



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

SECOND SECTION

CASE OF BELANOVA v. UKRAINE

(Application no. 1093/02)

JUDGMENT

STRASBOURG

29 November 2005

FINAL

29/02/2006

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 Belanova 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 R. TÜRMEŇ,

Mr V. BUTKEVYCH,

Ms D. JOČIENĚ,

Mr D. POPOVIĆ, *judges*,

and Mr S. NAISMITH, *Section Registrar*,

Having deliberated in private on 8 November 2005,

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

PROCEDURE

1. The case originated in an application (no. 1093/02) 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, Mrs Nadiya Dmytrivna Belanova (“the applicant”), on 25 November 2001.

2. The Ukrainian Government (“the Government”) were represented by their Agent, Ms Zoryana Bortnovska, succeeded by Ms Valeria Lutkovska.

3. The applicant alleged violations of Articles 6 § 1 and 13 of the Convention due to the non-enforcement of the judgment of 7 October 1999 of the Rozdilna City Court awarded in her favour.

4. The application was allocated to the Second Section of the Court (Rule 52 § 1 of the Rules of Court). Within that Section, the Chamber that would consider the case (Article 27 § 1 of the Convention) was constituted as provided in Rule 26 § 1.

5. On 1 November 2004 the Court changed the composition of its Sections (Rule 25 § 1). This case was assigned to the newly composed Second Section (Rule 52 § 1).

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

THE FACTS

7. The applicant was born in 1946 and currently resides in Rozdilna, the Odessa Region, Ukraine.

I. THE CIRCUMSTANCES OF THE CASE

8. On 20 July 1997 the applicant instituted proceedings in the Rozdilna City Court against the Rozdilna Municipal Council, seeking to recover an additional salary payment for her time-in-service as a teacher, and healthcare benefits.

A. The enforcement proceedings in the applicant's case

9. On 7 October 1999 the Rozdilna City Court (*Роздільнянський районний суд Одеської області*) allowed the applicant's claims and ordered the Department of Education of the Rozdilna Municipal Council (Department) to pay the applicant UAH 1,957.80¹ in compensation (UAH 1,506.6 in bonuses for the term of service, UAH 324 in welfare benefits, UAH 97.2 in additional payments for pupils' supervision and UAH 30 in costs and expenses). This judgment became final on 17 October 1999 and writs of enforcement were issued by the court on 18 October 1999.

10. The execution proceedings were initiated on 1 November 1999 by the Rozdilna Bailiffs' Service (the "RBS").

11. On 13 November 2000 the RBS informed the applicant that the judgment could not be executed due to the lack of funds in the State budget.

12. On 14 July 2000 the Department of Justice of the Odessa Region (the "Department of Justice") informed the applicant that the Department had no property that could be attached.

13. On 17 April 2001 the Department of Justice informed the applicant that the decision could not be executed due to the lack of funds in the State budget.

14. On 22 August 2001, 16 December 2003 and 19 May 2004, the RBS attached the bank accounts of the Department. These resolutions of the RBS were quashed on 26 September 2001, 24 December 2003 and 21 May 2004, respectively.

15. On 20 September 2001 the Department lodged complaints with the Rozdilna City Court, seeking to quash the decision of 22 August 2001.

16. On 26 September 2001 the Rozdilna City Court allowed the Department's claims.

17. On 29 December 2001 the RBS terminated the enforcement proceedings in the case in part with regard to the payment of UAH 97.2 to the applicant, which was then made on 21 January 2002.

18. On 22 May 2002 the Department of Justice informed the applicant that the rest of the judgment would be executed after the State had provided the necessary funds.

1. 411.78 euros ("EUR")

19. On 14 August 2003 the writs of enforcement were returned to the applicant due to the lack of funds of the Department.

20. On 30 April 2004 the RBS reinstituted the enforcement proceedings in the applicant's case.

B. Proceedings against the Bailiffs' Service

21. In June 2001, after the RBS returned the writs of enforcement to the applicant unenforced, the applicant lodged complaints with the Rozdilna City Court seeking compensation for the failure of the RBS to enforce the judgment of 7 October 1999 given in her favour. She also requested the court to declare unlawful the failure of the Bailiffs to enforce the judgment.

22. The proceedings were transferred to the Velykomykhaylivsky District Court of the Odessa Region (*Великомихайлівський районний суд Одеської області*; the Velykomykhaylivsky Court). On 30 July 2001 the Velykomykhaylivsky Court rejected the applicant's complaints.

23. The applicant lodged an appeal with the Odessa Regional Court of Appeal, which on 21 March 2003 quashed the judgment of 30 July 2001 and remitted the case for reconsideration to the same first-instance court.

24. On 19 July 2004 the Velykomykhaylivsky Court found no inactivity on the part of the Bailiffs. It also held that they had acted in accordance with the law in enforcing the applicant's judgment.

25. The applicant decided not to appeal against the judgment of the Velykomykhaylivsky Court as, from her point of view, it offered no prospects of success.

II. RELEVANT DOMESTIC LAW

26. The relevant domestic law is set out in the judgment of 27 July 2004 in the case of *Romashov v. Ukraine* (no. 67534/01, §§ 16-19).

THE LAW

I. ADMISSIBILITY

27. The Government contended that the applicant had not exhausted domestic remedies as she did not lodge an appeal with the Odessa Regional Court of Appeal challenging the judgment of the Velykomykhaylivsky District Court of 19 July 2004 which found no inactivity on the part of the State Bailiffs' Service in enforcing her judgment.

28. The applicant contested this submission. She alleged that a further appeal, after her case against the Bailiffs had already taken almost five years, would offer no reasonable prospects of success.

29. The Court notes that a similar objection has already been dismissed in a number of Court judgments (see, among many other authorities, the aforementioned *Romashov* judgment, §§ 28-32). Accordingly, it dismisses the Government's preliminary objection and declares the applicant's complaints admissible.

II. AS TO THE ALLEGED VIOLATION OF ARTICLE 6 § 1 OF THE CONVENTION

30. The applicant complains about the State authorities' failure to execute the judgment of the Rozdilna City Court of 7 October 1999 given in her favour. She alleges that the length of the enforcement proceedings was unreasonable. She further maintains that the judgment in her favour was never enforced as the sums due to her were not paid in full. She relies on Article 6 § 1 of the Convention, which in so far as relevant provides:

"In the determination of his civil rights and obligations ..., everyone is entitled to a fair and public hearing ...by an independent and impartial tribunal established by law."

31. The Government submitted that they took all necessary measures under domestic law to enforce the judgment given in the applicant's favour. They maintained that the delay from 7 October 1999 (the date of the adoption of the judgment of the Rozdilna City Court) until today, does not violate the applicant's rights under Article 6 § 1 of the Convention. The delay was caused by the difficult financial situation of the education system in Ukraine, i.e. the lack of funds for such payments in the State Budget, and not any failure by the Bailiffs to act.

32. The applicant disagreed. In particular, she complained that the execution proceedings had lasted a very long time and that she had not received the full award from the judgment of 7 October 1999.

33. The Court notes that the judgment of 7 October 1999 remains partly unenforced. The only sum paid to the applicant was UAH 97.2 in January 2002. It considers that by failing for some six years to take the necessary measures to comply with the final judicial decision in the present case, the Ukrainian authorities have deprived the provisions of Article 6 § 1 of all useful effect. The Government have not provided any convincing justification for the delay.

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

III. AS TO THE ALLEGED VIOLATION OF ARTICLE 13 OF THE CONVENTION

35. The applicant also complains that she had no effective remedies in respect of her complaints under Article 6 § 1 of the Convention. She invokes Article 13 of the Convention, which provides as follows:

“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.”

36. The Government contested this complaint.

37. The Court refers to its rejection of the Government’s argument regarding domestic remedies (at paragraphs 27-29 above). For the same reasons, and particularly the fact that the Bailiffs failed to provide direct and speedy redress, taking more than four years to examine the applicant’s claim, the Court concludes that the applicant did not have an effective domestic remedy, as required by Article 13 of the Convention, to redress the damage created by the delay in the present proceedings (cf. *Voytenko v. Ukraine*, no. 18966/02, judgment of 29 June 2004, §§ 46-48). Accordingly, there has been a breach of this provision.

IV. APPLICATION OF ARTICLE 41 OF THE CONVENTION

38. 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

39. The applicant claimed UAH 1,860 in compensation for pecuniary damage. She also alleged that her non-pecuniary damage amounted to UAH 55,000¹. She did not specify an exact amount for costs and expenses.

40. The Government submitted that there was no causal link between the violation found and the pecuniary damage claimed. They further noted that the applicant’s claims were unsubstantiated and exorbitant. They considered that the finding of a violation would constitute sufficient just satisfaction in the case.

41. The Court notes that, as the judgment of 7 October 1999 remains unenforced, if the Government were to pay the applicant the outstanding debt, this would satisfy the applicant’s claim for pecuniary damage.

¹ At the current rate, about EUR 9,120

Moreover, making its assessment on an equitable basis, as required by Article 41 of the Convention, the Court awards the applicant EUR 2,880 in non-pecuniary damage. The Court also awards the applicant EUR 50 for costs and expenses.

B. Default interest

42. 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*
 - (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 judgment debt still owed to her, as well as the following amounts:
 - (i) EUR 2,880 (two thousand eight hundred and eighty euros) in respect of non-pecuniary damage;
 - (ii) EUR 50 (fifty euros) for costs and expenses;
 - (iii) plus any tax that may be chargeable;
 - (b) that these sums are to be converted into the currency of the respondent State at the rate applicable on the date of settlement;
 - (c) 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;
5. *Dismisses* the remainder of the applicant's claim for just satisfaction.

Done in English, and notified in writing on 29 November 2005, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

S. NAISMITH
Deputy Registrar

J.-P. COSTA
President