



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

FIFTH SECTION

CASE OF SOVA v. UKRAINE

(Application no. 36678/03)

JUDGMENT

STRASBOURG

21 June 2007

FINAL

12/11/2007

This judgment will become final in the circumstances set out in Article 44 § 2 of the Convention.

In the case of Sova v. Ukraine,

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

Mr P. LORENZEN, *President*,

Mrs S. BOTOCHAROVA,

Mr V. BUTKEVYCH,

Mrs M. TSATSA-NIKOLOVSKA,

Mr R. MARUSTE,

Mr J. BORREGO BORREGO,

Mrs R. JAEGER, *judges*,

and Mrs C. WESTERDIEK, *Section Registrar*,

Having deliberated in private on 29 June 2007,

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

PROCEDURE

1. The case originated in an application (no. 36678/03) against Ukraine lodged with the Court under Article 34 of the Convention for the Protection of Human Rights and Fundamental Freedoms (“the Convention”) by a Ukrainian national, Mr Andrey Maksimovich Sova (“the applicant”), on 15 October 2003.

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

3. On 11 April 2006 the Court decided to grant the application priority and to communicate the complaint concerning the lengthy non-enforcement of the judgments in the applicant's 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 applicant was born in 1927 and lives in the town of Gorlivka, Donetsk region.

1. The proceedings against the State-owned coal-mine Lenina

5. On 18 April 2002 the Tsentralno-Miskiy Court of Gorlivka awarded the applicant UAH 8,888.37¹ against the State-owned coal-mine Lenina (hereinafter “the Lenina Mine”) in compensation for social benefits arrears and ordered the Social Security Fund to pay the applicant UAH 143.88² monthly as of 1 April 2001. This decision became final on 20 May 2002.

6. On 29 July 2002 the Donetsk Regional Court of Appeal rejected the applicant's appeal and upheld the judgment of 18 April 2002. The applicant did not appeal in cassation.

7. On 6 September 2002 the Kalininsky Bailiffs' Office of Gorlivka (hereinafter “the Bailiffs”) initiated the enforcement proceedings in the case.

8. On 28 December 2002 the Lenina Mine was re-organised into a structural division of the State-owned company “Artemvugillya”, which on 18 August 2004 was re-organised into the State-owned Donetsk Mining Company.

9. On 22 September 2005 the applicant was paid the total amount of social benefits arrears awarded him under the judgment of 18 April 2002.

10. To the extent that the judgment of 18 April 2002 concerned the monthly payments to the applicant by the Social Security Fund, it was enforced in due time.

2. The proceedings against the State-owned coal-mine Gayevogo

11. On 29 April 2003 the Kalininsky District Court of Gorlivka (hereinafter “the Kalininsky Court”) ordered the State-owned coal-mine Gayevogo (hereinafter “the Gayevogo Mine”) to pay the applicant UAH 4,168.25³ in compensation for salary arrears. This decision became final on 25 June 2003.

12. On 27 June 2003 the Bailiffs initiated the enforcement proceedings.

13. Between February 2003 and February 2005 the Donetsk Commercial Court on three occasions initiated and terminated the bankruptcy proceedings against the Gayevogo Mine.

14. On 3 February 2005 the Kalininsky Court rejected the applicant's claim for compensation against the Gayevogo Mine and the Bailiffs for failure to enforce the judgment of 29 April 2003.

15. On 1 April 2005 the Donetsk Regional Court of Appeal upheld this decision. The applicant's cassation appeal was left without consideration for failure to comply with the formalities prescribed by the Code of Civil Procedure.

16. On 17 August 2005 the applicant was paid the total amount awarded to him under the judgment of 29 April 2003.

1. EUR 1,947.37.

2. EUR 31.33.

3. EUR 715.38.

3. *Other proceedings*

17. In June 2004 the applicant instituted civil proceedings against the State Pension Fund seeking reassessment of his pension. On 6 December 2004 the Kalininsky Court found against him. The applicant did not appeal against this decision. In 2005 a similar claim was left without consideration for failure to comply with the procedural formalities.

II. RELEVANT DOMESTIC LAW

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

THE LAW

I. ALLEGED VIOLATION OF ARTICLE 6 § 1 OF THE CONVENTION

19. The applicant complained about an infringement of Article 6 § 1 of the Convention on amount of the lengthy non-enforcement of the judgments given in his favour against the Lenina Mine and the Gayevogo Mine. The above provision provides, 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...”

A. Admissibility

20. The Government observed that there was no omission by the State authorities and the judgments given in the applicant's favour were enforced in full.

21. The Court observes that the applicant's complaint under Article 6 § 1 of the Convention raises issues of fact and law under the Convention, the determination of which requires an examination of the merits. It finds no ground for declaring this complaint inadmissible. The Court must therefore declare it admissible.

B. Merits

22. In their observations, the Government contended that there had been no violation of the provisions of the Convention in the applicant's respect.

23. The applicant disagreed.

24. The Court notes that the judgments given in the applicant's favour remained unenforced for twenty-six and forty months.

25. The Court recalls that it has already found violation of Article 6 § 1 of the Convention in a number of similar cases (see, for instance, *Sokur v. Ukraine*, cited above and *Mykhaylenky and Others v. Ukraine*, nos. 35091/02, 35196/02, 35201/02, 35204/02, 35945/02, 35949/02, 35953/02, 36800/02, 38296/02 and 42814/02, § 45, ECHR 2004).

26. Having examined all the materials 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.

II. OTHER ALLEGED VIOLATIONS OF THE CONVENTION

28. The applicant further complained of the unfair hearings and outcome of the proceedings instituted by him.

29. However, in the light of all the materials in its possession, the Court finds that they do not disclose any appearance of a violation of the rights and freedoms set out in the Convention or its Protocols.

30. It follows that this part of the application must be declared inadmissible as being manifestly ill-founded, pursuant to Article 35 §§ 1, 3 and 4 of the Convention.

III. 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

32. The applicant claimed pecuniary and non-pecuniary damage and requested the Court to calculate their exact amount.

33. The Government did not submit their observation under this head.

34. The Court considers that the applicant must have sustained non-pecuniary damage as a result of the violations found (see *Kryachkov v. Ukraine*, no. 7497/02, § 30, 1 June 2006). Making its assessment on an equitable basis, as required by Article 41 of the Convention, the Court awards the applicant EUR 1,300 in this respect.

B. Costs and expenses

35. The applicant also claimed EUR 7 for the postal expenses incurred in the context of the proceedings before the Court. The Court considers it reasonable to award the applicant this sum.

C. Default interest

36. 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 complaint concerning the non-enforcement of the judgments given in the applicant's favour admissible and the remainder of the application inadmissible;
2. *Holds* that there has been a violation of Article 6 § 1 of the Convention;
3. *Holds*
 - (a) that the respondent State is to pay the applicant, within three months from the date on which the judgment becomes final in accordance with Article 44 § 2 of the Convention, EUR 1,307 (one thousand three hundred and seven euros) in respect of non-pecuniary damage and costs and expenses, plus any tax that may be chargeable;
 - (b) that the above amount 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 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 21 June 2007, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Claudia WESTERDIEK
Registrar

Peer LORENZEN
President