



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

FIFTH SECTION

CASE OF POGREBNA v. UKRAINE

(Application no. 25476/02)

JUDGMENT

STRASBOURG

15 February 2007

FINAL

09/07/2007

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 Pogrebna v. Ukraine,

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

Mr P. LORENZEN, *President*,

Mrs S. BOTOUCHAROVA,

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 22 January 2007,

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

PROCEDURE

1. The case originated in an application (no. 25476/02) 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, Mrs Lyubov Grygorivna Pogrebna (“the applicant”), on 17 November 2001.

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

3. On 9 September 2004 the Court decided to communicate the complaints under Articles 6 § 1 and 13 of the Convention concerning the lengthy non-enforcement of the judgments in the applicant's favour 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.

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

4. The applicant was born in 1957 and currently resides in the town of Vasylkiv, Kyiv Region, Ukraine.

5. The applicant and her ex-husband are doctors. They have established several NGOs among which are “Lyubava” and “Rodyna” NGOs.

6. On 15 April 1999 criminal proceedings were instituted against the applicant's ex-husband allegedly for the misappropriation of humanitarian

aid. On the same day, in the course of these criminal proceedings, the applicant was arrested, her apartment and garages were searched and some of the applicant's property was seized. The police also seized some documents of the "Lyubava" NGO.

7. On 16 April 1999 a judge of the Vasytkivsky Town Court ordered the applicant's detention for three days under the administrative procedure for failure to comply with the orders given to her by the police and the refusal to let the police officers search her apartment.

8. On 19 April 1999 the applicant was arrested on suspicion of having committed a crime. According to the applicant, she was interrogated at night and the police officers threatened her, and she was subjected to inhuman and degrading treatment during interrogations and during her detention.

9. On 20 April 1999, allegedly because of her mental problems and the general deterioration of her health, the applicant was brought by the police to a mental hospital. On 21 April 1999 the applicant was released upon a written undertaking not to abscond but stayed in the hospital until 30 April 1999. On 30 April 1999 the written undertaking not to abscond was cancelled. According to the applicant, she was informed thereof only by letter of 23 June 2006.

10. On 23 May 2000 the President of the Kyiv Regional Court quashed the decision of 16 April 1999 and closed the case for lack of the evidence of an administrative offence.

11. On 20 April 2001 the Vasytkivsky Town Court awarded the applicant 2,000¹ Ukrainian hryvnias (UAH) in compensation for non-pecuniary damage inflicted by the unlawful decision of the court, UAH 8.68² in compensation for the loss of income and UAH 300³ in compensation for costs and expenses to be paid from the State budget. This decision was upheld on 22 May 2001 by the Kyiv Regional Court in the part concerning compensation for non-pecuniary damage. The applicant's complaint about the pecuniary damage (loss of income) was remitted for a fresh consideration. The court did not pronounce itself on the claim for compensation for costs and expenses.

12. On 8 August 2001 the Vasytkivsky Town Court awarded the applicant UAH 412⁴ in compensation for the loss of income, and costs and expenses.

13. On 9 October 2001 the Supreme Court of Ukraine upheld the judgments of the Vasytkivsky Town Court of 20 April and 8 August 2001.

14. On 26 April 2002 the judgments of 20 April and 8 August 2001 were enforced in full.

¹ At the material time around 412 euros (EUR)

² At the material time around EUR 1.79

³ At the material time around EUR 61.80

⁴ At the material time around EUR 87.85

15. The applicant instituted another set of proceedings in the Vasylykivskyy Town Court claiming compensation for the loss of income and non-pecuniary damage inflicted by her unlawful arrest and detention, and the unlawful actions of the police. On 11 October 2001 the court awarded the applicant UAH 15,030⁵ in compensation for non-pecuniary damage and UAH 950⁶ in compensation for costs and expenses. On 19 February 2002 the Kyiv Regional Court of Appeal (former Kyiv Regional Court) reduced the amount of compensation for non-pecuniary damage up to UAH 10,030⁷. On 23 September 2003 the Supreme Court of Ukraine upheld this judgment.

16. On 11 May 2002 the judgment of 19 February 2002 was enforced in full.

17. On 31 January 2002 the Vasylykivskyy Town Court ordered the Vasylykivskyy Town Department of the Ministry of Interior to return the property confiscated from the applicant in April 1999 during the search of her apartment. It also ordered the Department to pay the applicant UAH 1,050⁸ in compensation for costs and expenses. On 26 April 2002 the applicant received the above amount. According to the applicant, she has also received 6% of the seized property.

18. On 18 June 2002 the Pecherskyy District Court of Kyiv refused to consider the applicant's administrative complaint lodged against the Regional State Treasury Department, the National Bank of Ukraine and the Pecherskyy District Bailiffs' Service for improper enforcement of the judgments in her favour, as it should have been heard under the civil procedure and not in the course of the administrative proceedings. This ruling was upheld on 16 January 2003 by the Kyiv City Court of Appeal. The applicant lodged a cassation appeal. The parties did not provide any further information about these proceedings.

19. On 28 October 2003 the Pecherskyy District Court of Kyiv rejected the applicant's claim for compensation for pecuniary and non-pecuniary damage inflicted by the lengthy non-enforcement of the judgments in her favour. On 28 January 2004 the Kyiv City Court of Appeal upheld this judgment. On 17 April 2006 the Supreme Court of Ukraine rejected the applicant's appeal in cassation.

II. RELEVANT DOMESTIC LAW

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

⁵ At the material time around EUR 3,092.75

⁶ At the material time around EUR 195.48

⁷ At the material time around EUR 2,254.25

⁸ At the material time around EUR 229.57

THE LAW

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

21. Relying on Article 13 of the Convention, the applicant complained that the judgments adopted in her favour remained unenforced. This Article provides, insofar as relevant, 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.”

22. The Court finds that the applicant's complaint about the lengthy non-enforcement of the judgments given in her favour also requires examination under Article 6 § 1 of the Convention which reads 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. ...

A. Admissibility

23. The Government raised objections regarding the applicant's victim status and exhaustion of domestic remedies similar to those which the Court has already dismissed in the case of *Romashov v. Ukraine* (see the *Romashov* judgment, cited above, §§ 23-33). The Court considers that the present objections must be rejected for the same reasons.

1. Non-enforcement of the judgments of 20 April 2001, 8 August 2001, 19 February 2002 and of the monetary part of the judgment of 31 January 2002

24. The Court notes that the period of enforcement of the judgments of 20 April 2001, 8 August 2001 and 19 February 2002, and of the monetary part of the judgment of 31 January 2002 in the applicant's favour lasted less than one year. The Court further notes that this period is not so excessive as to disclose any appearance of a breach of the Article 6 § 1 of the Convention. Furthermore, it is observed that the judgments' debts did not concern the applicant's basic subsistence and there were no other special, urgent circumstances that would lead to the conclusion that the periods of time that lapsed from the judgment in the applicant's favour until their

enforcement were unreasonable. It follows that this complaint is manifestly ill-founded within the meaning of Article 35 § 3, and must be rejected pursuant to Article 35 § 4 of the Convention.

2. Non-enforcement of the non-monetary part of the judgment of 31 January 2002

25. The Court finds that the applicant's complaints under Articles 6 § 1 and 13 of the Convention concerning the non-enforcement of part of the judgment of 31 January 2002 raise issues of fact and law under the Convention, the determination of which requires an examination of the merits. It finds no ground for declaring them inadmissible.

B. Merits

26. The Government did not submit any observations on the lengthy non-enforcement of the judgment of 31 January 2002.

27. The applicant submitted that the judgment of 31 January 2002 has not been enforced in reasonable time.

28. The Court notes that the non-monetary part of the judgment in the applicant's favour has not been enforced for more than four years and eleven months.

29. The Court recalls that it has already found violation of Article 6 § 1 of the Convention in cases like the present application (see, for instance, *Romashov*, cited above, §§ 42-46).

30. Having examined all the materials 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.

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

32. The Court does not find it necessary in the circumstances to examine the same complaint under Article 13 of the Convention (see *Derkach and Palek v. Ukraine*, nos. 34297/02 and 39574/02, § 42, 21 December 2004).

II. OTHER COMPLAINTS

33. The applicant complained under Article 3 of the Convention that she had been subjected to an inhuman and degrading treatment during her arrest and in detention.

34. She further complained under Article 5 of the Convention that she had been unlawfully arrested, detained, and later placed into mental hospital. The applicant complained under Article 5 § 5 of the Convention about the impossibility to receive compensation for her unlawful detention.

35. The applicant complained under Article 8 of the Convention that her apartment and garages had been unlawfully searched.

36. The applicant complained under Article 11 of the Convention about the impossibility to retrieve documents of the “Lyubava” NGO seized during the search in her apartment and that without these documents the NGO could not function.

37. The applicant finally complained that she had not been informed that the written undertaking not to abscond had been cancelled and this violated her right foreseen by Article 2 of Protocol No.4.

38. In the light of all the materials in its possession, and insofar as the matters complained of are within its competence, the Court finds that they do not disclose any appearance of a violation of the rights and freedoms set out in the Convention or its Protocols.

39. It follows that this part of the application must be declared inadmissible as being manifestly ill-founded, pursuant to Article 35 §§ 3 and 4 of the Convention.

III. APPLICATION OF ARTICLE 41 OF THE CONVENTION

40. 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

41. The applicant claimed USD 28,327.20⁹ in respect of pecuniary damage and USD 2,948,174.10¹⁰ in respect of non-pecuniary damage.

42. The Government maintained that the applicant's claims were exorbitant and unsubstantiated.

43. The Court does not discern any causal link between the violation found and the pecuniary damage alleged. However, insofar as the non-monetary part of the judgment of 31 January 2002 in the applicant's favour has not been enforced in full (paragraph 17 above), the Court considers that, if the Government were to enforce the remaining part of the judgment, it would constitute full and final settlement of her claim for pecuniary damage. The Court also considers that the applicant must have sustained non-pecuniary damage, and, deciding on an equitable basis, awards her EUR 1,600 in this respect.

⁹ Around EUR 22,200.80

¹⁰ Around EUR 2,306,902

B. Costs and expenses

44. The applicant claimed USD 23,498.60¹¹ in costs and expenses, including USD 649.60¹² for the postal expenditures and legal assistance for lodging her application with the Court.

45. The Government maintained that only those expenses which were actually and necessarily incurred should be awarded.

46. The Court reiterates that, in order for costs and expenses to be included in an award under Article 41, it must be established that they were actually and necessarily incurred in order to prevent or obtain redress for the matter found to constitute a violation of the Convention and were reasonable as to quantum (see, among many other authorities, *Nilsen and Johnsen v. Norway* [GC], no. 23118/93, § 62, ECHR 1999-VIII).

47. The Court considers that these requirements have not been met in the instant case. In particular, it notes that the case is not particularly complex and the applicant was not required to be legally represented. However, the applicant may have incurred some costs and expenses for her representation before the Court.

Regard being had to the information in its possession and to the above considerations, the Court awards the applicant EUR 100 for costs and expenses.

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 complaints under Articles 6 § 1 and 13 of the Convention concerning the lengthy non-enforcement of the non-monetary part of the judgment of 31 January 2002 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 it is not necessary to rule on the applicant's complaint under Article 13 of the Convention;

¹¹ Around EUR 18,387.30

¹² Around EUR 508.30

4. *Holds*

(a) that the respondent State is to enforce the non-monetary part of the judgment of 31 January 2002 and 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, EUR 1,700 (one thousand seven hundred euros) in respect of non-pecuniary damage and costs and expenses plus any tax that may be chargeable;

(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;

(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.

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

Done in English, and notified in writing on 15 February 2007, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Claudia WESTERDIEK
Registrar

Peer LORENZEN
President