



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

FIFTH SECTION

CASE OF POBEGAYLO v. UKRAINE

(Application no. 18368/03)

JUDGMENT

STRASBOURG

29 March 2007

FINAL

24/09/2007

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 Pobegaylo v. Ukraine,

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

Mr P. LORENZEN, *President*,
Mr K. JUNGWIERT,
Mr V. BUTKEVYCH,
Mrs M. TSATSA-NIKOLOVSKA,
Mr J. BORREGO BORREGO,
Mrs R. JAEGER,
Mr M. VILLIGER, *judges*,
Mr J.S. PHILLIPS, *Deputy Section Registrar*,

Having deliberated in private on 6 March 2007,

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

PROCEDURE

1. The case originated in an application (no. 18368/03) 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 Vladislav Vasilyevich Pobegaylo (“the applicant”), on 27 August 2001.

2. The applicant was represented before the Court by Mr Aleksandr Vladimirovich Lesovoy, a lawyer, practicing in the town of Bakhchisaray, the Autonomous Republic of Crimea (“the ARC”), Ukraine. The Ukrainian Government (“the Government”) were represented by their Agents, Mrs Z. Bortnovska, Mrs V. Lutkovska and Mr Y. Zaytsev.

3. On 24 October 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.

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

4. The applicant was born in 1971 and currently resides in the village of Molodezhnoye, the ARC, Ukraine.

5. On 1 May 1998 the applicant suffered serious bodily injuries in a traffic accident caused by the negligent driving of a police officer.

6. In January 1999 the applicant instituted proceedings in the Kyivskyy District Court of Simferopil against the Simferopil Branch of the Main

Department of the Ministry of Internal Affairs of Ukraine claiming compensation for material and moral damage caused by the accident. On 6 February 2001 the court awarded the applicant 2,288.93¹ Ukrainian hryvnias (“UAH”) in compensation for material damage and legal aid, UAH 2,100 in compensation for the loss of earnings and UAH 12,000 in compensation for moral damage. On 18 April 2001 the Supreme Court of the ARC upheld this decision in respect of the compensation for material damage and remitted the case for fresh consideration in respect of the compensation for the loss of earnings and for moral damage.

7. On 24 January 2002 the Bailiffs' Service instituted enforcement proceedings for the judgment of 6 February 2001 in that part which was upheld by the Supreme Court of the ARC and became final. On 19 April 2002 the enforcement proceedings were terminated on the ground that the judgment should be enforced directly by the State Treasury. On 16 August 2002 the judgment of 6 February 2001, as upheld by the Supreme Court, was enforced.

8. In the meantime, on 6 February 2002 the Kyivskyy District Court, after fresh consideration of the applicant's claims concerning compensation for the loss of earnings and moral damage, awarded the applicant UAH 1,470² and UAH 8,400³, respectively. On 29 May 2002 the Court of Appeal of the ARC (former Supreme Court of the ARC) upheld this judgment. The applicant appealed against these judgments in cassation. The parties did not submit any further information about these proceedings.

9. By a decree of 21 March 2003 the Ministry of Justice of Ukraine and the State Treasury of Ukraine decided that all judgments which should be enforced at the expense of the State Budget of Ukraine should be enforced by the State Treasury of Ukraine. In May 2003 the applicant instituted proceedings in the Pecherskyy District Court of Kyiv requesting to invalidate this decree as its provisions had not complied with the Law on Enforcement Proceedings. On 25 June 2003 the Pecherskyy District Court of Kyiv found the decree invalid. On 30 October 2003 the Kyiv City Court of Appeal upheld this judgment. On 29 March 2006 the High Administrative Court of Ukraine rejected the cassation appeal of the Ministry of Justice of Ukraine.

10. In July 2003 the applicant instituted proceedings in the Kyivskyy District Court of Simferopol complaining about the decision of 19 April 2002 to terminate the enforcement proceedings and claiming compensation for material and moral damage. On 22 December 2003 the court found that the decision of 19 April 2002 was unlawful. The court however did not allow the applicant's claims for compensation because the judgment of 6 February 2001 in his favour was enforced. On 5 April 2004 the Court of Appeal of the ARC upheld the judgment of 22 December 2003. On

¹ At the material time approximately 449.13 euros (EUR)

² At the material time approximately EUR 331.52

³ At the material time approximately EUR 1,894.39

27 September 2006 the High Administrative Court of Ukraine quashed the judgments of 22 December 2003 and 5 April 2004 and remitted the case for a fresh consideration to the District Court.

11. The judgment of 6 February 2002 was enforced by instalments, the final amount being paid on 11 February 2004.

II. RELEVANT DOMESTIC LAW AND PRACTICE

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

THE LAW

13. The applicant complained of the lengthy consideration of his cases in the court and of the lengthy enforcement of the judgments in his favour. He invoked Article 6 § 1 of the Convention, which provides, 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. ...”

I. ADMISSIBILITY

14. In respect of the applicant's complaint about the lengthy non-enforcement of the judgments in his favour, the Government raised objections regarding the applicant's victim status in respect of the non-enforcement of the judgment of 6 February 2001 and exhaustion of domestic remedies similar to those which the Court has already dismissed in the case of *Romashov v. Ukraine* (cited above, §§ 23-33). The Court considers that the present objections must be rejected for the same reasons.

15. The Court concludes that the applicant's complaints under Article 6 § 1 of the Convention are not manifestly ill-founded within the meaning of Article 35 § 3 of the Convention. It further notes that they are not inadmissible on any other grounds. They must therefore be declared admissible.

II. MERITS

16. The Government maintained that the judgment of 6 February 2001 in the applicant's favour was enforced in full and the length of its enforcement could not be considered as unreasonable. As for the non-enforcement of the judgment of 6 February 2002 the Government maintained that the Bailiffs'

Service performed all necessary actions and cannot be blamed for the delay. They further stated that the judgment of 6 February 2002, which has not been enforced at the time the Government submitted their observations, would be enforced in full and that the present non-enforcement did not breach Article 6 § 1 of the Convention.

17. The applicant disagreed.

18. The Court reiterates that the court proceedings and the enforcement proceedings are stages one and two in the total course of proceedings (see, *Scordino v. Italy (no. 1)* [GC], no. 36813/97, § 197). Therefore, the enforcement proceedings should not be dissociated from the action and the proceedings are to be examined in their entirety (see, *Estima Jorge v. Portugal*, judgment of 21 April 1998, *Reports of Judgments and Decisions* 1998-II, § 35 and, as a recent authority, *Sika v. Slovakia*, no. 2132/02, §§ 24-27, 13 June 2006).

19. The Court notes that the consideration of the applicant's case by the national courts lasted from January 1999 until 29 May 2002 when the Court of Appeal upheld the judgment in the applicant's favour. The applicant informed the Court that he had lodged a cassation appeal. However, as the applicant failed to show that the cassation proceeding are still pending, the Court considers that the proceedings in the applicant's case ended with the full enforcement of the judgments in the applicant's favour. The length of proceedings in the judicial phase is therefore three years and four months and there is no discernible period of inactivity which can be attributed to the domestic courts.

20. However, the judgments in the applicant's favour were not enforced for more than one year and five months and for more than one year and eight months.

21. The Court recalls that it has already found violations of Article 6 § 1 of the Convention in similar circumstances (see, *Chizhov v. Ukraine*, no. 6962/02, § 40-43, 17 May 2005; *Zamula and Others v. Ukraine*, no. 10231/02, § 43-45, 8 November 2005).

22. 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.

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

III. APPLICATION OF ARTICLE 41 OF THE CONVENTION

24. 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

25. The applicant claimed UAH 100,000¹ in respect of non-pecuniary damage.

26. The Government contested the applicant's claims, which they alleged were unsubstantiated and exorbitant.

27. Making its assessment on an equitable basis, as required by Article 41 of the Convention, the Court awards the applicant EUR 300 in respect of his non-pecuniary claim.

B. Costs and expenses

28. The applicant claimed UAH 9,000² for costs and expenses incurred in the Convention proceedings. He presented four invoices for that sum from his lawyer.

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

30. 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).

31. 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 his representation before the Court.

Regard being had to the information in its possession and to the above considerations, the Court awards the applicant EUR 300 for costs and expenses.

¹ Around EUR 16,246

² Around EUR 1,462

C. Default interest

32. 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*
 - (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, EUR 300 (three hundred euros) in respect of non-pecuniary damage and EUR 300 (three hundred euros) in costs and expenses, plus any tax that may be chargeable;
 - (b) that the above amounts 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 amounts at a rate equal to the marginal lending rate of the European Central Bank during the default period plus three percentage points.
4. *Dismisses* the remainder of the applicant's claim for just satisfaction.

Done in English, and notified in writing on 29 March 2007, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Stephen PHILLIPS
Deputy Registrar

Peer LORENZEN
President