



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

FIFTH SECTION

CASE OF GNITZEVICH v. UKRAINE

(Application no. 29925/04)

JUDGMENT

STRASBOURG

16 April 2009

FINAL

16/07/2009

This judgment may be subject to editorial revision.

In the case of Gnitzevich v. Ukraine,

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

Rait Maruste, *President*,
Karel Jungwiert,
Renate Jaeger,
Mark Villiger,
Isabelle Berro-Lefèvre,
Mirjana Lazarova Trajkovska, *judges*,
Stanislav Shevchuk, *ad hoc judge*,

and Claudia Westerdiek, *Section Registrar*,

Having deliberated in private on 24 March 2009,

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

PROCEDURE

1. The case originated in an application (no. 29925/04) 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 Valeriy Anatolyevich Gnitzevich (“the applicant”), on 31 July 2004.

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

3. On 13 November 2007 the Court declared the application partly inadmissible and decided to communicate the complaints concerning the non-enforcement of the judgment given in the applicant’s favour to the Government. It also decided to examine the merits of the remainder of the application at the same time as its admissibility (Article 29 § 3).

THE FACTS**I. THE CIRCUMSTANCES OF THE CASE**

4. The applicant was born in 1956 and lives in the city of Donetsk, Ukraine.

5. On 4 July 1997 the Kyivsky District Court of Donetsk (“the District Court”) fined the applicant with 350 Ukrainian hryvnias (UAH) for corruption in the course of his duties. On 17 December 1997 the President of the Donetsk Regional Court quashed this decision and terminated the proceedings against the applicant as time-barred.

6. On 5 May 2000 the District Court awarded the applicant UAH 500¹ in compensation for non-pecuniary caused by his conviction, to be paid by the Office of the State Treasury in the Kyivsky District of Donetsk (“the Office”). The decision was upheld on 5 June 2000 by the Donetsk Regional Court.

7. On 29 June 2000 the Bailiffs’ Service of the Kyivsky District of Donetsk (“the Bailiffs”) instituted enforcement proceedings and transferred the writ of execution to the Office.

8. On 6 June 2001 the District Court rectified its judgment of 5 May 2000, specifying that the applicant was to be paid UAH 500 from the State Budget through the Office.

9. On 26 June 2001 the writ of execution was sent to the Office, which transferred it to the Department of the State Treasury of the Donetsk Region.

10. In November 2004 the writ of execution was transferred to the Bailiffs’ Service of the Pechersky District Court of Kyiv, which on 7 December 2004 refused to institute enforcement proceedings as it fell outside its jurisdiction.

11. On 25 December 2004 the writ of execution was transferred to the Enforcement Department of the Ministry of Justice, which on 21 January 2005 refused to institute enforcement proceedings.

12. On 11 February 2005 the Donetsk Regional Bailiffs’ Service refused to institute enforcement proceedings since the writ of execution had expired on 5 June 2003.

13. On 20 May 2005 the District Court ordered a new writ of execution to be sent to the Department.

14. On 20 June 2005 the Donetsk Regional Bailiffs’ Service opened enforcement proceedings.

15. The judgment was enforced on 12 January 2008.

II. RELEVANT DOMESTIC LAW

16. The relevant domestic law is summarised in the judgments of *Romashov v. Ukraine*, no. 67534/01, §§ 16-19, 27 July 2004, and *Voytenko v. Ukraine*, no. 18966/02, §§ 20-25, 29 June 2004.

¹ Around EUR 103

THE LAW

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

17. The applicant complained about the lengthy non-execution of the judgment of 5 May 2000. He relied on Article 6 § 1 of the Convention and Article 1 of Protocol No. 1 to the Convention, which 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.....”

A. Admissibility

18. The Government raised objections regarding the applicants’ victim status similar to those which the Court has already dismissed in the case of *Voytenko v. Ukraine*, no. 18966/02, §§ 32-35, 29 June 2004. The Court considers that the present objections must be rejected for the same reasons.

19. The Court notes that the applicant’s complaints are not manifestly ill-founded within the meaning of Article 35 § 3 of the Convention. It further notes that they are not inadmissible on any other grounds. They must therefore be declared admissible.

B. Merits

20. The Government stressed that they had taken all measures provided for by the domestic legislation to enforce the judgment given in the applicant’s favour. They further submitted that the judgment was enforced in full.

21. The applicant reiterated that the State was responsible for the delay in the enforcement of the court judgment in his favour.

22. The Court observes that the judgment in the applicant’s favour remained unenforced for seven years and eight months.

23. The Court has frequently found violations of Article 6 § 1 of the Convention in cases raising similar issues to the ones in the present case (see *Romashov v. Ukraine*, cited above, § 46; and *Voytenko v. Ukraine*, cited above, §§ 43 and 55).

24. Having examined the material submitted to it, the Court notes that the Government have not put forward any fact or argument capable of persuading it to reach a different conclusion in the present case.

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

II. APPLICATION OF ARTICLE 41 OF THE CONVENTION

26. 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

27. The applicant claimed 7,800 euros (EUR) in respect of non-pecuniary damage.

28. The Government contested the applicant’s claim.

29. The Court finds that the applicant must have suffered non-pecuniary damage on account of the lengthy non-enforcement of the judgment given in his favour. Ruling on an equitable basis, it awards the applicant EUR 1,000 in respect of non-pecuniary damage.

B. Costs and expenses

30. The applicant also claimed EUR 35 for postal expenses incurred in connection with his Convention proceedings.

31. The Government left the matter to the Court’s discretion.

32. The Court considers it reasonable to award the applicant the full amount claimed

C. Default interest

33. 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 remainder of 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 1 of Protocol No. 1 to 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 1,000 (one thousand euros) in respect of non-pecuniary damage as well as EUR 35 (thirty-five euros) in respect of costs and expenses, plus any tax that may be chargeable, 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.
5. *Dismisses* the remainder of the applicant's claims for just satisfaction.

Done in English, and notified in writing on 16 April 2009, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Claudia Westerdiek
Registrar

Rait Maruste
President