



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

SECOND SECTION

CASE OF VODOPYANOVY v. UKRAINE

(Application no. 22214/02)

JUDGMENT

STRASBOURG

17 January 2006

FINAL

17/04/2006

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 Vodopyanovy 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 Mrs S. DOLLÉ, *Section Registrar*,

Having deliberated in private on 13 December 2005,

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

PROCEDURE

1. The case originated in an application (no. 22214/02) against Ukraine lodged with the Court under Article 34 of the Convention for the Protection of Human Rights and Fundamental Freedoms (“the Convention”) by Ukrainian nationals, Mr Sergey Vodopyanov and Mrs Alyona Vodopyanova (“the applicants”), on 23 May 2002.

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

3. On 15 March 2005 the Court decided to communicate the application. Applying Article 29 § 3 of the Convention, it decided to rule on the admissibility and merits of the application at the same time.

THE FACTS

I. THE CIRCUMSTANCES OF THE CASE

4. Mr Sergey Vodopyanov (hereafter “the first applicant”) and Mrs Alyona Vodopyanova (hereafter “the second applicant”), are husband and wife, who were born in 1964 and 1971 respectively and live in Ingulskoye, the Kirovograd region.

1. Proceedings for the reimbursement of food rations to the first applicant

5. In August 1998, the first applicant (a former Deputy Chief of the Ustinovskaya Prison no. 37 – *Устіновська виправна колонія № 37* – hereafter “the UP”) was dismissed from the Ministry of Interior. Upon retirement, the applicant was entitled to the reimbursement of his food ration expenses. As this compensation remained unpaid for two years, the first applicant instituted proceedings in the Ustinovska City Court (hereafter “the City Court”) against the UP, seeking recovery of the debt and compensation for the delay in payment of his salary.

6. On 1 August 2000 the court awarded the first applicant UAH 594¹ for the food ration debt, whilst rejecting the other claims. On 14 August 2000 the Ustinovska City Bailiffs’ Service (hereafter “the Bailiffs’ Service”) instituted enforcement proceedings in respect of this judgment.

7. On 26 March 2001 the Kirovograd Regional Department of Justice informed the first applicant that the judgment in his favour could not be immediately executed due to the lack of funds in the debtor’s account.

8. On 18 September 2003 the execution proceedings were terminated on the ground that the award had been fully paid to the first applicant. However, the subsequent inquiry by the higher Bailiffs’ authority revealed that, due to the mistake of the UP’s accountant, the applicant had been underpaid UAH 50². The enforcement proceedings were reopened and on 3 February 2005 the remaining amount was transferred from the UP to the Bailiffs’ Service. On 18 February 2005 the first applicant was notified about the availability of this money and requested to provide his banking details. On 27 May 2005 the Bailiffs’ Service, having received no reply from the first applicant, sent him a postal money order, which has been collected by the applicant. On 31 May 2005 the proceedings were terminated as the judgment of 1 August 2000 had been enforced in full.

2. Proceedings concerning the second applicant’s salary arrears

a. Enforcement of the judgment of 13 February 2001

9. In October 2000 the second applicant retired from the position as a kitchen worker at the UP. Immediately upon the retirement she instituted proceedings against the UP, claiming salary arrears. On 13 February 2001 the Ustinovska City Court awarded the second applicant UAH 3,864³. On the same date the Bailiffs’ Service instituted enforcement proceedings in respect of this judgment.

1. approximately 85 euros (EUR).

2. approximately EUR 8.

3. approximately EUR 553.

10. On 15 March 2002 the Kirovograd Regional Department of Justice informed the second applicant that the judgment in her favour could not be immediately executed due to the lack of funds in the debtor's account. The Department also indicated that the enforcement proceedings were impeded by the moratorium on the forced sale of the capital assets of State-owned entities.

11. On 29 June 2004 the execution proceedings were terminated as the award had been fully paid to the second applicant.

b. Enforcement of the judgment of 9 September 2004

12. In July 2004 the second applicant instituted proceedings against the UP seeking to receive her average pay for the period of delay in the payment of her salary arrears. On 9 September 2004 the Ustinovska City Court granted this claim and ordered the UP to pay the second applicant UAH 4,517.94¹. On 12 October 2004 the Bailiffs' Service instituted enforcement proceedings in respect of this judgment.

13. On 20 October 2004 the Bailiffs' Service undertook an inquiry to establish whether the UP had any seizable assets and, as it did not, on 3 February 2005 it levied the UP's bank account.

14. On 24 March 2005 the award was paid in full to the second applicant.

II. RELEVANT DOMESTIC LAW AND PRACTICE

15. The relevant domestic law is set out in the judgment of 29 June 2004 in the case of *Voytenko v. Ukraine* (no. 18966/02, §§ 20-25).

THE LAW

I. ADMISSIBILITY OF THE COMPLAINTS

16. The applicants complained of breaches of Article 6 § 1 of the Convention and Article 1 of Protocol No. 1, which in their relevant parts provide 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. ...”

1. approximately EUR 646.

Article 1 of Protocol No. 1

“Every natural or legal person is entitled to the peaceful enjoyment of his possessions. (...).

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.”

1. Alleged unfairness of the rejection of the first applicant's claim for salary arrears

17. The first applicant complained under Article 6 § 1 of the Convention that the domestic court unfairly rejected his claims for salary arrears, awarding him only the food ration debt. The Court observes that the applicant failed to challenge the judgment of 1 August 2000 before the Kirovograd Regional Court and has, therefore, not, as required by Article 35 § 1 of the Convention, exhausted the remedies available under Ukrainian law. This part of the application must be rejected in accordance with Article 35 § 4.

2. Allegedly excessive length of the enforcement proceedings concerning the judgment of 9 September 2004

18. The second applicant complained under Article 6 § 1 of the Convention that the period of enforcement of the judgment of 9 September 2004 was excessively long.

19. The Government maintained that the judgment at issue was fully enforced in March 2005, i.e. six months after it was delivered, which period in their opinion was not excessive. They also maintained that there was no period of inactivity attributable to the domestic authorities.

20. The Court recalls that appropriations for the payment of State debts may cause some delay in the enforcement of judgments from the Government's budget (see *Voytenko v. Ukraine*, no. 18966/02, § 42, 29 June 2004). The Court notes that, in certain cases against Ukraine, it has held that short delays of less than a year were not so excessive as to raise an arguable claim under Article 6 § 1 of the Convention (see *Kornilov and Others v. Ukraine* (dec.), no. 36575/02, 7 October 2003 – an eight month delay). The Court finds no reason to come to a different conclusion, given the circumstances of the present case.

21. It follows that this part of the application is manifestly ill-founded within the meaning of Article 35 § 3, and must be rejected pursuant to Article 35 § 4 of the Convention.

3. *Allegedly excessive length of the enforcement proceedings concerning the judgments of 1 August 2000 and 13 February 2001*

22. The applicants complained about the State authorities' failure to execute expediently the judgments of 1 August 2000 and 13 February 2001. They relied on both Article 6 § 1 of the Convention and Article 1 of Protocol No. 1.

a. The applicants' victim status

23. The Government stressed that, as the judgments in the applicants' favour had been executed by the national authorities in full, the applicants could no longer be considered victims of a violation of their rights under the Convention.

24. The applicants disagreed.

25. The Court notes that this issue has already been discussed in a number of the Court's judgments (see *Voytenko v. Ukraine*, no. 18966/02, judgment of 6 June 2004, § 35; *Shmalko v. Ukraine*, no. 60750/00, judgment of 20 July 2004, § 34). In these cases the Court found that an applicant may still claim to be a victim of an alleged violation of the rights guaranteed by Article 6 § 1 and Article 1 of Protocol No.1 in relation to the period during which the decision of which complaint is made remained unenforced. It therefore rejects the Government's objection as to the present applicants' victim status.

b. Objection as to the exhaustion of domestic remedies

26. The Government submitted that the applicants had failed to exhaust domestic remedies, as required by Article 35 § 1 of the Convention, since they had not challenged the Bailiffs' alleged inactivity before the domestic courts.

27. The applicants contested this submission, alleging that such a remedy had no prospect of success.

28. The Court notes that, throughout the period under consideration, the enforcement of the judgments was hindered by legislative measures, rather than by the Bailiffs' misconduct. In this respect the Court recalls its established case law that the claim for damages against the Bailiffs' Service cannot be considered an effective remedy where the delay in the enforcement of a judgment was due to reasons beyond the Bailiffs' control (see, among many others, *Mykhaylenky and Others v. Ukraine*, nos. 35091/02, 35196/02, 35201/02, 35204/02, 35945/02, 35949/02, 35953/02, 36800/02, 38296/02, and 42814/02, §§ 38-39, ECHR 2004-...).

III. MERITS

29. The Government submitted that the Bailiffs' Service had taken all necessary measures to enforce the judgment given in the applicants' favour. Moreover, they maintained that the judgments of 1 August 2000 was enforced in full on 18 September 2003 and the subsequent proceedings were due to an accountant's mistake for which the State bears no responsibility.

30. The applicants reiterated that the State was responsible for the delays in the enforcement of both court judgments in their favour.

31. The Court will first determine the periods of non-enforcement of the judgments in question.

32. In respect of the judgment of 1 August 2000 in favour of the first applicant, it notes that the enforcement proceedings were terminated in September 2003 on the ground that the award had been paid in full. However, this decision was subsequently revoked because an error by the UP's accountant had led to an underpayment. In February 2005 the remainder of the award was made available to the first applicant. However, the proceedings continued until May 2005 due to the applicant's failure to provide the Bailiffs with his banking details.

33. The Court recalls that the exercise of State powers which affects Convention rights and freedoms raises an issue of State responsibility regardless of the form in which these powers happen to be exercised (see *Wos v. Poland* (dec.), no. 22860/02, ECHR 2005-...). Thus the State assumes full responsibility under the Convention for the actions of State bodies such as the UP or the Bailiffs' Service, regardless of whether they were deliberate or accidental (see, *mutatis mutandis*, *Kalashnikov v. Russia*, no. 47095/99, § 95, ECHR 2002-VI).

34. However, the Court notes that the outstanding, unpaid sum of EUR 8 went unnoticed by the applicant and was not complained of. It therefore considers that the critical period of non-enforcement of the judgment of 1 August 2000 lasted until 18 September 2003, i.e. three years and one month. The remaining period of 1 year and five months concerning the EUR 8 was of less significance in the circumstances.

35. The judgment of 13 February 2001 in favour of the second applicant remained unenforced until 29 June 2004, i.e. a period of over three years and four months.

36. The Court considers that, by delaying the enforcement of the judgments in the applicants' cases, the authorities deprived the provisions of Article 6 § 1 of the Convention and Article 1 of Protocol No. 1 of much of their useful effect. The Court finds that the Government have not advanced any convincing justification for these delays (see, among many others, *Voytenko v. Ukraine*, cited above, §§ 43 and 55).

37. There has accordingly been a violation of Article 6 § 1 of the Convention and Article 1 of Protocol No. 1.

III. 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

39. The first applicant (Mr Vodopyanov) claimed UAH 60,000¹ and the second applicant (Mrs Vodopyanova) claimed UAH 30,000² in non-pecuniary damage.

40. The Government maintained that the applicants did not suffer any damage. They suggested that a finding of a violation would of itself constitute sufficient just satisfaction.

41. The Court, making its assessment on equitable basis, as required by Article 41 of the Convention, awards the first applicant EUR 1,500 and the second applicant EUR 1,600 in non-pecuniary damage.

B. Costs and expenses

42. The second applicant also claimed UAH 900³ for the costs and expenses incurred in the domestic proceedings.

43. The Government contested these submissions, stating they were unsupported by any evidence.

44. According to the Court’s case-law, an applicant is entitled to reimbursement of his costs and expenses only in so far as it has been shown that these have been actually and necessarily incurred and they were reasonable as to quantum. Having regard to the information in its possession, the Court awards the applicant the sum requested.

C. Default interest

45. 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.

1. approximately EUR 10,000.

2. approximately EUR 5,000.

3. approximately EUR 150.

FOR THESE REASONS, THE COURT UNANIMOUSLY

1. *Declares* the applicants' complaints under Article 6 § 1 of the Convention and Article 1 of the Protocol No. 1, concerning the lengthy non-enforcement of the judgments of 1 August 2000 and 13 February 2001, 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* that there has been a violation of Article 1 of Protocol No. 1 to the Convention;
4. *Holds*
 - a) that the respondent State is to pay the applicants, within three months from the date on which the judgment becomes final according to Article 44 § 2 of the Convention, the following sums, to be converted into the national currency of the respondent State at the rate applicable on the date of settlement:
 - (i) to Mr Sergey Vodopyanov, EUR 1,500 (one thousand five hundred euros) in respect of non-pecuniary damage;
 - (ii) to Mrs Alyona Vodopyanova, EUR 1,600 (one thousand six hundred euros) in respect of non-pecuniary damage and EUR 150 (one hundred and fifty euros) in respect of costs and expenses ;
 - (iii) plus any tax that may be chargeable on any of these awards;
 - (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* the remainder of the applicant's claim for just satisfaction.

Done in English, and notified in writing on 17 January 2006, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

S. DOLLÉ
Registrar

J.-P. COSTA
President