



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

FIFTH SECTION

CASE OF PTASHKO v. UKRAINE

(Application no. 6974/04)

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 Ptashko 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 27 November 2007,

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

PROCEDURE

1. The case originated in an application (no. 6974/04) 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 Viktor Mykolayovych Ptashko (“the applicant”), on 12 January 2004.

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

3. On 30 May 2006 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

4. The applicant, a former judge of the Kirovograd Regional Court of Appeal, was born in 1938 and lives in the city of Kirovograd.

5. On 5 February 2004 the applicant retired, following a respective decision of the Verkhovna Rada.

6. In November 2002 the applicant lodged a claim with the Pechersky District Court of Kyiv against the Ministry of Finance, the Ministry of Justice and the State Treasury, seeking payment of salary arrears and life-long judicial benefits (long-service bonus and welfare benefits).

7. On 16 December 2002 the Pechersky District Court of Kyiv allowed the applicant's claim and ordered the Ministry of Finances and the State Treasury of Ukraine to pay the applicant UAH 8,459.36¹.

8. On 9 July 2003 the Kyiv City Court of Appeal upheld this judgment and it became final.

9. On 11 August 2003 the Bailiffs' Office of the Pechersky District of Kyiv informed the applicant that he had to address the State Treasury of Ukraine directly.

10. On 10 November 2003 the State Treasury informed the applicant that there were no funds available in the budget to enforce the judgment of 16 December 2002.

11. On 5 November 2004 the applicant received the sum awarded to him by the judgment of 16 December 2002.

II. RELEVANT DOMESTIC LAW AND PRACTICE

12. The relevant domestic law and practice are summarised in the judgment of *Zubko and Others v. Ukraine* (nos. 3955/04, 5622/04, 8538/04 and 11418/04, §§ 33-43, 26 April 2006).

THE LAW

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

13. The applicant complained under Article 6 § 1 of the Convention about the lengthy non-enforcement of the judgment of 16 December 2002 and about a violation of his right to the peaceful enjoyment of possessions as guaranteed by Article 1 of Protocol No. 1. The Articles invoked, in so far as relevant, provide 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...”

¹. EUR 1,601.92.

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 or to secure the payment of taxes or other contributions or penalties.”

A. Admissibility

14. 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 these objections must be rejected for the same reasons.

15. The Court notes that the application 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

16. The Government contended that the delay in enforcement of the judgment given in the applicant's favour was reasonable and due to the lack of funds in the State budget.

17. The applicant disagreed.

18. The Court notes that the judgment of 16 December 2002 remained unenforced for almost sixteen months after it became final on 9 July 2003.

19. The Court recalls that it has already found violations 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, *Zubko and Others v. Ukraine*, cited above, *Shmalko v. Ukraine*, no. 60750/00, 20 July 2004 and *Voytenko v. Ukraine*, no. 18966/02, 29 June 2004).

20. 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.

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

II. APPLICATION OF ARTICLE 41 OF THE CONVENTION

22. 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

23. The applicant claimed 30,000 euros (EUR) in respect of pecuniary and non-pecuniary damage without specifying the amount or character of pecuniary damage caused to him.

24. The Government argued that this claim was unsubstantiated and the amount claimed exorbitant.

25. The Court considers that in spite of the fact that the applicant failed to substantiate his pecuniary damage claim he may be considered to have suffered some non-pecuniary damage as a result of the serious violation found which cannot be compensated by the Court's finding of a violation alone. Making its assessment on an equitable basis, as required by Article 41 of the Convention, the Court considers it reasonable to award the applicant the sum of EUR 5,000 in non-pecuniary damage (see *Zubko and Others v. Ukraine*, § 74, cited above).

B. Costs and expenses

26. In the present case the applicant failed to submit any claims; the Court therefore makes no award.

C. Default interest

27. 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 application admissible;
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 to 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 in accordance with Article 44 § 2 of the Convention, EUR 5,000 (five thousand 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;
5. *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