



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

1959 · 50 · 2009

FIFTH SECTION

CASE OF SAVULA v. UKRAINE

(Application no. 12868/05)

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 Savula 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,

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 the last-mentioned date:

PROCEDURE

1. The case originated in an application (no. 12868/05) 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 Yuriy Mykhaylovych Savula (“the applicant”), on 29 March 2005.

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

3. On 14 January 2009 the President of the Fifth Section decided to give notice of the application to the Government. It was also decided to rule on the admissibility and merits of the application at the same time (Article 29 § 3).

THE FACTS

I. THE CIRCUMSTANCES OF THE CASE

4. The applicant was born in 1930 and lives in Lviv. He is a retired judge.

5. On 22 February 2000 the Frankivskyy District Court of Lviv awarded the applicant 4,107.93 Ukrainian hryvnias (UAH)¹ in compensation for his

¹ Approximately 737 euros (EUR).

lifelong benefit arrears, to be paid by the Ministry of Justice. The judgment became final on 4 March 2000.

6. On 24 December 2004 the State Bailiffs' Service returned the writ of execution to the applicant, informing him that the judgment could not be enforced owing to the debtor's lack of funds. It remains unenforced.

II. RELEVANT DOMESTIC LAW

7. The relevant domestic law is summarised in the judgment of *Romashov v. Ukraine*, no. 67534/01, §§ 16-19, 27 July 2004 and *Zubko and Others v. Ukraine*, nos. 3955/04, 5622/04, 8538/04 and 11418/04, §§ 33-40, ECHR 2006-VI (extracts).

THE LAW

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

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

A. Admissibility

9. The Court notes that the applicant's 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

10. The Government maintained that there was no breach of any of the provisions of the Convention as the State authorities had taken all necessary measures to enforce the judgment in question.

11. The applicant disagreed.

12. 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 v. Ukraine*, cited above, § 46; *Voytenko v. Ukraine*, no. 18966/02, §§ 43, 48 and 55, 29 June 2004; and *Petrova and Chornobryvets v. Ukraine*, nos. 6360/04 and 16820/04, § 21, 15 May 2008).

13. 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.

14. 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

15. 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

16. The applicant claimed the unpaid judgment debt and 9,000 euros in respect of non-pecuniary damage.

17. The Government had no objections to the enforcement of the judgment at issue. They contested the applicant's claims in respect of non-pecuniary damage.

18. The Court notes that it is undisputed that the State still has an outstanding obligation to enforce the judgment given in the applicant's favour. It further takes the view that the applicant must have sustained non-pecuniary damage as a result of the violation found. Making its assessment on an equitable basis, as required by Article 41 of the Convention, the Court awards the applicant EUR 2,000 under this head.

B. Costs and expenses

19. The applicant claimed EUR 16 for the costs and expenses incurred before the Court. He provided the relevant supporting documents.

20. The Court considers it reasonable to award the applicant the sum claimed.

C. Default interest

21. 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 the Convention;
3. *Holds* that there has been a violation of Article 13 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 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 2,000 (two thousand euros) in respect of non-pecuniary damage, and EUR 16 (sixteen euros) in respect of costs and expenses, 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 to the applicant;

(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 10 December 2009, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Claudia Westerdiek
Registrar

Peer Lorenzen
President