



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

FIFTH SECTION

CASE OF CHERVONETS v. UKRAINE

(Application no. 39405/03)

JUDGMENT

STRASBOURG

24 April 2008

FINAL

24/07/2008

This judgment may be subject to editorial revision.

In the case of Chervonets v. Ukraine,

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

Peer Lorenzen, *President*,

Volodymyr Butkevych,

Rait Maruste,

Renate Jaeger,

Mark Villiger,

Isabelle Berro-Lefèvre,

Mirjana Lazarova Trajkovska, *judges*,

and Claudia Westerdiek, *Section Registrar*,

Having deliberated in private on 25 March 2008,

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

PROCEDURE

1. The case originated in an application (no. 39405/03) 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 Valeriy Pavlovich Chervonets (“the applicant”), on 12 November 2003.

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

3. On 3 April 2007 the Court decided to communicate the complaints concerning the length of the criminal proceedings and the non-enforcement of the judgment given in the applicant’s favour to the Government. Applying Article 29 § 3 of the Convention, it decided to rule on the admissibility and merits of the application at the same time.

THE FACTS**I. THE CIRCUMSTANCES OF THE CASE**

4. The applicant was born in 1940 and lives in Kharkiv.

A. Enforcement proceedings in the applicant’s civil case

5. On 23 October 2002 the Dzerzhinsky District Court of Kharkiv (hereinafter “the Dzerzhinsky Court”), upon the applicant’s claim, ordered

the Department of the State Pension Fund in Dzerzhinsky District of Kharkiv (*Дзержинське районне відділення Пенсійного Фонду України у м. Харків*, hereinafter “the Pension Department”) to recalculate in Ukrainian hryvnas the applicant’s salary, which he received in 1985-1989 in Soviet roubles, in order to establish the correct amount of his pension according to the Decree of the Cabinet of Ministers of 13 January 1993 (hereinafter “the Decree”). The defendant was also obliged to pay the applicant the recalculated amount as his regular pension.

6. This judgment became final on 23 November 2002 and the writ of execution was issued on 24 November 2002.

7. On 25 February 2003 the Bailiffs’ Office in Dzerzhinsky District of Kharkiv (hereinafter “the Bailiffs”) issued the warrant for the enforcement of the judgment by 4 March 2003.

8. On 8 April 2003 the Bailiffs re-issued the warrant.

9. As the Pension Department twice submitted calculations of the applicant’s pension which were not based on the Decree, on 17 June and 28 August 2003 the Bailiffs fined the officials of the Pension Department for failure to enforce the judgment.

10. In December 2003 the applicant and the Bailiffs requested the Public Prosecutor of the Dzerzhinsky District of Kharkiv (hereinafter “the Public Prosecutor”) to institute criminal proceedings against the officials of the Pension Department for intentional non-enforcement of the judgment of 23 October 2002.

11. On 13 April 2004 the Public Prosecutor rejected this request for want of proof of a crime.

12. On 4 March 2005 the Dzerzhinsky District Court rejected the applicant’s complaint against this decision.

13. On 23 April 2004, upon the applicant’s request, the Dzerzhinsky Court issued a ruling explaining the judgment of 23 October 2002. It indicated the coefficients that should be used by the Pension Department in order to recalculate the applicant’s pension according to the Decree.

14. The Pension Department did not appeal against this ruling within the statutory time-limit and the same court, by rulings of 14 June and 21 September 2005, returned the Department’s belated appeal without considering it.

15. During 2004-2005, following numerous written requests by the Bailiffs, the Pension Department submitted recalculations of the applicant’s pension, which were not based on the ruling of 23 April 2004.

16. On 6 February 2006 the bailiff personally handed to the official of the Pension Department the ruling of 23 April 2004 and requested him to enforce it by 13 February 2006. The bailiff drew up a written report.

17. On 10 February 2006 the Public Prosecutor, on behalf of the Pension Department, lodged with the Supreme Court a cassation appeal against the rulings of 14 June and 21 September 2005.

18. On 13 February 2006, following the request of the Public Prosecutor, the Bailiffs suspended the enforcement proceedings.

19. On 22 March 2006 the Head of the Bailiffs quashed this decision on the ground that lodging a cassation appeal in itself could not suspend the enforcement of the final judgment.

20. On 24 March 2006 the enforcement proceedings were resumed.

21. On 5 and 19 May 2006 the Bailiffs fined the officials of the Pension Department for failure to enforce the judgment of 23 October 2002 and the ruling of 23 April 2004.

22. On 25 May 2006 the Bailiffs requested the Public Prosecutor to institute criminal proceedings against the officials of the Pension Department for intentional non-enforcement of the judgment of 23 October 2002 and ruling of 23 April 2004.

23. On 11 August 2006 the Public Prosecutor rejected this request for want of proof of a crime.

24. On 30 May 2007 the Higher Administrative Court rejected the Public Prosecutor's cassation appeal against the rulings of 14 June and 21 September 2005.

25. On 8 August 2007 the Dzerzhinsky Court rejected the Public Prosecutor's request to review the case in the light of newly disclosed circumstances and to suspend the enforcement proceedings.

26. On 4 October 2007 the Kharkiv Regional Court of Appeal (hereinafter "the Court of Appeal") upheld this ruling.

27. The judgment of 23 October 2002 remains unenforced.

B. Criminal proceedings against the applicant

28. On 5 December 2002 the Public Prosecutor instituted criminal proceedings against the applicant for threatening a judge of the Dzerzhinsky Court (Article 376 of the Criminal Code). The applicant was obliged not to leave his place of his permanent residence.

29. On 26 February 2003, upon termination of the pre-trial investigation, the Public Prosecutor transmitted the criminal case to the Dzerzhinsky Court.

30. On 5 March 2003 the Court of Appeal, following the motion of the President of the Dzerzhinsky Court, transferred the case to the Chervonozaodsky District Court of Kharkiv (hereinafter "the Chervonozaodsky Court").

31. November 2003 the Dzerzhinsky Court rejected the applicant's complaint against the Public Prosecutor's decision of 5 December 2002 as the case was pending before the first instance court.

32. In the course of its examination of the applicant's appeal against the ruling of 20 November 2003, the Court of Appeal established that the applicant had not been not duly informed about the date of hearing before

the Dzerzhinsky District Court and on 13 January 2004 requested the Judicial Administration to investigate this matter.

33. On 16 March 2004 the Court of Appeal upheld the ruling of 20 November 2003. On the same date, it issued a ruling to the Judicial Administration setting out procedural omissions by the judge of Dzerzhinsky Court who had examined the case.

34. On 10 February 2005 the Supreme Court rejected the applicant's cassation appeal against the ruling of 20 November 2003.

35. On 30 November 2005 the Chervonozaodsky Court terminated the criminal proceedings against the applicant as time-barred.

36. On 5 December 2005 the applicant lodged an appeal seeking to be acquitted.

37. On 16 February 2006 the Court of Appeal quashed the ruling of 30 November 2005 and remitted the case for a fresh consideration.

38. In May 2006 the proceedings were resumed before the Chervonozaodsky Court.

39. Between May 2006 and February 2007 five out of six hearings scheduled were adjourned due to the witnesses' and the victim's failure to appear before the court.

40. In February 2007 the case was assigned to another judge.

41. The proceedings are still pending before the first instance court.

II. RELEVANT DOMESTIC LAW

42. The relevant domestic law concerning the non-enforcement of the final judgments is summarised in the judgment of *Romashov v. Ukraine* (no. 67534/01, §§ 16-18, 27 July 2004).

THE LAW

I. AS TO THE NON-ENFORCEMENT OF THE FINAL JUDGMENT GIVEN IN THE APPLICANT'S FAVOUR

43. The applicant complained under Articles 6 § 1 and 13 of the Convention and Article 1 of Protocol No. 1 about the lengthy non-enforcement of the judgment of 23 October 2002. 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...”

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

A. Admissibility

44. 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

45. In their observations, the Government submitted that the Bailiffs took all necessary measures aimed at enforcement of the judgment at issue and contended that there had been no violation of Article 6 § 1 of the Convention and Article 1 of Protocol No. 1 in the applicant’s respect. They also maintained that the length of the enforcement proceedings was due to the defendant’s numerous appeals against the decisions and rulings of the domestic courts.

46. The applicant disagreed. He argued, in particular, that the Pension department and the Public Prosecutor intentionally lodged apparently inadmissible appeals and requests with the aim to protract the enforcement proceedings.

47. The Court notes that the judgment which was given in the applicant's favour in October 2002 has remained unenforced for five years and four months to date.

48. The Court observes that in spite of repeated administrative sanctions imposed by the Bailiffs on the officials of the Pension Department the judgment of 23 October 2002, which became final on 23 November 2002 and in respect of which a warrant of execution was issued on 24 November 2002, has not been enforced to date. Thus, the measures adopted by the Bailiffs in the course of the enforcement proceedings and referred to by the Government appeared ineffective. Furthermore, the requests lodged by the Public Prosecutor to suspend the enforcement proceedings were rejected.

49. The Court recalls that it has already found violation of Article 6 § 1 of the Convention and Article 1 of Protocol No. 1 in a number of similar cases (see *Romashov*, cited above, §§ 42-46, and *Voytenko v. Ukraine*, no. 18966/02, §§ 53-55, 29 June 2004).

50. 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.

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

52. 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).

II. AS TO THE LENGTH OF THE CRIMINAL PROCEEDINGS AGAINST THE APPLICANT

53. The applicant also complained that the length of the criminal proceedings had been incompatible with the "reasonable time" requirement, laid down in Articles 6 § 1 and 13 of the Convention, which read as follows:

Article 6 § 1

"In the determination of ... any criminal charge against him, everyone is entitled to a ... hearing within a reasonable time by [a] ... tribunal..."

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."

54. The Government contested that argument.

55. The period to be taken into consideration began on 5 December 2002. It has thus lasted almost five years and four months to date; procedural decisions were taken at three instances, the substantive case was dealt with at two instances, and the proceedings are now pending at first instance.

A. Admissibility

56. 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

57. The Government maintained that the case was complicated and that the protracted length of the proceedings was imputable to the applicant's appeals against the rulings of the domestic courts. They also maintained that the hearings were postponed on numerous occasions due to the witnesses' and victim's failure to appear before the courts.

58. The applicant disagreed. He stressed that the authorities had been fully responsible for excessive duration of the case.

59. The Court reiterates that the reasonableness of the length of proceedings must be assessed in the light of the circumstances of the case and with reference to the following criteria: the complexity of the case, the conduct of the applicant and the relevant authorities (see, among many other authorities, *Pélissier and Sassi v. France* [GC], no. 25444/94, § 67, ECHR 1999-II).

60. The Court considers that, having regard to the nature of the crime with which the applicant was charged, the present case cannot be considered as complicated. The Court also takes into account the repeated adjournment of the hearings due to the witnesses' and victim's failure to appear before the court. However, the domestic court failed to take any steps to assure the presence of the said persons in order to proceed with the case.

61. The Court further notes that even though the proceedings had to be suspended because of the applicant's appeal against the ruling of 20 November 2003, the overall length of the proceedings cannot be considered as reasonable in particular taking into account the fact that since May 2006 the case has been pending before the first instance court without any measures being taken.

62. The Court has frequently found violations of Article 6 § 1 of the Convention in cases raising issues similar to the one in the present case (see *Pélissier and Sassi*, cited above).

63. 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. Having regard to its case-law on the subject, the Court considers that in the instant case the length of the proceedings was excessive and failed to meet the "reasonable time" requirement.

64. There has accordingly been a breach of Article 6 § 1.

65. Having regard to its findings under Article 6 § 1, the Court concludes that it is not necessary to rule whether, in this case, there has been a violation of Article 13 of the Convention (see, in the civil context, *Kukharchuk v. Ukraine*, no. 10437/02, §§ 39-40, 10 August 2006).

III. APPLICATION OF ARTICLE 41 OF THE CONVENTION

66. 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

67. The applicant claimed 5,500 euros (EUR) in respect of pecuniary and EUR 1,500 in respect of non-pecuniary damage caused by the lengthy non-enforcement of the judgment of 23 October 2002. He also claimed EUR 1,000 in respect of non-pecuniary damage caused by the lengthy criminal proceedings against him.

68. The Government contested these claims.

69. As to the applicant's claim in respect of pecuniary damage caused by the lengthy non-enforcement of the judgment of 23 October 2002, the Court considers that the applicant remains entitled to claim in the course of domestic proceedings compensation in lieu of execution of the said judgment. At the same time, the Court reiterates that a judgment in which it finds a breach imposes on the respondent State a legal obligation to put an end to the breach and make reparation for its consequences in such a way as to restore as far as possible the situation existing before the breach (*Metaxas v. Greece*, no. 8415/02, § 35, 27 May 2004 and *Iatridis v. Greece* (just satisfaction) [GC], no. 31107/96, § 32, ECHR 2000-XI). Therefore, the Court concludes that the State's outstanding obligation to enforce the judgment given in the applicant's favour is not in dispute (see *Blanutsa v. Ukraine*, no. 35274/03, § 39, 20 September 2007, and *Fateyev v. Ukraine*, no. 39265/02, § 37, 6 September 2007).

70. As to the remainder of the applicant's claims for just satisfaction, the Court, making its assessment on an equitable basis, as required by Article 41 of the Convention, awards the applicant EUR 2,500 (two thousand and five hundred euros) in respect of non-pecuniary damage.

B. Costs and expenses

71. The applicant also claimed EUR 100 for the costs and expenses incurred before the Court.

72. The Government contested the claim.

73. The Court considers that the sum claimed should be awarded in full.

C. Default interest

74. 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 in respect of the lengthy non-enforcement of the judgment of 23 October 2002;
3. *Holds* that there has been a violation of Article 1 of Protocol No. 1 in the same respect;
4. *Holds* that there has been a violation of Article 6 § 1 of the Convention in respect of the length of the criminal proceedings against the applicant;
5. *Holds* that there is no need to examine the complaints under Article 13 of the Convention;
6. *Holds*
 - (a) that the respondent State is to fulfil the judgment of 23 October 2002 given by the Dzerzhinsky District Court of Kharkiv in the applicant's favour as well as to pay him, within three months from the date on which the judgment becomes final in accordance with Article 44 § 2 of the Convention, the following sums, to be converted into the national currency of the respondent State at the rate applicable at the date of settlement:
 - (i) EUR 2,500 (two thousand and five hundred euros) in respect of non-pecuniary damage, plus any tax that may be chargeable;
 - (ii) EUR 100 (one hundred euros) for costs and expenses, plus any tax that may be chargeable to the applicant;

(b) that from the expiry of the above-mentioned three months until settlement simple interest shall be payable on the above amounts at a rate equal to the marginal lending rate of the European Central Bank during the default period plus three percentage points;

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

Done in English, and notified in writing on 24 April 2008, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Claudia Westerdiek
Registrar

Peer Lorenzen
President