



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

FIFTH SECTION

**CASE OF PERETYATKO v. UKRAINE**

*(Application no. 37758/05)*

JUDGMENT

STRASBOURG

27 November 2008

**FINAL**

***27/02/2009***

*This judgment may be subject to editorial revision.*



**In the case of** Peretyatko v. Ukraine,

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

Rait Maruste, *President*,

Karel Jungwiert,

Volodymyr Butkevych,

Renate Jaeger,

Mark Villiger,

Mirjana Lazarova Trajkovska,

Zdravka Kalaydjieva, *judges*,

and Stephen Phillips, *Deputy Section Registrar*,

Having deliberated in private on 4 November 2008,

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

## PROCEDURE

1. The case originated in an application (no. 37758/05) 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 Sergiy Yevgenovych Peretyatko (“the applicant”), on 5 October 2005.

2. The Ukrainian Government (“the Government”) were represented by their Agent, Mr Y. Zaytsev, of the Ministry of Justice.

3. On 12 December 2007 the Court decided to give notice of the application to the Government. It was also decided to examine the merits of the application at the same time as its admissibility (Article 29 § 3).

## THE FACTS

### THE CIRCUMSTANCES OF THE CASE

4. The applicant was born in 1965 and lives in the Vinnytsya Region.

5. In October 2003 the applicant retired from military service.

6. On 4 December 2003 the Military Court of Zhytomyr Garrison ordered the Military Unit A-2128 to pay the applicant 3,253 Ukrainian hryvnas (UAH)<sup>1</sup> in relation to his military uniform and UAH 51<sup>2</sup> in relation to court fees. This judgment was not appealed against and became final.

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1. About 510 euros (EUR).

2. About EUR 8.

7. In April 2004 the applicant sent by registered post the writs of execution to the Berdychiv Bailiffs' Service, which on 26 April 2004 instituted enforcement proceedings.

8. On 28 January 2005 the court, following the request of the Bailiffs, replaced the original debtor in the enforcement proceedings by its successor, the Berdychiv Town Military Enlistment Office.

9. In November 2006 the applicant received UAH 51<sup>1</sup>.

10. On 29 December 2006 the court, following the request of the Bailiffs, replaced the Berdychiv Town Military Enlistment Office by the Zhytomyr Regional Military Enlistment Office which was responsible for the former's finances.

11. The judgment of 4 December 2003 remains partially unenforced due to the debtor's lack of funds.

## THE LAW

### I. ALLEGED VIOLATION OF ARTICLES 6 § 1 AND 13 OF THE CONVENTION AND ARTICLE 1 OF PROTOCOL NO. 1 TO THE CONVENTION

12. The applicant complained under Articles 6 § 1 and 13 of the Convention about the State authorities' failure to enforce the judgment of 4 December 2003 and of a violation of Article 1 of Protocol No. 1 on the same grounds. The provisions invoked read in so far as relevant, as follows:

#### **Article 6 § 1**

"In the determination of his civil rights and obligations ..., 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."

#### **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

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1. About EUR 8.

and subject to the conditions provided for by law and by the general principles of international law.

### A. Admissibility

13. The Government submitted that Article 6 § 1 was not applicable in the present case stating that the compensation awarded to the applicant concerned his uniform which he was obliged to wear in the exercise of public functions. In their view, the award was of a public law nature and was not decisive for the applicant's private law rights or obligations.

14. The Government also submitted that the uniform for which the applicant obtained compensation was not his property within the meaning of Article 1 of Protocol No. 1. It belonged to the State and the applicant's complaint under Article 1 of Protocol No. 1 was thus incompatible *ratione materiae* with the provisions of the Convention.

15. The applicant disagreed.

16. As regards the Government's submissions concerning the incompatibility of the applicant's complaints under Article 6 § 1 of the Convention and Article 1 of Protocol No. 1, the Court observes that the applicant's case concerned the right to compensation and not, as the Government put it, a title to the uniform. It also notes that at the material time the applicant had retired from public service and had access to a court under national law. Thus, the Court discerns no justification for the exclusion of the applicant's dispute from the guarantees of Article 6 (see *Vilho Eskelinen and Others v. Finland* [GC], no. 63235/00, ECHR 2007-...). Furthermore, the Court recalls that a judgment debt constitutes a possession for the purposes of Article 1 of Protocol No. 1 and, accordingly, it is applicable in the present case (see *Voytenko v. Ukraine*, no. 18966/02, §§ 51-54, 29 June 2004).

17. In view of the foregoing, the Court concludes that the application raises issues of fact and law under the Convention, the determination of which requires an examination of the merits. It finds no grounds for declaring it inadmissible.

### B. Merits

18. The Court notes that the judgment of 4 December 2003 has remained unenforced for about four years and eight months.

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, *Voytenko v. Ukraine*, no. 18966/02, 29 June 2004, and *Pivnenko v. Ukraine*, no. 36369/04, 12 October 2006).

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.

22. Having regard to the above findings under Article 6 § 1, the Court considers that it is not necessary to rule whether, in this case, there has been a violation of Article 13 of the Convention.

## II. APPLICATION OF ARTICLE 41 OF THE CONVENTION

23. 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

24. The applicant claimed the judgment debt due to him and EUR 5,000 in respect of non-pecuniary damage.

25. The Government contested these claims.

26. In so far as the applicant claimed the amount awarded to him by the judgment at issue, the Court considers that the Government should pay him the outstanding debt in settlement of his pecuniary damage. As to the remainder of the applicant's just satisfaction claims, the Court, making its assessment on an equitable basis, as required by Article 41 of the Convention, awards the applicant EUR 1,400 in respect of non-pecuniary damage.

### B. Costs and expenses

27. The applicant claimed EUR 78 for the costs and expenses incurred before the domestic courts and EUR 12 for correspondence costs in the proceedings before the Court.

28. The Government contested these claims.

29. 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 rejects the claim for costs and expenses in the domestic proceedings and considers it reasonable to award the sum of EUR 12 for the applicant's correspondence with the Court.

### C. Default interest

30. 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 is no need to examine the complaint under Article 13 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 applicant, within three months from the date on which the judgment becomes final in accordance with Article 44 § 2 of the Convention,
    - the outstanding judgment debt due to him;
    - EUR 1,412 (one thousand four hundred and twelve euros) in respect of non-pecuniary damage and costs and expenses, plus any tax that may be chargeable;
  - (b) that the latter amount shall 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;
  - (c) that from the expiry of the above-mentioned three months until settlement simple interest shall be payable on the latter amount 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 applicant's claim for just satisfaction.

Done in English, and notified in writing on 27 November 2008, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Stephen Phillips  
Deputy Registrar

Rait Maruste  
President