



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

FIFTH SECTION

CASE OF VASYLYEV v. UKRAINE

(Application no. 10232/02)

JUDGMENT

STRASBOURG

13 July 2006

FINAL

13/10/2006

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 Vasyliev v. Ukraine,

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

Mr P. LORENZEN, *President*,

Mrs S. BOTOCHAROVA,

Mr V. BUTKEVYCH,

Mrs M. TSATSA-NIKOLOVSKA,

Mr R. MARUSTE,

Mr J. BORREGO BORREGO,

Mrs R. JAEGER, *judges*,

and Mrs C. WESTERDIEK, *Section Registrar*,

Having deliberated in private on 19 June 2006,

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

PROCEDURE

1. The case originated in an application (no. 10232/02) 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, Mr Anatoliy Fedorovich Vasyliev (“the applicant”), on 4 September 2001.

2. The Ukrainian Government (“the Government”) were represented by their Agents, Mrs V. Lutkovska and Mrs Z. Bortnovska.

3. On 2 July 2003 the Court decided to communicate the application to the Government. Under the provisions of Article 29 § 3 of the Convention, it decided to examine the merits of the application at the same time as its admissibility.

4. On 1 April 2006 this case was assigned to the newly constituted Fifth Section (Rule 25 § 5 and Rule 52 § 1).

THE FACTS**I. THE CIRCUMSTANCES OF THE CASE**

5. The applicant resides in the town of Vinnytsa. He is a former employee of the Oil and Gas State Inspection (“the Inspection”) of the State Oil and Gas Committee “Derzhnaftogazprom” (“the Committee”).

6. On 12 July 1999 the Committee decided to liquidate the Inspection. According to the Government, the liquidation of the Inspection was not accomplished.

7. On 20 August 1999 the applicant was dismissed from his position of the Chief State Inspector of the Vinnytsya Town Department of the Inspection.

8. On 25 November 1999 the President of Ukraine liquidated the Committee and established a liquidation commission for this purpose. By order of 14 April 2000, the President appointed the Ministry of Fuel and Gas of Ukraine as the Committee's successor.

9. In November 2000 the applicant instituted proceedings in the Leninsky District Court of Vinnytsya against commission overseeing the liquidation of the Committee, seeking recovery of salary arrears in respect of the period before 12 July 1999 and compensation.

10. On 12 December 2000 the court found in part for the applicant and ordered the Committee's liquidation commission ("the Debtor") to pay the applicant UAH 1,549¹ in salary arrears and other payments.

11. On 9 February 2001 the Shevchenkivsky District Bailiffs' Service of Kyiv instituted enforcement proceedings.

12. On 19 February 2001 the Bailiffs' Service submitted to the Debtor's bank a payment order in respect of the judgment award.

13. On 22 February 2001 the bank returned the payment order to the Bailiffs' Service on the grounds that the Debtor's account had been closed.

14. On 28 February 2001 the Bailiffs' Service suspended the enforcement proceedings pending the results of an enquiry about other bank accounts which the Debtor might have had.

15. On 26 March 2001 the Bailiffs' Service informed the applicant that no other bank accounts of the Debtor had been found.

16. On 23 June 2001 the Bailiff's Service discontinued the enforcement proceedings and returned the execution writ to the applicant on the grounds that it had not been possible to find the Debtor at its address and the latter had no bank accounts.

17. The applicant did not challenge the decision of the Bailiffs' Service of 23 June 2001 before the domestic courts.

18. The judgment in the applicant's favour remains unenforced.

II. RELEVANT DOMESTIC LAW

1. Constitution of Ukraine, 1996

19. Article 124 of the Constitution provided as follows:

"... Judicial decisions are adopted by the courts in the name of Ukraine and are mandatory for execution throughout the entire territory of Ukraine."

1. Around 255 euros – "EUR".

2. *Law of Ukraine of 21 April 1999 on Enforcement Proceedings*

20. Under Article 2 of the Law, the enforcement of judgments is entrusted to the State Bailiffs' Service. Under Article 85, the creditor is entitled to file a complaint against actions or omissions of the State Bailiffs' Service with the head of the competent department of that Service or with a local court. Article 86 entitles the creditor to institute court proceedings against a legal person responsible for the enforcement of a judgment, for inadequate enforcement or non-enforcement of a judgement, and to receive compensation.

21. At the material time, in particular during the period from 9 February until 23 June 2001, Article 11 obliged the state bailiff to replace a party to the enforcement proceedings by its successor. On 28 November 2002 this provision was changed so that the question of such replacement was within the competence of the courts, to which the bailiff and a party to the proceedings could apply.

3. *Law of Ukraine of 24 March 1998 on the State Bailiffs' Service*

22. Article 11 of the Law provides for the liability of bailiffs for any inadequate performance of their duties, as well as compensation for damage caused by a bailiff when enforcing a judgment. Under Article 13 of the Law, acts and omissions of the bailiff can be challenged before a superior official or the courts.

THE LAW

I. ALLEGED VIOLATION OF ARTICLE 6 OF THE CONVENTION AND ARTICLE 1 OF PROTOCOL NO. 1

23. The applicant complained about the State authorities' failure to enforce the judgment of the Leninskyy District Court of Vinnytsya of 12 December 2000. He invoked Article 6 § 1 of the Convention and Article 1 of Protocol No. 1, which provide, 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 1 of Protocol No. 1

“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. Admissibility

24. The Government submitted that the Committee, as well as its liquidation commission, ceased to exist, its successor being the Ministry of the Fuel and Energy of Ukraine. In this respect, the Government noted that the applicant neither applied to the Bailiffs’ Service or to the domestic courts to have the debtor in the enforcement proceedings replaced by the Ministry of the Fuel and Energy of Ukraine, nor challenged the decision of the Shevchenkivskiy Local Bailiffs’ Service of 23 June 2001 to discontinue the enforcement proceedings before the domestic courts.

25. The Government, therefore, contended that the applicant had not exhausted, as required by Article 35 § 1 of the Convention, the remedies available to him under Ukrainian law. The Government maintained that such remedies were effective both in theory and in practice.

26. The applicant disagreed. In particular, he argued that it had been the duty of the Bailiffs to change the debtor in the enforcement proceedings on their own initiative under the domestic legislation in force at the material time.

27. The Court recalls that the purpose of Article 35 § 1 of the Convention is to afford the Contracting States the opportunity to prevent or put right the violations alleged against them before those allegations are submitted to the Court. However, the only remedies to be exhausted are those which are effective. It is incumbent on the Government claiming non-exhaustion to satisfy the Court that the remedy was an effective one, available in theory and in practice at the relevant time (see *Voytenko v. Ukraine*, no. 18966/02, § 29, 29 June 2004).

28. Turning to the facts of the present case, the Court notes that at the material time the Bailiffs were obliged, under Article 11 of the Law of Ukraine on Enforcement Proceedings, to replace a party to enforcement proceedings if the latter ceased to exist. Under the same Law, the applicant was entitled to challenge the omissions or inactivity of the Bailiffs and to claim compensation before the domestic courts.

29. However, the Court recalls that it has already held in similar cases that the enforcement of the judgments against the State authorities could only be carried out if the State foresees and makes provision for the appropriate expenditures in the State Budget by taking the appropriate legislative measures (see, for instance, *Voytenko*, cited above, § 30, and *Glova and Bregin v. Ukraine*, nos. 4292/04 and 4347/04, § 14, 28 February 2006). In the Ukrainian legal system, neither the courts nor the bailiffs have power to overrule the law or to compel the State to amend its Budget laws. Accordingly, even assuming that the national courts could rule for the applicant in the proceedings against the bailiffs, the enforcement of the judgment against the debtor would still remain within the responsibility of the State.

30. The Court further considers that having obtained a judgment and an execution order against a particular State authority the applicants should not be required to institute, on their own initiative, other proceedings against different State agency to meet their claims (see, *mutatis mutandis*, *Plotnikovy v. Russia*, no. 43883/02, § 16, 24 February 2005).

31. Therefore, the Court finds that, in the particular circumstances of this case, the applicant should not have been required to initiate court proceedings against the bailiffs.

32. In view of the above considerations, the applicant cannot be reproached for not using the remedies invoked by the Government and has therefore complied with the requirements of Article 35 § 1. Accordingly, the Court dismisses the Government's contentions.

33. The Court concludes that this application raises 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 it inadmissible.

B. Merits

34. The Court notes that to date the judgment of the Leninsky District Court of Vinnytsya of 12 December 2000 has remained unenforced for more than five years and four months.

35. The Court recalls that it has already found violations of Article 6 § 1 of the Convention and Article 1 of Protocol No. 1 in cases raising issues similar to the present application (see, for instance, *Plotnikovy*, cited above, §§ 25-29).

36. Having examined all the material submitted to it, 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 Article 6 § 1 of the Convention and Article 1 of Protocol No. 1.

II. ALLEGED VIOLATION OF ARTICLE 13 OF THE CONVENTION

37. The applicant further complained that he had no effective domestic remedies for his complaints under Article 6 § 1 of the Convention and Article 1 of Protocol No. 1 to the Convention. He invoked Article 13 of the Convention, which provide as follows:

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

38. The Court refers to its reasoning in relation to Article 35 § 1 (paragraphs 29-33 above), which is equally pertinent to the applicant’s Article 13 claim. Consequently, the Court finds that this complaint is not manifestly ill-founded or indeed inadmissible on any other ground cited in Article 35 of the Convention. It must therefore be declared admissible.

B. Merits

39. The Government contended that the applicant had had effective channels of complaint on the same basis that they had argued that the applicant had not exhausted domestic remedies in respect of his complaints under Article 6 § 1 of the Convention and Article 1 of Protocol No. 1.

40. The applicant objected to this view.

41. The Court refers to its findings (at paragraphs 31-33 above) in the present case concerning the Government’s argument regarding domestic remedies. 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. Accordingly, there has been a breach of this provision.

III. APPLICATION OF ARTICLE 41 OF THE CONVENTION

42. 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

43. The applicant claimed UAH 19,672¹ in respect of pecuniary damage, which included the amount of the judgment debt and a sum to which the applicant has allegedly been entitled due to the non-payment of his salary arrears. The applicant further claimed UAH 50,000² in respect of non-pecuniary damage.

44. The Government maintained that the applicant had not substantiated the amount claimed and submitted that the finding of a violation would constitute sufficient just satisfaction.

45. In so far as the applicant claimed the amount awarded to him by the judgment at issue, the Court considers that the Government should pay him the outstanding debt in settlement of his pecuniary damage.

46. As to the applicant's claim in respect of non-pecuniary damage, the Court, making its assessment on an equitable basis, as required by Article 41 of the Convention, awards the applicant EUR 1,600 under this head.

B. Costs and expenses

47. The applicant did not submit any claim under this head. The Court therefore makes no award.

C. Default interest

48. 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 1 of Protocol No. 1;
4. *Holds* that there has been a violation of Article 13 of the Convention;

1. Around EUR 3,192.

2. Around EUR 8,112.

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 1,600 (one thousand six hundred 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;

6. *Dismisses* the remainder of the applicant's claim for just satisfaction.

Done in English, and notified in writing on 13 July 2006, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Claudia WESTERDIEK
Registrar

Peer LORENZEN
President