



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

FIFTH SECTION

CASE OF BELOCHENKO v. UKRAINE

(Application no. 41803/04)

JUDGMENT

STRASBOURG

15 May 2008

FINAL

29/09/2008

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 Belochenko v. Ukraine,

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

Peer Lorenzen, *President*,

Snejana Botoucharova,

Volodymyr Butkevych,

Rait Maruste,

Renate Jaeger,

Isabelle Berro-Lefèvre,

Mirjana Lazarova Trajkovska, *judges*,

and Claudia Westerdiek, *Section Registrar*,

Having deliberated in private on 22 April 2008,

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

PROCEDURE

1. The case originated in an application (no. 41803/04) 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 Ivan Pavlovich Belochenko on 16 November 2004.

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

3. On 21 January 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**

3. The applicant was born in 1952 and lives in Sevastopol.

4. On 30 July 1999 the Sevastopol Military Court (*Військовий суд Севастопільського гарнізону*) ordered the Military Unit A-3009 (*Військова частина А-3009*) to pay the applicant, a retired officer, 1,599.42 hryvnias (UAH) in compensation for his uniform. This judgment was not appealed against, became final and the enforcement proceedings were instituted to collect the judgment debt.

5. On numerous occasions the bailiffs informed the applicant that they were unable to enforce the judgment on account of the lack of budgetary allocations.

6. On 17 May 2005 the judgment debt was paid to the applicant.

7. On an unspecified date the applicant instituted civil proceedings in the Nakhimovsky District Court of Sevastopol (*Нахімовський районний суд м. Севастополя*) seeking indexation of the award, which was due to him under the judgment of 30 July 1999, default interest and non-pecuniary damage on account of the delay in payment.

8. On 10 October 2006 the court awarded the applicant UAH 1,375.50 in indexation of the judgment award and dismissed the remainder of his claims. This judgment was not appealed against, became final, and enforcement proceedings were instituted to collect the judgment debt. As of August 2007 this judgment remained unenforced.

II. RELEVANT DOMESTIC LAW

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

THE LAW

I. SCOPE OF THE CASE

10. The Court notes that on 3 October 2005, after the case had been communicated to the respondent Government, the applicant additionally invoked Article 1 of Protocol No. 1 concerning the facts of the present case. On 23 August 2007 he further complained about the non-enforcement of the judgment of 10 October 2006.

11. In the Court's view, the new complaints are not an elaboration of the applicant's original complaints to the Court, which had been communicated to the respondent Government. The Court considers, therefore, that it is not appropriate now to consider them (see *Piryanik v. Ukraine*, no. 75788/01, § 20, 19 April 2005).

II. ADMISSIBILITY

12. The applicant complained under Article 6 § 1 about the State authorities' failure to enforce the judgment of 30 July 1999 given in his favour in due time. He further complained under Article 13 of the Convention that he had no effective remedies for his complaint under

Article 6 § 1. The impugned provisions provide, insofar 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.

13. The Government raised objections regarding exhaustion of domestic remedies similar to those which the Court has already dismissed in a number of similar cases concerning the non-enforcement of the court judgments (see *Sokur v. Ukraine* (dec.), no. 29439/02, 16 December 2003 and *Voytenko v. Ukraine*, cited above, §§ 27-31). The Court considers that these objections must be rejected for the same reasons.

14. The Court finds that these complaints are not manifestly ill-founded within the meaning of Article 35 §§ 1, 3 and 4 of the Convention. It further notes that they are not inadmissible on any other grounds. They must therefore be declared admissible.

III. MERITS

A. The applicant’s complaint under Article 6 § 1 of the Convention

15. The Government contended that the bailiffs had taken every action necessary to enforce the judgment in the applicant’s favour and that there had been no violation of Article 6 § 1.

16. The applicant disagreed.

17. The Court notes that the period of debt recovery in the applicant’s case was five years and nine months.

18. The Court recalls that it has already found violations of Article 6 § 1 of the Convention in a number of similar cases (see, for instance, *Voytenko v. Ukraine*, cited above, § 43).

19. 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.

20. There has, accordingly, been a violation of Article 6 § 1 of the Convention.

B. The applicant's complaint under Article 13 of the Convention

21. The Government contended that the applicant had had effective channels of complaint, in particular, he could have challenged omissions of the bailiffs in the course of the enforcement proceedings.

22. The applicant disagreed.

23. The Court recalls that it had already found ineffective the remedy, referred to by the Government, in other similar cases (see e.g., *Voytenko v. Ukraine*, cited above, §§ 46-48). It finds no reason to depart from its case-law in the present case.

24. Accordingly, there has been a breach of Article 13 of the Convention.

IV. APPLICATION OF ARTICLE 41 OF THE CONVENTION

25. 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

26. The applicant claimed UAH 2,500 in respect of pecuniary damage and UAH 15,000 in respect of non-pecuniary damage.

27. The Government contested these claims.

28. The Court does not discern any causal link between the violation found and the pecuniary damage alleged; it therefore rejects this claim. On the other hand, it awards the applicant EUR 2,000 in respect of non-pecuniary damage.

B. Costs and expenses

29. The applicant also claimed UAH 600 for costs and expenses incurred by him in the course of domestic enforcement proceedings and before the Court. He presented receipts for UAH 260 in postal, copying and translation expenses.

30. The Government noted that the applicant failed to substantiate the full amount claimed.

31. According to the Court's case-law, an applicant is entitled to the reimbursement of costs and expenses only in so far as it has been shown that these have been actually and necessarily incurred and were reasonable as to quantum. In the present case, regard being had to the information in its

possession and the above criteria, the Court considers it reasonable to award the sum of EUR 50 covering costs under all heads.

C. Default interest

32. 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 13 of 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 2,000 (two thousand euros) and EUR 50 (fifty euros) in respect of costs and expenses, plus any tax that may be chargeable to the applicant on these amounts, to be converted into the national currency 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 amounts 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 15 May 2008, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Claudia Westerdiek
Registrar

Peer Lorenzen
President