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

SECOND SECTION

CASE OF POLTORACHENKO v. UKRAINE

(Application no. 77317/01)

JUDGMENT

STRASBOURG

18 January 2005

FINAL

18/04/2005

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 **Poltorachenko v. Ukraine**,

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

Mr J.-P. COSTA, *President*,
Mr A.B. BAKA,
Mr I. CABRAL BARRETO,
Mr K. JUNGWIERT,
Mr V. BUTKEVYCH,
Mrs A. MULARONI,
Ms D. JOČIENĖ, *judges*,
and Mrs S. DOLLÉ, *Section Registrar*,

Having deliberated in private on 14 December 2004,

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

PROCEDURE

1. The case originated in an application (no. 77317/01) 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 Aleksey Nikiforovich Poltorachenko ("the applicant"), on 5 October 2001.

2. The Ukrainian Government ("the Government") were represented by their Agents, Ms Valeria Lutkovska, succeeded by Ms Zoryana Bortnovska.

3. The case was communicated to the respondent Government on 22 May 2003. On the same date the Second Section of the Court decided to consider the admissibility and merits of the application together (Article 29 § 3 of the Convention and Rule 54A). It also decided to give priority to the application in view of the applicant's age (Rule 41).

4. The applicant and the Government each filed observations on the admissibility and merits (Rule 59 § 1).

THE FACTS

5. The applicant is a Ukrainian national, who was born in 1919 in Russia, and lives in Bakhchisaray (Crimea).

I. THE CIRCUMSTANCES OF THE CASE

6. The facts of the case, as submitted by the parties, may be summarised as follows.

7. On 8 October 1991 the Sudak City Court ordered the Automobile and Agricultural Machine Building Ministry of the USSR (the "Ministry") to pay the applicant 20,500 Soviet roubles (excluding taxes) for the use of his invention and to cover court fees incurred by him.

8. On 9 December 1991 the Ministry paid the applicant 18,140 Soviet roubles for his invention which was covered by a patent. The sum paid to the applicant was transferred to him through the Savings Bank of the USSR. On 20 January 1992 17,414.40 Soviet roubles were paid to the applicant's bank account at the Bakhchisaray branch of the Savings Bank of Ukraine (the "Bank").

9. This sum was indexed in 1996 on the basis of the Recovery of Citizens' Savings (State Guarantees) Act of 2 January 1992, and the applicant's deposit with the Savings Bank (account no. 42) eventually amounted to UAH 18,284.70[1].

10. In February 1998 the applicant instituted administrative proceedings in the Bakhchisaray City Court against the Bank and its director complaining of their unlawful refusal to release his deposits from accounts nos. 42 and 4692. On 16 March 1998 the Bakhchisaray City Court rejected his claims as unsubstantiated. On 20 April 1998 the Supreme Court of the Crimea quashed this decision and remitted the case for a fresh consideration.

11. On 15 June 1998 the Bakhchisaray City Court ordered the Bank to pay the applicant UAH 18,284.70 from his account no. 42. It also held that UAH 977.20 had to be paid to the applicant from his account no. 4692. On 27 July 1998 the Supreme Court of Crimea quashed this decision and remitted the case for a fresh consideration. In particular, it held that a property dispute, such as in the instant case, had to be dealt with in contentious, not administrative, proceedings.

12. In October 1999 the applicant instituted contentious proceedings in the Bakhchisaray City Court against the Bank seeking recovery of the sum held by it. In particular, the applicant claimed that this sum was not a deposit but a payment for his invention that had been transferred by cable from Moscow to the Bank and never given to him.

13. On 29 November 1999 the applicant lodged a claim (new contentious proceedings) with the Bakhchisaray City Court against the Bank seeking to recover the sum of UAH 18,284.70 from it.

14. On 6 December 1999 the Bakhchisaray City Court refused to consider the applicant's complaint lodged against the Bank and its director on account of the recently initiated contentious proceedings concerning the recovery of the applicant's deposit with the Savings Bank pending before the same court.

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1. EUR 3,536.42.

15. On 30 November 1999 the court adjourned the hearing in the case to 28 January 2000 and then to 25 February 2000 in view of a business trip by the judge.

16. On 25 February 2000 the court rejected the applicant's claims. On 10 April 2000 the Supreme Court of Crimea quashed this judgment and remitted the case for a fresh consideration.

17. On 22 May 2000 the case file was remitted to Bakhchisaray Court. The hearing was scheduled for 10 July 2000.

18. On 9 October 2000 the hearing was adjourned to 15 January 2001 due to the failure of the defendant to attend.

19. On 15 January 2001 the Bakhchisaray City Court allowed the applicant's claims and ordered the Bank to pay him UAH 18,284.70 since this sum was not an "indexed" deposit with the State Savings Bank. As to the Savings Bank "indexed" deposit on his account no. 4692, the court held that the applicant had not sought to recover that sum.

20. On 6 April 2001 the Presidium of the Supreme Court of Crimea quashed the decision of 15 January 2001 upon a "protest" *(протест в порядку нагляду)* lodged with it by the President of the Supreme Court of Crimea. It also rejected the applicant's claims for the recovery of UAH 18,284.70 as unsubstantiated.

II. RELEVANT DOMESTIC LAW AND PRACTICE

21. The relevant domestic law is set out in the judgment of 9 November 2004 in the case of *Svetlana Naumenko v. Ukraine* (no. 41984/98).

THE LAW

I. ALLEGED VIOLATION OF ARTICLE 6 § 1 OF THE CONVENTION

22. According to the applicant, the length of the proceedings in his case was unreasonable. He also complained that the proceedings were unfair by virtue of the quashing of the final and binding judgment in his favour following a *protest* lodged by the President of the Supreme Court in supervisory review proceedings. He invoked Article 6 § 1 of the Convention, which provides in so far as relevant as follows:

> "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. The admissibility of the complaints

1. Length of proceedings

23. The Government objected firstly to the Court having on its own initiative taken into consideration the issue of "reasonable time", within the meaning of Article 6 § 1, in the applicant's case. It therefore requested the Court not to examine this issue.

24. The applicant did not comment on this submission of the Government. However, he stated that the Ministry of Justice's submissions as to the inadmissibility of his application were unsubstantiated.

25. The Court affirms its jurisdiction to review the circumstances complained of by an applicant in the light of the entirety of the Convention's requirements. In the performance of its task, the Court is free to attribute to the facts of the case, as found to be established on the evidence before them, a characterisation in law different from that given by the applicant or, if need be, to view the facts in a different manner. Furthermore, it has to take account not only of the original application but also of the additional documents intended to complete the latter by eliminating initial omissions or obscurities (see *Foti and Others v. Italy*, judgment of 10 December 1982, Series A no. 56, § 44). It therefore rejects the Government's objection to an examination *ex officio* by the Court of the reasonableness of the length of the proceedings in the applicant's case.

26. The Government next observed that that there were two sets of proceedings in the applicant's case: contentious and administrative proceedings. As to the contentious proceedings, they ended on 29 November 1999, more than six months before the application was lodged with the Court. As to the second set of proceedings, the Government considered that their length did not exceed a reasonable time within the meaning of Article 6 § 1 of the Convention, because it amounted to one year and four months. They considered therefore that these complaints should be rejected as being manifestly ill-founded.

27. The Court considers that in the instant case the six month period envisaged by Article 35 § 1 of the Convention must be counted from 6 April 2001, i.e. the date of termination of both sets of the aforementioned proceedings (see *Koval v. Ukraine* (dec.), no. 65550/01, 30 March 2004). It finds that it would be inappropriate to separate the contentious and administrative proceedings and to assess their length in isolation (see *Svetlana Naumenko v. Ukraine*, no. 41984/98, judgment of 9 November 2004, § 74). It therefore decides to dismiss the Government's objection as to the admissibility of the applicant's complaint about the length of the contentious proceedings, which they deemed out of time. As to the overall length of the proceedings at issue, the Court notes that they began in February 1998 and were terminated on 6 April 2001. Their duration was

therefore three years and two months for two levels of jurisdiction. It finds that the proceedings in the applicant's case were conducted actively and continuously throughout this period as both the contentious and the administrative proceedings concerned the same subject-matter, namely the recovery of the money which had been transferred to accounts in the Savings Bank. During this period, the case was remitted for reconsideration on three occasions, the proceedings were adjourned three times and the administrative proceedings were terminated. The Court also notes that a protest was lodged against the final decision given in the applicant's favour.

28. The Court recalls that the "reasonable" length of proceedings must be assessed in accordance with the circumstances of the case and the following criteria: the complexity of the case, the behaviour of the applicant and that of the competent authorities and what was at stake for the applicant in the dispute (see, *among many other authorities*, *Frydlender v. France* [GC], no. 30979/96, § 43, ECHR 2000-VII). The Court reiterates that only delays attributable to the State may justify a finding of non-compliance with the "reasonable time" requirement (see *Humen v. Poland,* no. 26614/95, § 66, judgment of 15 October 1999).

29. In the instant case, the Court finds that the subject matter of the litigation was not especially difficult, but involved some complications as to the establishment of the amount of compensation to be paid to the applicant. However, the Court notes that, despite the remittals and the ultimate quashing of the final judgment given in the applicant's favour, the proceedings as a whole did not exceed three years and two months, with continuous judicial activity. The Court therefore concludes that the length did not in itself exceed what may be considered "reasonable" (see *Pedersen and Baadsgaard v. Denmark*, no. 49017/99, § 44, judgment of 19 June 2003).

30. It follows that this complaint is manifestly ill-founded and must be rejected pursuant to Article 35 §§ 3 and 4 of the Convention.

2. Fairness of proceedings

31. The parties did not dispute the admissibility of the applicant's complaint under Article 6 § 1 of the Convention of unfairness. Accordingly, the Court concludes that it should be examined on its merits, no ground for declaring it inadmissible having been established.

B. The merits of the fairness complaint

32. The Government conceded that, in view of the *Ryabykh v. Russia* judgment of 24 July 2003 (no. 52854/99), the quashing of the final judgment of 15 January 2001 by the Presidium of the Supreme Court of Crimea in the present case, following a *protest* lodged by the President of

that court in supervisory review proceedings, could be regarded as having violated the principles of the rule of law and legal certainty.

33. The applicant made no further comment on this point.

34. The Court agrees with the Government's analysis. The present case is indeed similar to the aforementioned case of *Ryabykh v. Russia* in which the Court held that "by using the supervisory-review procedure to set aside the judgment [which had become final and binding] ... the Presidium [of the court] ... infringed the principle of legal certainty and the applicant's "right to a court" under Article 6 § 1 of the Convention ...". Furthermore, the Court has previously found a violation of this provision regarding the lack of independence and impartiality of the Ukrainian Supreme Court when dealing with a *protest* lodged by one of its members (*Svetlana Naumenko v. Ukraine,* no. 41984/98, §§ 91-92, judgment of 9 November 2004; *Tregubenko v. Ukraine* (no. 61333/00, § 41, judgment of 2 November 2004).

35. The Court notes that in the instant case the President of the Supreme Court of Crimea lodged a *protest* against a decision of the Bakhchisaray City Court of 15 January 2001 that had become final and binding. By a decision of the Presidium of the Supreme Court of Crimea on 6 April 2001, this decision was quashed and a new decision rejecting the applicant's claims was adopted.

36. The Court finds no reason in the present case to depart from its established case law. It concludes, therefore, that there has been a violation of Article 6 § 1 in respect of the quashing of the final and binding judgment given in the applicant's favour.

II. ALLEGED VIOLATION OF ARTICLE 1 OF PROTOCOL NO. 1 TO THE CONVENTION

37. The applicant alleges that the facts of his case also disclose a breach of Article 1 of Protocol No. 1, which insofar as relevant provides as follows:

> "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 ..."

A. The admissibility of the complaint

1. Applicability of Article 1 of Protocol No. 1

38. The Court reiterates that, according to the established case-law of the Convention organs, "possessions" within the meaning of Article 1 of Protocol No. 1 can include claims in respect of which the applicant can argue that he or she has at least a "legitimate expectation" of obtaining the effective enjoyment of a property right (see *Pine Valley Developments Ltd. and Others v. Ireland*, judgment of 29 November 1991, Series A no. 222, p. 23, § 51; *Pressos Compañía Naviera S.A. v. Belgium*, judgment of 20 November 1995, Series A no. 332, p. 21, § 31). Whilst the Court has held that there is no right as such flowing from this provision to the indexation of bank savings (*Gayduk and Others v. Ukraine [GC]*, no. 45526/99 and others, decision of 2 July 2002), a judgment debt may be regarded as a possession within the meaning of Article 1 of Protocol No. 1 to the Convention (see *Shmalko v. Ukraine*, no. 60750/00, judgment of 20 July 2004, § 55).

39. The Court considers that the claims of the present applicant do not concern an indexed deposit with the Savings Bank of Ukraine, for which the Court's competence *ratione materiae* is limited, but a final and binding award given in the applicant's favour. It therefore finds that Article 1 of Protocol No. 1 is applicable in the present case.

2. Other admissibility aspects

40. The Government noted that the judgment in the applicant's favour had been quashed after it had become final and enforceable. Accordingly, there was an interference with the applicant's right to receive the funds awarded to him by that judgment. However, they maintained that the interference did not have any consequences for the applicant's right to receive those funds as it merely changed the procedure for recovering the indexed deposit. They further maintained that there are other people with deposits at the State Savings Bank who are also not entitled to retrieve their money. Therefore the interference with the applicant's rights was in accordance with the general interest and complied with Article 1 of Protocol No. 1.

41. The applicant disagreed. He maintained that he had never deposited any money with the Savings Bank. The sum at issue was transferred to the Savings Bank by the competent USSR Ministry for his use. He further maintained that, during the Soviet era, the Savings Bank was the only possible channel for such transfers and, in his particular case, it had merely acted as the financial broker between himself and the Ministry.

42. The Court considers, in the light of the parties' submissions, that the complaint raises serious issues of fact and law under the Convention, the

determination of which requires an examination of the merits. The Court therefore concludes that this complaint is not manifestly ill-founded within the meaning of Article 35 § 3 of the Convention. No other ground for declaring it inadmissible has been established.

B. Merits of the complaint

43. The Government maintained that there had been no violation of this provision as the sum which the applicant claimed was not his possession and the interference had been imposed in the general interest.

44. The applicant disagreed. In particular, he stressed the fact that he had been unlawfully deprived of possessions which had never been voluntarily deposited with the Savings Bank of Ukraine.

45. The Court finds that the applicant was deprived of the award given to him by a final and binding judgment. The applicant therefore had an enforceable claim which constituted a "possession" within the meaning of Article 1 of Protocol No. 1 (paragraphs 38-39 above). Taking into account the applicant's financial and social status, his age and state of health, the Court finds that the quashing of the final judgment given in his favour constituted a disproportionate interference with his right to the peaceful enjoyment of his possessions. The Government have not advanced any convincing justification for that interference.

46. The Court therefore concludes that there has been a violation of Article 1 of Protocol No. 1 to the Convention.

III. APPLICATION OF ARTICLE 41 OF THE CONVENTION

47. 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

48. The applicant initially did not claim any just satisfaction. He subsequently claimed USD 25,000 or UAH 125,000 in compensation. The applicant did not specify whether this sum concerned compensation for pecuniary and/or non-pecuniary damage.

49. The Government considered the claim excessive and unsubstantiated.

50. The Court is of the view that the applicant should be compensated for the money that he would have received if the final judgment in his

favour had been enforced. It therefore awards him 3,536.42 euros (EUR) in pecuniary damages. The Court also finds that the applicant may be considered to have suffered some degree of frustration and distress as a result of the violations found in this case. It therefore awards him, on an equitable basis, EUR 5,000 in respect of non-pecuniary damage.

B. Costs and expenses

51. The applicant claimed no costs and expenses for the Convention proceedings or for the proceedings before the domestic courts. The Court therefore makes no award under this head.

C. Default interest

52. 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* admissible the complaints under Article 6 § 1 of the Convention and Article 1 of Protocol No. 1 concerning the quashing of a final judicial decision in the applicant's case, and inadmissible the remainder of the application;

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 according to Article 44 § 2 of the Convention, EUR 3,536.42 (three thousand five hundred and thirty-six euros and forty-two cents) in respect of pecuniary damage and EUR 5,000 (five thousand euros) in respect of non-pecuniary damage, plus any tax that may be chargeable, to be converted into the currency of the respondent State at the rate applicable on 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 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* unanimously the remainder of the applicant's claim for just satisfaction.

Done in English, and notified in writing on 18 January 2005, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

S. DOLLÉ
Registrar

J.-P. COSTA
President