



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

FIFTH SECTION

**CASE OF BALATSKYY v. UKRAINE**

*(Application no. 34786/03)*

JUDGMENT

STRASBOURG

25 October 2007

**FINAL**

***25/01/2008***

*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 Balatskyy v. Ukraine,**

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

Mr P. LORENZEN, *President*,

Mrs S. BOTOUCHAROVA,

Mr K. JUNGWIERT,

Mr V. BUTKEVYCH,

Mrs M. TSATSA-NIKOLOVSKA,

Mr R. MARUSTE,

Mr M. VILLIGER, *judges*,

and Mrs C. WESTERDIEK, *Section Registrar*,

Having deliberated in private on 2 October 2007,

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

**PROCEDURE**

1. The case originated in an application (no. 34786/03) 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 Volodymyr Vasylyovych Balatskyy (“the applicant”), on 27 September 2003.

2. The Ukrainian Government (“the Government”) were represented by Mr Y. Zaytsev, their Agent, and Mrs I. Shevchuk, Head of the Office of the Government Agent before the European Court of Human Rights.

3. On 26 October 2006 the Court decided to communicate the complaints concerning the lack of access to a court and the length of the proceedings to the Government. Applying Article 29 § 3 of the Convention, it decided to rule on the admissibility and merits of the application at the same time.

**THE FACTS****THE CIRCUMSTANCES OF THE CASE**

4. The applicant was born in 1958 and lives in Blidcha, the Kyiv region.

### **A. Background**

5. In September 2000 the applicant, a teacher at the Blidcha secondary education school (hereinafter “the School”; *Блідчанська загальноосвітня школа*), learned that his teaching hours, and, accordingly, his remuneration, were reduced as compared to the previous academic year.

6. Seeking to restore his teaching hours and his remuneration, the applicant lodged two civil actions against the School with the Ivankivsky District Court (“the District Court,” *Іванківський районний суд Київської області*): civil action no. 2-384/2001 (“the reinstatement action”) and civil action no. 473/2001 (“the unlawful transfer action”).

### **B. The reinstatement action (no. 2-384/2001)**

7. On 10 January 2001 the applicant lodged an action alleging that he had been unlawfully dismissed from his previous job and seeking reinstatement and compensation for lost income.

8. On 8 August 2001 the District Court dismissed the applicant's claims as lodged outside the one-month statutory time-limit for lodging reinstatement actions. In its judgment, the court referred to 24 November 2000 as the date of lodging (the date of instituting the unlawful transfer action, see section C below).

9. On 7 December 2001 the Kyiv Regional Court of Appeal (“the Regional Court,” *Апеляційний суд Київської області*) upheld this judgment.

10. On 29 March 2002 the Supreme Court rejected the applicant's request for leave to appeal in cassation.

### **C. The “unlawful transfer” action (no. 473/2001)**

11. On 24 November 2000 the applicant lodged an action complaining that he had been unlawfully transferred to a position with lower remuneration.

12. On 29 November 2000 the District Court gave the applicant a time-limit to rectify the shortcomings in his statement of claim. In particular, the court instructed him to clarify his claims and pertinent factual circumstances. On 12 December 2000 the applicant submitted an addendum to his statement of claim.

13. On 22 December 2000 the District Court returned the applicant's submissions as “not lodged” on account of his failure to rectify the shortcomings in his statement of claim. The applicant appealed in cassation.

14. By letter of 16 January 2001, the District Court returned the applicant's appeal in cassation, having noted that the decision of 22 December 2000 was final and not subject to appeal.

15. The applicant complained to the Regional Court about the District Court's blocking his appeal in cassation. On 3 April 2001 the Deputy President of the Regional Court instructed the District Court that the decision in question could be appealed against.

16. Following these instructions, the District Court transferred the applicant's appeal in cassation to the Regional Court. On 29 May 2001 the Regional Court quashed the decision of 22 December 2000 and remitted the case to the District Court for a fresh consideration. The Regional Court found that the District Court had failed to indicate the shortcomings, not rectified by the applicant's addendum of 12 December 2000.

17. On 1 August 2001 the District Court refused to initiate proceedings in respect of the applicant's claims. It stated that the applicant's pending reinstatement proceedings (action no. 2-384/2001 described in section B above) raised the same issues of fact and law. The applicant appealed.

18. On 21 September 2001 the Regional Court quashed the decision of 1 August 2001 and remitted the case to the District Court for a fresh consideration. The Regional Court found that the applicant had lodged the action at issue prior to initiating his reinstatement proceedings. Accordingly, this action could not be rejected on the ground that the reinstatement proceedings were pending.

19. Subsequently, the District Court took no further actions in the proceedings, although the applicant submitted numerous complaints about its inactivity to various authorities. On 29 June 2006 the President of the District Court explained to the applicant that the examination of the action at issue would be redundant, as there was a definitive decision concerning his reinstatement action (no. 2-384/2001).

20. The proceedings are pending before the District Court.

#### **D. Other events**

##### *1. Criminal proceedings against Mrs K.*

21. The applicant unsuccessfully attempted to institute criminal proceedings against Mrs K., the School director, for various allegedly unlawful acts directed against him.

##### *2. Civil proceedings against the courts*

22. The applicant lodged a civil complaint against the District Court for its failure to adjudicate his claims raised in the unlawful transfer proceedings. On 4 February 2003 the Regional Court refused to initiate the proceedings, having found that the domestic law envisaged no right to bring litigation against a judicial authority for its procedural conduct in civil

proceedings. The applicant unsuccessfully attempted to challenge this decision and the conduct of the Regional Court before the Supreme Court.

## THE LAW

### I. ALLEGED VIOLATION OF ARTICLE 6 § 1 OF THE CONVENTION IN RESPECT OF THE UNLAWFUL TRANSFER PROCEEDINGS

23. The applicant alleged two violations of Article 6 § 1 of the Convention, which 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...”

24. Firstly, he complained that he was deprived of his right of access to a court because the Ivankivsky District Court had refused to take any decision in respect of his unlawful transfer action.

25. Secondly, he complained that the length of the aforementioned proceedings, instituted on 24 November 2000, had exceeded a “reasonable time”.

#### A. Admissibility

26. The Government submitted no observations on admissibility of these complaints.

27. The Court notes that these complaints 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.

#### B. Merits

##### *1. Access to a court*

28. The Government maintained that the failure of the domestic judicial authorities to take a final decision in the unlawful transfer proceedings has not compromised the applicant's right of access to a court. In this regard they noted that the applicant's claims, raised in the reinstatement proceedings, and the claims, raised in the proceedings at issue, were identical. Hence, the final resolution of the applicant's reinstatement claims in the Supreme Court's decision of 29 March 2002 (see paragraph 10 above)

made it redundant to consider the same claims under the head of an “unlawful transfer”.

29. The applicant disagreed, maintaining that the two actions were not identical. *Inter alia*, different statutory time-limits applied for lodging them. Even had the two sets of proceedings been identical, the courts should have adopted a formal final decision in this regard, which they failed to do.

30. The Court reiterates that it would be inconceivable for Article 6 § 1 to describe in detail procedural guarantees afforded to litigants – proceedings that are fair, public and expeditious – without guaranteeing the parties that their civil disputes will be finally determined (see *Multiplex v. Croatia*, no. 58112/00, § 45, 10 July 2003; *Kutić v. Croatia*, no. 48778/99, § 25, ECHR 2002-II and *Sukhorubchenko v. Russia*, no. 69315/01, § 43, 10 February 2005).

31. Turning to the facts of the present case, the Court recalls that on 24 November 2000 the applicant lodged an action alleging that he had been unlawfully transferred to a position with lower remuneration. By the last decision given in the case on 21 September 2001, the Court of Appeal obliged the District Court to reconsider the issue of admissibility of his complaint, having found unpersuasive its previous decision to dismiss it on the ground that the reinstatement proceedings, raising the same issue, had been pending. The District Court has since failed to take any formal decision in the case. Its explanation that the two sets of proceedings were identical, given to the applicant in an informal letter of 29 June 2006 (see paragraph 19 above), which could not be appealed against, does not, in the Court's view, provide a plausible explanation for its failure to take a formal decision as instructed by the Court of Appeal. More so, the Court recalls that the applicant's reinstatement claims were finally dismissed on account of his failure to comply with the reinstatement-specific statutory time-limit for instituting them (see paragraphs 8-10 above). Therefore, it is not obvious that the examination of the admissibility of the applicant's “unlawful transfer” claim, whether or not it was identical in substance with the reinstatement claim, would have yielded the same result.

32. In view of the above, the Court considers that the Government has not advanced a plausible explanation for the failure of the domestic judicial authorities to take a formal final decision in the applicant's unlawful transfer proceedings after the case had been sent for a fresh consideration on 21 September 2001.

33. There has accordingly been a breach of Article 6 § 1 in respect of the applicant's right of access to a court.

## 2. Length of proceedings

34. The Government maintained that the overall length of proceedings was one year and four months for three levels of jurisdiction and not excessive.

35. The applicant disagreed.

36. The Court recalls that the delay in the proceedings at issue in the present case has been caused by the failure of the domestic authorities to take a formal final decision in respect of the applicant's unlawful transfer claims. The Court has already taken this aspect into account in its examination of the applicant's right of access to a court above. Having regard to its findings on that point, it considers that it is not necessary to examine separately the issue of the length of the unlawful transfer proceedings.

## II. OTHER ALLEGED VIOLATIONS OF THE CONVENTION

37. In addition, the applicant complained under Article 6 § 1 of the Convention about the refusal of judicial authorities to adjudicate his claims against the courts and his inability to institute criminal proceedings against Mrs K., the School director.

38. 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 they do not disclose any appearance of a violation of the rights and freedoms set out in the Convention.

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 compensation for the loss of income as well as 3,000 hryvnyas (467 euros (EUR)) in non-pecuniary damage for the reduction of his teaching hours. He further claimed 10,000 hryvnyas (1,560 EUR) in moral damage for the courts' failure to decide on his claims relating to the allegedly unlawful transfer.

42. The Government contested these claims.

43. The Court does not discern any causal link between the violation found and the damage allegedly sustained on account of the reduction of the

applicant's teaching hours. On the other hand, it awards the applicant the amount claimed (EUR 1,560) in respect of non-pecuniary damage sustained on account of the domestic courts' failure to take a decision concerning his unlawful transfer claims.

### **B. Costs and expenses**

44. The applicant also claimed EUR 80 for the costs and expenses incurred before the domestic courts and before the Court, including copying, typing, travel and postal expenses.

45. The Government contested the claim.

46. The Court considers it reasonable to award the applicant the full amount claimed.

### **C. Default interest**

47. 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 concerning the lack of access to a court and excessive length of the unlawful transfer proceedings 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 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 1,640 (one thousand six hundred and forty 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;
4. *Dismisses* the remainder of the applicant's claim for just satisfaction.

Done in English, and notified in writing on 25 October 2007, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Claudia WESTERDIEK  
Registrar

Peer LORENZEN  
President