



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

FIFTH SECTION

CASE OF BLANUTSA v. UKRAINE

(Application no. 35274/03)

JUDGMENT

STRASBOURG

20 September 2007

FINAL

20/12/2007

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 *Blanutsa v. Ukraine*,

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

Mr P. LORENZEN, *President*,

Mr V. BUTKEVYCH,

Mrs M. TSATSA-NIKOLOVSKA,

Mr R. MARUSTE,

Mr J. BORREGO BORREGO,

Mrs R. JAEGER,

Mr M. VILLIGER, *judges*,

and Mrs C. WESTERDIEK, *Section Registrar*,

Having deliberated in private on 28 August 2007,

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

PROCEDURE

1. The case originated in an application (no. 35274/03) 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 Aleksandr Semyonovich Blanutsa (“the applicant”), on 3 October 2003.

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

3. On 11 May 2006 the Court decided to communicate the complaint concerning the non-enforcement of the judgment 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 1937 and lives in the city of Mykolayiv.

1. Non-enforcement of the judgment given in the applicant's favour

5. The applicant is a former employee of the State-owned enterprise “Mashproekt” (hereinafter “MP”). In June 1999 staff of this enterprise

refused to issue upon the applicant's request a certificate about his work and salary, which he required for the re-calculation of his retirement pension.

6. On 14 December 1999 the Leninsky District Court of Mykolayiv (hereinafter “the District Court”) ordered MP to provide the applicant with the requested certificate. In particular, the court ordered MP to certify that as of 30 March 1978 the applicant worked as the head of one of MP's departments. This judgment became final on 19 January 2000.

7. On 24 February 2000 the Leninsky Bailiffs' Office of Mykolayiv (hereinafter “the Bailiffs”) instituted the enforcement proceedings. On 29 March 2000 the proceedings were terminated.

8. On 2 August 2000 the District Court ordered the Bailiffs to resume the enforcement proceedings.

9. On 23 August 2002 the Bailiffs terminated the enforcement proceedings as the director of MP had sent a letter to the applicant.

10. In September 2002 the applicant lodged an administrative complaint against this decision.

11. On 18 January 2005 the District Court quashed the Bailiffs' decision of 23 August 2002 and ordered resumption of the enforcement proceedings.

12. On 30 May 2005 the enforcement proceedings were resumed.

13. On 18 November 2005 the enforcement proceedings were terminated as on 17 November 2005 MP provided the applicant with the certificate.

14. On 13 November 2006 the Head of the Bailiffs quashed the decision of 18 November 2005 on the ground that the certificate provided to the applicant did not comply with the requirements ordered by the judgment of 14 December 1999.

15. The judgment of 14 December 1999 remains unenforced.

2. Other proceedings instituted by the applicant against MP

16. In January 2002 the applicant lodged an administrative complaint against the director of MP seeking to be admitted to his work position.

17. On 8 February 2002 the District Court left the applicant's claim without consideration as the issue should be examined within the civil proceedings.

18. On 3 April 2002 the Mykolayiv Regional Court of Appeal (hereinafter “the Court of Appeal”) quashed this ruling and remitted the case for a fresh consideration.

19. On 17 February 2003 the District Court left the applicant's administrative complaint without consideration and explained that the applicant should lodge a claim within the civil proceedings.

20. On 23 April 2003 and 5 July 2004 the Court of Appeal and the Supreme Court, respectively, upheld this ruling.

II. RELEVANT DOMESTIC LAW

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

THE LAW

I. SCOPE OF THE CASE

22. The Court notes that after the communication of the case to the respondent Government the applicant introduced new complaints concerning other proceedings against the staff of MP.

23. In the Court's view, the new complaints are not an elaboration of the applicant's original complaints to the Court on which the parties have commented. The Court considers, therefore, that it is not appropriate now to take these matters up separately (see *Piryanik v. Ukraine*, no. 75788/01, § 20, 19 April 2005).

II. ALLEGED VIOLATION OF ARTICLE 6 § 1 OF THE CONVENTION

24. The applicant complained about the infringement of Article 6 § 1 of the Convention caused by the lengthy non-enforcement the judgment of 14 December 1999 given in his favour. The above provision provides, insofar as relevant, as follows:

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

A. Admissibility

25. The Court notes 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. It must therefore be declared admissible.

B. Merits

26. In their observations, the Government submitted that the Bailiffs took all necessary measures aimed at enforcement of the judgment at issue and contended that there had been no violation of Article 6 § 1 of the Convention in the applicant's respect.

27. The applicant disagreed.

28. The Court notes that the judgment given in the applicant's favour remains unenforced for seven years and eighth month.

29. The Court observes that in November 2005, i.e. five years and eleven months after the judgment of 14 December 1999 was given, the administration of MP did provide the applicant with the certificate. However, finding that this certificate did not comply with the said judgment, the Head of the Bailiffs resumed the enforcement proceedings. The Court further notes that the measures adopted by the Bailiffs in the course of the enforcement proceedings and referred to by the Government appeared ineffective.

30. The Court recalls that it has already found violation of Article 6 § 1 of the Convention in a number of similar cases (see *Romashov*, cited above, §§ 42-46, and *Voytenko v. Ukraine*, no. 18966/02, §§ 53-55, 29 June 2004).

31. Having examined all the material in its possession, 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.

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

III. OTHER ALLEGED VIOLATIONS OF THE CONVENTION

33. The applicant further complained under Article 6 § 1 of the Convention about the unfair outcome of the proceedings instituted by him in January 2002. The applicant further complained under Article 14 of the Convention about discrimination.

34. However, in the light of all the materials in its possession, 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.

35. It follows that these parts of the application must be declared inadmissible as being manifestly ill-founded, pursuant to Article 35 §§ 1, 3 and 4 of the Convention.

IV. APPLICATION OF ARTICLE 41 OF THE CONVENTION

36. 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

37. The applicant claimed EUR 87,000 in respect of pecuniary and EUR 80,000 in respect of non-pecuniary damage.

38. The Government maintained that the applicant's claims were exorbitant and non-substantiated.

39. The Court does not discern any causal link between the violation found and the pecuniary damage alleged. At the same time, the Court reiterates that a judgment in which it finds a breach imposes on the respondent State a legal obligation to put an end to the breach and make reparation for its consequences in such a way as to restore as far as possible the situation existing before the breach (*Metaxas v. Greece*, no. 8415/02, § 35, 27 May 2004 and *Iatridis v. Greece* (just satisfaction) [GC], no. 31107/96, § 32, ECHR 2000-XI). Therefore, the Court concludes that the State's outstanding obligation to enforce the judgment given in the applicant's favour is not in dispute.

40. As to the remainder of the applicant's claim for just satisfaction, the Court, making its assessment on an equitable basis, as required by Article 41 of the Convention, awards the applicant EUR 2000 (two thousand euros) in respect of non-pecuniary damage.

B. Costs and expenses

41. The applicant failed to submit any claim; the Court therefore makes no award.

C. Default interest

42. 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 complaint concerning the non-enforcement of the judgment in the applicant's favour 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*
 - (a) that the respondent State, within three months from the date on which the judgment becomes final in accordance with Article 44 § 2 of the Convention, is to fulfil the judgment of 14 December 1999 given by the Leninsky District Court of Mykolayiv in the applicant's favour as well as to pay the applicant EUR 2000 (two thousand euros) in respect of non-pecuniary damage 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;
4. *Dismisses* the remainder of the applicant's claim for just satisfaction.

Done in English, and notified in writing on 20 September 2007, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Claudia WESTERDIEK
Registrar

Peer LORENZEN
President