



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

FIFTH SECTION

CASE OF PRYPIYALO v. UKRAINE

(Application no. 75801/01)

JUDGMENT

STRASBOURG

31 January 2008

FINAL

30/04/2008

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 Prypiyalo v. Ukraine,

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

Peer Lorenzen, *President*,
Snejana Botoucharova,
Karel Jungwiert,
Volodymyr Butkevych,
Margarita Tsatsa-Nikolovska,
Rait Maruste,
Mark Villiger, *judges*,

and Claudia Westerdiek, *Section Registrar*,

Having deliberated in private on 8 January 2008,

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

PROCEDURE

1. The case originated in an application (no. 75801/01) 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 Mykhaylo Andriyovych Prypiyalo (“the applicant”) on 27 March 2001.

2. The Ukrainian Government (“the Government”) were represented by their Agents, Mrs Z. Bortnovska, Mrs V. Lutkovska and Mr Y. Zaytsev.

3. On 19 January 2004 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 was born in 1927. He died on 23 May 2005. In a letter of 17 January 2006, the applicant's wife Mrs Yelisaveta Vadymivna Prypiyalo (Ratushna) informed the Court that she wished to pursue the application.

A. Expropriation proceedings

5. In August 1972 the Prosecutor of the Cherkassy District (*Прокурор Черкаського району*) brought proceedings against the applicant's late mother claiming that her house in the town of Smila should be expropriated as having been built without proper authorisation of the competent local authorities. On 9 March 1973 the People's Court of the Cherkassy District (*Народний суд Черкаського району*) allowed this application. On 11 April 1973 this judgment was upheld on appeal.

6. On 27 December 1989 the Supreme Court of the Ukrainian Soviet Socialist Republic (*Верховний Суд УРСР*), acting as a supervisory instance, quashed the above judgment and remitted the case for rehearing.

7. After several rounds of court proceedings on 30 January 1992 the Smiliansky Town Court (*Смілянський міський суд*) dismissed the prosecutor's application and found the expropriation of the house concerned unlawful. On 4 March 1992 the Cherkassy Regional Court (*Черкаський обласний суд*) rejected the appeal of the Smila Town Council and upheld this judgment.

B. Eviction proceedings

8. As the expropriated house was rented by the Smila Town Council to third persons, the applicant brought proceedings for their eviction. This claim was eventually dismissed by the Cherkassy Regional Court on 7 June 1995.

C. Compensation proceedings

1. Judicial stage

9. On an unspecified date in 1997 the applicant instituted proceedings against various municipal and State authorities claiming damages incurred by the unlawful expropriation of the disputed house.

10. On 6 March 1998 the Sosnivsky District Court (*Соснівський районний суд*, hereafter “the Sosnivsky Court”) rejected the applicant's claim as unsubstantiated. On 13 March 1998 the Cherkassy Regional Court upheld the applicant's appeal, quashed this judgment and remitted the case to the Sosnivsky Court for a fresh consideration.

11. On an unspecified date the Cherkassy Regional Court withdrew the case from the Sosnivsky Court and examined it in the first instance.

12. On 22 October 1999 the Cherkassy Regional Court partly allowed the applicant's claim, awarding him UAH 12,839.36¹ in compensation for

1. Around 2,607 euros (EUR) at the material time

the unlawful expropriation of the house, to be paid by the Cherkassy Regional Department of the State Treasury of Ukraine (*Управління державного казначейства України в Черкаській області*).

13. On 16 February 2000 the Supreme Court of Ukraine (*Верховний суд України*) upheld this judgment.

2. Enforcement stage

14. On 15 June 2000 the Sosnivky District Bailiffs' Service (*Відділ державної виконавчої служби Соснівського районного управління юстиції*) instituted the enforcement proceedings.

15. On 10 July 2000 the applicant brought proceedings in the Sosnivsky Court challenging the inactivity of the bailiff, assigned to deal with his enforcement case.

16. By letter of 22 December 2000, the Deputy Head of the Cherkassy Regional Department of Justice (*Черкаське обласне управління юстиції*) informed the applicant that the judgment of 22 October 1999 could not be executed due to the lack of funds in the State budget.

17. On 31 January 2001 the Sosnivsky Court rejected the applicant's complaint against the bailiff as being unsubstantiated.

18. On 7 March 2001 the Cherkassy Regional Court upheld this judgment.

19. By letter of 27 June 2002, the Head of the Cherkassy Regional Department of the Ministry of Justice of Ukraine informed the applicant that the domestic legislation did not provide for the procedure to enable this judgment debt to be paid from the State Budget.

20. On 17 February 2004 the Sosnivsky District Bailiffs' Service lodged an application with the Cherkassy Regional Court of Appeal (*Апеляційний суд Черкаської області*, hereafter “the Court of Appeal”) claiming that the debt concerned is owed to the applicant by the State Treasury of Ukraine as a whole and not by its Department in the Cherkassy region and that, accordingly, the enforcement case should be processed by the Pechersky District Bailiffs' Service of Kyiv (*Відділ Державної виконавчої служби Печерського району м. Києва*), where the central office of the Treasury is located.

21. On 12 March 2004 the Court of Appeal allowed this application and ordered the writ of execution to be forwarded to the Pechersky District Bailiffs' Service, which was done on 2 April 2004.

22. On 22 April 2004 the Pechersky District Bailiffs' Service refused to accept this writ, on the ground that under the Law of Ukraine “On Enforcement Proceedings” the applicant's award had to be enforced by the Department of Compulsory Execution of Judgments of the State Bailiffs Service (*відділ примусового виконання рішень Державної виконавчої служби*).

23. By letter of 25 March 2005 the Deputy Head of the Department of Compulsory Execution of Judgments of the State Bailiffs Service informed the Agent of the Government that the writ of execution concerned had never been received by this Department.

24. The judgment in the applicant's favour remains unenforced.

II. RELEVANT DOMESTIC LAW

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

THE LAW

I. PRELIMINARY OBSERVATION

26. The applicant died on 23 May 2005, while the case was pending before the Court (see paragraph 5 above). It has not been disputed that his wife is entitled to pursue the application on his behalf and the Court sees no reason to hold otherwise (see, *mutatis mutandis*, *Kalló v. Hungary*, no. 30081/02, § 25, 11 April 2006 and *Sildedzis v. Poland*, no. 45214/99, § 30, 24 May 2005).

II. ALLEGED VIOLATION OF ARTICLES 6 AND 13 OF THE CONVENTION AND ARTICLE 1 OF PROTOCOL NO. 1 IN THE COURSE OF THE COMPENSATION PROCEEDINGS

27. The applicant complained about allegedly unreasonable length of the proceedings concerning compensation for unlawful expropriation. The applicant also complained of the State authorities' failure to execute the judgment of 22 October 1999 in due time. He invoked Articles 6 § 1 and 13 of the Convention and Article 1 of Protocol No. 1, which provide, in so far 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

28. The Government raised objections regarding the applicant's exhaustion of domestic remedies similar to those which the Court has already dismissed in a number of judgments (see, *Voytenko*, cited above, §§ 27-35, *Bakalov v. Ukraine*, no. 14201/02, §§ 24-26, 30 November 2004 and *Nosal v. Ukraine*, no. 18378/03, §§ 33-35, 29 November 2005). The Court considers that the present objections must be rejected for the same reasons.

29. The Court, noting that the court proceedings and the enforcement proceedings are stages one and two in the total course of proceedings and thus the enforcement proceedings should not be dissociated from the action and the proceedings are to be examined in their entirety (see *Scordino v. Italy (no. 1)* [GC], no. 36813/97, § 197 and, as a recent authority, *Sika v. Slovakia*, no. 2132/02, §§ 24-27, 13 June 2006), concludes that the applicant's complaints under Article 6 § 1 of the Convention about the length of the proceedings concerning compensation and about the delay in the enforcement of the judgment of the Cherkassy Regional Court 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. These complaints must therefore be declared admissible. For the same reasons, the applicant's complaints under Article 13 and Article 1 of Protocol No. 1 about the authorities' failure to enforce a judgment in his favour cannot be declared inadmissible.

B. Merits

30. The applicant submitted that the length of the proceedings in his case was excessive and that there had been a substantial delay in payment of the court award which had therefore deprived him of the actual possession of his property.

31. The Government did not submit any observations as regards the judicial part of the proceedings. As regards the enforcement stage, they acknowledged the need to enforce the judgment given in favour of the applicant. They maintained that the State performed all necessary actions in order to enforce it in the nearest future and that the judgment had remained unenforced due to a lack of budget funding and relevant legislative measures. The Government further maintained that the applicant had at his disposal effective remedies to challenge the non-enforcement of the judgment given in his favour. In their further submissions the Government contended that the applicant had failed to re-submit the writ of execution after 22 April 2004 and thus the State was not responsible for non-enforcement of the judgment after this date.

32. As regards the judicial proceedings for compensation, it is to be noted that the exact date when the applicant's claim was filed with the domestic courts cannot be established on the basis of his submissions. In any case the period to be taken into consideration could not begin earlier than 11 September 1997, when the Convention entered into force with respect to Ukraine. The final decision in this case was taken on 16 February 2000 by the Supreme Court. The length of proceedings in the judicial phase is therefore two years and four months for three levels of jurisdiction and there is no discernible period of inactivity which can be attributed to the domestic courts.

33. However, the Court observes that the judgment of the Cherkassy Regional Court of 22 October 1999, which became enforceable immediately upon its issuance, has not been executed for over seven years and nine months.

34. The Court reiterates that it is inappropriate to require an individual who has obtained judgment against the State at the end of legal proceedings to then bring enforcement proceedings to obtain satisfaction (see, for example, *Scordino v. Italy (no. 1)* [GC], cited above, § 198 and *Lizanets v. Ukraine*, no. 6725/03, § 43, 31 May 2007). It, therefore, rejects the Government's argument that the applicant's failure to resubmit his writ of execution to the State Bailiffs' Service has deprived him of his right to payment of the debt owed to him by the State.

35. The Court recalls that it has already found violations of Articles 6 § 1 and 13 of the Convention and Article 1 of Protocol No. 1 in cases like the present application (see, *Voytenko v. Ukraine*, cited above, §§ 26-55; *Nosal v. Ukraine*, cited above, §§ 33-47).

36. 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.

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

38. The Court does not find it necessary in the circumstances to examine the same complaint under Article 13 of the Convention (see *Derkach and Palek v. Ukraine*, nos. 34297/02 and 39574/02, § 42, 21 December 2004).

III. OTHER COMPLAINTS

39. The applicant complained under Article 6 of the Convention about the length of the expropriation and eviction proceedings. He further complained about a violation of Articles 3 and 8 of the Convention on account of the non-enforcement of the judgment in his favour.

40. The Court, in the light of all material before it, finds that in so far as the matters complained of are within its competence, they do not disclose any appearance of an unjustified interference or breach of these provisions and rejects this part of the application in accordance with Article 35 §§ 3 and 4 of the Convention as being manifestly ill-founded.

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, costs and expenses

42. The applicant claimed pecuniary damage corresponding to the sum awarded to him by the judgment of 22 October 1999. He further claimed EUR 20,000 in respect of non-pecuniary damage and costs and expenses incurred during the domestic proceedings.

43. The Government contended that they were not obliged to pay the above debt due to the applicant, as he had neither appealed against the Bailiffs' decision of 22 April 2004 not to open the enforcement proceedings, nor re-submitted the writ of execution at a later date. They further contended that the applicant's claim for non-pecuniary damage was exorbitant and unsubstantiated, and that the finding of a violation would constitute sufficient just satisfaction in the case.

44. In so far as the judgment in the applicant's favour has not been paid, the Court, referring to its findings above (paragraphs 33-37) considers that the full and final settlement of the applicant's claim for pecuniary damage would be the payment of the judgment debt owed to him (see paragraph 12 above).

45. As to the applicant's claim for non-pecuniary damage – EUR 20,000 – the Court considers it excessive. However, the Court considers that the applicant must have sustained non-pecuniary damage as regards the non-enforcement of the judgment given in his favour. The Court, making its assessment on an equitable basis, as required by Article 41 of the Convention, awards the applicant the sum of EUR 2,000 in respect of non-pecuniary damage.

46. As regards the applicant's claim for costs and expenses, the Court reiterates that only legal costs and expenses found to have been actually and necessarily incurred and which are reasonable as to quantum are recoverable under Article 41 of the Convention (see, for example, *Peck v. the United Kingdom*, no. 44647/98, § 127, ECHR 2003-I). In the present case, the applicant neither indicated any concrete amount nor produced any evidence in support of his claim for costs and expenses allegedly incurred during the proceedings before the domestic courts. The Court, therefore, does not award any compensation under this head.

B. 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 under Article 6 § 1 of the Convention in respect of the compensation proceedings and complaints under Article 13 of the Convention and Article 1 of Protocol No 1 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 it is not necessary to examine the applicant's complaint under Article 13 of the Convention;

5. *Holds*

(a) that the respondent State is to pay the applicant's wife, within three months from the date on which the judgment becomes final in accordance with Article 44 § 2 of the Convention the judgment debt still owed to the applicant, as well as EUR 2,000 (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;

6. *Dismisses* the remainder of the applicant's claim for just satisfaction.

Done in English, and notified in writing on 31 January 2008, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Claudia Westerdiek
Registrar

Peer Lorenzen
President