



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

1959 · 50 · 2009

FIFTH SECTION

CASE OF YANGOLENKO v. UKRAINE

(Application no. 14077/05)

JUDGMENT

STRASBOURG

10 December 2009

FINAL

10/05/2010

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 Yangolenko 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,

Mark Villiger,

Mirjana Lazarova Trajkovska, *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. 14077/05) 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 Yevgeniy Alekseyevich Yangolenko (“the applicant”), on 6 April 2005.

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

3. On 19 January 2009 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 1944 and lives in the town of Torez, Ukraine.

First set of proceedings

5. On 5 November 1998 the applicant instituted proceedings in the Torez Town Court against the Torezantratsyt State Company, his former employer, seeking recalculation of his monthly payments for work-related

damage and compensation for non-pecuniary damage. On 13 July 2000 the court found in part for the applicant and awarded him a lump sum of 948.27 Ukrainian hryvnias (UAH), and UAH 50.48 to be paid monthly. The defendant appealed and on 14 August 2000 the Donetsk Regional Court (from June 2001 the Donetsk Regional Court of Appeal) quashed that judgment and remitted the case to the lower court for a fresh examination.

6. At this stage of proceedings the Ukrvuglerestrukturyzatsiya State Company (ДК «Укрвуглереструктуризація») (“Company no. 1”) was joined as co-defendant.

7. On 5 February 2003 the Torez Town Court found in part for the applicant and ordered the Company no. 1 to pay the applicant the lump sum of UAH 4,574.33 and UAH 122.90¹ in monthly life-time instalments. According to the applicant, that judgment was not appealed against and became final.

8. In that regard, on an unspecified date the State Bailiffs' Service instituted proceedings to enforce the judgment.

9. In the course of those proceedings the applicant requested the Torez Town Court to replace the debtor with another company, the Donvuglerestrukturyzatsiya State Company (ДП «Донвуглереструктуризація») (“Company no. 2”). On 2 June 2004 the court turned down that request.

10. On 11 October 2004 the Ministry of Fuel and Energy started the process of liquidation of Company no. 1.

11. On 27 September 2006 by a decision of the Ministry of Coal Industry Company no. 1 was merged with Company no. 2.

12. On 29 December 2007 Company no. 2 was reorganised in its turn and merged with the Ukrvugletorfrestrukturyzatsiya State Company (ДП «Укрвуглеторфреструктуризація») (“Company no. 3”).

13. On 9 April 2009 the Bailiffs' Service requested the Torez Town Court to replace the debtor in the case. On the same day the enforcement proceedings were stayed pending the court's decision.

14. On 23 June 2009 the court rejected the Bailiffs' Service's request.

15. The judgment of 5 February 2003 remains unenforced.

Second set of proceedings

16. In January 2001 the applicant instituted proceedings in the Torez Town Court against the local State Social Security Department, seeking compensation for the allegedly incorrect calculation of his pension. On 27 February 2001 the court found against the applicant. On 23 April 2001 the Donetsk Regional Court upheld that judgment.

¹ Approximately 812.80 and 21.84 euros, respectively, at the material time.

Third set of proceedings

17. In April 2002 the applicant instituted proceedings in the Donetsk Regional Court of Appeal against the Torez Town Court, seeking compensation for the lengthy examination of his claim against the Torezantratsyt State Company. On 11 April 2002 the court found that domestic legislation did not confer on the applicant a right to lodge claims against lower courts if he was not satisfied with their administration of justice. On 25 November 2002 the same court dismissed appeals by the applicant against that decision for procedural shortcomings. The applicant did not appeal against the latter decision.

Fourth set of proceedings

18. In October 2003 the applicant instituted proceedings in the Torez Town Court against Company no. 2, seeking salary arrears and compensation for non-pecuniary damage. On 23 July 2004 the court dismissed his claim as statute-barred. On 7 October 2004 and 25 July 2007 respectively the Donetsk Regional Court of Appeal and the Kyiv City Court of Appeal, sitting as a court of cassation, upheld that judgment.

II. RELEVANT DOMESTIC LAW

19. 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

20. The applicant complained about the length of the first set of proceedings and about the lengthy non-enforcement of the judgment of 5 February 2003 under Article 6 § 1 of the Convention, which reads 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. ...”

A. Admissibility

21. 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 the applicant had failed to apply to any domestic court to challenge the allegedly inadequate enforcement by the Bailiffs' Service of the judgment in his favour.

22. The applicant disagreed.

23. 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, § 29-31, 29 June 2004). The Court considers that the objections in the instant case must be rejected for the same reasons.

24. 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

25. The applicant reiterated his complaints.

26. The Government submitted that the applicant's case was quite complicated, as there had been several forensic expert evaluations ordered by the court and the court had needed time to assess different evidence in the case. Moreover, the parties contributed to the length of proceedings as they lodged numerous requests, appeals and other complaints, and the representative of defendant failed three times to appear in the court hearings which were subsequently postponed. The Government further stated that the courts and the Bailiffs' Service had acted diligently in the present case.

27. The Court reiterates that the court proceedings and the enforcement proceedings are stages one and two in the total course of proceedings (see *Scordino v. Italy (no. 1)* [GC], no. 36813/97, § 197). Therefore, the enforcement proceedings should not be dissociated from the action and the proceedings are to be examined in their entirety (see *Estima Jorge v. Portugal*, 21 April 1998, § 35, *Reports of Judgments and Decisions* 1998-II, and *Sika v. Slovakia*, no. 2132/02, §§ 24-27, 13 June 2006).

28. The Court considers that in the present case the court proceedings lasted for four years and three months, which included three court decisions on two levels of jurisdiction. Although such length of the court proceedings can appear to be marginal, the decision adopted following these proceedings remains unenforced for six years and eight months¹.

29. The Court reiterates that it has already found violations of Article 6 § 1 of the Convention in similar cases (see, among other

¹ To be updated when the judgment is adopted.

authorities, *Sokur v. Ukraine*, no. 29439/02, §§ 30-37, 26 April 2005; *Stadnyuk v. Ukraine*, no. 30922/05, §§ 21-25, 27 November 2008).

30. 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.

31. There has accordingly been a violation of Article 6 § 1 of the Convention.

II. OTHER ALLEGED VIOLATIONS OF THE CONVENTION

32. Without specifying the set of proceedings concerned, the applicant complained under Article 6 § 1 and Article 13 of the Convention about their outcome. He further complained under Article 6 § 1 of the Convention about the length of all other proceedings in his case. The applicant also invoked Article 17 of the Convention.

33. Having carefully considered the applicant's submissions in the light of all the material in its possession, the Court finds that, in so far as the matters complained of are within its competence, they do not disclose any appearance of a violation of the rights and freedoms set out in the Convention.

34. It follows that this part of the application must be declared inadmissible as being manifestly ill-founded, pursuant to Article 35 §§ 3 and 4 of the Convention.

III. APPLICATION OF ARTICLE 41 OF THE CONVENTION

35. 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

36. The applicant claimed 250,872 euros (EUR) in respect of pecuniary and non-pecuniary damage.

37. The Government submitted that the claim for pecuniary damage consisted of different amounts which had not been received by the applicant on the national level and was completely unrelated to the subject matter of the proceedings before this Court. The Government further stated that the applicant's claim for the non-pecuniary damage was unsubstantiated.

38. The Court does not discern any causal link between the violation found and the pecuniary damage alleged; it therefore rejects this claim. On the other hand, it awards the applicant EUR 2,000 in respect of non-pecuniary damage.

39. The Court also notes that it is undisputed that the State still has an outstanding obligation to enforce the judgment at issue.

B. Costs and expenses

40. The applicant also claimed UAH 127,000¹ for the costs and expenses incurred before the domestic courts and the Court.

41. The Government noted that the applicant was not represented and had failed to submit any documents in support of the expenses incurred.

42. 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 are reasonable as to quantum. In the present case, regard being had to the documents in its possession and the above criteria, the Court rejects the claim for costs and expenses as the applicant has failed to substantiate his expenses.

C. Default interest

43. 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 complaint under Article 6 § 1 of the Convention concerning the length of the first set of the court proceedings and the enforcement proceedings admissible and the remainder of the application inadmissible;
2. *Holds* that there has been a violation of Article 6 § 1 of the Convention;
3. *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,

¹ Around 10,500 euros

- (i) the outstanding debt under the judgment given in the applicant's favour;
- (ii) EUR 2,000 (two thousand euros), plus any tax that may be chargeable, in respect of non-pecuniary damage, to be converted into Ukrainian hryvnias at the rate applicable at the date of settlement;
- (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;

4. *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