



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

FIFTH SECTION

CASE OF MARTYNCHUK v. UKRAINE

(Application no. 38988/02)

JUDGMENT

STRASBOURG

10 April 2008

FINAL

10/07/2008

This judgment may be subject to editorial revision.

In the case of Martynchuk 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,

Rait Maruste,

Mark Villiger,

Mirjana Lazarova Trajkovska, *judges*,

and Claudia Westerdiek, *Section Registrar*,

Having deliberated in private on 18 March 2008,

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

PROCEDURE

1. The case originated in an application (no. 38988/02) 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 Borys Andriyovych Martynchuk (“the applicant”), on 7 October 2002.

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

3. On 21 January 2005 the Court decided to communicate the complaint under Article 6 § 1 concerning non-enforcement of the judgment favourable to the applicant 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 was born in 1967 and lives in the village of Khotyn, Rivne region, Ukraine.

5. On 28 April 1996 the Bereznivsky District Prosecutor’s Office (*Березнівська районна прокуратура*) opened a criminal investigation into the murder of the applicant’s wife. On the same day the applicant was arrested.

6. On 7 May 1996 the applicant was charged with the murder of his wife.

7. The applicant was released on 20 February 1997 subject to a written undertaking not to abscond. On 31 March 1999 the Bereznivsky District Prosecutor's Office dropped the charges against the applicant on the ground of lack of evidence.

8. On 31 January 2000 the Rivne Regional Court (*Рівненський обласний суд*) found Mr K. guilty of the murder concerned. On 15 June 2000 the Supreme Court (*Верховний Суд України*) upheld the judgment of 31 January 2000. In a separate ruling, issued on the same day, the Supreme Court informed the Prosecutor General (*Генерального прокурора*) that there had been procedural irregularities in the criminal proceedings against the applicant.

9. The applicant brought proceedings for compensation for unlawful criminal prosecution. On 11 September 2001 the Bereznivsky District Court of the Rivne Region (*місцевий суд Березнівського району Рівненської області*, hereafter "the Bereznivsky Court") granted this claim and awarded him 50,000¹ Ukrainian Hryvnias (UAH) against the State in compensation for moral damage. The court judgment contained an instruction to the applicant to present a copy of it to the local department of the State Treasury (*Державне казначейство*) for enforcement. This judgment was not appealed against and became final.

10. According to the Government the applicant did not comply with the above instruction of the Bereznivsky Court.

11. The applicant stated that he did submit a copy of the judgment to the State Treasury for enforcement. In support of this statement he provided the Court with a copy of a letter of 27 September 2001 in which the Bereznivsky District Department of the State Treasury (*Відділення державного казначейства у Березнівському районі Рівненської області*) informed the Bereznivsky Court that the State Budget for 2001 did not include funds which could be used to pay the applicant.

12. On 5 and 22 April 2005 respectively the Bereznivsky District Department of the State Treasury sent copies of the judgment concerned to the Bereznivsky District Bailiffs' Service (*Відділ державної виконавчої служби Березнівського районного управління юстиції Рівненської області*) and the Central Department of the Bailiffs' Service (*Відділ примусового виконання Департаменту державної виконавчої служби*), stating that the lack of budget funds prevented it from honouring this judgment and inviting the Bailiffs' Service to open enforcement proceedings in its respect.

1. 6,720 euros

13. On 16 May 2005 the Central Department of the Bailiffs' Service found that a copy of the court judgment, without a writ of execution, was an insufficient ground for initiating the enforcement proceedings.

14. On 25 December 2006 the same department of the Bailiffs' Service refused to accept the writ of execution issued by the Bereznivsky Court because it did not contain the exact address of the State Treasury and had been submitted by the applicant outside the three-year time limit provided by law for compulsory execution.

II. RELEVANT DOMESTIC LAW

15. 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

16. The applicant complained of the lengthy non-enforcement of the Bereznivsky Court's judgment of 11 September 2001 in his favour. He relied on Article 6 § 1 of the Convention which, in so far as relevant, provides 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. ..."

A. Admissibility

1. Exhaustion of domestic remedies

17. The Government maintained that the applicant had failed to exhaust domestic remedies available to him. In particular, according to the Government the applicant had not submitted the copy of the judgment of 11 September 2001 to the local department of the State Treasury. Nor did he apply, in accordance with the relevant formalities, to the Bailiffs' Service to have proceedings instituted for compulsory enforcement of this judgment.

18. The applicant disagreed.

19. In the absence of any evidence to the contrary from the Government, the Court accepts the applicant's contention that the letter of 27 September 2001 from the State Treasury to the Bereznivsky Court confirms that he complied with the instruction of the Bereznivsky Court to submit a copy of the judgment of 11 September 2001 to the State Treasury (see paragraphs 11 and 12 above). As regards the applicant's alleged failure to apply for compulsory enforcement of this judgment to the Bailiffs' Service, the Court observes that even if it is true that the applicant had not complied with relevant formalities, 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], no. 36813/97, §198, ECHR 2006-... and *Lizanets v. Ukraine*, no. 6725/03, § 43, 31 May 2007). It therefore rejects the Government's arguments.

2. *The applicant's victim status*

20. The Government argued that the applicant lost his status as a "victim" within the meaning of Article 34 of the Convention because he produced his writ of execution to the Bailiffs' Service outside the three-year time limit provided by law.

21. The applicant disagreed.

22. The Court recalls that the term "victim" used in Article 34 denotes the person directly affected by the act or omission which is at issue (see *Eckle v. Germany*, judgment of 15 July 1982, Series A no. 51, p. 30, § 66). It notes that the court judgment in the applicant's favour has not been enforced to date. There is nothing to suggest that the applicant has ceased to be affected by non-enforcement of this judgment. This is the more so since the failure to abide by this time limit does not deprive the applicant of a right guaranteed by Article 6 § 1 to have a court judgment issued against the State enforced in full (see *Lizanets*, cited above, §§ 41-45). The Court, therefore, rejects this objection.

3. *Conclusion*

23. The Court notes that this complaint 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

24. The applicant claimed that the lengthy non-enforcement of a court judgment in his favour infringed his rights guaranteed by Article 6 § 1 of the Convention.

25. In their observations, the Government contented that the delay in the enforcement of the judgment of 11 September 2001 was caused by the applicant's failure to apply in a timely manner for its compulsory enforcement.

26. The Court, referring to its findings above (see paragraph 19), dismisses the Government's argument. It further notes that at least until April 2005 the judgment remained unenforced because of the lack budgetary funds and not because of the applicant's alleged failure to act.

27. The Court further notes that on 11 September 2001 the Bereznivsky Court awarded the applicant UAH 50,000 against the State. This award has not been paid to date, i.e. for six years and four months.

28. The Court recalls that it has already found violations of Article 6 of the Convention 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).

29. 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.

30. There has, accordingly, also been a violation of Article 6 § 1 of the Convention in this respect.

II. OTHER ALLEGED VIOLATIONS OF THE CONVENTION

31. The applicant complained in general under Article 5 of the Convention that his detention had been unlawful. The applicant maintained that he had had to enter into a written undertaking not to abscond, which violated his right to freedom of movement. He relied on Article 2 of Protocol No. 4. He further complained that his detention had led to a deterioration of his health and had placed his life at risk. He invoked Article 2 of the Convention. He also complained under Article 8 of the Convention that the criminal proceedings brought against him had affected his private and family life.

32. The Court notes that the applicant was released on 20 February 1997, before the Convention entered into force in respect of Ukraine, and that the charges against him were dropped on 31 March 1999, more than six months before the application was introduced. In the light of all the material before it and in so far as these remaining complaints fall within its competence, it finds that 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

33. 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

34. The applicant claimed a global sum of 1,000,000 euros (EUR) in respect of pecuniary and non-pecuniary damage.

35. The Government considered this claim unsubstantiated and exorbitant.

36. In so far as the judgment in the applicant’s favour has not been paid, the Court, referring to its findings above (paragraphs 29) 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 9 above).

37. As regards the applicant’s claim for non-pecuniary damage, the Court, making its assessment on an equitable basis, as required by Article 41 of the Convention, considers it reasonable to award the applicant a global sum of EUR 2,000 in respect of non-pecuniary damage.

B. Costs and expenses

38. The applicants did not submit any claim under this head within the set time-limit; the Court therefore makes no award in this respect.

C. Default interest

39. 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 Article 6 § 1 of the Convention 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 the judgment debt still owed to him, 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;

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

Done in English, and notified in writing on 10 April 2008, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Claudia Westerdiek
Registrar

Peer Lorenzen
President