



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

SECOND SECTION

CASE OF GLOVA AND BREGIN v. UKRAINE

(Applications nos. 4292/04 and 4347/04)

JUDGMENT

STRASBOURG

28 February 2006

FINAL

28/05/2006

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 Glova and Bregin 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 Mrs S. DOLLĚ, *Section Registrar*,

Having deliberated in private on 7 February 2006,

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

PROCEDURE

1. The case originated in two applications (nos. 4292/04 and 4347/04) against Ukraine lodged with the Court under Article 34 of the Convention for the Protection of Human Rights and Fundamental Freedoms (“the Convention”) by two Ukrainian nationals, Ms Ganna Petrivna Glova and Ms Nadiya Fedorivna Bregin (“the applicants”), on 15 and 5 December 2003 respectively.

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

3. On 25 October 2004 the Court decided to communicate to the Government the complaints under Articles 6 § 1 and 13 of the Convention concerning non-enforcement of the judgments favourable to the applicants. Under the provisions of Article 29 § 3 of the Convention, it decided to examine the merits of the applications at the same time as their admissibility.

THE FACTS

I. THE CIRCUMSTANCES OF THE CASE

4. Both applicants were born in 1943. Ms Glova and Ms Bregin reside respectively in the villages of Podillya and Tovste, the Ternopil region, Ukraine.

5. In March 2000 the applicants instituted two separate sets of proceedings in the Zalizchyt'skiy District Court of Ternopil Region against

the Zalizhchytskiy State Department for Education seeking recovery of payments due to them. On 15 May 2000, the court found for Ms Glova and awarded her UAH 1,015¹. On 16 May 2000, the court found in part for Ms Bregin and awarded her UAH 1,595². On 13 June 2000, the Ternopil Regional Court upheld both decisions of the first instance court. The decisions became final, but have been enforced only in part.

6. In March 2003 the Zalizhchytskiy State Department for Education requested the Zalizhchytskiy District Court to suspend the enforcement of judgments of 15 and 16 May 2000 due to a lack of budget funds and an absence of a mechanism to pay the State's debts to teachers. On 22 April 2003, the court allowed the requests and decided to suspend the enforcement proceedings until such a mechanism had been elaborated. On 24 June and 1 July 2003 respectively the Ternopil Regional Court of Appeal upheld the decisions of 22 April 2003. The applicants did not appeal in cassation to the Supreme Court.

7. The judgments in favour of Ms Glova and Ms Bregin remain unenforced in part (UAH 275³ and UAH 855⁴ respectively).

II. RELEVANT DOMESTIC LAW

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

THE LAW

I. JOINDER OF THE APPLICATIONS

9. The Court considers that, pursuant to Rule 42 § 1 of the Rules of Court, the applications should be joined, given their common factual and legal background.

II. ALLEGED VIOLATION OF ARTICLES 6 § 1 AND 13 OF THE CONVENTION

10. Relying on Article 13 and, in substance, Article 6 § 1 of the Convention, the applicants complained about the non-enforcement of the

¹ Around 170 euros ("EUR")

² Around EUR 266

³ Around EUR 46

⁴ Around EUR 143

judgments given in their favour. These provisions read, insofar as relevant, 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. ...”

Article 13

“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.”

A. Admissibility

1. The Government’s preliminary objection

11. The Government maintained that the applicants, having challenged the decision on suspension of the enforcement proceedings in the courts at two instances, failed to appeal to the Supreme Court on the points of law, which under the Court’s case-law should be considered as a failure to exhaust domestic remedies (see *Vorobyeva v. Ukraine* (dec.), no. 27517/02, dec. 17 December 2002). In the Government’s opinion, the applicants could also challenge any alleged inactivity or actions of the Bailiffs’ Service and seek compensation.

12. The applicants maintained that they did not trust the Supreme Court and considered any further appeals ineffective.

13. The Court recalls that the rule of exhaustion of domestic remedies referred to in Article 35 § 1 of the Convention obliges applicants to use first the remedies that are normally available and sufficient in the domestic legal system to enable them to obtain redress for the breaches alleged. It is not in dispute that the applicants did not avail themselves of the possibility to appeal in cassation against the judicial decisions suspending the enforcement proceedings in their cases. The Court therefore should look into the effectiveness of the remedy in question, regard being had not only to the possibility to raise the issue before the domestic courts, but also to the likelihood of obtaining redress.

14. The Court notes that the circumstances of the present case are similar to others which it has examined where the State itself is a debtor. In those previous applications (see, among other authorities, *Zhovner v. Ukraine*, no. 56848/00, 29 June 2004, and *Voytenko v. Ukraine*, no. 18966/02, 29 June 2004), the enforcement proceedings were suspended *de facto* due to the lack of budgetary funds, while in the present case the

enforcement proceedings were suspended also *de jure* (see paragraph 6 above). This difference, in the Court's opinion, does not change the general situation, since the enforcement of judgments against a State authority, as it appears from the case file, can only be carried out if the State foresees and makes provision for the appropriate expenditures in the State Budget of Ukraine by taking the appropriate legislative measures. In the Ukrainian legal system, the Supreme Court of Ukraine does not have power to overrule the law, therefore, even if the formal suspension of the enforcement proceedings could be lifted, the enforcement proceedings would anyway depend on statutory restraints outside the courts' competence.

15. As to the other remedies invoked by the Government, the Court notes that similar points have already been dismissed in a number of Court judgments (see *Voytenko v. Ukraine*, no. 18966/02, §§ 29-31, 29 June 2004; *Chernyayev v. Ukraine*, no. 15366/03, § 25, 26 July 2005, *Romanchenko v. Ukraine*, no. 5596/03, § 14, 22 November 2005). In such cases the Court has found that the applicants were absolved from pursuing the remedies invoked by the Government.

2. *The applicant's complaints*

16. In the light of the parties' submissions and the above considerations, the Court dismisses the Government's preliminary objection and concludes that the applicants' complaints under Articles 6 § 1 and 13 of the Convention raise serious issues of fact and law under the Convention, the determination of which requires an examination of the merits. It finds no ground for declaring this part of the application inadmissible.

B. Merits

17. The Court will now examine the merits of the applicants' complaint about the unreasonable length of the non-enforcement of the judgments of 15 and 16 May 2000.

18. In their observations, the Government contended that there had been no violation of Articles 6 § 1 or 13 of the Convention (as in the case of *Romashov*, cited above, §§ 28-33 and 37).

19. The applicants disagreed.

20. The Court notes that both judgments have remained unenforced for more than five years and eight months, and that there is no effective remedy at the applicants' disposal to redress that delay.

21. The Court recalls that it has already found violations of Articles 6 § 1 and 13 of the Convention in cases raising issues similar to the present application (see, for instance, the *Romashov* judgment, cited above, §§ 42-46, and *Voytenko v. Ukraine*, no. 18966/02, §§ 46-48, 29 June 2004).

22. Having examined all the material submitted to it and its reasoning on domestic remedies above (see paragraphs 13-15), the Court considers that the Government have not put forward any fact or convincing argument capable of persuading it to reach a different conclusion in the present case. There has, accordingly, been a violation of Articles 6 § 1 and 13 of the Convention.

III. OTHER ALLEGED VIOLATIONS OF THE CONVENTION

23. The applicants also complained that the non-enforcement of the judgments in their favour was in breach of Article 17 of the Convention, which provides as follows:

Article 17

“Nothing in [the] Convention may be interpreted as implying for any State, group or person any right to engage in any activity or perform any act aimed at the destruction of any of the rights and freedoms set forth herein or at their limitation to a greater extent than is provided for in the Convention.”

24. The Court notes, however, that this complaint is wholly unsubstantiated. It follows that this complaint is manifestly ill-founded and must be rejected in accordance with Article 35 §§ 3 and 4 of the Convention.

IV. APPLICATION OF ARTICLE 41 OF THE CONVENTION

25. 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

26. Ms Glova claimed UAH 7,275¹ in respect of pecuniary and non-pecuniary damage. This amount comprises UAH 4,576² for the judgment debt, multiplied by 4.5 to cover inflation losses, and UAH 2,699³ for non-pecuniary damage.

27. Ms Bregin claimed UAH 9,000⁴ in respect of pecuniary and non-pecuniary damage. This amount comprises UAH 7,177⁵ for the judgment

¹ Around EUR 1,217

² Around EUR 766

³ Around EUR 452

⁴ Around EUR 1,506

debt, multiplied by 4.5 times to cover inflation losses, and UAH 1,823¹ for non-pecuniary damage.

28. The Government maintained that the applicants could have claimed compensation for inflation losses at the domestic level. They further contended that the applicants did not substantiate their claim for non-pecuniary damage.

29. As regards the claims for compensation for inflation losses, in view to its findings in the instant case (see paragraph 15 above), the Court considers that the applicants were absolved from pursuing the litigation suggested by the Government. However, the Court notes that these claims are not supported by any documents which would enable the Court to determine the amount. Consequently, it rejects this part of the claim.

30. In so far as the judgments in the applicants' favour have not been enforced in full (paragraph 7 above), the Court considers that, if the Government were to pay the remaining judgment debts owed to Ms Glova² and Ms Bregin³, it would constitute full and final settlement of their claim for pecuniary damage.

31. In so far as the applicant's claims for non-pecuniary damage are concerned, the Court takes the view that the applicants have suffered some non-pecuniary damage as a result of the violations found which cannot be made good by the Court's mere findings. The amounts claimed are not excessive and the Court, therefore, awards these amounts in full: EUR 452 to Ms Glova and EUR 305 to Ms Bregin.

B. Costs and expenses

32. The applicants did not submit any claim under this head. The Court therefore makes no award.

C. Default interest

33. 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. *Decides* to join the applications;

⁵ Around EUR 1,200

¹ Around EUR 305

² UAH 275 (currently around EUR 46)

³ UAH 855 (currently around EUR 143)

2. *Declares* the complaints concerning the non-enforcement of the judgments under Articles 6 § 1 and 13 of the Convention admissible, and the remainder of the applications inadmissible;
3. *Holds* that there has been a violation of Article 6 § 1 of the Convention;
4. *Holds* that there has been a violation of Article 13 of the Convention;
5. *Holds*
 - (a) that the respondent State is to pay Ms Glova, 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 EUR 452 (four hundred and fifty-two euros) in respect of non-pecuniary damage;
 - (b) that the respondent State is to pay Ms Bregin, 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 EUR 305 (three hundred and five euros) in respect of non-pecuniary damage;
 - (c) that the above amounts shall be converted into the national currency of the respondent State at the rate applicable at the date of settlement, plus any tax that may be chargeable;
 - (d) 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;
6. *Dismisses* the remainder of the applicants' claim for just satisfaction.

Done in English, and notified in writing on 28 February 2006, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

S. DOLLÉ
Registrar

J.-P. COSTA
President