



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

SECOND SECTION

CASE OF GRISHECHKIN & OTHERS v. UKRAINE

(Application no. 26131/02)

JUDGMENT

STRASBOURG

3 May 2005

FINAL

03/08/2005

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 Grishechkin & Others v. Ukraine,

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

Mr A.B. BAKA, *President*,

Mr I. CABRAL BARRETO,

Mr R. TÜRMEŒ,

Mr K. JUNGWIERT,

Mr V. BUTKEVYCH,

Mrs A. MULARONI,

Ms D. JOČIENĚ, *judges*,

and Mrs S. DOLLĚ, *Section Registrar*,

Having deliberated in private on 5 April 2005,

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

PROCEDURE

1. The case originated in an application (no. 26131/02) against Ukraine lodged with the Court under Article 34 of the Convention for the Protection of Human Rights and Fundamental Freedoms (“the Convention”) by five Ukrainian nationals, Mr Sergey Arkadiyevich Grishechkin, Mr Vladimir Valentinovich Kayurov, Mr Anatoliy Vladimirovich Zavgorodyanskiy, Ms Marina Vladimirovna Tomayly and Ms Olga Yakovna Lopatina (“the applicants”), on 1 June 2002.

2. The applicants were represented by Mr I. Voron, a lawyer practising in Dneprodzerzhinsk, Ukraine. The Ukrainian Government (“the Government”) were represented by their Agents, Mrs V. Lutkovska and Mrs Z. Bortnovska.

3. On 26 September 2003 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

THE CIRCUMSTANCES OF THE CASE

4. The applicants were born in 1956, 1970, 1966, 1962 and 1963 respectively and live in the town of Zhovti Vody, Ukraine.

5. In 1999, all the applicants instituted separate proceedings in the Zheltovodsky Town Court of Dnipropetrovsk Region against their

employer, the Elektron-Gaz State-owned company, in order to receive salary arrears and other payments. In 2000-2001, four of the applicants instituted new proceedings in the same court against the same enterprise to receive further payments and compensation.

6. On 9 March 1999, the court found for Mr Grischechkin and awarded him UAH 4,055.35 (around EUR 580). On 11 September 2001, in the second proceedings, the court found in part for the applicant and awarded him UAH 8,148.98 (around EUR 1,165).

7. On 30 June 1999, the court found for Mr Kayurov and awarded him UAH 1,801.63 (around EUR 257). On 13 January 2000, in the second proceedings, the court found in part for the applicant and awarded him UAH 1,242.92 (around EUR 178).

8. On 21 December 1999, the court found for Mr Zavgorodyanskiy and awarded him UAH 4,199.32 (around EUR 600).

9. On 9 December 1999, the court found for the Ms Tomayly and awarded her UAH 1,642.24 (around EUR 235). On 26 April 2001, in the second proceedings, the court found in part for the applicant and awarded her UAH 851.72 (around EUR 122).

10. On 9 December 1999, the court found for Ms Lopatina and awarded her UAH 1,125.59 (around EUR 161). On 16 November 2001, in the second proceedings, the court found in part for the applicant and awarded her UAH 812.41 (around EUR 116).

11. In 2001-2002 the applicants filed several complaints to the different State institutions about the non-enforcement of the above judgments given in their favour. By a letter of 28 March 2002, the applicants were informed by the Dnipropetrovsk Justice Department that the judgments could not be executed due to the operation of the Law of Ukraine “on the Introduction of a Moratorium on the Forced Sale of Property” concerning part of the company’s property and the practical impossibility of selling the remainder.

12. On 7 March 2003 bankruptcy proceedings were instituted against the debtor company.

13. In March 2004 all judgments given in favour of the applicants were enforced in full and the enforcement proceedings were completed.

II. RELEVANT DOMESTIC LAW

14. The relevant domestic law is summarised in the judgment of Romashov v. Ukraine (no. 67534/01, §§ 16-18, 27 July 2004).

THE LAW

15. The applicants complained of an alleged failure by the State authorities to execute the court decisions given in their favour. They invoked Articles 6 § 1 and 13 of the Convention, and Article 1 of Protocol No. 1, which provide, 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 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 or to secure the payment of taxes or other contributions or penalties.”

I. ADMISSIBILITY

A. The Government’s preliminary objections

16. The Government considered that the applicants could no longer claim to be victims of a violation of the Convention as they had received full payment of the judgment debts. They also contended that the applicants had not exhausted domestic remedies regarding the Bailiffs’ Service and the expedition of proceedings.

17. The applicants maintained that the remedies suggested by the Government were not effective. Moreover, in their opinion, the Government contradicted themselves, stating that the Bailiffs performed all necessary actions and, at the same time, raising the above objection of non-exhaustion.

18. The Court notes that similar points have already been dismissed in a number of Court judgments (see the aforementioned *Romashov* judgment, § 41). In such cases the Court has found that applicants may still claim to be victims of an alleged violation of Article 6 § 1 in relation to the period during which the decisions of which complaint is made remain unenforced, and that the applicants were absolved from pursuing the remedies invoked by the Government. It finds no reason to reach different conclusions in the present case and, therefore, rejects the Government's objections.

B. Conclusion

19. In the light of the parties' submissions, the Court concludes that the applicants' complaint under Article 6 § 1 of the Convention raises serious issues of fact and law under the Convention, the determination of which requires an examination of the merits. It finds no ground for declaring this part of the application inadmissible. For the same reasons, the applicants' complaints under Article 13 of the Convention and Article 1 of Protocol No. 1 cannot be declared inadmissible.

II. MERITS

A. The applicants' complaints under Article 6 § 1 of the Convention

20. The Government maintained that the bailiffs performed all necessary actions to enforce the judgments and could not be held liable for the delays in the enforcement proceedings. They further suggested that there was no infringement of Article 6 § 1 of the Convention in view of the enforcement of the judgments.

21. The applicants disagreed.

22. The Court notes that the decisions favourable for Mr Grishechkin were not enforced for five years (March 1999 – March 2004) and two and a half years (September 2001 – March 2004); the decisions favourable for Mr Kaurov – for four years and nine months (June 1999 – March 2004) and four years and two months (January 2000 – March 2004); the decision favourable for Mr Zavgorodyanskiy – for four years and three months (December 1999 – March 2004); the decisions favourable for Ms Tomayly – for four years and three months (December 1999 – March 2004) and two years and eleven months (April 2001 – March 2004); and the decisions favourable for Ms Lopatina – for four years and three months (December 1999 – March 2004) and two years and four months (November 2001 – March 2004). It further notes that these decisions were enforced in full after the communication of the application to the respondent Government.

23. The Court considers that by delaying for periods of more than two years the enforcement of the judgments in the applicants' cases, the authorities deprived the provisions of Article 6 § 1 of the Convention of much of their useful effect. The Court finds that the Government have not advanced any justification for these delays (see *Shmalko v. Ukraine*, no. 60750/00, judgment of 20 July 2004, § 45).

24. There has, accordingly, been a violation of Article 6 § 1 of the Convention.

B. The applicants' complaints under Article 13 of the Convention

25. The Government maintained that the applicants had at their disposal effective remedies explicitly provided for by domestic legislation in order to challenge the non-enforcement of the court judgments given in their favour. They referred to their earlier argument on exhaustion of domestic remedies.

26. The applicants disagreed.

27. The Court refers to its findings (at paragraph 18 above) concerning the Government's argument regarding domestic remedies. For the same reasons, the Court concludes that the applicants did not have an effective domestic remedy, as required by Article 13 of the Convention, to redress the damage created by the delays in the present proceedings. Accordingly, there has also been a breach of this provision.

C. The applicants' complaints under Article 1 of Protocol No. 1

28. The Government in their submissions confirmed that the amounts awarded to the applicants by the domestic court constituted a possession within the meaning of Article 1 of Protocol No. 1. Nevertheless, the Government maintained that the provision had not been violated since the applicants' entitlement to the awards was not disputed and they were not deprived of their property. The Government further noted that the delays in payments were due to the difficult economic situation of the debtor company and, therefore, the delays were justified by the need to strike a fair balance between the interests of the company and those of the applicants.

29. The applicants disagreed.

30. The Court recalls its case-law that the impossibility for an applicant to obtain the execution 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).

31. In the instant case the Court is therefore of the opinion that the impossibility for the applicants to obtain the execution of their judgements

for periods from two to five years constituted an interference with their right to the peaceful enjoyment of their possessions, within the meaning of the first paragraph of Article 1 of Protocol No. 1.

32. By failing to comply with the judgments of the Zheltovodsky Town Court, the national authorities prevented the applicants, for a considerable period of time, from receiving in full the money to which they were entitled. The Government have not advanced any justification for this interference. Accordingly there has also been a violation of Article 1 of Protocol No. 1.

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 applicants claimed USD 10,000 each (the equivalent of 7,452.12 euros (EUR) in respect of pecuniary and non-pecuniary damage. They maintained that for significant periods of time they were deprived of a possibility to buy necessary home appliances, to enjoy certain recreations, to move to other places, etc.

35. The Government maintained that the amounts claimed were excessive. They submitted that the finding of a violation would constitute sufficient just satisfaction in the present case.

36. The Court notes that the judgments given in the applicants' favour were enforced in full. However, it takes the view that the applicants have suffered some non-pecuniary damage as a result of the violations found which cannot be made good by the Court's mere finding of a violation. Nevertheless, the particular amounts claimed are excessive. Making its assessment on an equitable basis, as required by Article 41 of the Convention, the Court makes the following awards depending on the duration of the periods of non-enforcement:

- Mr Sergey Grischechkin – EUR 2,400;
- Mr Vladimir Kayurov – EUR 2,280;
- Mr Anatoliy Zavgorodyanskiy – EUR 2,040;
- Ms Marina Tomayly – EUR 2,040; and
- Ms Olga Lopatina – EUR 2,040.

B. Costs and expenses

37. The applicants did not submit any claim under this head within the set time-limit; the Court therefore makes no award.

C. Default interest

38. 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 applicants, within three months from the date on which the judgment becomes final according to Article 44 § 2 of the Convention, in respect of non-pecuniary damage the following amounts:
 - to Mr Grishechkin, EUR 2,400 (two thousand four hundred euros);
 - to Mr Vladimir Kayurov, EUR 2,280 (two thousand two hundred and eighty euros);
 - to Mr Anatoliy Zavgorodyanskiy, EUR 2,040 (two thousand and forty euros);
 - to Ms Marina Tomayly – EUR 2,040 (two thousand and forty euros);and
 - to Ms Olga Lopatina – EUR 2,040 (two thousand and forty euros).
 - (b) that the above amounts shall 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;
 - (c) 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 applicants' claim for just satisfaction.

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

S. DOLLÉ
Registrar

A.B. BAKA
President