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

1959 · 50 · 2009

FIFTH SECTION

CASE OF LAZARENKO v. UKRAINE

(Application no. 26855/05)

JUDGMENT

STRASBOURG

19 November 2009

FINAL

19/02/2010

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 Lazarenko v. Ukraine,

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

Peer Lorenzen, *President,*
Renate Jaeger,
Rait Maruste,
Mark Villiger,
Mirjana Lazarova Trajkovska,
Zdravka Kalaydjieva, *judges,*
Mykhaylo Buromenskiy, ad hoc *judge,*

and Stephen Phillips, *Deputy Section Registrar*,

Having deliberated in private on 20 October 2009,

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

PROCEDURE

1. The case originated in an application (no. 26855/05) 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 Viktor Tymofiyovych Lazarenko ("the applicant"), on 30 June 2005.

2. The Ukrainian Government ("the Government") were represented by their Agent, Mr Yuri Zaytsev.

3. On 15 October 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

THE CIRCUMSTANCES OF THE CASE

4. The applicant was born in 1953 and lives in Oleksandriya.

5. On 28 May 2004 the Oleksandriya Court (*Олександрійський міськрайонний суд Кіровоградської області*) ordered the State-owned company Oleksandriyavugillya to pay the applicant 14,632.02 Ukrainian hryvnias (UAH)[1] in salary arrears and other payments. The judgment

1. About 3,145.81 euros (EUR).

became final, but remains only partially enforced due to the debtor company's lack of funds, the outstanding debt being UAH 2,189.18[1].

6. On an unspecified date liquidation proceedings were started against Oleksandriyavugillya and the applicant's writ of execution was transferred to the company's liquidation commission.

THE LAW

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

7. The applicant complained about the authorities' failure to execute, in due time, the judgment of 28 May 2004. He relied on Articles 6 § 1 and 13 of the Convention and Article 1 of Protocol No. 1. The Court, master of the characteristic to be given in law to the facts of a case, finds that the applicant's complaint falls to be considered solely under Article 6 § 1 of the Convention and Article 1 of Protocol No. 1. These provisions read, 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 ... hearing within a reasonable time by [a] ... tribunal ..."

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

8. The Government submitted that the applicant had not exhausted domestic remedies as he had not lodged a claim with the domestic courts to challenge the actions or inactivity of the bailiffs and the liquidation commission.

1. About EUR 206.

9. The applicant disagreed.

10. The Court considers that, in the light of its findings in similar cases, the Government's objection must be rejected (see *Romashov v. Ukraine*, no. 67534/01, §§ 28-33, 27 July 2004 and *Shmalko v. Ukraine*, no. 60750/00, §§ 35-40, 20 July 2004).

11. The Court considers that this complaint is not manifestly ill-founded within the meaning of Article 35 § 3 of the Convention. It further considers that it is not inadmissible on any other grounds. It must therefore be declared admissible.

B. Merits

12. The Government reiterated that they had taken all measures provided for by the domestic legislation to enforce the judgment given in the applicant's favour and that the delay in enforcement was caused by the difficult financial situation of the debtor company.

13. The applicant disagreed.

14. The Court notes that the judgment of the Oleksandriya Court of 28 May 2004 remained unenforced for more than five years.

15. The Court observes that it has frequently found violations of Article 6 § 1 of the Convention and Article 1 of Protocol No. 1 in cases raising similar issues to the present application (see *Romashov v. Ukraine* §§ 42-47 and *Shmalko v. Ukraine* §§ 47 and 57, cited above; *Solovyev v. Ukraine*, no. 4878/04, §§ 20-24, 14 December 2006; *Sokur v. kraine*, no. 29439/02, § 37, 26 April 2005 and *Anatskiy v. Ukraine*, no. 10558/03, § 23, 13 December 2005).

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

II. APPLICATION OF ARTICLE 41 OF THE CONVENTION

17. 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

18. The applicant claimed the judgment debt due to him and EUR 5,000 in respect of non-pecuniary damage.

19. The Government contested this claim.

20. 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

21. The applicant claimed UAH 915.53[1] in costs and expenses for legal assistance and correspondence with the Court. The applicant submitted documentary evidence that he had spent UAH 41.49[2] on correspondence with the Court. He also submitted documentary evidence (copies of receipts) that he had spent UAH 750[3] on legal assistance in the proceedings before unspecified courts.

22. The Government contested the claim concerning the costs allegedly incurred by the applicant for legal assistance. They left the matter concerning the expenses for correspondence with the Court to the Court's discretion.

23. According to the Court's case-law, an applicant is entitled to the reimbursement of costs and expenses only in so far as it has been shown that these have been actually and necessarily incurred and were reasonable as to quantum. The Court notes that in the present case the applicant represented himself before the Court and the domestic courts. The Court further notes that the applicant failed to submit an itemised schedule of costs and expenses incurred. Therefore, regard being had to the information in its possession and the above criteria, the Court rejects the claim for costs and expenses.

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.

---

1. About EUR 86.
2. About EUR 5.
3. About EUR 70.

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;

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 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 amount 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;

5. *Dismisses* the remainder of the applicant's claim for just satisfaction.

Done in English, and notified in writing on 19 November 2009, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Stephen Phillips Deputy Registrar	Peer Lorenzen President