



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

FIFTH SECTION

CASE OF PIVNENKO v. UKRAINE

(Application no. 36369/04)

JUDGMENT

STRASBOURG

FINAL

12/01/2007

12 October 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 Pivnenko 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 18 September 2006,

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

PROCEDURE

1. The case originated in an application (no. 36369/04) against Ukraine lodged with the Court under Article 34 of the Convention for the Protection of Human Rights and Fundamental Freedoms ("the Convention") by Mr Igor Volodymyrovych Pivnenko (the applicant), on 28 September 2004.

2. The Ukrainian Government ("the Government") were represented by their Agents, Mrs V. Lutkovska and Mr Y. Zaytsev.

3. On 7 July 2005 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, Mr Igor Volodymyrovych Pivnenko, is a Ukrainian national who was born in 1965 and lives in the town of Oleksandriya, Kirovograd region, Ukraine.

6. The facts of the case, as submitted by the parties, may be summarised as follows.

7. On an unspecified date the applicant retired from the army. Upon retirement, the applicant became entitled to compensation for his uniform.

As this compensation remained unpaid, in 2002 he instituted proceedings in the Dnipropetrovs'k Garrison Military Tribunal against his former employer, a military unit, seeking recovery of the debt.

8. On 14 June 2002 the tribunal found for the applicant (*Решение Военного суда Днепропетровского гарнизона*) and awarded him UAH 3,377.17¹ for uniform and UAH 51² for court fees. The latter sum was paid to him, while the main judgment debt remains unpaid.

9. By letter of 20 January 2004, the Dnipropetrovs'k Regional Department of Justice (*Дніпропетровське обласне управління юстиції*) informed the applicant that the remaining debt could not be paid due to the debtor's lack of funds.

10. On 29 July 2004 the Bailiffs' Service (*відділ державної виконавчої служби Центрально-Міського районного управління юстиції*) returned the writ of execution to the applicant on the ground that the judgment could not be enforced due to the debtor's lack of funds.

II. RELEVANT DOMESTIC LAW

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

THE LAW

12. The applicant complained about the non-enforcement of the judgment of the Dnipropetrovs'k Garrison Military Tribunal of 14 June 2002. He invoked Articles 6 § 1 and 13 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 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.”

¹ Around EUR 558

² Around EUR 8.5

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”

I. ADMISSIBILITY

13. The Government raised objections regarding the applicant's exhaustion of domestic remedies and victim status similar to those which the Court has already dismissed in a number of judgments (see, among many other authorities, *Voytenko v. Ukraine*, no. 18966/02, §§ 27-35, 29 June 2004 and *Nosal v. Ukraine*, no. 18378/03, §§ 33-35, 29 November 2005). The Court considers that the present objections must be rejected for the same reasons.

14. The Court concludes that the applicant's complaint under Article 6 § 1 of the Convention about the delay in the enforcement of the judgment of the Dnipropetrovsk Garrison Military Tribunal is not manifestly ill-founded within the meaning of Article 35 § 3 of the Convention. It further notes that it is not inadmissible on any other grounds. It must therefore be declared admissible. For the same reasons, the applicant's complaints under Article 13 and Article 1 of Protocol No. 1 cannot be declared inadmissible.

II. MERITS

15. The Government maintained that the length of the enforcement proceedings was not excessive and the Bailiffs' Service performed all necessary actions. The Government contended that the applicant's entitlement to the award was not disputed and he was not deprived of his property. The Government further maintained that the applicant had at his disposal effective remedies explicitly provided for by domestic legislation in order to challenge the non-enforcement of the court judgment given in his favour.

16. The applicant disagreed. He submitted that there had been a substantial delay in payment which had therefore deprived him of the actual possession of his property. He also stated that the remedies invoked by the Government could not be effective in his case since the judgment had remained unenforced due to a lack of budget funding and no fault for the delay in the enforcement proceedings could be attributed to the bailiffs.

17. The Court notes that the judgment in the applicant's favour has not been enforced for four years and three months.

18. The Court recalls that it has already found violations of Articles 6 § 1 and 13 of the Convention and Article 1 of Protocol No. 1 in cases like the present application (see, *Voytenko v. Ukraine*, cited above, §§ 26-55; *Nosal v. Ukraine*, cited above, §§ 33-47).

19. Having examined all the material submitted to it, the Court considers that the Government have not put forward any fact or argument capable of persuading it to reach a different conclusion in the present case.

20. There has, accordingly, been a violation of Articles 6 § 1 and 13 of the Convention and of Article 1 of Protocol No. 1.

III. APPLICATION OF ARTICLE 41 OF THE CONVENTION

21. 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

22. The applicant claimed pecuniary damage corresponding to the sum awarded to him by the judgment of 14 June 2002. He further claimed non-pecuniary damage in the amount of EUR 4,000.

23. The Government contended that it was not obliged to pay the above debt due to the applicant, as he had neither appealed against the Bailiffs' decision of 29 July 2004 to return the writ of execution, nor resubmitted it at a later date. They further contended that the applicant's claim for non-pecuniary damage should be dismissed as unsubstantiated.

24. 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 of UAH 3,377.17 (equivalent of EUR 558). As to the applicant's claim for non-pecuniary damage - EUR 4,000 - the Court considers it excessive. Making its assessment on an equitable basis as required by Article 41 of the Convention, the Court awards the applicant the sum of EUR 1,200 in respect of non-pecuniary damage.

B. Costs and expenses

1. The submissions of the parties

25. The applicant also claimed UAH 48.86 (EUR 8.14) in postal expenses and UAH 230 (EUR 38.3) in legal fees. He presented postal invoices and invoices from his lawyer M.

26. The Government agreed to reimburse the postal expenses. However, they maintained that the applicant had not provided any evidence that the above invoices for legal assistance had related to the applicant's Convention proceedings.

2. The Court's assessment

27. 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 were reasonable as to quantum. In the present case, the applicant presented evidence of his postal costs.

28. As regards the applicant's claim for legal fees, the Court notes that the case is not particularly complex. Mr M. did not make any submissions to the Court on the applicant's behalf and the applicant never informed the Court of his representation. Furthermore, the invoices submitted by the applicant show no evidence that Mr M. provided any assistance to the applicant in connection with the Convention proceedings.

29. However, the applicant may have incurred some costs and expenses in connection with his Convention proceedings. Regard being had to the Court's case-law and the information in its possession, the Court awards the amount he claimed (see *mutatis mutandis*, *Romanchenko v. Ukraine*, no. 5596/03, § 38, 22 November 2005).

C. Default interest

30. 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 of 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 in accordance with Article 44 § 2 of the Convention, the judgment debt still owed to him (five hundred and fifty-eight euros), as well as the EUR 1,246.44 (one thousand two hundred and forty-six euros and forty-four cents) in respect of non-pecuniary damage, and costs and expenses;
 - (b) that the above amount 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;
 - (c) 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 12 October 2006, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Claudia WESTERDIEK
Registrar

Peer LORENZEN
President