



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

FIFTH SECTION

CASE OF GAYKOVYCH v. UKRAINE

(Application no. 38931/02)

JUDGMENT

STRASBOURG

20 December 2007

FINAL

20/03/2008

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 Gaykovych v. Ukraine,

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

Mr P. LORENZEN, *President*,

Mrs S. BOTOCHAROVA,

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 27 November 2007,

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

PROCEDURE

1. The case originated in an application (no. 38931/02) 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, Mrs Nella Antonivna Gaykovych (“the applicant”), on 24 September 2002.

2. The applicant was represented by Mr Kostyantyn Buzadzhy, a lawyer practising in Kyiv. The Ukrainian Government (“the Government”) were represented by their Agent, Mr Yuriy Zaytsev.

3. On 7 March 2007 the Court decided to communicate the complaint concerning the lengthy 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 1940 and lives in Kyiv.

5. On 10 September 1998 the Leningradsky District Court of Kyiv instituted criminal proceedings against the applicant for defamation.

6. On 4 February 2000 the same court found the applicant guilty.

7. On 3 August 2000 the Kyiv Court quashed this decision and terminated criminal proceedings on exonerative grounds.

8. In July 2001 the applicant instituted civil proceedings against the Department of the State Treasury in the Svyatoshynsky District of Kyiv (hereafter “the Department”) seeking compensation for moral damage caused by the criminal proceedings.

9. On 16 January 2002 the Solomyansky District Court of Kyiv (hereafter “the Solomyansky Court”) allowed the applicant's claim and awarded her UAH 3,360 (EUR 600) in compensation.

10. On 28 March 2002 the Kyiv City Court of Appeal upheld this judgment and it became final. On 21 May 2003 the Supreme Court rejected the applicant's cassation appeal.

11. The writ of execution was issued on 26 June 2002, and the applicant submitted it to the Svyatoshynsky Bailiff's Service (hereafter “the Bailiffs”) on 23 July 2002.

12. On 25 July 2002 the Bailiffs suspended the opening of enforcement proceedings as the writ did not contain the debtor's bank requisites. The decision also indicated that the judgment of 16 January 2002 could not be enforced as it did not comply with the Law on the State Budget.

13. On 4 October 2002 the Solomyansky Court submitted to the Bailiffs a rectified writ.

14. On 27 January 2003 the Bailiffs attached the Department's bank account.

15. On 1 April 2003 the Bailiffs terminated the enforcement proceedings due to the respondent's lack of funds. The applicant was not informed about this decision in due time.

16. On 20 August 2003 the Svyatoshynsky District Court of Kyiv (hereafter “the Svyatoshynsky Court”) allowed the applicant's complaint against the Bailiffs' inactivity and found that the termination of the enforcement proceedings was unlawful.

17. On 26 September 2003 the enforcement proceedings were resumed.

18. On 10 December 2003 the Svyatoshynsky Court ordered to change the debtor in the case to the Central Office of the State Treasury.

19. On 18 December 2003 the Pechersky Bailiff's Service initiated the enforcement proceedings.

20. On 21 January 2004 the applicant was paid the judgment debt and the enforcement proceedings were terminated.

II. RELEVANT DOMESTIC LAW

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

THE LAW

I. ALLEGED VIOLATION OF ARTICLES 6 § 1 AND 13 OF THE CONVENTION AND ARTICLE 1 OF PROTOCOL NO. 1

22. Relying on Article 6 § 1 of the Convention and Article 1 of Protocol No. 1 the applicant complained about the lengthy non-enforcement of the judgment given in her favour. The applicant also complained under Article 13 of the Convention that she had no effective remedies in respect of her complaint under Article 6 § 1 and Article 1 of Protocol No. 1. These Articles 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.”

Article 1 of Protocol No. 1

Every natural or legal person is entitled to the peaceful enjoyment of his possessions. No one shall be deprived of his possessions except in the public interest and subject to the conditions provided for by law and by the general principles of international law.

The preceding provisions shall not, however, in any way impair the right of a State to enforce such laws as it deems necessary to control the use of property in accordance with the general interest ...”

A. Admissibility

23. The Government raised objections regarding exhaustion of domestic remedies and admissibility *ratione personae* similar to those already dismissed in a number of similar cases (see *Shestakov v. Russia* (dec.), no. 48757/99, 18 June 2002 and *Skubenko v. Ukraine* (dec.), no. 41152/98, 6 April 2004). The Court considers that the present objections must be rejected for the same reasons.

24. The Court concludes that the applicant's complaints under Articles 6 § 1 and 13 of the Convention and Article 1 of Protocol No. 1 raise issues of fact and law under the Convention, the determination of which requires an examination of the merits. It finds no ground for declaring them inadmissible.

B. Merits

1. The applicant's complaints under Article 6 § 1 of the Convention and Article 1 of Protocol No. 1

25. In their observations, the Government reiterated that the judgment of 16 January 2002 in the applicant's favour had been enforced in full. They further indicated that the Bailiffs had performed all necessary actions in order to enforce the judgment in question.

26. The applicant disagreed.

27. The Court notes that the judgment of 16 January 2002 remained unenforced for one year and ten months.

28. The Court recalls that it has already found violation of Article 6 § 1 of the Convention and Article 1 of Protocol No. 1 in cases raising issues similar to the present application (see, for instance, *Voytenko v. Ukraine*, cited above, §§ 39-43 and 53-55).

29. Having examined all the material submitted to it, the Court considers that the Government have not put forward any fact or convincing argument capable of persuading it to reach a different conclusion in the present case.

30. There has, accordingly, been a violation of Article 6 § 1 of the Convention and Article 1 of Protocol No. 1.

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

31. The Government contended that the applicant had had an effective remedy at her disposal but had not used it.

32. The applicant disagreed.

33. The Court, having regard to its case-law, considers that the applicant did not have an effective domestic remedy, as required by Article 13 of the Convention, to redress the damage created by the delay in the present proceedings (see *Voytenko v. Ukraine*, cited above, § 48). Accordingly, there has been a breach of this provision.

II. OTHER ALLEGED VIOLATIONS OF THE CONVENTION

34. Lastly, the applicant complained under Articles 6 § 1 and 13 of the Convention and Article 3 of Protocol No. 7 that the amount of

compensation awarded to her by the judgment of 16 January 2002 was unreasonably low.

35. However, in the light of all the materials in its possession, the Court finds that these submissions do not disclose any appearance of a violation of the rights and freedoms set out in the Convention or its Protocols.

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

III. APPLICATION OF ARTICLE 41 OF THE CONVENTION

37. 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

38. The applicant claimed EUR 6,000 in respect of non-pecuniary damage.

39. The Government contested the claim as unsubstantiated and exorbitant.

40. The Court considers that the applicant must have sustained non-pecuniary damage. Ruling on an equitable basis, it awards her EUR 500 under that head.

B. Costs and expenses

41. In the present case the applicant failed to submit any claims; 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 lengthy non-enforcement of the judgment in the applicant's favour and the lack of the effective remedies in this respect 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 1 of Protocol No. 1;
4. *Holds* that there has been a violation of Article 13 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 in accordance with Article 44 § 2 of the Convention, EUR 500 (five hundred euros) in respect of non-pecuniary damage, plus any tax that may be chargeable, to be converted into the national currency of the respondent State at the rate applicable at the date of settlement;
 - (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 20 December 2007, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Claudia WESTERDIEK
Registrar

Peer LORENZEN
President