



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

1959 · 50 · 2009

FIFTH SECTION

CASE OF VASILCHUK v. UKRAINE

(Application no. 31387/05)

JUDGMENT

STRASBOURG

10 December 2009

FINAL

10/05/2010

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 Vasilchuk 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 that date:

PROCEDURE

1. The case originated in an application (no. 31387/05) 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 Ivan Filippovich Vasilchuk (“the applicant”), on 16 August 2005.

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

3. The applicant alleged, in particular, that his right to a fair and public hearing within a reasonable time had been infringed on account of the length of several sets of his civil proceedings and non-enforcement of judgments given in his favour.

4. On 16 January 2009 the President of the Fifth Section decided to give notice of the application to the Government. It was also decided to examine the merits of the application at the same time as its admissibility (Article 29 § 3).

THE FACTS

I. THE CIRCUMSTANCES OF THE CASE

5. The applicant was born in 1940 and lives in Chornobayivka.

A. First set of proceedings against Obsilkomungosp

6. On 16 August 1999 the applicant was dismissed from his job at the Dzherelo enterprise (*Чорнобаївське сільське комунальне господарство «Джерело»*), a subsidiary of the municipal entity Obsilkomungosp (*Херсонське обласне виробничо-кооперативне об'єднання сільського комунального господарства «Облсількомунгосп»*).

7. In August 1999 the applicant challenged his dismissal and sought compensation before the Dniprovsky District Court of Kherson.

8. On 22 August 2001 the court allowed the applicant's reinstatement claim and ordered Obsilkomungosp to pay him 4,800 Ukrainian hryvnias (UAH).

9. On 3 September 2001 the State Bailiffs' Service instituted enforcement proceedings.

10. On 6 November 2001 the Kherson Regional Court of Appeal upheld that judgment.

11. On 7 December 2001 the Dzherelo enterprise was formally reorganised into a private company, D.

12. On several occasions the enforcement proceedings were discontinued for various reasons and reopened following complaints by the applicant that these decisions were unfair. It is unclear from the parties' submissions whether the debt under the judgment was paid.

13. In October 2005 the debtor entity was fined for failure to enforce the judgment of 22 August 2001. Additionally, the State Bailiffs' Service requested the local prosecutor to institute criminal proceedings against the managers of Obsilkomungosp, which request was subsequently rejected.

14. On 7 October 2005 a decision was taken to initiate liquidation of Obsilkomungosp.

15. On 17 October 2005 the Bailiffs' Service returned the enforcement writ to the applicant unenforced.

16. On 3 July 2006 the Kherson Regional Commercial Court instituted insolvency proceedings against Obsilkomungosp and on 17 July 2006 declared the company insolvent.

17. On 4 March 2008 the Commercial Court further approved the liquidation balance sheet and declared Obsilkomungosp liquidated, following which declaration on 19 March 2008 the company was deleted from the State Company Register.

B. Second set of proceedings against Oblsilkomungosp

18. On 5 April 2002 the applicant instituted proceedings in the Suvorovskiy District Court of Kherson against Oblsilkomungosp, seeking compensation on account of its prolonged failure to reinstate him.

19. On 4 February 2005 the court, finding that the judgment of 22 August 2001 in the part concerning reinstatement had still not been enforced, awarded the applicant UAH 8,081.70.

20. On 24 May 2005 the Kherson Regional Court of Appeal increased this sum to UAH 17,206.

21. On an unspecified date the State Bailiffs' Service instituted enforcement proceedings. On 23 December 2005 the State Bailiffs' Service terminated the enforcement proceedings as the debtor had been liquidated.

22. The judgment of 4 February 2005, as amended by the judgment of 24 May 2005, remains largely unenforced.

C. Third set of proceedings against Oblsilkomungosp

23. In September 2005 the applicant instituted proceedings in the Dniprovskiy District Court of Kherson against Oblsilkomungosp, seeking compensation for its failure to reinstate him after 5 February 2005.

24. On 14 June 2006 the court, finding that the judgment of 22 August 2001 in the part concerning reinstatement had still not been enforced, allowed his claim and awarded the applicant UAH 9,495.75. The court also found that the applicant had resigned on 14 June 2006 as a result of his employer's liquidation and ordered the liquidation commission to prepare documents for the applicant's pension.

25. On 2 November 2006 the Kherson Regional Court of Appeal quashed that judgment in the part concerning the applicant's resignation and the liquidation commission's obligation to prepare documents for the applicant's pension and gave a new judgment dismissing these claims. The court further upheld the remainder of the judgment.

26. The judgment at issue remains unenforced.

D. Proceedings against the local department of justice and two local departments of the State Bailiffs' Service

27. In October 2005 the applicant instituted proceedings in the Dniprovskiy District Court of Kherson against the local department of justice and two local departments of the State Bailiffs' Service, seeking compensation for non-pecuniary damage incurred as a result of the lengthy non-enforcement of the judgment of 22 August 2001.

28. In a judgment of 23 December 2005 the court ordered the defendants jointly to pay the applicant the total amount of UAH 6,000.

29. On 8 June 2006 the Kherson Regional Court of Appeal quashed that judgment in the part concerning the obligation of the local department of justice to pay the applicant compensation and rendered a new one dismissing this claim and reducing thereby the amount awarded to UAH 4,000.

30. On an unspecified date the State Bailiffs' Service instituted enforcement proceedings.

31. On 23 November 2006 it returned the writs of enforcement to the applicant owing to the debtors' lack of funds.

32. On 14 December 2006 the Dniprovskiy District Court of Kherson amended its previous judgment, awarding the applicant an additional amount of UAH 40 in court fees.

33. The judgment of 23 December 2005 as amended, remains unenforced.

E. Other proceedings

34. In February 2002 the applicant instituted proceedings in the Dniprovsky District Court of Kherson against Y. and G., the manager and his deputy, of Oblsilkomungosp, seeking compensation for non-pecuniary damage incurred as a result of the lengthy non-enforcement of the judgment of 22 August 2001. In a final decision of 9 December 2003 the Supreme Court of Ukraine dismissed his claim. Later, the applicant requested the courts to review the impugned judgment under the extraordinary procedure, but in vain.

35. The applicant also requested a local prosecutor to institute criminal proceedings against the above-mentioned persons. However, on 7 October 2002 the prosecutor found no prima facie case for instituting the proceedings as requested. The applicant appealed against that decision but in a final decision of 20 April 2004 the Supreme Court of Ukraine dismissed his appeal. Subsequently, the applicant requested the courts to review the impugned decision under the extraordinary procedure, but to no avail.

36. The applicant further claimed compensation from the local prosecutor's office for its failure to enforce the judgment of 22 August 2001. On 20 December 2002 the Suvorovskiy District Court of Kherson found against the applicant. On 27 March 2003 the Kherson Regional Court of Appeal upheld that judgment.

37. In November 2002 the applicant instituted proceedings in the Komsomolskiy District Court of Kherson against Oblsilkomungosp and the local State Administration, seeking to have the reorganisation of Dzherelo declared void. On 5 August 2004 the court dismissed his claim. On 10 November 2004 the Kherson Regional Court of Appeal upheld that judgment. Subsequently, the applicant requested the courts to review the impugned judgment under the extraordinary procedure, but to no avail.

38. In January 2003 the applicant instituted proceedings in the Suvorovskiy District Court of Kherson against Obsilkomungosp, seeking the annulment of the reinstatement orders of 17 September 2001 and 24 April 2002. On 6 August 2003 the court dismissed his claim. On 3 December 2003 the Kherson Regional Court of Appeal upheld that judgment. Later, the applicant unsuccessfully requested the courts on several occasions to review the impugned judgment under the extraordinary procedure.

39. On an unspecified date the applicant instituted proceedings in the Suvorovskiy District Court of Kherson against the local department of justice, seeking compensation for non-pecuniary damage incurred as a result of the lengthy non-enforcement of the judgment of 22 August 2001. In a judgment of 15 May 2003 his claim was dismissed. The applicant did not appeal against that judgment.

40. On an unspecified date the applicant instituted proceedings in the Supreme Court of Ukraine against the State of Ukraine and its President. On 13 October 2006 the court dismissed his claim, stating that it should have been lodged with a relevant district court.

41. In December 2007 the applicant instituted proceedings in the Dniprovskiy District Court of Kherson against Obsilkomungosp and other persons, seeking, *inter alia*, to have the judgment of 22 August 2001 reviewed under the extraordinary procedure. It appears that the proceedings are still pending before that court.

II. RELEVANT DOMESTIC LAW

42. The relevant domestic law is summarised in the judgment of *Vasylyev v. Ukraine*, (no. 10232/02, §§ 19-22, 13 July 2006).

THE LAW

I. COMPLAINTS ABOUT THE LENGTH OF PROCEEDINGS AND THE NON-ENFORCEMENT OF JUDGMENTS

A. Admissibility

43. The applicant complained that the length of the four sets of his proceedings described in paragraphs 6-33 above, including their enforcement stage, was incompatible with the guarantees set forth in Article 6 § 1 of the Convention. Additionally, he complained that the failure

of the authorities to enforce the final judgments given at the close of these proceedings breached his rights under Article 1 of Protocol No. 1. Finally, he complained that he had no effective remedies in respect of his Convention complaints. The pertinent provisions 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 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”

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.”

44. The Government raised objections, contested by the applicant, regarding exhaustion of domestic remedies, similar to those which the Court has already dismissed in a number of other cases where, as in the present case, the defendants were public entities (see, for example, *Vasylyev v. Ukraine*, no. 10232/02, §§ 29-33, 13 July 2006, and *Lizanets v. Ukraine*, no. 6725/03, § 43, 31 May 2007). The Court considers that these objections must be rejected for the same reasons.

45. The Court further observes that the applicant's enforcement proceedings cannot be dissociated from his court actions (see, as a recent authority, *Sika v. Slovakia*, no. 2132/02, §§ 23-26, 13 June 2006).

46. The Court considers that the applicant's complaints raise issues of fact and law under the Convention and finds no ground to declare them inadmissible. The Court must therefore declare them admissible.

B. Merits

1. *The alleged violation of Article 6 § 1 of the Convention*

47. In their observations on the merits of the above complaint, the Government contended that there had been no violation of Article 6 § 1.

48. The applicant disagreed.

49. The Court reiterates that the applicant initiated the “determination” of his “civil rights” within the meaning of Article 6 § 1 of the Convention by instituting four sets of judicial proceedings in August 1999, April 2002, September and October 2005 respectively. Last judgments in these proceedings were taken on 6 November 2001, 24 May 2005, 2 November 2006 and 14 December 2006 respectively. Therefore, the length of proceedings in their judicial phase ranged from one year and two months to three years and one month for two levels of jurisdiction.

50. From the dates when the judgments in the applicant's favour became binding for enforcement the State entities became liable to ensure the applicant's reinstatement and pay him the judgments awards. However, none of the judgments at issue had been fully enforced, the periods of non-enforcement ranging from three to eight years.

51. The Court notes that the primary reason for the delay in the final determination of the applicant's civil rights in the present case has been caused by the non-enforcement of final judgments given in his favour. The Court has frequently found violations of Article 6 § 1 of the Convention in cases raising issues similar to the one in the present case (see, for example, *Sika*, cited above, § 35; *Vasylyev*, cited above, § 36; and *Kozachek v. Ukraine*, no. 29508/04, § 33, 7 December 2006).

52. Having examined all the material submitted to it, 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.

53. Having regard to its case-law on the subject, the Court considers that in the instant case there has accordingly been a breach of Article 6 § 1.

2. *Alleged violation of Article 1 of Protocol No. 1 to the Convention*

54. The Court reiterates that its case-law has found that impossibility for an applicant to obtain enforcement of a judgment in his or her favour constitutes an interference with the right to the peaceful enjoyment of possessions, as set out in the first sentence of the first paragraph of Article 1 of Protocol No. 1 (see, among other authorities, *Burdov v. Russia*, no. 59498/00, § 40, ECHR 2002-III; *Jasiūnienė v. Lithuania*, no. 41510/98, § 45, 6 March 2003; and *Voytenko v. Ukraine*, no. 18966/02, §§ 53-55, 29 June 2004). The Court finds no ground to depart from its case-law in the present case.

55. There has, accordingly, been a violation of Article 1 of Protocol No. 1 of the Convention.

3. Alleged violation of Article 13 of the Convention

56. The Court concludes that the applicant did not have an effective domestic remedy, as required by Article 13 of the Convention, whereby he could have obtained a ruling upholding his right to have his claims finally settled within a reasonable time, as set forth in Article 6 § 1 of the Convention (see, for example, *Voytenko*, cited above, §§ 46-48, 29 June 2004, and *Vasylyev*, cited above, § 41). Accordingly, there has been a breach of this provision.

II. OTHER ALLEGED VIOLATIONS OF THE CONVENTION

57. The applicant additionally complained that there had been other breaches of his rights under Article 6 § 1 of the Convention, infringement of his right to work, and invoked Articles 1, 2, 3, 5 § 1, 8, 14 and 17 of the Convention to the facts of the present case.

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

59. It follows that this part of the application must be declared inadmissible as manifestly ill-founded, pursuant to Article 35 §§ 1, 3 and 4 of the Convention.

III. APPLICATION OF ARTICLE 41 OF THE CONVENTION

60. 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

61. The applicant claimed 4,032,000 euros (EUR) by way of compensation for pecuniary damage allegedly sustained by him on account of Oblsilkomungosp's failure to reinstate him in his job. He also claims EUR 6,060,000 in respect of non-pecuniary damage.

62. The Government submitted that these claims were exorbitant and unsubstantiated.

63. The Court finds that the applicant sustained pecuniary damage equal to the amount of the outstanding debts under the four judgments at issue in the present case and rejects the remainder of the applicant's claim for pecuniary damage. The Court also awards the applicant EUR 2,600 in respect of non-pecuniary damage.

B. Costs and expenses

64. The applicant did not lodge any claim under this head. The Court therefore makes no award.

C. Default interest

65. 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 concerning length of four sets of proceedings including their enforcement stage, under Article 1 of Protocol no. 1 and Article 13 admissible and the remainder of the application inadmissible;
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 of the Convention;
4. *Holds* that there has been a violation of 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,
 - (i) the unsettled debts under the judgments of 22 August 2001, 4 February 2005 (as amended on 24 May 2005), 14 June 2006 (as amended on 2 November 2006), 23 December 2005 (as amended on 8 June 2006 and 14 December 2006) as well as
 - (ii) EUR 2,600 (two thousand six hundred euros) in respect of non-pecuniary damage plus any tax that may be chargeable on this amount,

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;

6. *Dismisses* the remainder of the applicant's claim for just satisfaction.

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