



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

1959 · 50 · 2009

FIFTH SECTION

CASE OF KORABELNIKOV v. UKRAINE

(Application no. 29860/05)

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 Korabelnikov v. Ukraine,

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

Peer Lorenzen, *President*,

Renate Jaeger,

Rait Maruste,

Isabelle Berro-Lefèvre,

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. 29860/05) 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 Yevgen Illich Korabelnikov (“the applicant”), on 30 July 2005.

2. The applicant was represented by Mr V.P. Mokhnenko, a lawyer practising in Ukraine. 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 1935 and lives in the town of Chasiv-Yar, Ukraine.

5. By judgments of 14 September 2000 and 14 May 2002 the Artemovsk Court awarded the applicant 2,736.90¹ Ukrainian hryvnias (UAH) and UAH 1,895.64² in disability allowance arrears and other payments, to be

¹ Approximately EUR 586

paid by the applicant's former employer, the State company Chasiv-Yarskoye spechupravleniye po remontu oborudovaniya, zdaniy i sooruzheniy.

6. On 3 December 2003 the Donetsk Regional Commercial Court declared the company insolvent. Following this event, liquidation proceedings were instituted.

7. The applicant received UAH 525.72 in partial payment of the judgment debts. The judgments remain unenforced.

II. RELEVANT DOMESTIC LAW

8. 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

9. The applicant complained under Article 6 § 1 of the Convention and Article 1 of Protocol No. 1 about the non-enforcement of the judgments given in his favour. The above provisions 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 fair and public hearing within a reasonable time by an independent and impartial tribunal established by law.”

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.....”

² Approximately EUR 409

A. Admissibility

10. The Government submitted that the applicant had failed to exhaust domestic remedies as required by Article 35 § 1 of the Convention. In particular, they maintained that he had not availed himself of the opportunity to be registered as a creditor in the insolvency proceedings and had failed to apply to any domestic court against the Bailiffs' Service challenging the allegedly inadequate enforcement of the judgment.

11. The applicant made no comments.

12. The Court notes that similar objections have already been rejected in a number of judgments adopted by the Court (see *Sokur v. Ukraine* (dec.), no. 29439/02, 16 December 2003; *Sychev v. Ukraine*, no. 4773/02, §§ 42-46, 11 October 2005; and *Trykhlib v. Ukraine*, no. 58312/00, §§ 38-43, 20 September 2005). The Court considers that this objection must be rejected in the instant case for the same reasons.

13. The Court notes that the 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

14. In their observations, the Government contended that there had been no violation of the provisions of the Convention in the applicant's respect. They further maintained that the State authorities had taken all necessary measures to enforce the judgments in question.

15. The applicant made no comments.

16. The Court observes that the judgments given in the applicant's favour remain unenforced.

17. 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*, cited above, § 46, and *Voytenko v. Ukraine*, no. 18966/02, §§ 43 and 55).

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 Article 1 of Protocol No.1 to the Convention.

II. ALLEGED VIOLATION OF ARTICLE 1 OF THE CONVENTION

20. The applicant finally invoked Article 1 of the Convention referring to the same facts.

21. The Court has found the respondent Government to be in breach of Article 6 § 1 of the Convention and Article 1 of Protocol No. 1 to the Convention and does not consider it necessary to examine the complaint under Article 1, which is a framework provision that cannot be breached on its own (see *Ireland v. the United Kingdom*, 18 January 1978, § 238, Series A no. 25, p. 90).

III. APPLICATION OF ARTICLE 41 OF THE CONVENTION

22. 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, costs and expenses

23. 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.

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

FOR THESE REASONS, THE COURT UNANIMOUSLY

1. *Declares* the applicant's complaints under Article 6 § 1 and Article 1 of Protocol No. 1 about the non-enforcement of the judgments 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 it is not necessary to examine whether there has been a violation of Article 1 of the Convention.

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