



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

SECOND SECTION

CASE OF KOMAR AND OTHERS v. UKRAINE

*(Applications nos. 36684/02, 14811/03, 26867/03, 37203/03, 38754/03
and 1181/04)*

JUDGMENT

STRASBOURG

28 February 2006

FINAL

28/05/2006

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 Komar and Others 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 7 February 2006,

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

PROCEDURE

1. The case originated in six applications (nos. 36684/02, 14811/03, 26867/03, 37203/03, 38754/03 and 1181/04) against Ukraine lodged with the Court under Article 34 of the Convention for the Protection of Human Rights and Fundamental Freedoms (“the Convention”) by seven Ukrainian nationals, Mr Aleksandr Kondratyevich Komar, Mr Yevgeniy Leonidovich Tsysyuk, Mr Sergey Leonidovich Tsysyuk, Mr Vadim Alekseyevich Maltsev, Mr Vyacheslav Vladimirovich Mikhaylenko, Mr Vladimir Aleksandrovich Serdyuk and Ms Nina Timofeyevna Maltseva (“the applicants”), in 2002-2004.

2. The Ukrainian Government (“the Government”) were represented by their Agents - Mrs V. Lutkovska and Mrs Z. Bortnovska.

3. On 20 February 2004 the Court decided to communicate the applicant’s complaint under Article 6 of the Convention in application no. 36684/02 to the Government.

4. On 2 June 2004 the Court decided to communicate the applications nos. 38754/03 and 1181/04, and the applicants’ complaints under Article 6 of the Convention and Article 1 of Protocol No. 1 in applications nos. 14811/03, 26867/03 and 37203/03 to the Government.

5. Under the provisions of Article 29 § 3 of the Convention, the Court decided to examine the merits of all applications at the same time as their admissibility.

THE FACTS

I. THE CIRCUMSTANCES OF THE CASE

6. Mr Aleksandr Kondratyevich Komar was born in 1942. Mr Yevgeniy Leonidovich Tsysyuk was born in 1980. Mr Sergey Leonidovich Tsysyuk was born in 1977. Mr Vadim Alekseyevich Maltsev was born in 1968. Mr Vyacheslav Vladimirovich Mikhaylenko was born in 1957. Mr Vladimir Aleksandrovich Serdyuk was born in 1951. Ms Nina Timofeyevna Maltseva was born in 1938. Messrs Mikhaylenko and Serdyuk reside in the village of Grodovka, Donetsk region, Ukraine. The other applicants reside in the town of Novogradovka, Donetsk region, Ukraine.

7. The applicants instituted separate sets of proceedings in the Novogradovskiy Town Court, seeking recovery of salary arrears and other payments from their former employer, the State-owned “Novogradovskaya 1/3” Mining Company.

8. By judgment of 27 March 2001 Mr Komar was awarded UAH 4,851.43. In 2004 the judgment was enforced by instalments, the final amount being paid on 12 May 2004. The length of enforcement proceedings in his case was therefore more than three years and one month.

9. By judgments of 17 April 2002 Messrs Yevgeniy Tsysyuk and Sergey Tsysyuk were awarded UAH 1,903.61 and 1,510.99 respectively. In 2004 the judgments were enforced by instalments, the final amounts being paid to Mr Yevgeniy Tsysyuk on 9 August 2004 and to Mr Sergey Tsysyuk on 23 September 2004. The enforcement proceedings in their cases lasted more than 2 years and 3 months and more than 2 years and 5 months respectively.

10. By judgment of 11 May 2001 Mr Maltsev was awarded UAH 5,757.87. The judgment was enforced in August 2004, the length of enforcement being about 3 years and 3 months.

11. By judgment of 6 April 2001 Mr Mikhaylenko was awarded UAH 7,320.37. The judgment was enforced in August 2004, the length of enforcement being more than 3 years and 4 months.

12. By judgment of 12 April 2001 Mr Serdyuk was awarded UAH 6,672.89. The judgment was enforced in August 2004, the length of enforcement being more than 3 years and 4 months.

13. By judgment of 11 May 2001 Ms Maltseva was awarded UAH 2,751.01. The judgment was enforced in August 2004, the length of enforcement being more than 3 years and 3 months.

14. Pending the enforcement of the judgments in their favour, the applicants instituted separate sets of proceedings in the Novogradivskiy Town Court of the Donetsk Region against the Novogradivskiy Town Bailiffs’ Service for failure to execute these judgments. The Town Court rejected the applicants’ claims, finding no fault had been committed by that

Service. The court stated that the Bailiffs' Service had presented a decision of the Commercial Court of the Donetsk Region of 30 August 2000 to the respondent company. This decision prohibited the enforcement of judgments against the company by selling its property, due to the bankruptcy proceedings which had been initiated against it. The decisions of the Town Court were subsequently appealed against but all of the appeals were rejected.

15. On 26 December 2001 the ban on the forced sale of assets belonging to undertakings in which the State holds at least 25% of the share capital was entrenched in the Law on the Introduction of a Moratorium on the Forced Sale of Property. On 10 June 2003 the Constitutional Court found the moratorium to be compatible with the provisions of the Constitution.

II. RELEVANT DOMESTIC LAW

16. A description of the relevant domestic law can be found in *Sokur v. Ukraine* (no. 29439/02, § 17-22, 26 April 2005).

THE LAW

I. JOINDER OF THE APPLICATIONS

17. Pursuant to Rule 42 § 1 of the Rules of Court, the Court joins the applications, given their common factual and legal background.

II. ADMISSIBILITY

A. The applicants' complaints under Article 2 § 1 of the Convention

18. Messrs Komar, Yevgeniy Tsysyuk, Sergey Tsysyuk, Maltsev and Mikhaylenko allege a violation of Article 2 § 1 of the Convention, which provides, insofar as relevant, as follows:

Article 2 § 1

"Everyone's right to life shall be protected by law."

19. The Court reiterates that according to its case-law neither Article 2 nor any other provision of the Convention can be interpreted as conferring on an individual a right to enjoy any given standard of living (*Wasilewski v. Poland*, no. 32734/96, 20.4.1999). Moreover, the applicants have not

shown that they suffered such destitution as to put their lives at risk. It follows that these complaints are incompatible *ratione materiae* with the provisions of the Convention and must be rejected in accordance with Article 35 §§ 3 and 4 of the Convention.

B. The applicants' complaints under Article 4 § 1 of the Convention

20. Messrs Komar, Yevgeniy Tsysyuk, Sergey Tsysyuk and Mikhaylenko alleged a violation of Article 4 § 1 of the Convention, which provides, insofar as relevant, as follows:

Article 4 § 1

“No one shall be held in slavery or servitude.”

21. The Court notes that the applicants' allegations under Article 4 § 1 derive from the fact that they did not receive remuneration for work they had performed. The Court further notes that the applicants performed their work voluntarily and their entitlement to payment has never been denied. The dispute thus involves civil rights and obligations, but does not disclose any element of slavery or servitude within the meaning of this provision. In these circumstances, the Court considers that these parts of the applications must be rejected as being manifestly ill-founded pursuant to Article 35 §§ 3 and 4 of the Convention.

C. The applicants' complaints under Article 6 § 1 of the Convention and Article 1 of Protocol No. 1

22. The applicants complained about the length of the non-enforcement of the judgments in their favour. They invoked Article 6 § 1 of the Convention in all applications and Article 1 of Protocol No. 1 in applications nos. 14811/03, 26867/03, 37203/03, 38754/03 and 1181/04. These Articles 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 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”

23. The Government raised objections regarding the applicants’ victim status similar to those which the Court has already dismissed (see *Shmalko v. Ukraine*, no. 60750/00, §§ 30-34 and 49-51, 20 July 2004). The Court considers that the present objections must be rejected for the same reasons.

24. The Court concludes that the applicants’ complaints under Article 6 § 1 of the Convention about the delay in the enforcement of the judgments of the Novogradovskiy Town Court raise 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 these complaints inadmissible. For the same reasons, the applicants’ complaints under Article 1 of Protocol No. 1 cannot be declared inadmissible.

III. MERITS

25. In their observations, the Government contended that there had been no violation of either Articles 6 § 1 of the Convention or Article 1 of Protocol No. 1 (as in the *Sokur* case; see the judgment, cited above, § 28).

26. The applicants disagreed.

27. The Court notes that the judgments in the applicants’ favour were not enforced for a considerable period of time.

28. The Court recalls that it has already found violations of Articles 6 § 1 of the Convention and Article 1 of Protocol No. 1 in cases like the present applications (see, the *Sokur* judgment, cited above, §§ 30-37, and the *Shmalko* judgment, cited above, §§ 55-57).

29. Having examined all the material submitted to it, 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 cases.

30. There has, accordingly, been a violation of Article 6 § 1 of the Convention in all applications and a violation of Article 1 of Protocol No. 1 in the applications nos. 14811/03, 26867/03, 37203/03, 38754/03 and 1181/04.

IV. APPLICATION OF ARTICLE 41 OF THE CONVENTION

31. 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, costs and expenses

32. The applicants claimed the following amounts by way of just satisfaction:

- Mr Aleksandr Komar - EUR 8,882;
- Mr Yevgeniy Tsysyuk - EUR 3,125;
- Mr Sergey Tsytsyuk - EUR 3,100;
- Mr Vadim Maltsev – EUR 6,488;
- Mr Vyacheslav Mikhaylenko – EUR 7,521;
- Mr Vladimir Serdyuk – EUR 7,475;
- Ms Nina Maltseva – EUR 6,240.

33. The Government maintained that the applicants had not substantiated their claims, and submitted that the finding of a violation would constitute sufficient just satisfaction.

34. The Court, making its assessment on an equitable basis, as required by Article 41 of the Convention, awards on the basis of the length of the periods of non-enforcement in each case:

- Mr Aleksandr Komar - EUR 1,400;
- Mr Yevgeniy Tsysyuk - EUR 1,000;
- Mr Sergey Tsytsyuk - EUR 1,000;
- Mr Vadim Maltsev – EUR 1,400;
- Mr Vyacheslav Mikhaylenko – EUR 1,400;
- Mr Vladimir Serdyuk – EUR 1,400;
- Ms Nina Maltseva – EUR 1,400.

B. Default interest

35. 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. *Decides* to join the applications;

2. *Declares* admissible the applicants' complaints about the delay in the enforcement of the judgments in their favour under Article 6 § 1 of the Convention and Article 1 of Protocol No.1, and inadmissible the remainder of the applications;
3. *Holds* that there has been a violation of Article 6 § 1 of the Convention in each of the present applications;
4. *Holds* that there has been a violation of Article 1 of Protocol No. 1 in applications nos. 14811/03, 26867/03, 37203/03, 38754/03 and 1181/04;
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, as follows:
 - to Mr Aleksandr Komar, EUR 1,400 (one thousand four hundred euros) for non-pecuniary damage, costs and expenses;
 - to Mr Yevgeniy Tsysyuk, EUR 1,000 (one thousand euros) for non-pecuniary damage, costs and expenses;
 - to Mr Sergey Tsysyuk, EUR 1,000 (one thousand euros) for non-pecuniary damage, costs and expenses;
 - to Mr Vadim Maltsev, EUR 1,400 (one thousand four hundred euros) for non-pecuniary damage, costs and expenses;
 - to Mr Vyacheslav Mikhaylenko, EUR 1,400 (one thousand four hundred euros) for non-pecuniary damage, costs and expenses;
 - to Mr Vladimir Serdyuk, EUR 1,400 (one thousand four hundred euros) for non-pecuniary damage, costs and expenses;
 - to Ms Nina Maltseva, EUR 1,400 (one thousand four hundred euros) for non-pecuniary damage, 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;
6. *Dismisses* the remainder of the applicants' claims for just satisfaction.

Done in English, and notified in writing on 28 February 2006, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

S. DOLLÉ
Registrar

J.-P. COSTA
President