



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

SECOND SECTION

CASE OF SVINTITSKIY AND GONCHAROV v. UKRAINE

(Application no. 59312/00)

JUDGMENT

STRASBOURG

4 October 2005

FINAL

04/01/2006

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 Svintitskiy and Goncharov v. Ukraine,

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

Mr J.-P. COSTA, *President*,

Mr A.B. BAKA,

Mr I. CABRAL BARRETO,

Mr K. JUNGWIERT,

Mr V. BUTKEVYCH,

Mrs A. MULARONI,

Ms D. JOČIENĖ, *judges*,

and Mrs S. DOLLÉ, *Section Registrar*,

Having deliberated in private on 18 January and 13 September 2005,

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

PROCEDURE

1. The case originated in an application (no. 59312/00) against Ukraine lodged with the Court under Article 34 of the Convention for the Protection of Human Rights and Fundamental Freedoms (“the Convention”) by two Ukrainian nationals, Mr Anatoliy Svintitskiy and Mr Aleksandr Goncharov (“the applicants”), on 15 May 2000.

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

3. The applicants alleged that the delays in the enforcement of the judgments given in their favour violated their rights guaranteed by Articles 6 § 1 and 13 of the Convention, and Article 1 of Protocol No. 1.

4. The application was allocated to the Second Section of the Court (Rule 52 § 1 of the Rules of Court). Within that Section, the Chamber that would consider the case (Article 27 § 1 of the Convention) was constituted as provided in Rule 26 § 1.

5. By a decision of 18 January 2005 the Court declared the application partly admissible in respect of the complaints of these applicants. It also declared inadmissible the complaints of seven other individuals.

6. After the admissibility decision, the applicants and the Government each filed observations on the merits (Rule 59 § 1).

THE FACTS

I. THE CIRCUMSTANCES OF THE CASE

7. The applicants were born in 1954 and 1960, respectively, and live in the city of Kirovograd, Ukraine.

8. Until 1998 the applicants served as career officers in military unit A-425. In 1998, the applicants retired.

9. Upon retirement, the applicants were entitled to different types of compensation and payments. As these entitlements went unpaid, they instituted proceedings in the Cherkassy Garrison Military Court against military unit A-0425 for their recovery.

10. On 13 August 1998 the court found for Mr Svintitskiy and awarded him UAH 2,376.37¹.

11. On 24 September 1998 the court found for Mr Goncharov and awarded him UAH 670².

12. These court decisions were not appealed and came into force. The execution writs were sent to the Kirovograd Bailiffs' Service for enforcement.

13. Between March 1999 and March 2000 the applicants lodged numerous complaints with the local departments of justice and defence and with the local prosecutor's office about the non-enforcement of the judgments in their favour.

14. By letter of 6 September 1999, the head of the economic department of the Ministry of Defence informed the applicants that the judgments in their favour remained unenforced due to the lack of sufficient funding from the State Budget.

15. By letter of 12 January 2000, the Kirovograd District Prosecutors' Office informed the Mr Svintitskiy that the judgment in his favour could not be enforced due to the lack of funds of the debtor, and the impossibility of attaching the debtor's property since it belonged to the State.

16. On 1 August 2001 the judgment in favour of Mr Goncharov was enforced in full.

17. On 17 September 2001 the judgment in favour of Mr Svintitskiy was enforced in full.

II. RELEVANT DOMESTIC LAW

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

¹. Around EUR 380

². Around EUR 107

THE LAW

19. 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, insofar 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. THE GOVERNMENT'S PRELIMINARY OBJECTIONS

20. The Government repeated the objections they had made prior to the admissibility of the case as to the applicants' victim status and exhaustion of domestic remedies. They submitted domestic case-law in support of their contentions.

21. The Court recalls that it has already dismissed these objections in its decision on admissibility in the present case. The domestic case-law now presented by the Government does not demonstrate such sufficient consistency as might enable the Court to reach a different conclusion as to the effectiveness of the domestic remedies in cases of non-enforcement of judgments. Therefore, the Court dismisses the Government's preliminary objections.

II. ALLEGED VIOLATION OF ARTICLES 6 § 1 AND 13 OF THE CONVENTION

22. The Government maintained that the judgments in the applicants' favour were enforced in full and that the length of the enforcement proceedings was not excessive. The delays were justified in the general interest, namely the need to conduct military reforms that required more funds than the State could allocate in its budget.

23. The applicants disagreed.

24. The Court notes that the decision in favour of Mr Svintitskiy was not enforced for three years and one month (August 1998 – September 2001); the decision in favour of Mr Goncharov – for two years and eleven months (September 1998 – August 2001). It further notes that these decisions were enforced in full after the communication of the application to the respondent Government.

25. The Court considers that by delaying for so long 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).

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

27. The Court does not consider it necessary in the circumstances to examine the same complaint separately under Article 13 of the Convention (see *Derkach and Palek v. Ukraine*, nos. 34297/02 and 39574/02, § 42, 21 December 2004).

III. ALLEGED VIOLATION OF 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 payment were due to insufficient budgetary allocations for the Armed Forces given the greater need for military reforms. Therefore, the delays were justified in the public interest.

29. The applicants maintained that the enforcement of judgments in their favour lasted an unreasonably long time and therefore their rights under Article 1 of Protocol No. 1 were violated.

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 judgments for periods of three years and one month and two years and eleven months, respectively, 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 Cherkassy Garrison Military 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 convincing justification for this interference, and the Court considers that a lack of budget funds cannot justify such an omission. Accordingly there has also been a violation of Article 1 of Protocol No. 1.

IV. 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. Mr Svintitskiy claimed EUR 16,057.59 for pecuniary and non-pecuniary damage. Mr Goncharov claimed EUR 15,868.38 under this head. These amounts included their calculation of inflation losses, lost profits and moral suffering, and related both to the impugned judgments and three other judgments which were not the subject of the present application.

35. The Government maintained that the claimed amounts were unsubstantiated, irrelevant and exaggerated. They invited the Court to determine the amount of non-pecuniary damage on an equitable basis.

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 pecuniary and 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 global awards, under both heads

of damage, depending on the duration of the periods of non-enforcement: EUR 1,500 to Mr Svintitskiy and EUR 1,400 to Mr Goncharov.

B. Costs and expenses

37. The applicants claimed respectively 869 EUR and 845 EUR for the cost and expenses incurred before the domestic courts and in the Convention proceedings. Under the former head they referred to domestic court proceedings in 2001 which were not the subject of the present application.

38. The Government pointed out the irrelevance of the applicants' expenses in the 2001 proceedings. As to the Convention proceedings, they noted that the applicants only paid UAH 200 (about EUR 35) each for their representation before the Court.

39. The Court reiterates that, in order for costs and expenses to be included in an award under Article 41, it must be established that they were actually and necessarily incurred in order to prevent or obtain redress for the matter found to constitute a violation of the Convention and were reasonable as to quantum (see, among many other authorities, *Nilsen and Johnsen v. Norway* [GC], no. 23118/93, § 62, ECHR 1999-VIII).

40. The Court considers that these requirements have not been met in the instant case. However, it is clear that the applicants incurred some costs and expenses for their representation before the Court.

41. Regard being had to the information in its possession and to the above criteria, the Court considers it reasonable to award each applicant EUR 100 for costs and expenses.

C. Default interest

42. 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. *Holds* that there has been a violation of Article 6 § 1 of the Convention;
2. *Holds* that it is not necessary to make a separate examination of the applicants' complaint under Article 13 of the Convention;
3. *Holds* that there has been a violation of Article 1 of Protocol No. 1;

4. *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, the following amounts:

- to Mr Svintitskiy, EUR 1,500 (one thousand five hundred euros) in respect of pecuniary and non-pecuniary damage and EUR 100 (one hundred euros) in respect of costs and expenses;

- to Mr Goncharov, EUR 1,400 (one thousand four hundred euros) in respect of pecuniary and non-pecuniary damage and EUR 100 (one hundred euros) in respect of costs and expenses;

(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.

5. *Dismisses* the remainder of the applicants' claim for just satisfaction.

Done in English, and notified in writing on 4 October 2005, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

S. DOLLÉ
Registrar

J.-P. COSTA
President