



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

SECOND SECTION

CASE OF NOSAL v. UKRAINE

(Application no. 18378/03)

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 Nosal v. Ukraine,

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

Mr J.-P. COSTA, *President*,

Mr I. CABRAL BARRETO,

Mr K. JUNGWIERT,

Mr V. BUTKEVYCH,

Mr M. UGREKHELIDZE,

Mrs A. MULARONI,

Mrs E. FURA-SANDSTRÖM, *judges*,

and Mr S. NAISMITH, *Deputy 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. 18378/03) 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 Vyacheslav Alekseyevich Nosal (“the applicant”), on 18 April 2003.

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

3. On 9 September 2004 the Court decided to communicate the applicant’s complaints, under Articles 6 § 1 and 13 of the Convention and Article 1 of Protocol No. 1, concerning the non-execution of the judgment of the Pechersky District Court of Kyiv of 22 May 2001 given in his favour. Under the provisions of Article 29 § 3 of the Convention, it decided to examine the merits of the communicated complaints at the same time as their admissibility.

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

THE FACTS

5. The applicant was born in 1941 and currently resides in Kyiv.

I. THE CIRCUMSTANCES OF THE CASE

6. The applicant is a former employee of the State Committee on Nationalities and Migration (the “Committee”).

7. On 15 December 1999 the President issued a decree “on changes to the structure of central government bodies” and liquidated the Committee. The decree also gave instructions to the Cabinet of Ministers (the “CM”) to control and manage the liquidation of the Committee.

8. On 29 March 2000 the applicant was dismissed from his position as a secretarial assistant, with effect from 31 March 2000.

9. On 4 April 2000 the CM decided to abolish this Committee and to create a Department of Nationalities and Migration within the Ministry of Justice. Some functions of the Committee were transferred to the Ministry of the Interior and the Ministry of Culture.

10. In April 2001 the applicant instituted proceedings in the Pechersky District Court of Kyiv (the “Pechersky Court”) against the CM, seeking the recovery of unpaid salary.

11. On 22 May 2001 the court allowed his claims. It decided that the CM was liable for the salary debt and ordered it to pay the applicant UAH 4,241¹ in compensation. In particular, it found that the CM, as the body responsible for managing and financing the liquidation of the Committee and a central body of executive power, was to ensure payment of the debt to the applicant.

12. The writ of enforcement was issued on 20 July 2001.

13. On 1 August 2001 the Pechersky District Bailiffs’ Service (the “PDBS”) commenced the enforcement of the judgment of 22 May 2001.

14. On 20 November 2001 the First Deputy Prime Minister requested the Pechersky Court to suspend the enforcement proceedings in the case in view of the appeal in cassation pending before the Supreme Court. On the same date the CM lodged an appeal in cassation with the Supreme Court, through the Pechersky Court.

15. On 7 December 2001 the Pechersky Court suspended the enforcement of that judgment in view of the pending cassation appeal.

16. On 20 May 2002 the Supreme Court rejected the CM’s cassation appeal as being unsubstantiated. On 16 July 2002 the enforcement proceedings were resumed.

17. On 10 October 2002 the Pechersky Court heard the request of the PDBS for an interpretation of the procedure for the enforcement of the judgment of 22 May 2001. In particular, it specified that the CM was responsible for the payment of the award.

18. On 19 November 2002 the Deputy State Secretary of the CM, notwithstanding the ruling of 10 October 2002, informed the PDBS that the CM was a collegiate body and not a legal entity, and did not have its own funds or bank accounts that would contain such funds. He therefore concluded that the judgment of 22 May 2001 could not be enforced.

1. EUR 893.33.

19. On 27 November 2002 the PDBS returned the writ of enforcement to the applicant as it found that the CM had no funds and was not a legal entity.

20. On 27 January 2003 the Golosiyivsky District Court of Kyiv (the “Golosiyivsky Court”) declared the failure of the PDBS to enforce the judgment of 22 May 2001 unlawful. It also ordered the PDBS to reinitiate the enforcement proceedings and comply with its obligations.

21. On 18 February 2002 the PDBS reinitiated the enforcement proceedings in the case.

22. On 24 March 2003 the PDBS informed the Pechersky Court that it could not enforce the judgment of 22 May 2001 as the CM was not a legal entity or physical person, and that it had no bank accounts or property of its own. It therefore asked the court to interpret the procedure for that judgment’s enforcement.

23. On 19 June 2003 the Pechersky Court rejected the PDBS’s request as unsubstantiated. In particular, it held that the decision was sufficiently clear and there were no grounds for its further interpretation.

24. On 25 July 2003 the enforcement proceedings were resumed and the CM was requested to pay the salary debt to the applicant.

25. On 4 August 2003 the PDBS suspended the enforcement proceedings in the case.

26. On 11 November 2003 the PDBS returned the writs of enforcement to the applicant as the CM had no funds and its property could not be attached due to the moratorium on the forced sale of State property.

27. The applicant lodged a complaint against this decision with the Golosiyivsky Court. On 9 December 2003 the Golosiyivsky Court rejected the applicant’s complaint against the PDBS’s decision of 11 November 2003. On 26 February 2004 the Kyiv City Court of Appeal (the “Court of Appeal”) rejected the applicant’s appeal. In particular, it stated that the CM was not a legal person and its status was not determined by the law. It also found that the applicant had not appealed against the ruling of 3 February 2004 to the Court of Appeal (see paragraph 29 below).

28. On 3 February 2004 the Pechersky Court rejected the applicant’s request to change the procedure for the enforcement of the judgment. In particular, the applicant demanded that the Logistics Department of the Secretariat of the CM pay him the debt awarded by the judgment of 22 May 2001. The court ruled that the Logistics Department was not liable for the CM’s debts.

29. In February 2004 the applicant lodged a new complaint with the Pechersky Court against the CM, seeking compensation for the delay in payment of the debt awarded by the judgment of 22 May 2001 in non-pecuniary damage. On 13 February 2004 the court rejected his claims. On 5 and 26 March 2004 the Pechersky Court refused the applicant leave to

appeal as the applicant had failed to mention the postal index of the CM or provide the necessary number of copies of his appeal.

30. According to the parties' submissions, the judgment of 22 May 2001 remains unenforced.

II. RELEVANT DOMESTIC LAW

31. The relevant domestic law in relation to enforcement proceedings is summarised in the judgment of *Romashov v. Ukraine* (no. 67534/01, §§ 16-18, 27 July 2004).

32. The relevant provisions of the Constitution of Ukraine with regard to the status of the Cabinet of Ministers read as follows:

Article 113

"The Cabinet of Ministers of Ukraine is the highest body in the system of bodies of executive power.

The Cabinet of Ministers of Ukraine is responsible to the President of Ukraine and is under the control of and accountable to the Verkhovna Rada of Ukraine within the limits envisaged by Articles 85 and 87 of the Constitution of Ukraine.

The Cabinet of Ministers of Ukraine is guided in its activity by the Constitution and the laws of Ukraine and by the acts of the President of Ukraine."

Article 114

"The Cabinet of Ministers of Ukraine is composed of the Prime Minister of Ukraine, the First Deputy Prime Minister, the three other Deputy Prime Ministers and the Ministers.

... The Prime Minister of Ukraine forwards a submission to the President of Ukraine on the establishment, reorganisation and liquidation of ministries and other central bodies of executive power, within the funds envisaged by the State Budget of Ukraine for the maintenance of these bodies."

Article 116

"The Cabinet of Ministers of Ukraine:

1) ensures State sovereignty and the economic independence of Ukraine, the implementation of the domestic and foreign policy of the State, the execution of the Constitution and the laws of Ukraine, and the acts of the President of Ukraine;

2) takes measures to ensure human and citizens' rights and freedoms;

3) ensures the implementation of financial, pricing, investment and taxation policy, the policy in the spheres of labour and employment of the population, social security,

education, science and culture, environmental protection, ecological safety and the utilisation of nature;

4) elaborates and implements national programmes for the economic, scientific, technical, social and cultural development of Ukraine;

5) ensures equal conditions of development of all forms of ownership; administers the management of State property in accordance with the law;

6) elaborates the draft law on the State Budget of Ukraine and ensures the implementation of the State Budget of Ukraine, approved by the Verkhovna Rada of Ukraine, and submits a report on its implementation to the Verkhovna Rada of Ukraine;

7) takes measures to ensure the defence capability and national security of Ukraine, public order and the combat against crime;

8) organises and ensures the implementation of the foreign economic activity of Ukraine, and the operation of customs;

9) directs and co-ordinates the operation of ministries and other bodies of executive power;

10) performs other functions determined by the Constitution and the laws of Ukraine, and the acts of the President of Ukraine.”

THE LAW

I. ADMISSIBILITY

33. The Government contended that the applicant could no longer claim to be a victim of a violation of the Convention as he failed to lodge the writ of execution with the Bailiff's Service again. They also contended that the applicant had not exhausted domestic remedies regarding the Bailiffs' Service as he had failed to appeal against the ruling of the Pechersky District Court of Kyiv of 26 March 2004 to the Kyiv City Court of Appeal and the Supreme Court. He thus showed no interest in the enforcement of the judgment of 22 May 2001 given against the Cabinet of Ministers.

34. The applicant disagreed.

35. The Court notes that similar objections have already been dismissed in a number of Court judgments (see, among many other authorities, the aforementioned *Romashov* judgment, §§ 23-33). Accordingly, it dismisses the Government's preliminary objections and declares the applicant's complaints admissible.

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

36. The applicant complained about the authorities' failure to execute, in due time, the judgment of 22 May 2001 of the Pechersky District Court of Kyiv. He relied 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 within a reasonable time by an independent and impartial tribunal established by law.”

A. The parties' submissions

37. The Government emphasised that the execution of court decisions was possible only if the Ministry of Finance and the State Treasury were involved in the enforcement proceedings. Furthermore, they submitted that the applicant was not interested in the enforcement of the judgment at issue and was not sufficiently active in pursuing payment of the award. They stated that the domestic authorities took all necessary measures to enforce the judgment of 22 May 2001. They also submitted that the enforcement proceedings lasted only one year and ten months (from 20 July 2001 to 12 April 2002, from 16 July to 27 November 2002 and from 18 February to 4 August 2003).

38. The applicant disagreed with the Government's submissions.

B. The Court's assessment

39. The Court notes that it is not open to a State institution, such as the Cabinet of Ministers, to cite a lack of funds as an excuse for not honouring a final judgment debt. The Court acknowledges that a delay in the execution of a judgment may not be such as to impair the essence of the right protected under Article 6 § 1 (see *Immobiliare Saffi v. Italy* [GC], no. 22774/93, § 74, ECHR 1999-V). However, in the instant case, the applicant should not have been prevented from benefiting from the outcome of his litigation, on the ground of the Cabinet of Ministers' alleged financial and administrative difficulties in paying the debt awarded by the judgment of 22 May 2001.

40. The Court reiterates that the State's positive obligation, under Article 6 § 1 of the Convention, is to organise a system for the enforcement of judgments which is effective in both law and practice, and to ensure their execution without undue delay. In the present case the Cabinet of Ministers could not honour the judgment debt as the Bailiffs' Service, a body within the structure of the Ministry of Justice solely responsible for the enforcement of judgments (subordinate to the Cabinet of Ministers), found

that the Cabinet was not a legal entity and did not possess the necessary funds for the payment of the debt.

41. However, the Court observes, and it ensues from the judgment of 22 May 2001 and the relevant domestic legislation, that the Cabinet of Ministers had sufficient powers to order the State Treasury and the Ministry of Finance to allocate the necessary funds from the State budget for the payment of compensation to the applicant (see paragraphs 11 and 32 above). Furthermore, the Government have not provided any proof that the funds, as specified in the judgment of 22 May 2001, were at least allocated or that some action was taken by the Cabinet of Ministers to enforce the judgment of 22 May 2001 during the period under consideration, which lasted nearly four years and five months. Moreover, the response of the Deputy State Secretary of the Cabinet of Ministers showed that this official disregarded the judgment which was final and enforceable, and contributed to the delay in enforcing it (see paragraph 18 above).

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

III. ALLEGED VIOLATION OF ARTICLE 13 OF THE CONVENTION

43. The Court refers to its rejection of the Government's argument regarding domestic remedies (paragraphs 33 and 35 above). For the same reasons, 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 (see *Voytenko v. Ukraine*, no. 18966/02, judgment of 29 June 2004, §§ 46-48). Accordingly, there has been a breach of this provision.

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

44. The applicant alleged that there had been an unjustified interference with his property rights, in breach of Article 1 of Protocol No. 1, which reads 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 or to secure the payment of taxes or other contributions or penalties.”

45. The Government maintained that Article 1 of Protocol No. 1 had not been violated since the applicant's entitlement to the amount awarded was not disputed and he was not deprived of his property.

46. The applicant disagreed.

47. In the instant case the Court is of the opinion that the impossibility for the applicant to obtain the execution of his judgment for a period of almost four years and five months constituted an interference with his right to the peaceful enjoyment of his possessions, within the meaning of the first paragraph of Article 1 of Protocol No. 1 (see, among other authorities, *Burdov v. Russia*, no. 59498/00, § 40, ECHR 2002-III; *Jasiūnienė v. Lithuania*, no. 41510/98, § 45, 6 March 2003). The Government have not advanced any convincing justification for this interference, and the Court considers that a lack of internal regulation of the status of the Cabinet of Ministers cannot justify such an omission. Accordingly there has been a violation of Article 1 of Protocol No. 1 in the applicant's case.

IV. APPLICATION OF ARTICLE 41 OF THE CONVENTION

48. 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 and costs and expenses

49. The applicant claimed pecuniary damage in relation to the sum awarded to him by the judgment of 22 May 2001. He further claimed non-pecuniary damage in the amount of EUR 65 per month for the delay in its enforcement, for 46 months, amounting to a total of EUR 2,990. He claimed no specific sum for costs and expenses.

50. By a decision of 25 July 2005, the President of the Second Section decided that the Government's submissions on just satisfaction should not be admitted to the case file as they had been lodged out of time and no extension of time for lodging these submissions had been granted.

51. In so far as the applicant claimed the amounts awarded to him by the judgment at issue, the Court considers that the Government should pay him the outstanding debt. As to the applicant's claim for non-pecuniary damage - EUR 2,990 - the Court considers it excessive. Making its assessment on an equitable basis as required by Article 41 of the Convention and on the assumption that the applicant incurred some expenses in the proceedings before the Court, it awards the applicant a global sum of EUR 2,300 in non-pecuniary damage, costs and expenses.

B. 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* 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 the applicant, within three months from the date on which the judgment becomes final according to Article 44 § 2 of the Convention, the judgment debt still owed to him, as well as EUR 2,300 (two thousand three hundred euros) in respect of non-pecuniary damage, costs and expenses, plus any tax that may be chargeable, which amount is to be converted into the national currency of the respondent State 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 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 29 November 2005, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

S. NAISMITH
Deputy Registrar

J.-P. COSTA
President