



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

1959 · 50 · 2009

FIFTH SECTION

CASE OF BILETSKAYA v. UKRAINE

(Application no. 25003/06)

JUDGMENT

STRASBOURG

10 December 2009

FINAL

10/03/2010

This judgment will become final in the circumstances set out in Article 44 § 2 of the Convention. It may be subject to editorial revision.

In the case of Biletskaya v. Ukraine,

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

Peer Lorenzen, *President*,

Renate Jaeger,

Karel Jungwiert,

Rait Maruste,

Mark Villiger,

Isabelle Berro-Lefèvre, *judges*,

Mykhaylo Buromenskiy, *ad hoc judge*,

and Claudia Westerdiek, *Section Registrar*,

Having deliberated in private on 17 November 2009,

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

PROCEDURE

1. The case originated in an application (no. 25003/06) against Ukraine lodged with the Court under Article 34 of the Convention for the Protection of Human Rights and Fundamental Freedoms (“the Convention”) by a Ukrainian national, Ms Lyubov Mikhaylovna Biletskaya (“the applicant”), on 3 June 2006.

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

3. On 14 January 2009 the President of the Fifth Section decided to give notice of the application to the Government. It was also decided to rule on the admissibility and merits of the application at the same time (Article 29 § 3).

THE FACTS

I. THE CIRCUMSTANCES OF THE CASE

4. The applicant was born in 1957 and lives in Slavutych of the Kyiv Region.

5. On 16 May 2005 the Slavutych Court awarded the applicant 6,057.34 Ukrainian hryvnias¹ (UAH) in compensation for salary arrears and non-pecuniary damage to be paid by the State Central Enterprise of Nuclear Waste Utilisation (*Державне підприємство «Центральне підприємство*

¹ Approximately 951 euros (EUR).

по переробці радіоактивних відходів»). The judgment became final on 16 June 2005.

6. In May 2006 the Ministry of Fuel and Energy of Ukraine informed the applicant that the liquidation procedure in respect of the State Central Enterprise of Nuclear Waste Utilisation had been instituted and that the Enterprise lacked funds to pay the judgment debts to the applicant.

7. The judgment remains unenforced.

II. RELEVANT DOMESTIC LAW

8. The relevant domestic law is summarised in the judgment of *Mykhaylenko and Others v. Ukraine* (nos. 35091/and foll., §§ 24-33, ECHR 2004-XII).

THE LAW

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

A. Admissibility

9. The Government submitted that the applicant's complaint was inadmissible as violation of Article 1 of Protocol No. 1 to the Convention concerning non-enforcement of judgment could not be established separately, being based on a finding of a breach of Article 6 § 1 of the Convention.

10. The applicant disagreed.

11. The Court considers that the Government's objection is closely linked to the merits of the applicant's complaints under Article 1 of Protocol No. 1. In these circumstances, it joins this objection to the merits of the applicant's complaint.

12. The Court notes that the applicant's complaint is not manifestly ill-founded within the meaning of Article 35 § 3 of the Convention. It further notes that it is not inadmissible on any other ground. It must therefore be declared admissible.

B. Merits

13. The Court reiterates that the judgment debt at issue constitutes the applicant's possession (see *Poltorachenko v. Ukraine*, no. 77317/01, § 38,

18 January 2005) and impossibility for the applicant to obtain execution of the judgment at issue amounts to an interference with this possession (see, among other authorities, *Voytenko v. Ukraine*, no. 18966/02, § 53, 29 June 2004). It has already found a violation of Article 1 of Protocol No. 1 in cases similar to the present one, where the Government have not advanced any convincing justification for that interference (see, *Dubenko v. Ukraine*, cited above, § 51; see also *Lopatyyuk and Others v. Ukraine*, nos. 903/05 et seq., §§ 14-15 and 22, 17 January 2008).

14. 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.

15. In view of the above the Court rejects the Government's preliminary objection as to admissibility of the application and holds that there had been a violation of Article 1 of Protocol No. 1.

II. APPLICATION OF ARTICLE 41 OF THE CONVENTION

16. 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

17. The applicant claimed the unpaid judgment debts and 3,000 euros in respect of non-pecuniary damage.

18. The Government had no objections to the enforcement of the judgment at issue. They contested the applicant's claims in respect of non-pecuniary damage.

19. The Court notes that it is undisputed that the State still has an outstanding obligation to enforce the judgment given in the applicant's favour. It further takes the view that the applicant must have sustained non-pecuniary damage as a result of the violation found. Making its assessment on an equitable basis, as required by Article 41 of the Convention, the Court awards the applicant EUR 1,200 under this head.

B. Costs and expenses

20. The applicant claimed EUR 56 supported by relevant evidence. The Court considers it reasonable to award the applicant the amount claimed.

C. Default interest

21. 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. *Joins* the Government's preliminary objection to the merits and *declares* the application admissible;
2. *Holds* that there has been a violation of Article 1 of Protocol No. 1 to the Convention;
3. *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 debts, EUR 1,200 (one thousand two hundred euros) in respect of non-pecuniary damage and EUR 56 (fifty six euros) for costs and expenses, 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.

Done in English, and notified in writing on 10 December 2009, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Claudia Westerdiek
Registrar

Peer Lorenzen
President