



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

FIFTH SECTION

CASE OF REDKA v. UKRAINE

(Application no. 17788/02)

JUDGMENT

STRASBOURG

21 June 2007

FINAL

21/09/2007

This judgment will become final in the circumstances set out in Article 44 § 2 of the Convention.

In the case of Redka 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*,

and Mrs C. WESTERDIEK, *Section Registrar*,

Having deliberated in private on 29 May 2007,

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

PROCEDURE

1. The case originated in an application (no. 17788/02) 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 Vasyl Petrovych Redka (“the applicant”), on 26 March 2002.

2. The Ukrainian Government (“the Government”) were represented by their Agent, Mr Y. Zaytsev.

3. On 13 December 2005 the Court decided to communicate the complaints under Article 6 § 1 and Article 13 of the Convention concerning the length of the proceedings, including their enforcement stage, 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 1967 and lives in Kyiv.

A. Judicial proceedings on account of the applicant's reinstatement

5. In August 2000 the applicant was dismissed from his position as a senior tax inspector (*старший державний податковий інспектор*) of the Moskovsky District Tax Inspectorate of Kyiv (the “Moskovsky Inspectorate,” *Державна податкова інспекція у Московському районі м. Києва*). On 6 September 2000 he instituted civil proceedings in the Moskovsky District Court of Kyiv (*Московський районний суд м. Києва*) seeking his reinstatement, compensation for lost income and moral damage. Subsequently the proceedings were transferred to the Vatutinsky District Court of Kyiv¹ (the “District Court,” *Ватутінський районний суд м. Києва*).

6. On 2 August 2001 the District Court ordered the applicant's reinstatement and awarded him 4,040.41 Ukrainian hryvnias (“UAH”)² in compensation for lost income and UAH 600³ in compensation for moral damage. Pursuant this judgment, the applicant was reinstated and paid the compensation equivalent to his one-month income.

7. On 26 September 2001 the applicant resigned from the civil service.

8. On 5 November 2001 the Kyiv City Court of Appeal (“the Court of Appeal,” *Апеляційний суд м. Києва*) upheld the judgment of 2 August 2001 in part ordering the applicant's reinstatement and recalculated the amount of compensation due to him. In particular, the Court of Appeal awarded the applicant UAH 6,031.65⁴ in compensation for lost income and UAH 200⁵ in compensation for moral damage.

9. On 30 November 2001, due to the mergers of the city administrative districts, the Moskovsky Inspectorate was liquidated and replaced by the Golosiyivsky District Inspectorate (the “Golosiyivsky Inspectorate”; *Державна податкова інспекція у Голосіївському районі м. Києва*).

10. On 7 March 2002 the Supreme Court rejected the requests for leave to appeal in cassation submitted by the Moskovsky (Golosiyivsky) Inspectorate and the applicant's representative.

B. Enforcement proceedings

11. On 20 December 2001 the District Court issued an enforcement writ for the judgment of 5 November 2001 indicating the Moskovsky Inspectorate as the debtor.

1. Due to the changes in the administrative districts in the city of Kyiv, in 2001 the Vatutinsky District Court merged with another district court and became the Desnyansky District Court (*Деснянський районний суд м. Києва*).

2. 855.20 euros (“EUR”).

3. EUR 126.99.

4. EUR 1,261.92.

5. EUR 32.70.

12. On 21 December 2001 the applicant submitted the writ to the Golosiyivsky District Bailiffs' Service (the "Bailiffs"; *Відділ Державної виконавчої служби Голосіївського районного управління юстиції м. Києва*).

13. On 8 January 2002 the Bailiffs initiated the enforcement proceedings and on 31 January 2002 submitted an invoice to the National Bank (*Національний Банк України*).

14. Having received no response from the National Bank, on 12 April and 9 July 2002 the Bailiffs requested the District Court to issue a duplicate enforcement writ. Having received a duplicate writ without a seal on 12 August 2002, the Bailiffs returned it to the District Court for validation. On 26 March 2003 the District Court informed the applicant that it had never received the returned duplicate writ.

15. On 13 May 2003 the Bailiffs requested the District Court to issue another duplicate writ. On 4 June 2003 the District Court fulfilled this request, indicating the Moskovsky Inspectorate as the debtor.

16. On 6 August 2003 the Golosiyivsky Inspectorate paid the applicant UAH 6,031.65¹ in compensation for lost income due to him by the judgment at issue (97% of the judgment debt).

17. On 14 August 2003 the State Treasury (*Відділення Державного Казначейства у Голосіївському районі м. Києва*) rejected the Bailiffs' request to pay the remainder award of UAH 200² (3% of the debt) in compensation for moral damage, having noted that the Moskovsky Inspectorate had been liquidated in 2001.

18. On 18 August 2003 the Bailiffs terminated the enforcement proceedings on account of the debtor's liquidation and returned the writ to the applicant informing him of his right to re-introduce it at a later date.

19. According to the Government's submissions, in June 2006 the remainder judgment debt of UAH 200³ was transferred to the Bailiffs' account. On 30 June and 25 September 2006 the Bailiffs requested the applicant to provide his banking details to effect the money transfer, but he never responded.

II. RELEVANT DOMESTIC LAW

20. The relevant domestic law is summarised in the judgment of *Vasylyev v. Ukraine*, (no. 10232/02, §§ 19-22, 13 July 2006).

1. EUR 1,261.92.

2. EUR 32.70.

3. EUR 32.70.

THE LAW

I. SCOPE OF THE CASE

21. The Court notes that after the case had been communicated to the respondent Government, the applicant introduced a new complaint about having been allegedly harassed in 2001 by certain officers of the Organized Crime Police Department in connection with his proceedings against the Tax Inspectorate. He presented copies of his complaints about these officers filed with the national authorities and their respective answers. Neither the complaints, nor the answers have mention of the Tax Inspectorate or the proceedings against it and, instead, refer to the applicant's questioning in connection with a criminal investigation against third persons.

22. In the Court's view, the new complaint is not an elaboration of the applicant's original complaints to the Court, lodged more than three years earlier and which had been communicated to the respondent Government. The Court considers, therefore, that it is not appropriate now to consider it (see *Piryanik v. Ukraine*, no. 75788/01, § 20, 19 April 2005).

II. ADMISSIBILITY

A. Complaints about the length of proceedings including their enforcement stage

23. The applicant complained that the length of the civil proceedings in respect of his reinstatement and compensation claims, including their enforcement stage, was incompatible with the “reasonable time” requirement of Article 6 § 1 of the Convention and that he had no effective domestic remedies for this complaint as required by Article 13 of the Convention. The Convention provisions in question 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.”

24. The Government submitted that Article 6 § 1 was applicable to the proceedings at issue. They submitted no further observations on the admissibility of the applicant's complaints.

25. The Court recalls that the proceedings at issue concerned the applicant's reinstatement claim, which, pursuant the national law, was treated as an ordinary labour dispute. Under the general rule, such proceedings are presumed to fall within the ambit of Article 6 § 1, unless the Government presents a valid argument to the contrary (see *Vilho Eskelinen and Others v. Finland* [GC], no. 63235/00, §§ 62-64, 19 April 2007). As the Government presented no such argument, the Court is satisfied that Article 6 § 1 applies to the circumstances of the present case.

26. The Court further observes that the applicant's enforcement proceedings cannot be dissociated from his court action (see, as a recent authority, *Sika v. Slovakia*, no. 2132/02, §§ 23-26, 13 June 2006) and that the applicant's complaints under Articles 6 § 1 and 13 of the Convention about their unreasonable length and the absence of a remedy in that respect raise issues of fact and law under the Convention. The Court finds that these complaints are not inadmissible on any ground and their determination requires an examination on the merits.

B. Other complaints

27. The applicant additionally complained that the amount of compensation awarded to him was inadequate and that the proceedings as a whole were generally unfair. In his submissions, he relied on Articles 6 § 1, 8, 14, 17 and 41 of the Convention.

28. Having carefully examined the applicant's submissions in the light of all the material in its possession and insofar as the matters complained of are within its competence, the Court finds that there is no appearance of a violation of the rights and freedoms set out in the Convention or its protocols.

29. 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. MERITS

A. The applicant's complaint under Article 6 § 1 of the Convention

30. In their observations on the merits of the applicant's complaints, the Government contended that there had been no violation of Article 6 § 1.

31. The applicant disagreed.

32. The Court reiterates that the applicant initiated the “determination” of his “civil rights and obligations” within the meaning of Article 6 § 1 of the Convention by his civil action in September 2000. This action eventually led to the adoption of a court judgment of 5 November 2001, which became final on 7 March 2002. Therefore, the length of proceedings in their judicial phase was one year and six months, during which period the applicant's claims were considered by the courts of three levels of jurisdiction. Subsequently, on 21 December 2001 the applicant requested the initiation of the enforcement proceedings, but was unable to collect the full amount of the judgment debt due to him until July 2006, when, according to the Government, last, though minor outstanding amount was made available to him. This information was not disputed by the applicant. Therefore, the enforcement stage of the proceedings lasted for another four years and six months.

33. The Court reiterates that the reasonableness of the length of proceedings must be assessed in the light of the circumstances of the case and with reference to the following criteria: the complexity of the case, the conduct of the applicant and the relevant authorities and what was at stake for the applicant in the dispute (see, among many other authorities, *Frydlender v. France* [GC], no. 30979/96, § 43, ECHR 2000-VII).

34. The Court notes that the delay in the proceedings at issue was mostly caused by the non-enforcement of a final judgment given in the applicant's favour. The Court has frequently found violations of Article 6 § 1 of the Convention in cases raising issues similar to the one in the present case (see, e.g., *Sika v. Slovakia*, cited above, § 35, and *Vasylyev v. Ukraine*, no. 10232/02, § 36, 13 July 2006).

35. 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. Having regard to its case-law on the subject, the Court considers that in the instant case the length of the proceedings, in particular in their enforcement stage, was excessive and failed to meet the “reasonable time” requirement.

36. There has accordingly been a breach of Article 6 § 1.

B. The applicant's complaint under Article 13 of the Convention

37. In their observations on the merits of the applicant's complaints, the Government contended that there had been no violation of Article 13.

38. The applicant disagreed.

39. The Court notes that it has already found a violation of Article 13 of the Convention in cases raising issues similar to the present application (see, for instance, *Vasylyev v. Ukraine*, cited above, § 41). The Court finds no ground to depart from its case-law in the present case.

40. There has, accordingly, been a violation of Article 13 of the Convention.

IV. APPLICATION OF ARTICLE 41 OF THE CONVENTION

41. 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

42. The applicant claimed UAH 146,900 (EUR 23,838) in respect of pecuniary and UAH 51,033,500 (EUR 8,332,285) in respect of non-pecuniary damage inflicted by violation of his rights under Articles 6 § 1, 8, 13, 14, 17 and 41 of the Convention.

43. The Government submitted that there is not causal link between the applicant's complaint about the length of the proceedings and the damage alleged.

44. The Court recalls that the applicant had received 97% of the judgment debt before the case was communicated to the Government, and the remainder debt of UAH 200 (EUR 32.70) had been made available to him by July 2006. Having regard to the circumstances of the case and making its assessment on an equitable basis, as required by Article 41 of the Convention, the Court awards the applicant EUR 200 in respect of non-pecuniary damage.

B. Costs and expenses

45. The applicant also claimed UAH 43,700 (EUR 7,134.94) for legal fees and other expenses incurred in connection to his domestic and Convention proceedings. He presented a copy of his contract of 12 August 2001 with Mr S., a licensed advocate, pursuant which the applicant had to pay a monthly fee of at least UAH 500 (EUR 106.20) for representation in his reinstatement case.

46. The Government noted that the applicant did not present any proof that the claimed expenses had been actually and necessarily incurred.

47. The Court recalls that the case at issue is of no particular complexity, the applicant had no representative in his Convention proceedings and was granted leave to use the Russian language. However, the applicant may have incurred some costs and expenses in connection with his Convention complaints, particularly, for representation before domestic Bailiffs and other authorities. Regard being had to the information in its possession and the Court's case-law (see e.g., *Romanchenko v. Ukraine*, no. 5596/03, § 38, 22 November 2005), the Court awards the applicant EUR 300 under this head.

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 applicant's complaints under Article 6 § 1 and 13 of the Convention concerning the length of the civil proceedings, including their enforcement stage, 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 there has been a violation of Article 13 of the Convention;
4. *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, EUR 500 (five hundred euros) in respect of non-pecuniary damage and costs and expenses to 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;
 - (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;
5. *Dismisses* the remainder of the applicant's claims for just satisfaction.

Done in English, and notified in writing on 21 June 2007, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Claudia WESTERDIEK
Registrar

Peer LORENZEN
President