



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

FIFTH SECTION

CASE OF PETROVA AND CHORNOBRYVETS v. UKRAINE

(Applications nos. 6360/04 and 16820/04)

JUDGMENT

STRASBOURG

15 May 2008

FINAL

15/08/2008

This judgment may be subject to editorial revision.

In the case of Petrova and Chornobryvets 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 22 April 2008,

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

PROCEDURE

1. The case originated in two applications (nos. 6360/04 and 16820/04) against Ukraine lodged with the Court under Article 34 of the Convention for the Protection of Human Rights and Fundamental Freedoms (“the Convention”) by Ukrainian nationals, Mrs Iryna Mykhaylivna Petrova and Mrs Olena Saveliyivna Chornobryvets (Zhuravlyova) (“the applicants”), on 13 January and 17 March 2004, respectively.

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

3. On 30 May 2006 the Court decided to communicate the applications to the Government. Under the provisions of Article 29 § 3 of the Convention, it decided to examine the merits of the applications at the same time as their admissibility.

THE FACTS

I. THE CIRCUMSTANCES OF THE CASE

4. Mrs Iryna Mykhaylivna Petrova (“the first applicant”) was born in 1960. Mrs Olena Saveliyivna Chornobryvets (Zhuravlyova) (“the second applicant”) was born in 1963. Both applicants are judges of the Kirovograd Regional Court of Appeal and live in Kirovograd.

5. In November 2002 the applicants lodged claims with the Pechersky District Court of Kyiv against the Ministry of Finance, the Ministry of

Justice and the State Treasury, seeking payment of salary arrears and life-long judicial benefits (long-service bonus and welfare benefits).

6. On 16 December 2002 the court allowed the applicants' claims and ordered the Ministry of Finances and the State Treasury of Ukraine to pay the applicants, respectively, UAH 6,529.03 and UAH 8,459.36.

7. On 9 July 2003 the Kyiv City Court of Appeal upheld this judgment and it became final.

8. On 11 August 2003 the Bailiffs' Office of the Pechersky District of Kyiv informed the applicants that they had to address the State Treasury of Ukraine directly.

9. On 26 November and 19 December 2003 the State Treasury informed the applicants that there were no funds available in the State budget to enforce the judgment of 16 December 2002.

10. On 5 November 2004 the applicants received the sums awarded to them by the judgment of 16 December 2002.

II. RELEVANT DOMESTIC LAW

11. The relevant domestic law and practice are summarised in the judgment of *Zubko and Others v. Ukraine* (nos. 3955/04, 5622/04, 8538/04 and 11418/04, §§ 33-43, 26 April 2006).

THE LAW

I. JOINDER OF THE APPLICATIONS

12. The Court considers that, pursuant to Rule 42 § 1 of the Rules of Court, the applications should be joined, given their common factual and legal background.

II. ALLEGED VIOLATION OF ARTICLE 6 § 1 OF THE CONVENTION AND ARTICLE 1 OF PROTOCOL NO. 1 TO THE CONVENTION

13. The applicants complained under Article 6 § 1 of the Convention about the lengthy non-enforcement of the judgment of 16 December 2002 and about a violation of their right to the peaceful enjoyment of possessions as guaranteed by Article 1 of Protocol No. 1. 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 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

14. The Government raised objections regarding exhaustion of domestic remedies and admissibility *ratione personae* similar to those already dismissed in a number of similar cases (see *Shestakov v. Russia* (dec.), no. 48757/99, 18 June 2002 and *Skubenko v. Ukraine* (dec.), no. 41152/98, 6 April 2004). The Court considers that these objections must be rejected for the same reasons.

15. The Government also submitted that the applicants’ complaints under Article 6 § 1 of the Convention were inadmissible *ratione materiae* with the provisions of the Convention. However, the Court notes that there can in principle be no justification for the exclusion from the guarantees of Article 6 of ordinary labour disputes, such as those relating to salaries, allowances or similar entitlements, on the basis of the special nature of relationship between the particular civil servant and the State in question. Furthermore, the applicants, as a category of public servants, had access to a court under national law (see *Vilho Eskelinen and Others v. Finland* [GC], no. 63235/00, § 62, ECHR 2007-...). Accordingly, the Court considers that in the present cases Article 6 § 1 is applicable and the Government’s objections must be rejected.

B. Merits

16. The Government contended that the delay in enforcement of the judgment given in the applicants’ favour was reasonable and due to the lack of funds in the State budget.

17. The applicant disagreed.

18. The Court notes that the judgment of 16 December 2002 remained unenforced for almost sixteen months after it became final on 9 July 2003.

19. The Court recalls that it has already found violations of Article 6 § 1 of the Convention and Article 1 of Protocol No. 1 in cases raising issues similar to the present application (see, for instance, *Zubko and Others v. Ukraine*, cited above, *Shmalko v. Ukraine*, no. 60750/00, 20 July 2004 and *Voytenko v. Ukraine*, no. 18966/02, 29 June 2004).

20. 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.

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

III. APPLICATION OF ARTICLE 41 OF THE CONVENTION

22. 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

23. The applicants claimed 20,000 euros (EUR) in respect of non-pecuniary damage.

24. The Government rejected these claims.

25. Making its assessment on an equitable basis, as required by Article 41 of the Convention, and taking into account the special circumstance of the applicants' important judicial status, the Court considers it reasonable to award the applicants the sum of EUR 3,000 each for non-pecuniary damage (see *Zubko and Others v. Ukraine*, § 68 and 74, cited above).

B. Costs and expenses

26. In the present case the applicants failed to submit any claims; the Court therefore makes no award.

C. Default interest

27. 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. *Decides* to join the applications;
2. *Declares* the applications admissible;
3. *Holds* that there has been a violation of Article 6 § 1 of the Convention;
4. *Holds* that there has been a violation of Article 1 of Protocol No. 1;
5. *Holds*
 - (a) that the respondent State is to pay the applicants, within three months from the date on which the judgment becomes final in accordance with Article 44 § 2 of the Convention, EUR 3,000 (three thousand euros) each, plus any tax that may be chargeable, 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;
 - (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;
6. *Dismisses* the remainder of the applicants' claims 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