



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

1959 · 50 · 2009

FIFTH SECTION

CASE OF PANOV v. UKRAINE

(Application no. 21231/05)

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 Panov 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,

Mirjana Lazarova Trajkovska, *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. 21231/05) 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 Igor Mykolayovych Panov (“the applicant”), on 17 May 2005.

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

3. On 20 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

4. The applicant was born in 1958 and lives in Kyiv, Ukraine.

5. From 18 April 1997 until 10 July 2003 the applicant occupied the position of a judge in the Golosiyivskyy District Court.

6. On 19 July 2002 the Svyatoshynskyy District Court of Kyiv found that the applicant had been entitled to improvement of his housing conditions since 1999. It held that the State Treasury of Ukraine should transfer 177,650 Ukrainian hryvnias¹ (UAH) to the Golosiyivskyy District Court for the purchase of an apartment for the applicant and his family.

7. On 22 November 2004 the Ministry of Justice of Ukraine informed the applicant that the writ of enforcement had been returned by the State Treasury of Ukraine and that the judgment should be enforced by the State Court Administration.

8. This judgment at issue remains unenforced allegedly because of lack of funds.

II. RELEVANT DOMESTIC LAW

9. In accordance with paragraph 7 of Article 44 of the Law of Ukraine “On the Status of Judges”, if a judge needs an improvement to his or her living conditions he or she has to be provided with an apartment or a house within six months of his or her election. Judges can also later privatise this apartment or house.

10. Other relevant domestic law is summarised in the judgment *Voytenko v. Ukraine*, no. 18966/02, §§ 20-22, 29 June 2004.

THE LAW

I. ALLEGED VIOLATION OF ARTICLES 1, 8 AND 13 OF THE CONVENTION AND ARTICLE 1 OF PROTOCOL NO.1

11. The applicant complained that the non-enforcement of the court judgment in his favour violated his rights guaranteed by Articles 1 and 8 of the Convention and Article 1 of Protocol No. 1. He further complained under Article 13 of the Convention that there was no effective remedy in respect of these complaints.

12. The Court is of the opinion that the applicant's complaints have to be considered under Article 13 of the Convention and Article 1 of Protocol No. 1, which read as follows:

¹ At the material time 34,131.60 euros (EUR)

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.”

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

13. The Government submitted that no violation of Article 1 of Protocol No. 1 could be found separately from Article 6 § 1 of the Convention in cases concerning the lengthy non-enforcement of judgments in the applicants' favour, because the finding of a violation of the former provision was based on conclusions regarding the latter. As the applicant did not complain and the Court did not of its own motion qualify the complaints under Article 6 § 1 of the Convention, no violation of this provision can be presumed to find a violation of Article 1 of Protocol No. 1 in the present case. Consequently, the applicant's complaints under Article 13 of the Convention are inadmissible too.

14. The applicant disagreed.

15. The Court notes that Article 1 of Protocol No. 1 is an independent provision, whose application does not depend on whether or not other Articles of the Convention are invoked by the applicant. Moreover, the Court has found on numerous occasions that the impossibility for an applicant to obtain the execution of a judgment in his or her favour constituted 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, *Voytenko v. Ukraine*, no. 18966/02, § 53, 29 June 2004). The applicant's complaint under Article 13 of the Convention is accordingly considered in relation to his complaints under Article 1 of Protocol No. 1.

16. The Court notes that the application 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 grounds. It must therefore be declared admissible.

B. Merits

17. The applicant reiterated his position that the lengthy non-enforcement of the judgment in his favour and the absence of any effective remedy in this respect constituted a violation of his rights guaranteed by Article 13 of the Convention and Article 1 of Protocol No. 1.

18. The Government did not submit any observations on the merits of the case.

19. The Court notes that the judgment in the applicant's favour remained unenforced for seven years and four months.

20. The Court further notes that it has already found a violation of Article 1 of Protocol No. 1 in cases concerning lengthy non-enforcement of judgments in applicants' favour (see, for instance, *Voytenko v. Ukraine*, cited above, § 55, and *Dubenko v. Ukraine*, no. 74221/01, § 51, 11 January 2005; see also *Lopatyyuk and Others v. Ukraine*, nos. 903/05 et seq., §§ 14, 15 and 22, 17 January 2008).

21. 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.

22. There has, accordingly, been a violation of Article 1 of Protocol No. 1 in respect of the lengthy non-enforcement of the judgment in the applicant's favour in the present application.

23. Lastly, the Court reiterates that it has held on numerous occasions that no remedy existed under Ukrainian law against non-enforcement of domestic court judgments given against State authorities (see, among many other authorities, *Voytenko v. Ukraine*, cited above, § 48). It finds no ground to depart from its case-law in the present case. Accordingly, there has been a violation of Article 13 of the Convention in the present application as well.

II. APPLICATION OF ARTICLE 41 OF THE CONVENTION

24. 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.”

25. The applicant did not submit a claim for just satisfaction. Accordingly, the Court considers that there is no call to award him any sum on that account.

26. It notes, however, that it is undisputed that the State still has an outstanding obligation to enforce the judgment at issue.

FOR THESE REASONS, THE COURT UNANIMOUSLY

1. *Declares* the application admissible;
2. *Holds* that there has been a violation of Article 1 of Protocol No. 1 to the Convention;
3. *Holds* that there has been a violation of Article 13 of the Convention.

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