



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

1959 · 50 · 2009

FIFTH SECTION

CASE OF BILOKIN AND OTHERS v. UKRAINE

(Application no. 14298/06)

JUDGMENT

STRASBOURG

18 June 2009

FINAL

18/09/2009

This judgment may be subject to editorial revision.

In the case of Bilokin and Others v. Ukraine,

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

Peer Lorenzen, *President*,

Karel Jungwiert,

Renate Jaeger,

Isabelle Berro-Lefèvre,

Mirjana Lazarova Trajkovska,

Zdravka Kalaydjieva, *judges*,

Stanislav Shevchuk, *ad hoc judge*,

and Claudia Westerdiek, *Section Registrar*,

Having deliberated in private on 26 May 2009,

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

PROCEDURE

1. The case originated in an application (no. 14298/06) against Ukraine lodged with the Court under Article 34 of the Convention for the Protection of Human Rights and Fundamental Freedoms (“the Convention”) by six Ukrainian nationals, Ms Yefrosyniya Semenivna Bilokin, Ms Olena Oleksandrivna Shebitko, Mr Anatoliy Ivanovich Shebitko, Mr Petro Ivanovich Shebitko, Mr Sergiy Ivanovich Maksymenko and Ms Nataliya Dmytrivna Maksymenko, on 17 March 2006.

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

3. On 29 April 2008 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. Ms Yefrosyniya Semenivna Bilokin was born in 1925, Ms Olena Oleksandrivna Shebitko in 1972, Mr Anatoliy Ivanovich Shebitko in 1973, Mr Petro Ivanovich Shebitko in 1967, Mr Sergiy Ivanovich Maksymenko in 1965 and Ms Nataliya Dmytrivna Maksymenko in 1963. All the applicants live in Sudiyivka, Poltava Region.

A. Proceedings against the Collective Farming Enterprise im. Illicha

5. On 26 July 2001 the Poltava Town Court (“the Town Court”) allowed the applicants’ claim against the collective enterprise and ordered the latter to return to all of them certain agricultural equipment worth 13,382 Ukrainian hryvnias (UAH)¹. It also awarded them UAH 180² in compensation for legal expenses.

6. On 17 October 2001 the Town Court changed the manner of enforcement of the judgment at the applicants’ request and ordered the debtor to pay them UAH 13,382 instead of providing them with the equipment corresponding to that amount. To secure the claim the court decided to seize the equipment at issue.

7. On 9 November 2001 enforcement proceedings were instituted.

8. In April 2002 the Bailiffs’ Service seized the debtor’s equipment.

9. On an unspecified date the judgment was enforced in part, an amount of UAH 2,000³ being paid to the applicants (each of them received UAH 333⁴).

10. No further steps seem to have been taken for the enforcement of the judgment.

B. Proceedings against the State Bailiffs’ Service

11. The applicants complained to the Town Court that the Bailiffs’ Service was taking no action.

12. On 21 November 2002 the Town Court found their complaint substantiated and ordered the Bailiffs’ Service to speed up the sale of the seized property.

13. In 2004 the applicants introduced a claim for damages against the Bailiffs’ Service at the Zhovtnevyi District Court, Poltava (“the District Court”).

14. On 5 August 2004 the District Court found for the applicants and ordered the Bailiffs’ Service to pay them jointly UAH 11,562⁵ as the remaining amount of the award made by the 26 July 2001 judgment, and UAH 1,000⁶ each in compensation for non-pecuniary damage. The judgment was not appealed against and became final. It remains unenforced for lack of funds.

1. About 2,888 euros (EUR).

2. About EUR 40.

3. About EUR 437.

4. About EUR 73.

5. About EUR 1,857.

6. About EUR 160.

II. RELEVANT DOMESTIC LAW

15. The relevant domestic law is summarised in the judgment of *Romashov v. Ukraine* (no. 67534/01, §§ 16-19, 27 July 2004).

THE LAW

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

16. The applicants complained of the lengthy non-enforcement of the judgments of 26 July 2001 and 5 August 2004. They relied on Article 13 of the Convention and Article 1 of Protocol No. 1.

17. The Court finds it appropriate to examine the applicants' complaint under Article 6 § 1 of the Convention and Article 1 of Protocol No. 1, which 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 fair ... hearing within a reasonable time by [a] ... tribunal ...”

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 applicant's victim status concerning the non-enforcement of the judgment of 26 July 2001

18. The Government raised objections regarding the applicants' victim status submitting, in particular, that the applicants had lost any grounds to claim to be victims of the alleged violation in respect of the non-enforcement of the 26 July 2001 judgment on 5 August 2004, when the District Court had not only recognised the violation but also awarded each

of them UAH 1,000¹ in compensation for non-pecuniary damage in this respect.

19. The Court reiterates its case-law on the matter, according to which the applicant is considered to lose victim status if the national authorities have acknowledged, either expressly or in substance, and then afforded redress for, the breach of the Convention. The issue as to whether a person may still claim to be a victim of an alleged violation of the Convention essentially entails on the part of the Court an *ex post facto* examination of his or her situation. As it has already held in the length-of-proceedings cases, the question whether he or she has received reparation for the damage caused – comparable to just satisfaction as provided for under Article 41 of the Convention – is an important issue (see, among other authorities, *Cocchiarella v. Italy* [GC], no. 64886/01, §§ 71-72, ECHR 2006-V).

20. Turning to the present case, the Court notes that the domestic authorities indeed acknowledged the authorities' failure to ensure the enforcement of the judgment in question and awarded the applicants UAH 1,000 (about EUR 160) each in compensation for non-pecuniary damage. The Court considers that the redress was insufficient in the circumstances and, in any event, has never been paid to the applicants. They, therefore, can still claim to be "victims" of the lengthy non-enforcement of the 26 July 2001 judgment in their favour.

21. The Government's objection must therefore be dismissed.

2. Non-exhaustion of domestic remedies concerning the non-enforcement of the judgment of 5 August 2004

22. The Government raised objections regarding the exhaustion of domestic remedies similar to those which the Court has already dismissed in a number of cases (see, for example, *Sokur v. Ukraine* (dec.), no. 29439/02, 16 December 2003).

23. The Court sees no reasons to depart from its case-law in the instant case and dismisses also this objection of the Government.

24. The Court further notes that the application is not manifestly ill-founded within the meaning of Article 35 § 3 of the Convention and that it is not inadmissible on any other grounds. It must therefore be declared admissible.

B. Merits

25. The Court notes that the final judgment of the Poltava Town Court dated 26 July 2001 was partially enforced in April 2002, when each of the applicants received UAH 333, that being equal to about 15 per cent of the

1. About EUR 160.

outstanding debt. The judgment, in so far as the remainder of the award is concerned, has remained unenforced for about seven years and six months, with the Bailiffs' Service recognized, by the judgment of 5 August 2004, responsible for the delay. Furthermore, the last-mentioned judgment itself, in the part concerning the compensation to the applicants for the non-pecuniary damage caused to them by the lengthy non-enforcement of the 26 July 2001 judgment, has remained unenforced for four years and six months.

26. The Court reiterates 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, *Romashov v. Ukraine*, cited above, §§ 45-46). The Court finds no ground to depart from its case-law in the present case.

27. 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.

28. Accordingly, it finds that there has been a violation of Article 6 § 1 of the Convention and Article 1 of Protocol No. 1.

II. APPLICATION OF ARTICLE 41 OF THE CONVENTION

29. 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

30. Each of the applicants claimed EUR 6,500 in respect of pecuniary damage and EUR 5,500 in compensation for non-pecuniary damage.

31. The Government contested these claims.

32. 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 applicants the outstanding debt under the judgment of 5 August 2004 in settlement of their pecuniary damage. It also awards EUR 1,100 to each of them in respect of non-pecuniary damage.

B. Costs and expenses

33. The applicants did not submit any separate claim under this head; the Court therefore makes no award in this respect.

C. Default interest

34. 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 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 applicants' complaint under Article 13 of the Convention;
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, the debt still owed to them under the judgment of 5 August 2004 as well as EUR 1,100 (one thousand one hundred euros) to each of them 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 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' claim for just satisfaction.

Done in English, and notified in writing on 18 June 2009, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Claudia Westerdiek
Registrar

Peer Lorenzen
President