



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

FIFTH SECTION

CASE OF ANTONYUK v. UKRAINE

(Application no. 17022/02)

JUDGMENT

STRASBOURG

11 December 2008

FINAL

11/03/2009

This judgment may be subject to editorial revision.

In the case of Antonyuk 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,

Mark Villiger,

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 that date:

PROCEDURE

1. The case originated in an application (no. 17022/02) 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, Ms Oksana Vasylivna Antonyuk (“the applicant”), on 19 March 2002.

2. The Ukrainian Government (“the Government”) were represented by their Agent, Mrs V. Lutkovska.

3. On 21 January 2005 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 1909 and lives in Volodymyr-Volynsky, in the Volyn Region, Ukraine.

5. In 1971 the Volodymyr-Volynsky Town Council granted the applicant a protected tenancy of a plot of land for permanent use (*безстрокове користування земельною ділянкою*); subsequently the applicant gained property rights over the plot.

6. According to the applicant, in 1984 her neighbour, C., built a garage occupying part of her land.

A. Court proceedings

7. In May 1994 the applicant instituted proceedings in the Volodymyr-Volynsky Town Court (“the Town Court”) against C., seeking to remove the impediments to her possession of the plot of land at issue. She also sought compensation.

8. On 10 August 1995, in the context of conciliatory proceedings, a municipal land commission defined the boundary between the plots and placed a set of land markers to make it visible.

9. On 24 March 1997 the Town Court found in favour of the applicant. In particular, it ordered C. not to impede the applicant’s use of her land and dismissed the claim for compensation.

10. On 17 April 1997 the Volyn Regional Court (since June 2001 the Volyn Regional Court of Appeal) rejected an appeal in cassation by C.

B. Enforcement proceedings

11. The judgment of 24 March 1997 having become final, on 5 May 1997 the Volodymyr-Volynsky Town Bailiffs’ Service (“the Bailiffs’ Service”) instituted enforcement proceedings.

12. The Bailiffs’ Service requested the Town Court to clarify the manner of enforcement of the judgment. On 19 June 1997 the Town Court indicated that the boundary between the plots should be set out in accordance with the municipal land commission’s plan of 10 August 1995. Nevertheless, until at least 2002, the Bailiffs’ Service requested the court several times to provide further clarifications. In letters of 21 January and 5 April 1999, 14 January and 19 December 2000, 19 November 2001 and 12 November 2002 the Town Court replied to these requests and noted that the judgment of 24 March 1997 was final and subject to enforcement, and that the court findings were unambiguous and clear. The court also referred to its decision of 19 June 1997.

13. Subsequently, on an unspecified date the local prosecutor requested the Town Court to interpret its judgment of 24 March 1997. On 7 July 2003 the court discontinued the proceedings upon this request as it had already interpreted the judgment in question on 19 June 1997.

14. Between 1997 and 2003 the Bailiffs’ Service made over thirty visits to the site; however, because of C.’s resistance and unwillingness to cooperate, they were unsuccessful. Although C. was fined for such behaviour (the last occasion, according to the Government, being on 1 November 2001), the judgment of 24 March 1997 remained unenforced. The Bailiffs’ Service terminated the enforcement proceedings on a number of occasions. However, following appeals by the applicant, those decisions were quashed by the Town Court and the enforcement proceedings were resumed.

15. On 19 July 2002, following the court's reversal of one of the above-mentioned decisions to terminate the enforcement proceedings, the Bailiffs' Service refused to resume these proceedings, as, in its view, the court findings in the judgment of 24 March 1997, as mentioned in the writ of enforcement, were vague and imprecise. On 20 August 2002 the Town Court allowed a complaint by the applicant against the Bailiffs' Service and set aside its decision. The court also ordered the Bailiffs' Service to enforce the judgment at issue.

16. On several occasions during this period the applicant complained of alleged omissions or inactivity on the part of the bailiffs to their superiors.

17. In a ruling of 6 November 2003 the Bailiffs' Service terminated the enforcement proceedings on the ground that the judgment of 24 March 1997 had been enforced in full.

C. Court proceedings against the Bailiffs' Service after 6 November 2003

18. In November 2003 the applicant, being dissatisfied with the ruling of 6 November 2003, appealed against it. On 9 December 2003 the Town Court quashed the impugned ruling, ordering the Bailiffs' Service to resume the enforcement proceedings. On 25 February 2004 the Volyn Regional Court of Appeal quashed the judgment of 9 December 2003 and rendered a new one, rejecting the applicant's appeal against the ruling of 6 November 2003. On 16 January 2008 the Higher Administrative Court of Ukraine upheld the judgment of 25 February 2004.

19. The applicant further requested the Supreme Court of Ukraine to review the case under the extraordinary review procedure but to no avail.

II. RELEVANT DOMESTIC LAW

20. The relevant provisions of the State Bailiffs' Service Act of 24 March 1998 and the Enforcement Proceedings Act of 21 April 1999 are summarised in the case of *Dzizin v. Ukraine* ((dec.), no. 1086/02, 24 June 2003).

THE LAW

I. LENGTHY NON-ENFORCEMENT OF THE JUDGMENT OF 24 MARCH 1997

21. The applicant complained about the State authorities' failure to enforce the judgment of 24 March 1997. She also complained about the length of the enforcement proceedings.

The Court will examine these complaints under Article 6 § 1 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 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 ...”

A. Admissibility

1. The complaint about the State authorities' failure to enforce the judgment of 24 March 1997

22. The Government, referring to the ruling of the Bailiffs' Service of 6 November 2003 (see paragraph 17 above), contended that the judgment in question had already been enforced.

23. The applicant disagreed, asserting that the judgment had still not been enforced, notwithstanding her lack of success in judicial proceedings to annul the bailiff's decision on the termination of the enforcement proceedings.

24. The Court notes that on 6 November 2003 the Bailiffs' Service terminated the enforcement proceedings on the ground that the judgment of 24 March 1997 had been enforced in full. The ensuing court proceedings

instituted by the applicant to quash this decision and to resume the enforcement proceedings were unsuccessful.

25. The Court finds no reasons, in the circumstances of the present case, to doubt the national courts' findings. Accordingly, the Court comes to the conclusion that the judgment in question was enforced by the said date.

26. It follows that this part of the application is manifestly ill-founded and must be rejected in accordance with Article 35 §§ 3 and 4 of the Convention.

2. The complaint about the length of the enforcement proceedings

27. The Court observes that the fact that the judgment in question was enforced does not deprive the applicant of her victim status in relation to the period during which it remained unenforced (see *Romashov v. Ukraine*, no. 67534/01, §§ 26-27, 27 July 2004).

28. The Court further reiterates that in enforcement proceedings against private persons the responsibility of the State is limited to the organisation and proper conduct of such proceedings (see *Shestakov v. Russia* (dec.), no. 48757/99, 18 June 2002).

29. The Court further notes that it is not required to decide whether the applicant should have claimed compensation from the State Bailiffs' Service for damage allegedly inflicted in the course of the enforcement proceedings against C. (see, for instance, *Dzizin v. Ukraine* (dec.), no. 1086/02, 24 June 2003, and *Kukta v. Ukraine* (dec.), no. 19443/03, 22 November 2005) in order to comply with the requirement of exhaustion of domestic remedies, as the Government did not raise in their observations an objection to that effect (see, *mutatis mutandis*, *Dobrev v. Bulgaria*, no. 55389/00, §§ 110-112, 10 August 2006).

30. The complaint must therefore be declared admissible as it is not manifestly ill-founded within the meaning of Article 35 § 3 of the Convention and neither is it inadmissible on any other grounds.

B. Merits

1. Period to be taken into consideration

31. The Government maintained that the period to be taken into consideration had begun only on 11 September 1997, when the recognition by Ukraine of the right of individual petition took effect. Therefore, the applicant's complaints relating to the events prior to that date should be rejected as inadmissible *ratione temporis*.

32. The Court notes that the judgment in the applicant's favour became final and enforceable on 17 April 1997 (see paragraph 10 above), and, having regard to the above findings (see paragraph 25 above), that it was

enforced by 6 November 2003. The Court notes that the Convention entered into force in respect of Ukraine on 11 September 1997, almost five months after the date of the judgment when the judgment became final. The Court further observes that after 11 September 1997 the enforcement proceedings lasted for six years and almost two months. However, in assessing the reasonableness of the time that elapsed after 11 September 1997, account must be taken of the state of proceedings on that date (see, *mutatis mutandis*, *Milošević v. "the former Yugoslav Republic of Macedonia"*, no. 15056/02, § 21, 20 April 2006; *Styrkowski v. Poland*, no. 28616/95, § 46, ECHR 1998-VIII; and *Foti and Others v. Italy*, 10 December 1982, § 53, Series A no. 56).

2. Reasonableness of the length of the enforcement proceedings

(a) Article 6 § 1 of the Convention

33. In their observations on the merits of the case, the Government contended that there had been no violation of Article 6 § 1 of the Convention. In particular, they stated that the delays in the proceedings at issue had been caused by C.'s resistance to the bailiffs' activities and by defects in the judgment that required the bailiff to request the Town Court to interpret and clarify it. They also argued that the applicant's manifold appeals and complaints about the bailiffs' alleged omissions or inactivity had frustrated the conduct of the enforcement proceedings. Lastly, they pointed out that the Bailiffs' Service had performed all the necessary actions in order to enforce the judgment of 24 March 1997 in the applicant's favour.

34. The applicant disagreed.

35. The Court accepts the Government's contention that C.'s lack of cooperation and resistance to the bailiff's actions caused delays in the enforcement proceedings. However, according to the Government's observations, the last time C. was fined was on 1 November 2001, and therefore this argument is not pertinent to the period after that date. At the same time the Court stresses that the delays before this date cannot be imputed solely to C. It is true that the bailiffs fined him on several occasions but the judgment of 24 March 1997 nevertheless remained unenforced until 6 November 2003. Given the length of the period in question, the effectiveness of the sanctions to which the Bailiffs' Service resorted in order to force C. to comply with the judgment in the applicant's favour may be called into question.

36. The Court also agrees with the Government's submission that the applicant's complaints and appeals against the bailiffs' decisions to some extent frustrated the conduct of the enforcement proceedings. However, having regard to the fact that in most cases these complaints and appeals were allowed by the domestic courts, the effect of the latter submission is considerably diminished.

37. It follows that these arguments do not provide a plausible justification for the length of the proceedings as a whole.

38. The Court further observes that until late 2002 the Bailiffs' Service, and in 2003 the local prosecutor, requested the Town Court on several occasions to clarify the manner of enforcement of the judgment in the applicant's favour. The Town Court, in turn, having already interpreted the judgment once on 19 June 1997, subsequently insisted that the findings in its judgment were unambiguous and needed no further clarification (see paragraphs 12-15 above). The Court notes that it is impossible to conclude from the materials in its possession whether the judgment in question and its further interpretation by the national court were sufficient for the enforcement of this judgment. However, for a considerable period of time the discrepancies between the national authorities, regardless of their background, thwarted the progress of the enforcement proceedings.

39. Having regard to the particular circumstances of the present case, the Court comes to the conclusion that the respondent State has fallen short of its obligation in this respect.

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

(b) Article 1 of Protocol No. 1 to the Convention

41. The Government submitted that the plot of land granted to the applicant for permanent use could not be viewed as her "possession" for the purposes of Article 1 of Protocol No. 1.

42. The applicant disagreed.

43. The Court has recently found that the applicant's title to a plot of land granted for permanent use constitutes a "possession" falling within the ambit of Article 1 of Protocol No. 1 (see, *mutatis mutandis*, *Ostapenko v. Ukraine*, no. 17341/02, §§ 11 and 44-48, 14 June 2007). Furthermore, the Court points out that subsequently the applicant gained property rights over the plot at issue (see paragraph 5 above).

44. Having regard to its above findings, the Court considers that the impossibility for the applicant to have this judgment enforced "within a reasonable time" constitutes an interference with her right to peaceful enjoyment of her possessions.

45. The Court has already found violation of Article 1 of Protocol No. 1 in cases like the present application (see, for instance, *Fuklev v. Ukraine*, no. 71186/01, §§ 90-93, 7 June 2005). It finds no reason to reach a different conclusion in the present case.

46. Accordingly, there has been a violation of Article 1 of Protocol No. 1.

II. OTHER COMPLAINTS

47. The applicant also complained about the outcome of the court proceedings in which she had sought to annul the ruling of 6 November 2003. She stated in this connection that the Higher Administrative Court of Ukraine had failed to invite her to attend the hearing.

48. Having carefully considered the applicant's submissions in the light of all the material in its possession, the Court finds that, in so far as the matters complained of are within its competence, they do not disclose any appearance of a violation of the rights and freedoms set out in the Convention.

49. It follows that this part of the application must be declared inadmissible as being manifestly ill-founded, pursuant to Article 35 §§ 3 and 4 of the Convention.

III. APPLICATION OF ARTICLE 41 OF THE CONVENTION

50. 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

51. The applicant claimed 20,000 Ukrainian hryvnias (UAH)¹ in respect of non-pecuniary damage. Subsequently she increased this sum to EUR 30,000; however, this was done outside the set time-limit.

52. The Government found these claims unsubstantiated and exorbitant. They suggested that the finding of a violation would be sufficient just satisfaction in the present case.

53. The Court considers that the applicant must have sustained non-pecuniary damage as a result of the violations found. Making its assessment on an equitable basis, as required by Article 41 of the Convention, the Court awards the applicant EUR 2,000 under this head.

B. Costs and expenses

54. The applicant did not submit any claim under this head. The Court therefore makes no award.

¹ Around 3,229.57 euros (EUR).

C. Default interest

55. 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 complaints under Article 6 § 1 of the Convention and Article 1 of Protocol No. 1 concerning the excessive length of the enforcement proceedings admissible and the remainder of the application inadmissible;
2. *Holds* that there has been a violation of Article 6 § 1 of the Convention in respect of the excessive length of the enforcement proceedings;
3. *Holds* that there has been a violation of Article 1 of Protocol No. 1 in respect of the excessive length of the enforcement proceedings;
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) 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, plus any tax that may be chargeable;
 - (b) that from the expiry of the above-mentioned three months until settlement simple interest shall be payable on the above amount 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 11 December 2008, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Claudia Westerdiek
Registrar

Peer Lorenzen
President