



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

FIFTH SECTION

CASE OF PASLEN v. UKRAINE

(Application no. 44327/05)

JUDGMENT

STRASBOURG

11 December 2008

FINAL

11/03/2009

This judgment may be subject to editorial revision.

In the case of Paslen v. Ukraine,

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

Peer Lorenzen, *President*,
Rait Maruste,
Karel Jungwiert,
Volodymyr Butkevych,
Renate Jaeger,
Mirjana Lazarova Trajkovska,
Zdravka Kalaydjieva, *judges*,

and Claudia Westerdiek, *Section Registrar*,

Having deliberated in private on 18 November 2008,

Delivers the following judgment, which was adopted on the last-mentioned date:

PROCEDURE

1. The case originated in an application (no. 44327/05) 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 Vladimir Vladimirovich Paslen (“the applicant”), on 23 November 2005.

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

3. On 7 September 2006 the Court decided to communicate 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**

4. The applicant was born in 1956 and lives in Donetsk. He retired from the army in 2003.

A. First set of proceedings

5. By the final judgment of 19 August 2004, the Military Court of Donetsk Garrison ordered the Donetsk Regional Enlistment Office to pay the applicant 1,144.07 Ukrainian hryvnias (UAH)¹ in compensation for his uniform and UAH 51² for court fees. The judgment remains unenforced.

B. Second set of proceedings

6. By the decisions of 8 April and 16 June 2005, the Voroshylivskyy District Court of Donetsk and the Donetsk Regional Court of Appeal rejected the applicant's new claim for compensation for his uniform as unsubstantiated.

7. The applicant did not appeal in cassation.

II. RELEVANT DOMESTIC LAW

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

THE LAW

I. NON-ENFORCEMENT OF THE JUDGMENT IN THE APPLICANT'S FAVOUR

9. The applicant complained of the lengthy non-enforcement of the judgment of 19 August 2004. He invoked Articles 6 § 1 and 13 of the Convention and Article 1 of Protocol No. 1, which provide, in so far as relevant, as follows:

Article 6 § 1

“In the determination of his civil rights and obligations ... everyone is entitled to a fair ... 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.”

1. About 180 euros – “EUR”.

2. About EUR 8.

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 ...”

10. The Government raised objections regarding the applicability of Article 6 § 1 and exhaustion of domestic remedies similar to those which the Court has already dismissed in a number of judgments (see, for example, *Mitin v. Ukraine*, no. 38724/02, §§ 20-24, 14 February 2008, and *Voytenko v. Ukraine*, cited above, §§ 27-31).

11. The Court notes that the final judgment of the Military Court of Donetsk Garrison of 19 August 2004 has remained unenforced for about four years and one month.

12. The Court recalls that it has already found violations of Article 6 § 1 of the Convention and Article 1 of Protocol No. 1 in a substantial number of cases raising issues similar to the present application (see, for example, *Voytenko v. Ukraine*, cited above, §§ 43 and 55). There is nothing in the parties’ submissions capable of persuading the Court to reach a different conclusion.

13. Accordingly, the Court declares this part of the application admissible and finds that there has been a violation of Article 6 § 1 of the Convention and Article 1 of Protocol No. 1.

14. 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. COMPLAINTS REGARDING THE SECOND SET OF PROCEEDINGS

15. The applicant complained of a violation of Articles 6 § 1 and 13 of the Convention and Article 1 of Protocol No. 1 on account of the outcome and unfairness of the second set of proceedings.

16. The Court notes that the applicant did not appeal in cassation to the Supreme Court and has, therefore, not exhausted all the remedies available to him under Ukrainian law (see *Vorobyeva v. Ukraine* (dec.), no. 27517/02, 17 December 2002). It follows that this part of the application must be declared inadmissible pursuant to Article 35 §§ 1 and 4 of the Convention.

III. APPLICATION OF ARTICLE 41 OF THE CONVENTION

17. 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

18. The applicant claimed UAH 3,272.46¹, to be indexed to take inflation into account, for pecuniary damage, and UAH 250,000² for non-pecuniary damage. The Government disagreed. The Court makes its assessment on an equitable basis as required by Article 41 of the Convention and considers that the Government should pay the applicant the outstanding debt (UAH 1,195.07³) in settlement of his pecuniary damage. It also awards him EUR 600 in respect of non-pecuniary damage.

B. Costs and expenses

19. The applicant did not submit any claim under this head; the Court therefore makes no award in this respect.

C. Default interest

20. 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 applicant’s complaints concerning the non-enforcement of the judgment of 19 August 2004 admissible and the remainder of the application inadmissible;
2. *Holds* that there has been a violation of Article 6 § 1 of the Convention;

1. About EUR 512.

2. About EUR 34,785.

3. About EUR 187.

3. *Holds* that there has been a violation of Article 1 of Protocol No. 1 to the Convention;
4. *Holds* that there is no need to examine separately the applicant's complaint under Article 13 of the Convention;
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 judgment debt still owed to him (UAH 1,195.07), as well as EUR 600 (six hundred euros), plus any tax that may be chargeable, in respect of pecuniary and non-pecuniary damage, the latter amount 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;
6. *Dismisses* the remainder of the applicant's claim for just satisfaction.

Done in English, and notified in writing on 11 December 2008, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Claudia Westerdiek
Registrar

Peer Lorenzen
President