



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

FIFTH SECTION

CASE OF SARAFANOV AND OTHERS v. UKRAINE

(Application no. 32166/04)

JUDGMENT

STRASBOURG

14 December 2006

FINAL

14/03/2007

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 Sarafanov and Others v. Ukraine,

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

Mr P. LORENZEN, *President*,

Mr K. JUNGWIERT,

Mr V. BUTKEVYCH,

Mrs M. TSATSA-NIKOLOVSKA,

Mr J. BORREGO BORREGO,

Mrs R. JAEGER,

Mr M. VILLIGER, *judges*,

and Mrs C. WESTERDIEK, *Section Registrar*,

Having deliberated in private on 20 November 2006,

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

PROCEDURE

1. The case originated in an application (no. 32166/04) against Ukraine lodged with the Court under Article 34 of the Convention for the Protection of Human Rights and Fundamental Freedoms ("the Convention") by six Ukrainian nationals: Mr Nikolay Ivanovich Sarafanov, Mr Nikolay Markovich Kolbasa, Mr Nikolay Aleksandrovich Kuzminskiy, Mr Pavel Ivanovich Lysenko, Mr Yevgeniy Mikhaylovich Seredin and Mr Pyotr Mikhaylovich Solonkin ("the applicants") on 25 August 2004.

2. The applicants were represented by Mr V. Bychkovskiy from Miusinsk. The Ukrainian Government ("the Government") were represented by their Agent, Mr Y. Zaytsev.

3. On 2 November 2005 the Court decided to communicate the complaints under Article 6 § 1 of the Convention and Article 1 of Protocol No. 1 concerning the non-enforcement of the judgments in the applicants' favour 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 applicants live in Miusinsk, the Lugansk region. The first, the third, the fourth, the fifth and the sixth applicants were born in 1943, 1936,

1940, 1950 and 1934 respectively. The second applicant did not specify the date of his birth.

5. On 29 November 2000 the Krasnyy Luch Court (*Краснолучський міський суд Луганської області*) awarded the first applicant UAH 286.68¹ against the State Mining Company Novopavlivska (“the Mine,” *ДВАТ шахта „Новопавлівська”*) in compensation for a delayed salary payment.

6. Additionally, between 2001 and 2004 (see annexed table) each of the applicants obtained a judgment of the Krasnyy Luch Court ordering the Mine to provide him with a certain quantity of coal.

7. All of the judgments given in favour of the applicants became final and the enforcement writs in their respect were transferred to the Krasnyy Luch Bailiffs' Service (“the Bailiffs,” *Відділ державної виконавчої служби Краснолучького міського управління юстиції*) for enforcement.

8. On 8 February 2005 the Bailiffs informed the applicants that pursuant to a decision of the Lugansk Regional Commercial Court (*Господарський суд Луганської області*) of 14 November 2002, the Mine had been declared bankrupt and subjected to a financial rehabilitation procedure that was to continue until 31 December 2007. The Bailiffs further noted that the Mine was not mining any coal, due to the lack of financing from the State.

9. The judgment of 29 November 2000 awarding compensation to the first applicant was enforced on 12 December 2005. The other judgments awarding the applicants coal have not been enforced.

II. RELEVANT DOMESTIC LAW

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

THE LAW

11. 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 Article 6 § 1 of the Convention and Article 1 of Protocol No. 1. The third applicant additionally invoked Article 13 of the Convention on the same grounds as Article 6 § 1. These provisions, insofar as relevant, provide as follows:

1. 61.60 euros (“EUR”).

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 .”

I. ADMISSIBILITY

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

13. The Court concludes that the application raises issues of fact and law under the Convention, the determination of which requires an examination on the merits. The Court finds no ground for declaring it inadmissible. The Court must therefore declare it admissible.

II. MERITS

14. In their observations on the merits of the applicants' claims, the Government contended that there had been no violation of Article 6 § 1 of the Convention or Article 1 of Protocol No. 1.

15. The applicants disagreed.

16. The Court observes that the delay in enforcement of the judgment of 29 November 2000 in favour of the first applicant was five years and two weeks. It further notes that the other judgments given in the applicants' favour have not been enforced, the delays ranging from two years and ten months to five years and eight months.

17. 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).

18. 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.

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

20. The Court does not find it necessary in the circumstances to examine under Article 13 of the Convention the same complaint as under Article 6 § 1 (see *Derkach and Palek v. Ukraine*, nos. 34297/02 and 39574/02, § 42, 21 December 2004).

III. APPLICATION OF ARTICLE 41 OF THE CONVENTION

21. 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

22. The applicants claimed the quantities of coal due to them under the judgments of the Krasnyy Luch Court and penalty interest for late execution of these judgments in respect of pecuniary damage.

23. Additionally, they claimed the following sums in compensation for non-pecuniary damage

- Mr Nikolay Sarafanov - EUR 2,000;
- Mr Nikolay Kolbasa – EUR 2,000;
- Mr Nikolay Kuzminskiy – UAH 5,000 (EUR 800);
- Mr Pavel Lysenko - UAH 3,000 (EUR 480);
- Mr Yevgeniy Seredin – UAH 3,000 (EUR 480); and
- Mr Pyotr Solonkin - UAH 3,000 (EUR 480).

24. The Government submitted that the applicants' claims for pecuniary damage should be rejected. They however agreed to pay the amounts claimed by the applicants in respect of non-pecuniary damage.

25. The Court recalls that the judgments awarding the applicants certain quantities of coal have not been enforced. It therefore finds that the Government should enforce these judgments in settlement of the applicants' claims for pecuniary damage. However, having regard to the circumstances of the case and the submissions of the parties, the Court also awards the applicants the amounts claimed by them in respect of non-pecuniary damage.

B. Costs and expenses

26. The applicants also requested the Court to compensate them for the costs and expenses incurred in connection with their Convention proceedings, without specifying any amounts.

27. The Government requested the Court to rule on an equitable basis.

28. 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. In the present case, the Court recalls that the applicants, represented by counsel, failed to specify any sums and did not present any supporting documents. Regard being had to the information in its possession and the above criteria, the Court gives no award.

C. Default interest

29. 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 is no need to examine the complaint under Article 13 of the Convention;
4. *Holds* that there has been a violation of Article 1 Protocol No. 1 of the Convention;
4. *Holds*
 - (a) that within three months from the date on which the judgment becomes final in accordance with Article 44 § 2 of the Convention, the respondent State is to enforce the judgments of the Krasnyy Luch Court given in the applicants' favour and to pay the applicants the following sums in respect of non-pecuniary damage:
 - to Mr Nikolay Sarafanov, EUR 2,000 (two thousand euros);
 - to Mr Nikolay Kolbasa, EUR 2,000 (two thousand euros);
 - to Mr Nikolay Kuzminskiy, EUR 800 (eight hundred euros);
 - to Mr Pavel Lysenko, EUR 480 (four hundred eighty euros);

- to Mr Yevgeniy Seredin EUR 480 (four hundred eighty euros); and
 - to Mr Pyotr Solonkin, EUR 480 (four hundred eighty 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;

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

Done in English, and notified in writing on 14 December 2006, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Claudia WESTERDIEK
Registrar

Peer LORENZEN
President

APPENDIX

List of the judgments of the Krasnyy Luch Court in respect of coal

Applicant	The court decision (date)	The award of coal (kilos)
Mr Sarafanov	18 May 2001	14,750
Mr Kolbasa	24 May 2001	11,800
Mr Kuz'minskiy	18 April 2001	14,750
Mr Lysenko	18 February 2004	20,650
Mr Seredin	18 February 2004	17,700
Mr Solonkin	18 February 2004	23,600