



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

FIFTH SECTION

CASE OF MITIN v. UKRAINE

(Application no. 38724/02)

JUDGMENT

STRASBOURG

14 February 2008

FINAL

07/07/2008

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 Mitin v. Ukraine,

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

Peer Lorenzen, *President*,
Karel Jungwiert,
Volodymyr Butkevych,
Margarita Tsatsa-Nikolovska,
Javier Borrego Borrego,
Renate Jaeger,
Mark Villiger, *judges*,

and Claudia Westerdiek, *Section Registrar*,

Having deliberated in private on 22 January 2008,

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

PROCEDURE

1. The case originated in an application (no. 38724/02) 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, Mr Aleksandr Nikolayevich Mitin (“the applicant”), on 10 September 2002.

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

3. On 22 September 2005 the Court decided to give notice of 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 1959 and lives in the city of Sevastopol, Ukraine.

A. First set of proceedings

5. At the material time the applicant was a military officer. In November 1998, on an order from his superior, a commanding officer of the A-3009

military unit, he was appointed to a lower post and imposed disciplinary sanctions for various infractions.

6. In June 1999 the applicant brought proceedings in the Sevastopolskiy Garrison Military Court (*Військовий суд Севастопольського гарнізону*) against his commanding officer claiming that he had been sanctioned unfairly. The applicant sought moral damages.

7. After several round of courts proceedings, on 20 August 2001 the Navy Military Court of Appeal (*Апеляційний суд Військово-Морських Сил України*, hereafter “the Navy Court”), acting as a first instance court, found that the disputed disciplinary sanctions had been imposed on the applicant contrary to the relevant military regulations and awarded him 5,000¹ Ukrainian hryvnas (UAH) against the military unit for moral damages. Considering this sum insufficient the applicant appealed in cassation. On 10 January 2002 the Supreme Court (*Верховний Суд України*) upheld this judgment.

8. On 5 November 2001 the Nakhimovskiy District Bailiffs’ Service (*Відділ державної виконавчої служби Нахімовського районного управління юстиції м. Севастополя*, hereafter “the Nakhimovskiy Bailiffs’ Service”) instituted enforcement proceedings.

9. After having attempted, in vain, to withdraw the awarded sum from the account of the military unit concerned, on 21 June 2002 the bailiffs returned the writ of execution to the applicant because of the debtor’s lack of funds. The applicant never resubmitted it to the Bailiff’s Service.

10. In September 2002 the applicant attempted to bring administrative proceedings against the Nakhimovskiy Bailiffs’ Service for its alleged inactivity. On 26 September 2002 his application was found inadmissible by the Nakhimovskiy District Court of Sevastopol (*Нахімовський районний суд м. Севастополь*) on the ground of the applicant’s failure to pay court fees and to specify his claims.

11. The applicant filed, to no avail, a number of criminal complaints against his commanding officer with various prosecutors and courts.

12. The Government stated that in late 2005 the commanding officer on several occasions invited the applicant to visit the A-3009 military unit in order to collect the money due to him under the Navy Court’s judgment. The letters to this effect were sent to the applicant’s last known address. The applicant denied having received those letters, stating that his new address was known to the authorities. In particular it was indicated in his letters to the Court, the copies of which were sent to the Agent of the Government by the Court Registry.

13. On 26 December 2005 the A-3009 military unit paid UAH 5,000 in cash to the applicant’s pension account. The Government did not produce any document related to this event. As the applicant objected to an

¹ At the material time 1,021 euros (EUR)

unauthorised transaction in his account, the bank transferred this amount back to the account of the military unit.

14. On 14 March 2006 the military unit A-3009 opened an account in the applicant's name in the Oshchadbank Bank. According to the copy of bank receipt produced by the Government the reason for this transaction was specified as a "transfer of compensation for moral damage in accordance with a court decision of 20 August 2001 to Mr Mitin".

B. Second set of proceedings

15. In early 2004 the applicant was dismissed from the military forces.

16. In May 2004 he instituted proceedings in the Sevastopolskiy Garrison Military Court (*Військовий суд Севастопольського гарнізону*) challenging his dismissal.

17. On 14 October 2004 the court rejected the applicant's claim as being unsubstantiated. On 21 December 2004 the Navy Court rejected the applicant's appeal and upheld this judgment. On 9 March 2005 the Supreme Court rejected the applicant's appeal in cassation.

II. RELEVANT DOMESTIC LAW

18. 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. ALLEGED VIOLATION OF ARTICLE 6 § 1 OF THE CONVENTION AND ARTICLE 1 OF PROTOCOL No. 1

19. The applicant complained of the lengthy non-enforcement of the Navy Court's judgment of 20 August 2001 in his favour. He relied on Article 6 § 1 of the Convention and Article 1 of Protocol No. 1 which, 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. ..."

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*1. Applicability of Article 6 of the Convention*

20. The Government submitted that Article 6 § 1 was inapplicable to the proceedings at issue, as the dispute concerned a military officer’s career and therefore was not a “civil” dispute for the purposes of the impugned Convention provision. They, therefore, invited the Court to declare this part of the application inadmissible as being incompatible *ratione materiae* within the meaning of Article 35 § 3.

21. The applicant disagreed.

22. The Court notes that at the material time the applicant was an active military officer, and his disputes concerned different conditions of his employment. In a recent judgment *Vilho Eskelinen and Others v. Finland* ([GC], no. 63235/00, § 62, 19 April 2007) the Grand Chamber proposed two criteria of applicability of Article 6 to such disputes. According to this judgment Article 6 under its “civil” head shall be applicable to all disputes involving civil servants, unless the national law expressly excludes access to a court for the post of category of staff in question, and this exclusion is justified on objective grounds.

23. In the present case the applicant’s claims were accepted, examined, and partially granted by the domestic courts following ordinary rules of civil procedure. Although it is true that the applicant’s case involved the examination of the lawfulness of disciplinary sanctions imposable under specific military regulations, there is nothing to suggest that the proceedings concerning moral damage incurred by an individual as a result of unlawful actions by a state official falls outside the scope of Article 6 of the Convention.

24. Therefore, the applicant, despite his special status, was not excluded by the domestic law from the “access to a court” within the meaning of Article 6. The Court concludes that Article 6 is applicable to the domestic proceedings at issue.

2. *Exhaustion of domestic remedies*

25. The Government argued that the applicant has failed to exhaust all domestic remedies available to him under the law, as he did not resubmit his writ of execution to the competent Bailiffs' Service.

26. The applicant disagreed.

27. The Court reiterates in this respect 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.

3. *Conclusion*

28. The Court notes that the applicant's complaints under Article 6 § 1 of the Convention and Article 1 of Protocol No. 1 concerning the non-enforcement of a judgment in the applicant's favour 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.

B. Merits

29. The applicant claimed that the lengthy non-enforcement of a court judgment in his favour infringed his right to peaceful enjoyment of possessions guaranteed by Article 6 § 1 of the Convention and Article 1 of Protocol No. 1.

30. In their observations, the Government contended that there had been no violation of Article 1 of Protocol No. 1 (as in the cases of *Romashov v. Ukraine*, no. 67534/01, § 37, 27 July 2004 and *Voytenko*, cited above § 37).

31. The Court should first establish the period during which the judgment of the Navy Court of 20 August 2001 remained unenforced. It notes in this respect that in late 2005 the commanding officer of the A-3009 military unit allegedly invited the applicant to appear in order to repay him the awarded amount. However, those letters were sent to the applicant's old address whereas the authorities were aware of the applicant's new address from, *inter alia*, his letters to the Court, the copies of which were sent by the Court Registry to the Government Agent. Therefore, the Court finds that the relevant period did not end in 2005.

32. The Court further observes that on 26 December 2005 the A-3009 military unit transferred UAH 5,000 in cash to the applicant's pension account. As the Government have failed to show that such action was provided by the domestic law as a legal means of executing court judgments

or that the applicant was informed of the reason for this transaction, the Court does not find his refusal to accept this money unreasonable.

33. As regards the account opened in the applicant's name in the Oshchadbank Bank, the Court notes that the applicant did not suggest that he was not informed of the fact that this account was opened or of the reason why it had been done. Nor did he suggest that this money was inaccessible for him. Accordingly, the Court considers that by opening on 14 March 2006 a bank account in the applicant's name the authorities enforced – for the purpose of Article 6 § 1 of the Convention – a court judgment in the applicant's favour.

34. The Court, therefore, finds that the Navy Court's judgment of 20 August 2001 remained unenforced for four years and five months.

35. The Court recalls that it has already found violations of Article 1 of Protocol No. 1 in cases raising issues similar to the present application (see, for example *Voytenko*, cited above, §§ 53-55 and *Vodopyanov v. Ukraine*, no. 22214/02, §§ 31-36, 17 January 2006).

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

II. OTHER ALLEGED VIOLATIONS OF THE CONVENTION

37. The applicant complained under Article 3 of the Convention that his appointment to a lower post and the imposition of sanctions constituted degrading treatment. He further complained under Articles 6 § 1 and 13 of the impossibility to institute a criminal case against the command of his military unit. Relying on Article 6 the applicant complained about a violation of his right of access to court referring to the domestic courts' refusal to consider on the merits his complaints about the non-enforcement of the judgment in his favour. The applicant also complained under Article 6 of the Convention about an unfair hearing and the outcome of the proceedings in the civil case concerning his dismissal. He finally invoked Articles 14 and 17 of the Convention without any further specification.

38. 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.

III. APPLICATION OF ARTICLE 41 OF THE CONVENTION

39. 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

40. The applicant claimed EUR 2,013,900 euros (EUR) in respect of non-pecuniary damage.

41. The Government considered that the applicant did not suffer any damage and that, in any case, his demands were excessive.

42. Making its assessment on an equitable basis, as required by Article 41 of the Convention, the Court considers it reasonable to award the applicant a global sum of EUR 1,200 in respect of non-pecuniary damage.

B. Costs and expenses

43. The applicant claimed EUR 3,000 for costs and expenses incurred before the domestic authorities without providing any documents in support of this claim.

44. The Government considered this claim unsubstantiated.

45. 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 did not produce any evidence in support of his claim for costs and expenses allegedly incurred during the proceedings before the domestic authorities. It, therefore, does not award any compensation under this head.

C. Default interest

46. 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* complaints under Article 6 § 1 of the Convention and Article 1 of Protocol No. 1 concerning the non-enforcement of a 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* that there has been a violation of Article 1 of Protocol No. 1 to the Convention;
4. *Holds*
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 1,200 (one thousand two hundred 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;
5. *Dismisses* the remainder of the applicant's claim for just satisfaction.

Done in English, and notified in writing on 14 February 2008, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Claudia Westerdiek
Registrar

Peer Lorenzen
President