



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

FIFTH SECTION

CASE OF GONCHAROV AND OTHERS v. UKRAINE

(Applications nos. 43090/04, 43096/04, 43101/04 and 43106/04)

JUDGMENT

STRASBOURG

30 November 2006

FINAL

28/02/2007

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 Goncharov and others v. Ukraine,

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

Mr P. LORENZEN, *President*,

Mrs S. BOTOUCHAROVA,

Mr K. JUNGWIERT,

Mr V. BUTKEVYCH,

Mrs M. TSATSA-NIKOLOVSKA,

Mr R. MARUSTE,

Mr M. VILLIGER, *judges*,

and Mrs C. WESTERDIEK, *Section Registrar*,

Having deliberated in private on 6 November 2006,

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

PROCEDURE

1. The case originated in four applications (nos. 43090/04, 43096/04, 43101/04 and 43106/04) against Ukraine lodged with the Court under Article 34 of the Convention for the Protection of Human Rights and Fundamental Freedoms (“the Convention”) by four Ukrainian nationals, Mr Viktor Yefimovich Goncharov, Ms Antonina Dmitriyevna Pontryagina, Ms Valentina Vasilyevna Ivanova and Mr Viktor Anatolyevich Bulba (“the applicants”), on 2 March 2004.

2. The applicants were represented by Mr V. Bychkovskiy from Miusinsk. The Ukrainian Government (“the Government”) were represented by their Agent Mr Yu. Zaytsev.

3. On 8 November 2005 the Court decided to communicate the complaints under Article 6 § 1 of the Convention and Article 1 of Protocol No. 1 to the Government. Under the provisions of Article 29 § 3 of the Convention, it decided to examine the merits of the applications at the same time as their admissibility.

THE FACTS

I. THE CIRCUMSTANCES OF THE CASE

4. The applicants were born in 1933, 1953, 1946 and 1968 respectively and live in Krasnyy Kut, the Lugansk region.

5. The facts of the case, as submitted by the parties, may be summarised as follows.

6. On various dates the applicants instituted civil proceedings in the Krasnyy Luch Court (*Краснолучський міський суд Луганської області*) seeking salary arrears and various payments from the State Open Joint Stock Mining Company “Krasnokutska” (“the Company,” *ДВАТ шахта “Краснокутська” ДП ДХК “Донбасантрацит”*).

7. On 5 March 2001 the Krasnyy Luch Court awarded UAH 8,906.23¹ in favour of the first applicant.

8. On 21 February 2001 the Krasnyy Luch Court awarded UAH 1,881.63² in favour of the second applicant.

9. On 14 June 2000 and 8 February 2001 the Krasnyy Luch Court awarded UAH 1,548.42³ and UAH 417.53⁴ respectively in favour of the third applicant.

10. On 21 May 2001 the Krasnyy Luch Court awarded UAH 2,843.41⁵ in favour of the fourth applicant.

11. The judgments in favour of the applicants became final and the enforcement writs were transferred to the Krasnyy Luch Bailiffs' Service (“the Bailiffs,” *Відділ Державної виконавчої служби Краснолучького міського управління юстиції*) for enforcement.

12. On 13 August 2002 the Lugansk Regional Commercial Court (“the Commercial Court,” *Господарський суд Луганської області*) initiated bankruptcy proceedings against the Company and introduced a moratorium on payment of its debts.

13. On 4 February 2003 the Commercial Court approved a friendly settlement between the Company and its creditors and discontinued the bankruptcy proceedings.

14. The first, the second and the fourth applicant received their judgments debts in several instalments, the final payments being made in August 2005. The third applicant received the debt due to her by the judgment of 1 June 2000 in August 2004 and in August 2005 - the debt by the judgment of 8 February 2001.

II. RELEVANT DOMESTIC LAW

15. The relevant domestic law is summarised in the judgment of *Sokur v. Ukraine* (no. 29439/02, § 17-22, 26 April 2005).

1. EUR 1,799.34.

2. EUR 380.23.

3. EUR 296.17.

4. EUR 83.10.

5. EUR 573.29.

THE LAW

I. JOINDER OF THE APPLICATIONS

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

II. ADMISSIBILITY

A. Complaints under Article 6 § 1 and Article 1 Protocol No. 1

17. The applicants complained about the State authorities' failure to enforce the judgments of the Krasnyy Luch Court given in their favour in due time. They invoked Articles 6 § 1 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 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”

18. The Government submitted no observations on the admissibility of the applicants' complaints.

19. The Court concludes that the applicants' complaints under Article 6 § 1 of the Convention and Article 1 of Protocol No. 1 about the delay in the enforcement of the judgments of the Krasnyy Luch Court raise issues of fact and law under the Convention, the determination of which requires an examination on the merits. It finds no ground for declaring these complaints inadmissible. The Court must therefore declare them admissible.

B. Complaint under Article 3 of the Convention

20. Mr Goncharov and Ms Pontryagina additionally complained under Article 3 of the Convention that the failure of the State authorities to enforce the judgments given in their favour caused them severe moral and physical suffering.

21. The Court observes that it does not appear that the suffering that the applicants might have experienced was sufficient to amount to inhuman and degrading treatment under Article 3 of the Convention (see *Ireland v. the United Kingdom*, judgment of 18 January 1978, Series A no. 25, § 162). Therefore, this part of the application must be declared inadmissible as being manifestly ill-founded in accordance with Article 35 §§ 3 and 4 of the Convention.

III. MERITS

22. In their observations, the Government contended that there had been no violation of Article 6 § 1 of the Convention or Article 1 of Protocol No. 1.

23. The applicants disagreed.

24. The Court notes that the judgments in the applicants' favour were not enforced for considerable periods of time. Notably, the periods of debt recovery in the applicants' cases lasted for more than four years.

25. The Court recalls that it has already found violations of Article 6 § 1 of the Convention and Article 1 of Protocol No. 1 in a number of similar cases (see, for instance, *Sokur v. Ukraine*, cited above, §§ 36-37 and *Sharenok v. Ukraine*, no. 35087/02, §§ 37-38, 22 February 2005).

26. Having examined all the material in its possession, 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 case.

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

IV. APPLICATION OF ARTICLE 41 OF THE CONVENTION

28. 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

29. The applicants claimed the following global sums in respect of compensation for pecuniary and non-pecuniary damage:

- Mr Viktor Goncharov – UAH 23,906.23 (EUR 3,750);
- Ms Antonina Pontryagina – UAH 11,289.78 (EUR 1,770);
- Ms Valentina Ivanova – UAH 8,913.74 (EUR 1,400); and
- Mr Viktor Bulba – UAH 11,033.29 (EUR 1,730).

30. The Government submitted that the claims of Mr Viktor Goncharov and Ms Antonina Pontryagina should be rejected. They further agreed to pay Ms Valentina Ivanova and Mr Viktor Bulba the amounts claimed in the event of the Court's finding a violation.

31. Regard been had to the circumstances of the case and the submissions of the parties, the Court awards the applicants the following global sums in respect of all their claims and expenses in pursuing their applications before the Court (see, *mutatis mutandis*, *Sharko v. Ukraine*, no. 72686/01, §§ 44-46, 19 April 2005):

- Mr Viktor Goncharov – EUR 1,400 (one thousand four hundred euros);
- Ms Antonina Pontryagina – EUR 1,400 (one thousand four hundred euros);
- Ms Valentina Ivanova – EUR 1,400 (one thousand four hundred euros); and
- Mr Viktor Bulba – EUR 1,730 (one thousand seven hundred thirty euros).

B. Default interest

32. 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* the complaints under Article 6 § 1 of the Convention and Article 1 of Protocol No. 1 to the Convention admissible and the complaints under Article 3 of the Convention inadmissible;
3. *Holds* that there has been a violation of Article 6 § 1 of the Convention;

4. *Holds* that there has been a violation of Article 1 Protocol No. 1 of the Convention;
5. *Holds*
 - (a) that the respondent State is to pay the applicants, within three months from the date on which the judgment becomes final in accordance with Article 44 § 2 of the Convention the following global sums in respect of just satisfaction:
 - to Mr Viktor Goncharov, EUR 1,400 (one thousand four hundred euros);
 - to Ms Antonina Pontryagina, EUR 1,400 (one thousand four hundred euros);
 - to Ms Valentina Ivanova, EUR 1,400 (one thousand four hundred euros); and
 - to Mr Viktor Bulba, EUR 1,730 (one thousand seven hundred thirty euros)
 - plus any tax that may be chargeable;
 - (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;
 - (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 30 November 2006, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Claudia WESTERDIEK
Registrar

Peer LORENZEN
President