



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

FIFTH SECTION

CASE OF SHCHERBININ AND ZHARIKOV v. UKRAINE

(Applications nos. 42480/04 and 43141/04)

JUDGMENT

STRASBOURG

21 December 2006

FINAL

21/03/2007

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 Shcherbinin and Zharikov 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,
Mrs R. JAEGER,
Mr M. VILLIGER, *judges*,

and Mrs C. WESTERDIEK, *Section Registrar*,

Having deliberated in private on 27 November 2006,

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

PROCEDURE

1. The case originated in two applications (nos. 42480/04 and 43141/04) against Ukraine lodged with the Court under Article 34 of the Convention for the Protection of Human Rights and Fundamental Freedoms (“the Convention”) by two Ukrainian nationals, Mr Vladimir Petrovich Shcherbinin and Mr Ivan Fyodorovich Zharikov (“the applicants”), on 19 July 2004 and 2 March 2004 respectively.

2. The applicants were represented by Mr V. Bychkovskiy from Miusinsk. The Ukrainian Government (“the Government”) were represented by Mr Y. Zaytsev, their Agent, and Mrs I. Shevchuk, Head of the Office of the Government Agent before the European Court of Human Rights.

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 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 applications at the same time as their admissibility.

THE FACTS

I. THE CIRCUMSTANCES OF THE CASE

4. The applicants were born in 1938 and 1933 respectively and live in Krasnyy Luch, the Lugansk region. They are former employees of the State

Mining Company Novopavlivska (“the Mine,” *ДП шахта „Новопавлівська”*).

5. On 6 October 1999, 16 and 28 February 2001 the Krasnyy Luch Court (*Краснолучський міський суд Луганської області*) ordered the Mine to pay UAH 3,626.42,¹ UAH 1,000.96² and UAH 1,868.12³ respectively in salary arrears and various payments to the first applicant.

6. On 1 and 23 February 2001 the Krasnyy Luch Court ordered the Mine to pay UAH 3,776.36⁴ and UAH 1,491.80,⁵ respectively, in salary arrears and various payments to the second applicant.

7. All of the above judgments 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.

8. On 29 May 2002 the Lugansk Regional Commercial Court (“the Commercial Court,” *Господарський суд Луганської області*) initiated bankruptcy proceedings against the Mine and introduced a moratorium on payment of its debts.

9. On 14 November 2002 the Commercial Court declared the Mine bankrupt and ordered its rehabilitation, which was to be completed by 31 December 2007.

10. In July 2004 the first applicant received the debts due to him by the judgments of 6 October 1999 and 16 February 2001. As regards the debt due to him by the judgment of 28 February 2001 – the first applicant received it in several instalments, the last payment being made on 27 July 2006.

11. On 27 November 2004 the second applicant received the debt due to him by the judgment of 23 February 2001. The debt due to him by the judgment of 1 February 2001 was paid to him in several instalments, the final one being made on 26 July 2006.

II. RELEVANT DOMESTIC LAW

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

1. 760.13 euros (“EUR”).

2. EUR 203.18.

3. EUR 375.30.

4. EUR 743.14.

5. EUR 303.19.

THE LAW

I. JOINDER OF THE APPLICATIONS

13. 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

14. 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”

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

16. 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.

III. MERITS

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

18. The applicants disagreed.

19. The Court notes that the judgments given in the applicants' favour were not enforced for considerable periods of time. Notably, the periods of debt recovery in the applicants' cases ranged from three years and five months to five years and six months.

20. 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).

21. 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.

22. 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

23. 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

24. The first applicant claimed the global sum of UAH 28,906.78 (EUR 4,652.29) in respect of pecuniary and non-pecuniary damage. The second applicant claimed the global sum of UAH 18,194.86 (EUR 2,850.93) in respect of pecuniary and non-pecuniary damage.

25. The Government submitted that these claims were unsubstantiated.

26. The Court does not discern any causal link between the violations found and the pecuniary damage alleged; it therefore rejects these claims. However, the Court considers that the applicants must have sustained non-pecuniary damage, and awards each of them EUR 2,100 in this respect.

B. Costs and expenses

27. The first applicant claimed costs and expenses without specifying any amount. The second applicant did not submit any separate claim under this head.

28. The Government submitted that the Court should give no award.

29. 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, regard being had to the information in its possession and the above criteria, the Court makes no award under this head.

C. Default interest

30. 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 applications admissible;
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 each applicant, within three months from the date on which the judgment becomes final in accordance with Article 44 § 2 of the Convention, EUR 2,100 (two thousand one hundred euros) in respect of non-pecuniary damage to 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;
 - (b) 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 21 December 2006, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Claudia WESTERDIEK
Registrar

Peer LORENZEN
President