



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

1959 · 50 · 2009

FIFTH SECTION

CASE OF MATSYUK v. UKRAINE

(Application no. 1751/03)

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 Matsyuk 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,

Isabelle Berro-Lefèvre,

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:

PROCEDURE

1. The case originated in an application (no. 1751/03) 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 Vadym Gavrylovych Matsyuk (“the applicant”), on 28 November 2002.

2. The applicant was represented by Mr Yavorskyy, a lawyer practising in Kyiv. The Ukrainian Government (“the Government”) were represented by their Agent, Mr Y. Zaytsev.

3. The applicant alleged, in particular, that his right to access to a court under Article 6 § 1 of the Convention had been violated because the domestic courts refused to examine a complaint he lodged against a decision of the tax police on the ground that that decision had not been given in the correct form.

4. By a partial decision of 15 January 2008, the Court decided to adjourn the examination of the above complaint and declared the remainder of the application inadmissible. Under the provisions of Article 29 § 3 of the Convention, it decided to examine the merits of the adjourned part of the application at the same time as its admissibility.

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

5. The applicant was born in 1938 and lives in Bila Tserkva.

6. Between 1998 and 2000 the Bila Tserkva Tax Police (“the police”) instituted and subsequently discontinued several sets of criminal proceedings against the applicant for property embezzlement and tax evasion.

7. On 6 November 2001 he claimed compensation from the police for pecuniary and non-pecuniary damage in respect of the above proceedings.

8. By a letter of 23 November 2001 the police informed the applicant that his claims had to be rejected as unsubstantiated. They noted that he had been found guilty and amnestied in one set of the proceedings and that the property which had been seized from him in the course of the proceedings had in fact remained in his possession.

9. On 10 December 2001 the applicant repeated his claim, which remained without reply.

10. On 20 February 2002 he brought proceedings before the Bila Tserkva Town Court (“the Bila Tserkva Court”) against the police, claiming compensation for pecuniary and non-pecuniary damage in respect of the criminal proceedings against him.

11. On 4 March 2002 the court stayed the examination of his claim in the part concerning the pecuniary damage having indicated some shortcomings which had to be rectified by 27 March 2002. It referred to section 12 of the Act “On the procedure of compensation for damage caused to citizens by unlawful actions of bodies of inquiry, pre-trial investigation authorities, prosecutors and courts” (“the Compensation Act”), according to which the amount of compensation for pecuniary damage was to be established by a resolution of the respective authority (the police in the present case). The court noted that the police had rejected the applicant's claim for such compensation by their letter of 23 November 2001 and that the applicant had not introduced a judicial appeal against that refusal. As to his claim in the part concerning the non-pecuniary damage, it was subsequently examined by the domestic courts and rejected as unsubstantiated.

12. On 26 March 2002 the applicant introduced a complaint, by which he challenged the refusal of his claim by the police. Referring to his two requests to them of 6 November and 10 December 2001, he argued that he had made every attempt to settle the issue before bringing the judicial action.

13. On 23 April 2002 the court rejected the above claim as time-barred, referring to the fact that the applicant had failed to raise it within six months after he had become aware of the discontinuation of the criminal proceedings against him (February 2000).

14. On 25 October 2002 the Kyiv Regional Court of Appeal (“the Court of Appeal”) quashed the above decision on the applicant's appeal and remitted the case for fresh examination. It noted that the first-instance court had wrongly considered that the applicant's claim concerned the criminal

proceedings against him. Instead, it should have been deemed to concern the refusal of the police to award him compensation for pecuniary damage. It further noted in that connection that the first-instance court had failed to clarify whether the police had issued a resolution concerning the applicant's compensation claim.

15. On 21 November 2002 the Bila Tserkva Court refused to consider the applicant's complaint, since no resolution in that respect had been issued by the police in accordance with section 12 of the Compensation Act. The court also relied on the fourth paragraph of Article 248-3 of the Code of Civil Procedure in the part compliant with the Constitution pursuant to the decision of the Constitutional Court of 23 May 2001. It considered that it had no jurisdiction over the case, as the aforementioned provision provided for "a different procedure for lodging claims", namely through challenging a resolution of the police. Accordingly, the court instructed the applicant that he could apply to the tax police "for settling the compensation issue under the legally envisaged procedure".

16. The applicant appealed, submitting that the first-instance court had been unduly formalistic as the police had clearly stated their position in the letter of 23 November 2001. He further argued that he could not be held responsible for the inadequate form of the response to his claim.

17. On 17 January 2003 the Court of Appeal upheld the finding of the Bila Tserkva Court that given the absence of a resolution there was no procedural basis for the judicial examination of the applicant's claim.

18. On 21 March 2003 the Supreme Court of Ukraine rejected the applicant's cassation appeal as unsubstantiated.

II. RELEVANT DOMESTIC LAW

19. The relevant constitutional provisions, as well as references to the pertinent practice of the Constitutional Court and the Supreme Court, can be found in *Ponomarenko v. Ukraine*, no. 13156/02, §§ 15, 17 and 19, 14 June 2007.

20. The relevant provisions of the Compensation Act are cited in the partial admissibility decision of 15 January 2008 concerning this application.

21. Paragraph 4 of Article 248-3 of the Code of Civil Procedure 1963 (as worded at the material time) read as follows:

"The following complaints shall be outside the courts' jurisdiction:

- ... against actions or acts of an official of a body of inquiry, preliminary investigation, prosecution or court with regard to which a different procedure for lodging claims is established...."

By decision of the Constitutional Court of Ukraine No. 6-пп/2001 of 23 May 2001 this provision was declared unconstitutional in the part

concerning lack of the courts' jurisdiction to examine complaints “against actions or acts of an official of a body of inquiry, preliminary investigation, prosecution...”, where the legislation provided only for extrajudicial settlement.

THE LAW

I. ALLEGED VIOLATION OF ARTICLE 6 § 1 OF THE CONVENTION IN RESPECT OF THE APPLICANT'S RIGHT OF ACCESS TO A COURT

22. The applicant complained, relying on Articles 6 § 1 and 13 of the Convention, that he had been denied access to a court. The Court considers that this complaint falls to be examined solely under Article 6 § 1 of the Convention (see *Ferenc Rózsa and István Rózsa v. Hungary*, no. 30789/05, § 14, 28 April 2009), which provides as relevant:

“In the determination of his civil rights and obligations ... everyone is entitled to a fair ... hearing ... by [a] ... tribunal ...”

A. Admissibility

23. The Government submitted that the applicant had not exhausted the domestic remedies, having failed to request the domestic courts to oblige the police to issue a resolution concerning his compensation claim so that his subsequent judicial action for damages would have an adequate procedural basis. They contended that it would have been a simple formality.

24. The applicant contested their arguments.

25. The Court considers that the Government's objection is closely linked to the substance of the applicant's complaint and that its examination should therefore be joined to the merits.

B. Merits

26. The applicant submitted that his right of direct access to a court, albeit enshrined in the Constitution, had wrongly been made dependant on the will of the authority against which he had been complaining and which could not have reasonably been expected to entertain his preferences as to the form of its decisions.

27. According to the Government, the applicant's right of access to a court had not been infringed. They maintained that the domestic courts had

acted in compliance with the procedural legislation, according to which the applicant could challenge only a resolution of the police, but not the contents of their letter. The Government referred in this connection to section 12 of the Compensation Act, under which the amount of compensation for pecuniary damage in the applicant's case was to be established by a resolution of the tax police. Thereafter, had the applicant disagreed with it, he could have further challenged it before the courts.

28. The Court reiterates that Article 6 § 1 of the Convention secures to everyone the right to have any claim relating to his or her civil rights and obligations brought before a court or tribunal. In this way it embodies the “right to a court”, of which the right of access, that is, the right to institute proceedings before courts in civil matters, constitutes one aspect (see, as a long-established reference, *Golder v. the United Kingdom*, 21 February 1975, §§ 35-36, Series A no. 18, and, for more recent case-law, *Mendel v. Sweden*, no. 28426/06, § 73, 7 April 2009). This right is not, however, absolute and may be subject to legitimate restrictions. Where an individual's access is limited either by operation of law or in fact, the restriction will not be incompatible with Article 6 where the limitation does not impair the very essence of the right and where it pursues a legitimate aim, and there is a reasonable relationship of proportionality between the means employed and the aim sought to be achieved (see *Ashingdane v. the United Kingdom*, 28 May 1985, § 57, Series A no. 93). At the same time, in order for the right of access to a court to be effective, an individual must have a clear, practical opportunity to challenge an act that is an interference with his or her rights (see *Ponomarenko v. Ukraine*, no. 13156/02, § 36, 14 June 2007). The Court also underlines that in the domain of interpretation of domestic legislation, in particular, procedural rules applicable to judicial proceedings, its role is limited to verifying whether the effects of such interpretation by the domestic authorities, notably the courts, are compatible with the Convention (see *Zvolský and Zvolská v. the Czech Republic*, no. 46129/99, § 46, ECHR 2002-IX).

29. Turning to the present case, the Court notes that the applicant, before bringing judicial action, had sought compensation for pecuniary damage from the police, who informed him by a letter of 23 November 2001 that his claim had been rejected and explained their reasoning for that decision. After their failure to respond to his renewed claim of 10 December 2001, the applicant applied for compensation to the Bila Tserkva Court, but was instructed that he had first to appeal against the refusal of the tax police to award it to him of 23 November 2001 (see paragraph 11 above). After he fulfilled that requirement, the courts of three levels of jurisdiction dismissed without consideration his complaint on the ground that the decision of the police, which he was challenging, had not been issued as a resolution but stated in a simple letter. The courts relied on section 12 of the Compensation Act (see paragraphs 15, 17-18 and 20 above), according to

which it was for the tax police to establish the amount of compensation for pecuniary damage. To sum up, the domestic courts instructed the applicant to apply to the tax police for a resolution about the amount of the compensation for pecuniary damage after the latter had rejected such compensation claim as a whole by their letter of 23 November 2001 and after the applicant had judicially challenged that rejection in compliance with the earlier instruction of the Bila Tserkva Court of 4 March 2002.

30. The Court notes, without undertaking to interpret the applicable domestic procedural legislation, which is not its role, that the respective interpretation by the domestic courts lacked consistency (given the misleading instruction to the applicant of 4 March 2002) and deprived the applicant of the opportunity to challenge, in a clear and practical procedure, the refusal of the administrative authorities to pay compensation in connection with criminal proceedings.

31. The Court therefore dismisses the Government's objection as to the exhaustion of domestic remedies previously joined to the merits (see paragraphs 23 and 25 above) and finds that the applicant did not have a practical, effective right of access to a court.

32. There has accordingly been a breach of Article 6 § 1 of the Convention.

II. APPLICATION OF ARTICLE 41 OF THE CONVENTION

33. 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

34. The applicant claimed EUR 15,000 in respect of non-pecuniary damage.

35. The Government contested that claim.

36. The Court considers that the finding of a violation of Article 6 § 1 of the Convention constitutes in itself sufficient just satisfaction in the circumstances (see *Ponomarenko*, cited above, § 44).

B. Costs and expenses

37. The applicant did not submit any claim under this head. The Court therefore makes no award.

FOR THESE REASONS, THE COURT UNANIMOUSLY

1. *Decides* to join to the merits the Government's preliminary objection as to the exhaustion of domestic remedies in respect of the applicant's complaint under Article 6 § 1 of the Convention about a lack of access to a court, and *rejects* it;
2. *Declares* the complaint concerning a lack of access to a court admissible;
3. *Holds* that there has been a violation of Article 6 § 1 of the Convention on account of the applicant's lack of access to a court;
4. *Holds* that the finding of a violation constitutes in itself sufficient just satisfaction for the non-pecuniary damage sustained by the applicant;
5. *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