enterprises (*Закон України „Про заходи, спрямовані на забезпечення сталого функціонування підприємств паливно-енергетичного комплексу” від 23 червня 2005 року*) introduced a new mechanism for the payment and amortisation of companies' debts for energy resources. It also introduced a special register of companies concerned by debt payments and amortisation under its provisions. A company's inclusion on the register suspends any enforcement proceedings against it. The domestic courts will also dismiss any request to initiate insolvency or liquidation proceedings against the company in question. By the most recent amendment to the Law, enacted on 16 December 2008, the effect of the debt payment and amortisation programme was extended until 1 January 2011.

10. The remainder of the relevant law is summarised in the judgment of *Sokur v. Ukraine* (no. 29439/02, §§ 17-22, 26 April 2005).

THE LAW

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

11. 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 ... hearing within a reasonable time by [a] ... tribunal ...”

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.

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”

A. Admissibility

12. The Government contended that the applicant had not exhausted domestic remedies as he had not challenged the bailiffs' actions.

13. The applicant disagreed.

14. 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, 29 June 2004, and *Shmalko v. Ukraine*, no. 60750/00, §§ 35-39, 20 July 2004).

15. 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

16. 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, *Sokur*, cited above, § 28).

17. The applicant disagreed.

18. The Court points out that it has already found violations of Articles 6 § 1 and 13 of the Convention and Article 1 of Protocol No. 1 in cases like the present application (see *Sokur*, cited above, § 37; *Shmalko*, cited above, §§ 47 and 57, and *Voytenko*, cited above, §§ 43, 48 and 55).

19. 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.

20. There has, accordingly, been a violation of Articles 6 § 1 and 13 of the Convention and of Article 1 of Protocol No. 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 70,014¹ Ukrainian hryvnias (UAH) in respect of pecuniary damage. This amount included the unsettled court award, adjusted to take into account inflation rates. However, the applicant did not provide detailed calculations of these losses.

23. The Government contested the applicant's claim.

24. The Court notes that it is undisputed that the State still has an outstanding obligation to enforce the judgment at issue. It dismisses the remainder of the applicant's claim for pecuniary damage as unsubstantiated (see, *a contrario*, *Maksimikha v. Ukraine*, no. 43483/02, §§ 27-30, 14 December 2006).

B. Costs and expenses

25. The applicant did not submit any claim under this head. The Court therefore makes no award in this connection.

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.

¹ Approximately EUR 6,865

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 outstanding debt under the judgment of the Chervonograd Court of 10 November 2003 in respect of 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;
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