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

1959 · 50 · 2009

FIFTH SECTION

CASE OF SKRYPETS v. UKRAINE

(Application no. 41236/06)

JUDGMENT

STRASBOURG

10 December 2009

FINAL

10/03/2010

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 Skrypets v. Ukraine,

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

Peer Lorenzen, *President,*
Renate Jaeger,
Karel Jungwiert,
Mark Villiger,
Isabelle Berro-Lefèvre,
Zdravka Kalaydjieva, *judges,*
Mykhaylo Buromenskiy, ad hoc *judge,*
and Claudia Westerdiek, *Section Registrar*,

Having deliberated in private on 17 November 2009,

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

PROCEDURE

1. The case originated in an application (no. 41236/06) 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 Vitaliy Yaroslavovych Skrypets ("the applicant"), on 30 September 2006.

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 1967 and lives in the town of Novyy Rozdil, Ukraine.

5. On 4 April 2003 the Mykolaivsky Court awarded the applicant 1,884.77 Ukrainian hryvnias (UAH)[1] in salary arrears and litigation expenses incurred by the applicant, to be paid by the State-controlled enterprise OJSC Novorozdilsky Zavod Fungytsydiv.

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[1] About EUR 339

6. On 8 May 2003 the State Bailiffs' Service initiated enforcement proceedings in respect of the judgment given in the applicant's favour.

7. On 25 October 2006 the company was declared insolvent. The liquidation proceedings instituted against the company are still pending.

8. On 19 May 2006 the applicant received UAH 659.32 in part settlement of the judgment debt.

9. In their submissions the Government stated that on 31 October 2008 the applicant had also received UAH 150.78. The applicant did not disagree.

II. RELEVANT DOMESTIC LAW

10. 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 ARTICLES 6 § 1 AND 13 OF THE CONVENTION AND ARTICLE 1 OF PROTOCOL No. 1 TO THE CONVENTION

11. The applicant complained about the non-enforcement of the judgment given in his favour and that there was no effective remedy in that respect. He relied on 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 fair and public hearing within a reasonable time by an independent and impartial tribunal established by law. "

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..."

A. Admissibility

12. 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 to challenge the allegedly inadequate enforcement of the judgment.

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 *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.

15. The Court notes that this 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, 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 judgment in question.

17. The applicant disagreed.

18. The Court has frequently found violations of Articles 6 § 1 and 13 of the Convention and Article 1 of Protocol No. 1 to the Convention in cases raising similar issues to those in the present case (see *Romashov*, cited above, § 46, and *Voytenko v. Ukraine*, no. 18966/02, §§ 43, 48 and 55, 29 June 2004).

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 a violation 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. In respect of pecuniary damage, the applicant claimed payment of the debt still owed to him under the judgment that had been given in his favour. He further claimed 5,000 euros (EUR) in respect of non-pecuniary damage.

23. The Government noted that the applicant's right to have the judgment in his favour executed had never been contested. They contested the applicant's claim in respect of non-pecuniary damage

24. The Court finds that, as the judgment in the applicant's favour remains unenforced, the Government should pay him the debt still owed under the judgment of 4 April 2003 in order to satisfy his claims in respect of pecuniary damage. In addition, ruling on an equitable basis, the Court finds it reasonable to award the applicant EUR 2,000 in respect of non-pecuniary damage.

B. Costs and expenses

25. The applicant made no claims for costs and expenses. Therefore, the Court makes no award under this head.

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 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 13 of the Convention;

4. *Holds* that there has been a violation of Article 1 of Protocol No. 1 to the Convention;

5. *Holds*:
(a) that the respondent State is to pay to the applicant, within three months from the date on which the judgment becomes final in accordance with Article 44 § 2 of the Convention, the following sums:
(i) the outstanding debt under the judgment of 4 April 2003 in respect of pecuniary damage;
(ii) EUR 2,000 (two thousand euros) in respect of non-pecuniary damage, to be converted into the national currency of the respondent State at the rate applicable at the date of settlement, plus any tax that may be chargeable;
(b) that from the expiry of the above-mentioned three months until settlement simple interest shall be payable on the above amounts 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 10 December 2009, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Claudia Westerdiek Registrar	Peer Lorenzen President