CONSEIL DE L'EUROPE

COUNCIL OF EUROPE

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

SECOND SECTION

CASE OF POLONETS v. UKRAINE

(Application no. 39496/02)

JUDGMENT

STRASBOURG

20 September 2005

FINAL

20/12/2005

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 Polonets v. Ukraine,

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

Mr J.-P. COSTA, *President*,
Mr I. CABRAL BARRETO,
Mr K. JUNGWIERT,
Mr V. BUTKEVYCH,
Mr M. UGREKHELIDZE,
Mrs A. MULARONI,
Mrs E. FURA-SANDSTRÖM, *judges*,
and Mrs S. DOLLÉ, *Section Registrar*,

Having deliberated in private on 30 August 2005,

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

PROCEDURE

1. The case originated in an application (no. 39496/02) 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 Mykola Yosypovych Polonets ("the applicant"), on 15 October 2002.

2. The Ukrainian Government ("the Government") were represented by their Agent, Mrs Valeria Lutkovska.

3. On 19 November 2004 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. The applicant was born in 1948 and lives in the city of Zhytomyr, Ukraine.

5. On 28 January 2000 the applicant retired from his post in the Zhytomyr Regional Police Department (hereafter "the Police Department"). Having received no redundancy pay, to which he was entitled, the applicant instituted proceedings against the Police Department, seeking the recovery of the debt.

6. On 7 November 2001 the Koroliovsky District Court of Zhytomyr awarded the applicant UAH 7,410[1] in redundancy pay arrears. On 12 March 2002, the Zhytomyr Regional Court of Appeal (hereafter "the Court of Appeal"), on the Police Department's appeal, re-examined the case and upheld this judgment.

7. On 19 March 2002 the Koroliovsky District Bailiffs' Service (hereafter "the Bailiffs' Service") instituted enforcement proceedings in respect of the judgment of 7 November 2001 and joined the applicant's case to other enforcement actions against the debtor.

8. On 14 June 2002 the Bogunsky District Court of Zhytomyr rejected the applicant's complaint about the bailiffs' inactivity. The court stated that in October 2001, acting in the course of the enforcement proceedings to which the applicant's case was subsequently joined, the Bailiffs' Service levied the Police Department's bank account, which revealed no funds suitable for attachment. The court found that no further actions regarding the Police Department's account were possible in the absence of budgetary funds earmarked for such purposes. This judgment was upheld by the Court of Appeal on 26 August 2002 and by the Supreme Court on 13 January 2003.

9. On 17 January 2004 the Koroliovsky District Court of Zhytomyr, on the Police Department's request, temporarily suspended the enforcement proceedings. On 6 April 2004 the Court of Appeal quashed this decision as it was taken in the applicant's absence and manifestly unfounded. On 14 May 2004 the Koroliovsky District Court of Zhytomyr ultimately rejected the Police Department's request.

10. On 23 September 2004 the Bailiffs' Service terminated the enforcement proceedings as the judgment of 7 November 2001 had been enforced in full.

II. RELEVANT DOMESTIC LAW AND PRACTICE

11. The relevant domestic law is set out in the judgment of 29 June 2004 in the case of *Voytenko v. Ukraine* (no. 18966/02, §§ 20-25).

[1] EUR 1,147

THE LAW

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

12. The applicant complained about the State authorities' failure to execute the judgment of 7 November 2001, awarding him redundancy pay arrears. He relied on Article 6 § 1 of the Convention and Article 1 of Protocol No. 1, which in so far as relevant provide:

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 or to secure the payment of taxes or other contributions or penalties."

13. The Government contested the claim.

A. Admissibility

1. The applicant's victim status

14. The Government submitted under Article 34 of the Convention that the applicant can no longer claim to be a victim of a violation, and that the case should therefore be rejected as being incompatible *ratione personae* with the provisions of the Convention.

15. The applicant disagreed.

16. The Court notes that this issue has already been examined in a number of Court's judgments (*Romashov v. Ukraine*, no. 67534/01, § 27, 27 July 2004; *Shmalko v. Ukraine*, no. 60750/00, § 34, 20 July 2004). In these cases the Court found that the applicant may still claim to be a victim of an alleged violation of the rights guaranteed by Article 6 § 1 in relation to the period during which the decision of which he complained remained

unenforced (see, *Skubenko v. Ukraine* (dec.), no. 41152/98, 6 April 2004). For the same reason, it rejects the Government's objection in the present case.

2. Exhaustion of domestic remedies

17. The Government maintained that the applicant had not exhausted domestic remedies available to him, in that he had failed to challenge the bailiffs' six-month inactivity, which complaint, in their view, would have offered more prospects of success than the applicant's complaint about the bailiffs' two-month inactivity, lodged in 2002.

18. The applicant did not comment on these submissions

19. The Court recalls that, as it appears from the judgment of the Bogunsky District Court of Zhytomyr of 14 June 2002, the enforcement of the judgment in the applicant's favour could only be carried out if the State foresees and makes provision for the appropriate expenditures in the State Budget of Ukraine. Therefore, the Court finds that any further proceedings against the bailiffs would have been redundant in view of the fact that the delay in the enforcement of the judgment of 7 November 2001 was due to reasons which the bailiffs could not influence (see, among many others, *Mykhaylenky and Others v. Ukraine*, nos. 35091/02, and the following, §§ 38-39, ECHR 2004-...).

3. Conclusion

20. 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

21. The Government submitted that the Bailiffs' Service had taken all necessary measures to enforce the judgment given in the applicant's favour. Moreover, they maintained that the enforcement was delayed by the decision in January 2004 of the Koroliovsky District Court to suspend the proceedings temporarily.

22. The applicant reiterated that the State was responsible for the delay in the enforcement of the court judgment in his favour.

23. The Court observes that the judgment in the applicant's favour remained unenforced for two years and ten months.

24. The Court has frequently found violations of Article 6 § 1 of the Convention in cases raising similar issues (see *Voytenko v. Ukraine*, cited above, §§ 43 and 55).

25. Having examined the materials submitted to it, the Court notes that the Government have not put forward any fact or argument capable of persuading it to reach a different conclusion in the present case. In particular, it finds that it lies ill with the Government to invoke the court decision of 17 January 2004, which was subsequently quashed on appeal as being manifestly ill-founded (paragraph 9 above). Such a decision cannot be a valid excuse for not honouring their obligations under the Convention.

26. Having regard to its case-law on the subject, the Court finds that by failing for two years and ten months to comply with the enforceable judgment in the applicant's favour, the Ukrainian authorities prevented him from receiving the money to which he was entitled.

27. There has accordingly been a violation of Article 6 § 1 of the Convention and Article 1 of Protocol No. 1.

II. ALLEGED VIOLATION OF ARTICLE 13 OF THE CONVENTION

28. The applicant next complained that he had no effective remedies in respect of his complaint under Article 6 § 1 of the Convention. He invoked Article 13 of the Convention, which provides as follows:

> "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."

29. The Court notes that this complaint is linked to the issues examined above, and must therefore be declared admissible.

30. The Government maintained that the applicant had at his disposal effective remedies explicitly provided for by domestic legislation in order to challenge the non-enforcement of the court judgment given in his favour. They referred to their arguments on exhaustion of domestic remedies.

31. The applicant challenged these submissions, stating that the remedies could not be effective in his case since no fault for the delay in the enforcement proceedings could be attributed to the bailiffs, who were entrusted with the enforcement of the judgment.

32. The Court refers to its findings above (paragraph 19), rejecting the Government's argument regarding domestic remedies. For the same reasons, the Court concludes that the applicant did not have an effective domestic remedy, as required by Article 13 of the Convention, to redress the damage caused by the delay in the present proceedings. Accordingly, there has been a breach of this provision.

III. 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 18,886 euros (EUR) in respect of pecuniary and non-pecuniary damage.

35. The Government maintained that the applicant did not suffer any damage. They suggested that a finding of a violation would of itself constitute sufficient just satisfaction.

36. The Court does not discern any causal link between the violation found and the pecuniary damage alleged; it therefore rejects this claim. However, deciding on an equitable basis, it awards the applicant EUR 1,360 in respect of non-pecuniary damage.

B. Costs and expenses

37. The applicant also claimed EUR 165 for the costs and expenses incurred in the domestic proceedings and before the Court.

38. The Government left the question of costs and expenses to the Court.

39. According to the Court's case-law, an applicant is entitled to reimbursement of his costs and expenses only in so far as it has been shown that these have been actually and necessarily incurred and were reasonable as to quantum. Having regard to the information in its possession, the Court awards the applicant the sum requested.

C. Default interest

40. 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 13 of the Convention;

4. *Holds* that there has been a violation of Article 1 of Protocol No. 1;

5. *Holds*
(a) that the respondent State is to pay the applicant, within three months from the date on which the judgment becomes final according to Article 44 § 2 of the Convention, to be converted into the national currency of the respondent State on the date of payment, EUR 1,360 (one thousand three hundred and sixty euros) in respect of non-pecuniary damage and EUR 165 (one hundred and sixty five euros) in respect of costs and expenses, 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 applicant's claim for just satisfaction.

Done in English, and notified in writing on 20 September 2005, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

S. DOLLÉ
Registrar

J.-P. COSTA
President