



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

FIFTH SECTION

CASE OF LIZANETS v. UKRAINE

(Application no. 6725/03)

JUDGMENT

STRASBOURG

31 May 2007

FINAL

31/08/2007

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 Lizanets 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 9 May 2007,

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

PROCEDURE

1. The case originated in an application (no. 6725/03) 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 Georgiy Ivanovych Lizanets (“the applicant”), on 22 January 2003.

2. The applicant was represented by Mr Volodymyr Dumnych, a lawyer practising in Mukacheve. The Ukrainian Government (“the Government”) were represented by their Agents, Ms Valeria Lutkovska and Mr Yuriy Zaytsev.

3. On 28 April 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.

THE FACTS**I. THE CIRCUMSTANCES OF THE CASE***1. Proceedings concerning compensation for unlawful prosecution*

4. The applicant was born in 1945 and lives in the town of Mukacheve, the Zakarpatye region.

5. In February 1997 the Mukacheve City Prosecutor charged the applicant (a former inspector of the Mukacheve city market) with corruption, and ordered his detention on remand. In August 1997 the applicant was released against his undertaking not to abscond. In December 1997 his case was closed given the lack of any *corpus delicti*. This decision was subsequently quashed by the Zakarpatye Regional Prosecutor's Office and the investigation was reopened. On 8 August 1998 the criminal proceedings against the applicant were ultimately terminated given the absence of any *corpus delicti*.

6. On 3 September 1998 the applicant instituted proceedings against the Mukacheve District Prosecutor's Office of the Zakarpatye Region, seeking monetary compensation for unlawful prosecution.

7. On 30 September 1998 the Mukacheve City Court (hereafter “the City Court”) granted this claim and awarded the applicant UAH 60,000¹. In assessing the amount of moral compensation, the court took account of medical certificates attesting to the fact that subsequent to his release the applicant had suffered a nervous breakdown. On 10 October 1998 this judgment became final and binding.

8. On 18 November 1999 the Zakarpatye Regional Prosecutor lodged an supervisory appeal with the Presidium of the Zakarpatye Regional Court against the judgment of 30 September 1998. On 29 November 1999 the court, sitting in a closed session in the presence of a prosecutor, quashed this judgment and remitted the case for a new consideration.

9. On 17 May 2001 the City Court, in the resumed proceedings, allowed the applicant's claim. Having regard to the medical documents, the forensic psychological report and statements from a number of witnesses, the court found, *inter alia*, that the applicant's nervous breakdown had been caused by his detention, and ordered the Prosecutor's Office to pay the applicant UAH 80,000² in moral and material damages. On 27 May 2001 this judgment acquired legal force.

10. On 4 September 2001 the Zakarpatye Regional Prosecutor's Office challenged this judgment under the new cassation procedure (see “Relevant domestic law”, paragraph 24 below).

11. On 3 October 2001 the Constitutional Court declared unconstitutional Article 25 of the Law on the State Budget 2001, which provided that compensation for unlawful criminal prosecutions was to be deducted from the funds allocated to the relevant law-enforcement agencies. The Constitutional Court decided that the relevant amounts should be paid directly from the State Budget held by the State Treasury.

12. On 10 December 2001 a judge of the Supreme Court returned the prosecutor's appeal to the City Court, indicating that it had to examine the

1. Approximately 9,600 euros (EUR)

2. Approximately EUR 13,000

issue of the reopening of the proceedings on the ground of new circumstances.

13. On 24 January 2002 the City Court, on a request from the Zakarpatye Regional Prosecutor, reopened the proceedings in the case due to new circumstances, namely the annulment of the Article 25 of the Law on the State Budget 2001 by the aforementioned decision of the Constitutional Court.

14. On 5 April 2002 the City Court partly allowed the applicant's claim, ordering the State Treasury to pay him UAH 10,000¹ in compensation for unlawful prosecution. The court held that the criminal proceedings against the applicant had been unlawful but found the claim for moral damages excessive:

“With respect to the remainder of the claims [the court notes that] the claimant has failed ...to provide any corroborating evidence; nor did he submit to the court any calculation of the amount of compensation for moral damage.

No reliable link could be seen between the claimant's nervous breakdown and his criminal prosecution and arrest.”

The applicant appealed.

15. On 12 June 2002 the Zakarpatye Regional Court of Appeal upheld this judgment, indicating, *inter alia*, that, according to the forensic psychological report, the nervous breakdown, suffered by the applicant in 1997, could result either from his unlawful detention or from his general poor state of health, thus finding that the amount of UAH 10,000 constituted sufficient compensation for damages suffered due to unlawful prosecution.

16. On 2 December 2002 the Supreme Court rejected the applicant's request for leave to appeal under the cassation procedure.

2. Enforcement proceedings

17. On an unknown date in early 1999 the applicant applied to the Zakarpatye Regional Department of Justice for compulsory enforcement of the September 1998 judgment. The warrant of execution was on several occasions sent to the Zakarpatye Regional Department of the State Treasury. However on 18 November 1999 the enforcement proceedings were suspended pending the outcome of the prosecution's extraordinary appeal (paragraph 8 above).

18. On 2 December 2005 the City Court refused the applicant's request to initiate the enforcement proceedings for the judgment of 5 April 2002, ruling that its enforcement was time barred. The court found that Article 21 of the Law on Enforcement Proceedings envisaged that the writs of execution should be lodged with the relevant authority within three years after the judgment acquired legal force. The judgment in the applicant's case

1. Approximately 1,620 EUR

had become final on 12 June 2002 upon the decision of the Zakarpatye Regional Court of Appeal, whereas the applicant requested the issuance of the writ of execution on 23 November 2005, i.e. after the expiry of the statutory limitation. The applicant did not appeal against this decision.

19. The judgment of 5 April 2002 has not been enforced to date.

II. RELEVANT DOMESTIC LAW AND PRACTICE

1. Domestic law related to execution of the court judgments

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

2. Domestic law related to the reopening of the proceedings

a. Code of Civil Procedure, 1963

21. Article 347-6 of the Code provides that, having examined the request for reopening of the case on the ground of new circumstances, the competent court delivers the ruling, whereby it either quashes the relevant judgment or rejects the above request. If the judgment is quashed the case is examined on the merits according to the general rules contained in this Code.

b. Decision of the Constitutional Court of Ukraine of 3 October 2001

22. The Constitutional Court held:

“ 5... Therefore, Article 25 of Law of Ukraine “On the State Budget of Ukraine for the Year 2001” ... *de facto* introduces civil and not public responsibility of ..., the prosecutor's offices, ... for the material and moral damage caused to the citizens by unlawful actions of these bodies. Concurrently, the Constitution of Ukraine guarantees the right of the citizens for the compensation by the State and not from the funds allocated for the maintenance of these bodies (Article 56, 62).

...

the Constitutional Court has decided:

1. To consider as contrary to the Constitution of Ukraine (unconstitutional) provisions of Article 25 of Law of Ukraine “On the State Budget of Ukraine for the Year 2001” ... according to which the compensation for damage inflicted to the citizens by unlawful actions of ..., the prosecutor's offices, ... is to be provided from the funds allocated for the maintenance of the courts, the General Prosecutor's Office, the Security Service of Ukraine, and the Ministry of Interior.

2. Provisions of Article 25 of Law of Ukraine “On the State Budget of Ukraine for the Year 2001” ... are considered unconstitutional, and void from the day this decision is made by the Constitutional Court of Ukraine.”

c. Law of 21 June 2001 on the Introduction of Changes to the Code of Civil Procedure Civil Procedure

23. The relevant provisions of the Law are read as follows:

Article 320

Persons having the right to lodge a cassation appeal

“Parties and other persons who participate in court proceedings, and the prosecutor and other persons who have not participated in the proceedings in which the court has decided on their rights and obligations, may lodge a cassation appeal against judgments and rulings adopted by the court of first instance, only in relation to a violation of the substantive or procedural law and rulings and judgments of an appeal court.

The basis for such an appeal is the incorrect application of the norms of substantive law or infringement of the norms of procedural law.”

Section 321

The deadlines for lodging an application for annulment

“The deadline for lodging an application by the prosecutor is three months from the date of delivery of the ruling or judgment of the Court of Appeal, or one year from the date of delivery of the ruling or judgment of the court of first instance, if these rulings or decisions have not been appealed against.”

Chapter II. Transitional Provisions

“1. This Law shall enter into force as from 29 June 2001.

2. Laws and other normative acts adopted before this Law entered into force are effective in so far as their provisions do not conflict with the Constitution of Ukraine and this Law.

3. Appeals in civil cases lodged before 29 June 2001 shall be considered in accordance with the procedure adopted for the examination of appeals against local courts' decisions.

4. Protests against judicial decisions lodged before 29 June 2001 shall be sent to the Supreme Court of Ukraine for consideration in accordance with the procedure for consideration of cassation appeals (*касаційних скарг*).

5. Decisions that have been adopted and have entered into force before 29 June 2001 can be appealed against within three months in accordance with the procedure for consideration of cassation appeals (to the Supreme Court of Ukraine).”

THE LAW

I. ALLEGED VIOLATION OF ARTICLE 6 OF THE CONVENTION

24. The applicant complained that in the proceedings for compensation for unlawful prosecution he did not have a fair hearing. The applicant submitted that as a result of the quashing of final judgments in his favour in extraordinary judicial proceedings, the domestic courts eventually did not fully allow his claim for moral damages relating to the deterioration of his health. He also challenged the length of the proceedings and the non-execution of the judgments given in his favour. He invoked Article 6 § 1 of the Convention, which, insofar as relevant provides as follows:

In the determination of his civil rights and obligations ..., everyone is entitled to a fair ... hearing within a reasonable time by [a] ... tribunal..."

A. Legal certainty

1. Admissibility

25. The Government alleged that the applicant's complaint about a violation of his right to a fair hearing in the compensation proceedings had been lodged out of time as the decisions reversing the final judgments of the September 1998 and May 2001 judgments were taken on 29 November 1999 and 24 January 2002 respectively, i.e. more than six months before the date on which the application was submitted to the Court. The applicant disagreed.

26. As regards the decision taken on 29 November 1999, the Court observes that it was not challenged separately by the applicant and in any case falls outside the six-month time-limit (see *Sardin v. Russia* (dec.), no. 69582/01, ECHR 2004-II).

27. As to the decision of 24 January 2002, the Court notes that the Government's objection is closely linked to the applicant's complaint under Article 6 § 1 of the Convention about the unfairness of the proceedings leading to the April 2002 judgment as confirmed upon appeal on 12 June and 2 December 2002. In these circumstances, it considers that the objection should be joined to the merits of the applicant's complaint.

28. The Court considers that this complaint 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.

2. Merits

29. The Government maintained that there was no violation of the applicant's right to a fair trial in that his claims were considered in a public hearing by a competent tribunal established by law. The reversal of the May 2001 judgment gave the City Court a power to review the case in its totality, including the assessment of evidence and determination of the amount of the award. The domestic court considered the case properly and gave a reasoned judgment.

30. The applicant disagreed, stating that after two final judgments in his case with essentially similar outcomes the judgment of 5 April 2002 was unreasonable.

31. The Court reiterates that the right to a fair hearing before a tribunal as guaranteed by Article 6 § 1 of the Convention must be interpreted in the light of the Preamble to the Convention, which declares, among other things, the rule of law to be part of the common heritage of the Contracting States. One of the fundamental aspects of the rule of law is the principle of legal certainty, which requires, *inter alia*, that where the courts have finally determined an issue, their ruling should not be called into question (see *Brumărescu v. Romania* [GC], no. 28342/95, § 61, ECHR 1999-VII).

32. In assessing the domestic judicial practices against their compatibility with the principle of legal certainty the Court primarily focused on the extraordinary review proceedings susceptible to undermine the finality of court judgments (cf., *Popov v. Moldova* (no. 2), no. 19960/04, § 52, 6 December 2005, *Tregubenko v. Ukraine*, no. 61333/00, § 36, 2 November 2004, *Ryabykh v. Russia*, no. 52854/99, § 57, ECHR 2003-IX and *Svetlana Naumenko v. Ukraine*, no. 41984/98, § 92, 9 November 2004). The present case, however, differs from the above instances, in that it was not the very fact of the reversal of a final judgment, but rather its combination with the subsequent treatment of the case by the trial court that raises an issue as regards the applicant's "right to a court".

33. The Court notes that the decision of 24 January 2002 was based on the changes in the legislation brought about by the 2001 decision of the Constitutional Court. The Court, on the one hand, should be especially mindful of the dangers inherent in the use of retrospective legislation which has the effect of influencing the judicial determination of a dispute to which the State is a party (see *The National & Provincial Building Society, the Leeds Permanent Building Society and the Yorkshire Building Society v. the United Kingdom*, judgment of 23 October 1997, *Reports* 1997-VII, § 112; *Zielinski and Pradal & Gonzalez and Others v. France* [GC], nos. 24846/94 and 34165/96 to 34173/96, § 57, ECHR 1999-VII). On the other hand, the

initial objective of the procedure in issue being the clarification of the source of payment of the applicant's award, this decision does not seem to be an “appeal in disguise” *per se* (compare and contrast *Pravednaya v. Russia*, no. 69529/01, § 32, 18 November 2004). In this context the Court observes that in similar proceedings which were triggered by the above-mentioned decision of the Constitutional Court, domestic courts normally abstained from a fresh determination of the merits of the claims (see, for example, *Volosyuk v. Ukraine*, no. 60712/00, § 14, 6 June 2006). However, the Court observes that the domestic law did not provide any safeguards against a possible infringement of the principle of legal certainty, giving the relevant court an unfettered power to reconsider the case on the merits regardless of the original aim of the reopening of the proceedings (see paragraph 21 above).

34. In the present case the City Court went beyond the determination of the mode of execution of the May 2001 judgment following the judgment of the Constitutional Court of 3 October 2001 (see paragraph 11) in that it reassessed the evidence and gave a new judgment covering the entire case. As it was mentioned above, such decision was in compliance with the domestic law, which, however, cannot exempt the domestic authorities from the requirement of Article 6 § 1 of the Convention to respect the principle of legal certainty. The Court considers that the City Court's outright dismissal of the evidence on which the judgment of 17 May 2001 was based and the consequent rejection of the applicant's argument relating to his nervous breakdown (see paragraph 13 above), which led to a substantial decrease of his award, infringed the principle of legal certainty and the applicant's “right to a court” under Article 6 § 1 of the Convention.

35. The Court, therefore, rejects the preliminary objection of the Government as regards the alleged non-compliance with the six-month rule and finds that there has been a violation of Article 6 § 1 of the Convention.

B. Non-execution of court judgments

1. Admissibility

36. The Court notes that the non-execution of the September 1998 and May 2001 judgments was mainly due to the extraordinary judicial proceedings for review of these judgments.

37. The Court recalls that the applicant's complaint concerning the first set of supervisory review proceedings has been rejected for non-compliance with the six-month requirement under Article 35 § 1 of the Convention (see paragraph 26 above). The Court cannot, therefore, examine the applicant's complaint about delays concerning this part of the proceedings.

38. Concerning the second re-opening, the Court finds that the applicant's complaint under this head overlaps with the issues of legal

certainty and fairness which have been considered in paragraphs 27-28 above.

39. Furthermore, the aspect of the applicant's complaint relating to the non-enforcement of the judgment given on 5 April 2002, 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.

2. Merits

40. The Court observes at the outset that it has found a violation of the principle of legal certainty as a result of the supervisory review proceedings concerning the judgment of May 2001 (see paragraph 35 above) and does not, therefore, consider necessary to examine the issue of non-enforcement from another angle of Article 6 § 1 of the Convention.

41. Concerning the judgment of 5 April 2002, the Court turns first to the Government's argument that the applicant had failed to apply for the compulsory enforcement within the statutory time-limit, for which the State bore no responsibility.

42. The Court notes that by judgment of 5 April 2002 which was upheld on appeal by the decision of 12 June 2002 the applicant was awarded a compensation for material and moral damage to be paid by the State. This judgment has not been enforced to date, i.e. for four years and eleven months (see, *Volosyuk v. Ukraine*, no. 60712/00, § 33, 29 June 2006).

43. The Court reiterates that it is inappropriate to require an individual who has obtained judgment against the State at the end of legal proceedings to then bring enforcement proceedings to obtain satisfaction (see, for example, *Metaxas v. Greece*, no. 8415/02, § 19, 27 May 2004; *Karahalios v. Greece*, no. 62503/00, § 23, 11 December 2003 and *Scordino v. Italy (no. 1)* [GC], no. 36813/97, § 198, ECHR 2006-...).

44. The Court further recalls that it has already found a violation of Article 6 § 1 of the Convention on account of the lengthy non-enforcement of a final judgment in numerous similar cases (see, *Volosyuk*, cited above, § 33-38; *Voytenko v. Ukraine*, cited above, §§ 26-55; *Nosal v. Ukraine*, no. 18378/03, §§ 33-47, 29 November 2005).

45. 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.

46. There has, accordingly, also been a violation of Article 6 § 1 of the Convention in this respect.

C. Length of the proceedings

47. Having regard to the Court's case-law in civil length-of-proceedings cases that the enforcement proceedings are the second stage of the proceedings and that the right asserted does not actually become effective

until enforcement (see, among other authorities, *Di Pede v. Italy* and *Zappia v. Italy*, judgments of 26 September 1996, *Reports* 1996-IV, p. 1384, §§ 22, 24 and 26, and pp. 1411-12, §§ 18, 20, 22, and, *mutatis mutandis*, *Silva Pontes v. Portugal*, judgment of 23 March 1994, Series A no. 286-A, p. 14, § 33), the applicant's complaint about the length of the proceedings which is closely linked to the one about the lengthy non-enforcement of the final judgments in his favour, must likewise be declared admissible.

48. However, having regard to its findings of violations of Article 6 § 1 (see paragraphs 35 and 46 above), the Court does not consider it appropriate to examine this complaint separately.

II. OTHER ALLEGED VIOLATIONS OF THE CONVENTION

49. The applicant complained that his unlawful detention violated Article 5 § 1 of the Convention and that the insufficient compensation for it was contrary to Article 5 § 5. He also invoked Article 12 of the Convention.

50. The Court, in the light of all material before it, finds that these matters do not disclose any appearance of an unjustified interference or breach of these provisions and rejects this part of the application in accordance with Article 35 §§ 3 and 4 of the Convention as being manifestly ill-founded.

III. APPLICATION OF ARTICLE 41 OF THE CONVENTION

51. 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

52. The applicant claimed 30,000 euros (EUR) in respect of pecuniary and non-pecuniary damage.

53. The Government considered this amount exorbitant and unreasonable.

54. As regards the pecuniary damage claimed, the Court considers that in respect of the non-enforcement of the court decision of 12 June 2002, the full and final settlement of the applicant's claim would be the payment of the judgment debt owed to him. The Court further notes that although the applicant has not claimed a violation of his rights under Article 1 of Protocol No. 1 to the Convention, it has found a breach of the principle of legal certainty and the applicant's “right to a court” under Article 6 § 1 of

the Convention on account of the quashing of a final judgment in his favour. Accordingly, it awards the applicant EUR 11,380, representing the amount of which he was deprived as a result of the quashing of the final judgment of 17 May 2001 (EUR 13,000), less the amount of EUR 1,620 which has been awarded to him by the judgment of 12 June 2002 (see *Braga v. Moldova*, no. 74154/01, § 30, 14 November 2006).

55. In so far as non-pecuniary claims are concerned, the Court finds that the applicant may be considered to have suffered some degree of frustration and distress as a result of the violations found. Deciding on an equitable basis, it awards the applicant EUR 3,000 in respect of non-pecuniary damage.

B. Costs and expenses

56. The applicant did not submit any claim under this head within the set time-limit; the Court therefore makes no award in this respect.

C. Default interest

57. 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. *Joins* to the merits the Government's preliminary objection that the applicant failed to respect the six-month time-limit concerning his complaint about the reversal, in supervisory review proceedings, of the judgment of 17 May 2001, and *dismisses* it after considering the merits;
2. *Declares* the complaints under Article 6 § 1 of the Convention about the alleged unfairness of the proceedings reopened on 24 January 2002, the non-enforcement of the judgment of 5 April 2002 and the length of the proceedings admissible and the remainder of the application inadmissible;
3. *Holds* that there has been a violation of the right to a fair hearing, as guaranteed by Article 6 § 1 of the Convention, in respect of the proceedings reopened on 24 January 2002 and of the non-enforcement of the judgment of 5 April 2002;

4. *Holds* that there is no need to examine the complaint about the overall length of proceedings under Article 6 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 according to Article 44 § 2 of the Convention, the following sums, to be converted into the national currency of the respondent State at the rate applicable at the date of settlement:
 - (i) EUR 11,380 (eleven thousand three hundred and eighty euros) and the judgment debt of 12 June 2002 still owed to him in respect of pecuniary damage,
 - (ii) EUR 3,000 (three thousand euros) in respect of non-pecuniary damage;
 - (iii) plus any tax that may be chargeable on these amounts;
 - (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 31 May 2007, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Claudia WESTERDIEK
Registrar

Peer LORENZEN
President