



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

FIFTH SECTION

CASE OF GIRYA AND OTHERS v. UKRAINE

(Application no. 17787/02)

JUDGMENT

STRASBOURG

26 April 2007

FINAL

26/07/2007

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 Girya 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 27 March 2007,

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

PROCEDURE

1. The case originated in an application (no. 17787/02) against Ukraine lodged with the Court under Article 34 of the Convention for the Protection of Human Rights and Fundamental Freedoms (“the Convention”) by 12 Ukrainian nationals, Ms Aleksandra Nikolayevna Girya, Ms Anna Filipovna Seroshtan, Ms Yuliya Trofimovna Butenko, Ms Svetlana Aleksandrovna Tur, Mr Nikolay Grigoryevich Kovalenko, Ms Raisa Yefimovna Kovalenko, Mr Vitaliy Vasilyevich Stasyuk, Ms Tatyana Ivanovna Stasyuk, Ms Nina Vasilyevna Plavshuk, Ms Svetlana Grigoryevna Denisenko, Ms Nadezhda Ivanovna Glushchenko and Ms Lyubov Ivanovna Shevchenko (“the applicants”), on 21 March 2002.

2. The Ukrainian Government (“the Government”) were represented by their Agent, Mr Yuriy Zaytsev.

3. On 5 April 2005 the Court decided to communicate the application 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**THE CIRCUMSTANCES OF THE CASE**

4. Ms Aleksandra Nikolayevna Girya was born in 1954. Ms Anna Filipovna Seroshtan was born in 1946. Ms Yuliya Trofimovna Butenko was born in 1941. Ms Svetlana Aleksandrovna Tur was born in 1960.

Mr Nikolay Grigoryevich Kovalenko was born in 1945. Ms Raisa Yefimovna Kovalenko was born in 1946. Mr Vitaliy Vasilyevich Stasyuk was born in 1980. Ms Tatyana Ivanovna Stasyuk was born in 1961. Ms Nina Vasilyevna Plavshuk was born in 1948. Ms Svetlana Grigoryevna Denisenko was born in 1960. Ms Nadezhda Ivanovna Glushchenko was born in 1959. Ms Lyubov Ivanovna Shevchenko was born in 1950. All the applicants live in the village of Kovshrovka, Kharkiv region.

5. Between 1996 and 2001 the applicants instituted separate sets of proceedings in the Kupyansk Court and the labour disputes commission (hereafter “the Commission”), seeking the recovery of salary arrears and other payments, against their former employer, the Joint Stock Company “Kupyanskyi Liteinyi Zavod” (hereafter “the Company”), in which the State held about 41% of the share capital.

6. Ms Aleksandra Nikolayevna Girya was awarded a total of UAH 2,764.78 in salary arrears and compensation for moral damage (decisions of the Commission of 3 September 1997 and 25 September 2000 and judgment of the Kupyansk Court of 25 May 2001). The decisions remain largely unenforced, the outstanding debt being UAH 1,863 (the equivalent of EUR 264.72).

7. Ms Anna Filipovna Seroshtan was awarded a total of UAH 2074.83 in salary arrears (decisions of the Commission given in 1997 and judgment of the Kupyansk Court of 13 August 2001). The decisions remain largely unenforced, the outstanding debt being UAH 1,590 (the equivalent of EUR 226.54).

8. Ms Yuliya Trofimovna Butenko was awarded UAH 1,598 (the equivalent of EUR 227.70) in salary arrears (decision of the Commission of 5 March 2001). The decision remains unenforced.

9. Ms Svetlana Aleksandrovna Tur was awarded UAH 1,039 (the equivalent of EUR 148.05) in salary arrears (decision of the Commission given in 1997). The decision remains unenforced.

10. Mr Nikolay Grigoryevich Kovalenko was awarded a total of UAH 2,413.45 in salary arrears and compensation for moral damage (judgment of the Kupyansk Court of 3 July 2001). The judgment remains largely unenforced, the outstanding debt being UAH 1,159 (the equivalent of EUR 165.15).

11. Ms Raisa Yefimovna Kovalenko was awarded a total of UAH 3,735.95 in salary arrears (judgment of the Kupyansk Court of 24 May 2001). The judgment remains largely unenforced, the outstanding debt being UAH 2,220 (the equivalent of EUR 316.31).

12. Mr Vitaliy Vasilyevich Stasyuk was awarded a total of UAH 1,543.90 in salary arrears and compensation for delay in payment of the salary (judgment of the Kupyansk Court of 6 June 2001). The judgment remains largely unenforced, the outstanding debt being UAH 1,236 (the equivalent of EUR 176.11).

13. Ms Tatyana Ivanovna Stasyuk was awarded a total of UAH 2,876.04 in salary arrears and compensation for moral damage (judgment of the Kupyansk Court of 6 June 2001). The judgment remains largely unenforced, the outstanding debt being UAH 1,613 (the equivalent of EUR 229.82).

14. Ms Nina Vasilyevna Plavshuk was awarded UAH 946 (the equivalent of EUR 134.78) in salary arrears (decision of the Commission given in 1997). The decision remains unenforced.

15. Ms Svetlana Grigoryevna Denisenko was awarded a total of UAH 2,888 in salary arrears (decisions of the Commission of 2 September 1997 and 28 October 1999). The decisions remain largely unenforced, the outstanding debt being UAH 2,508 (the equivalent of EUR 357.32).

16. Ms Nadezhda Ivanovna Glushchenko was awarded UAH 910 in salary arrears (decision of the Commission of 5 March 2001). The decision remains largely unenforced, the outstanding debt being UAH 810 (the equivalent of EUR 115.40).

17. Ms Lyubov Ivanovna Shevchenko was awarded UAH 1,249 in salary arrears (decision of the Commission of 14 October 1999). The decision remains largely unenforced, the outstanding debt being UAH 1,200 (the equivalent of EUR 170.95).

18. On 2 March 2001 the State Committee of Industrial Policy informed the applicants that the financial situation of the Company was examined by various State authorities. In particular, between 1997 and 1999 the Company was granted State funding for payment of salaries and other social arrears. On 18 and 22 September 2000 the Cabinet of Ministers established a commission made up of representatives from the State Committee of Industrial Policy, the Ministries of Finance, Economics and Labour, the State Property Fund and the Kharkiv Regional State Administration. The development plan prepared by the commission proposed to transfer the Company's non-productive assets to the Kupyansk Municipality and to initiate bankruptcy proceedings with the view to freezing its debts.

19. According to a letter of the Kupyansk Bailiffs' Service, the funds on the Company's bank accounts were insufficient to pay the sums awarded to the applicants and for this reason a part of the Company's property was attached. However, its forced sale was suspended because of the moratorium on the forced sale of property belonging to State enterprises introduced by the Order of the President of Ukraine of 23 May 2001.

20. When on 8 May 2001 the Kharkiv Commercial Court instituted bankruptcy proceedings against the Company, the Kupyansk Bailiffs' Service suspended the enforcement proceedings.

THE LAW

21. The applicants complained about the State authorities' failure to enforce the decisions of the Commission and the judgments of the Kupyansk Court. They invoked Article 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”

I. ADMISSIBILITY

22. The Government raised objections, contested by the applicants, regarding exhaustion of domestic remedies similar to those already dismissed in a number of the Court's judgments regarding non-enforcement against the State-owned companies (see e.g. *Sokur v Ukraine* (dec.), no. 29439/02, 16 December 2003 and *Trykhlil v. Ukraine*, no. 58312/00, §§ 39-43, 20 September 2005). The Court considers that these objections must be rejected for the same reasons.

23. The Court concludes that the applicants' complaints under Article 6 § 1 of the Convention and Article 1 of Protocol No. 1 raise 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. The Court must therefore declare them admissible.

II. MERITS

24. 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.

25. The applicants disagreed.

26. The Court notes that the decisions of the Commission and the judgments of the Kupyansk Court remain largely unenforced for periods ranging from five years and ten months to nine years and nine months.

27. 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, *Rudenko v. Ukraine*, no. 11412/02, 29 November 2005 and *Romashov v. Ukraine*, no. 67534/01, 27 July 2004).

28. 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.

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

III. APPLICATION OF ARTICLE 41 OF THE CONVENTION

30. 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

31. The applicants claimed the unsettled debts due to them under the decisions and the judgments at issue (see paragraphs 6-17 above) by way of compensation for pecuniary damage. Additionally, they claimed UAH 5,000 (EUR 800) each in respect of non-pecuniary damage.

32. The Government did not submit any comments on the applicants' claims for pecuniary damage and agreed to pay them UAH 5,000 by way of compensation for non-pecuniary damage in the event of the Court's finding a violation.

33. The Court finds that the Government should pay the applicants the outstanding debts due to them under the decisions and the judgments at issue in order to satisfy their claim for pecuniary damage. Additionally, it awards to each of the applicants EUR 800 by way of compensation for non-pecuniary damage.

B. Costs and expenses

34. The applicants did not submit any separate claim under this head; the Court therefore makes no award under this head.

C. 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. *Declares* the application admissible;
2. *Holds* that there has been a violation of Article 6 § 1 of the Convention;
3. *Holds* that there has been a violation of Article 1 Protocol No. 1 to the Convention;
4. *Holds*
 - (a) that the respondent State is to pay to each of the applicants, within three months from the date on which the judgment becomes final according to Article 44 § 2 of the Convention, the unsettled debts still owed to them, as well as EUR 800 (eight hundred euros) each 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 amount at a rate equal to the marginal lending rate of the European Central Bank during the default period plus three percentage points.

Done in English, and notified in writing on 26 April 2007, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Claudia WESTERDIEK
Registrar

Peer LORENZEN
President