



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

FIFTH SECTION

CASE OF MORGUNENKO v. UKRAINE

(Application no. 43382/02)

JUDGMENT

STRASBOURG

6 September 2007

FINAL

31/03/2008

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 Morgunenko 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 Mr J.S. PHILLIPS, *Deputy Section Registrar*,

Having deliberated in private on 10 July 2007,

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

PROCEDURE

1. The case originated in an application (no. 43382/02) against Ukraine lodged with the Court under Article 34 of the Convention for the Protection of Human Rights and Fundamental Freedoms (“the Convention”) by a Ukrainian national, Mr Ivan Andreyevich Morgunenko (“the applicant”), on 4 November 2002.

2. The applicant was represented by Mr A. Mitin from Kryvvy Rig. 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 26 October 2006 the Court decided to communicate the complaints concerning the length of the proceedings, including their enforcement stage, and the lack of remedies in that respect to the Government. Applying Article 29 § 3 of the Convention, it decided to rule on the admissibility and merits of the application at the same time.

THE FACTS**I. THE CIRCUMSTANCES OF THE CASE**

4. The applicant was born in 1937 and lives in Kryvvy Rig. He was an employee of the “Kryvbaszalizrudkom” OJSC (“the Company”; *BAT “Кривбасзалізрудком”*). The “Ukrudprom” State Company (*ДБАТ «Укррудпром»*) owned 100% of the Company's share capital.

5. In March 2000 the applicant instituted civil proceedings in the Dzerzhynsky District Court of Kryvyi Rig (*Дзержинський районний суд м. Кривий Ріг*), seeking his reinstatement as an overman (*гірничий майстер*) and compensatory redress for allegedly unlawful dismissal.

6. On 2 November 2001 the court ordered the applicant's reinstatement and partly allowed his claims for compensation, having awarded him 12,231.37 hryvnias (UAH)¹. The Company appealed, but reinstated the applicant.

7. On 4 June 2002 the Dnipropetrovsk Regional Court of Appeal upheld the applicant's reinstatement, however, recalculated the compensation and awarded him UAH 7,038.38². The judgment was not appealed against in cassation within the statutory time-limit and became final.

8. On 30 July 2002 the Zhovtnevy District Bailiffs' Service (*Біddіл Державної виконавчої служби Жовтневого району м. Кривий Ріг*) instituted the enforcement proceedings.

9. On 30 August 2002 the enforcement proceedings were stayed on account of the pending bankruptcy proceedings against the Company.

10. On 26 April 2004 the enforcement proceedings were resumed, as the bankruptcy proceedings had been discontinued.

11. In May 2004 the judgment given in the applicant's favour was enforced.

II. RELEVANT DOMESTIC LAW

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

THE LAW

I. ALLEGED VIOLATION OF ARTICLE 6 § 1 OF THE CONVENTION IN RESPECT OF THE LENGTH OF THE PROCEEDINGS

13. The applicant complained about the length of his civil proceedings, including their enforcement stage. He invoked Article 6 § 1 of the Convention, which reads, in so far as relevant, as follows:

“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. ...”

1. 2,521.36 euros (“EUR”).

2. EUR 1,455.08.

A. Admissibility

14. The Government submitted no observations on admissibility of this complaint.

15. The Court observes that the court proceedings and the enforcement proceedings are stages one and two in the total course of proceedings (see *Scordino v. Italy (no. 1)* [GC], no. 36813/97, § 197). Therefore, the enforcement proceedings should not be dissociated from the action and the proceedings are to be examined in their entirety (see, *Estima Jorge v. Portugal*, judgment of 21 April 1998, *Reports of Judgments and Decisions* 1998-II, § 35 and, as a recent authority, *Sika v. Slovakia*, no. 2132/02, §§ 24-27, 13 June 2006).

16. The Court considers that the applicant's complaint raises issues of fact and law under the Convention and finds no ground for declaring it inadmissible. The Court must therefore declare it admissible.

B. Merits

17. In their observations on the merits of the applicant's complaint, the Government contended that there had been no violation of Article 6 § 1.

18. The applicant disagreed.

19. The Court reiterates that the applicant lodged his civil action for reinstatement and compensation in March 2000. This action eventually led to the adoption of a final judgment on 4 June 2002. Therefore, the length of proceedings in their judicial phase was two years and three months, during which period the applicant's claims were considered by the courts of two levels of jurisdiction.

20. The Court further notes that in July 2002 formal enforcement proceedings were instituted in respect of the judgment of 4 June 2002. However, the applicant was able to collect the full amount of the judgment debt only twenty-three months later, in May 2004.

21. The Court reiterates that the reasonableness of the length of proceedings must be assessed in the light of the circumstances of the case and with reference to the following criteria: the complexity of the case, the conduct of the applicant and the relevant authorities and what was at stake for the applicant in the dispute (see, among many other authorities, *Frydlender v. France* [GC], no. 30979/96, § 43, ECHR 2000-VII).

22. The Court notes that the delay in the proceedings at issue was mostly caused by the non-enforcement of a final judgment given in the applicant's favour. The Court has frequently found violations of Article 6 § 1 of the Convention in cases raising issues similar to the one in the present case (see, e.g., *Sika v. Slovakia*, cited above, § 35 and *Sokur v. Ukraine*, no. 29439/02, § 37, 26 April 2005).

23. Having examined all the material submitted to it, 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. Having regard to its case-law on the subject, the Court considers that in the instant case the length of the proceedings was excessive and failed to meet the “reasonable time” requirement.

24. There has accordingly been a breach of Article 6 § 1.

II. ALLEGED VIOLATION OF ARTICLE 13 OF THE CONVENTION

25. The applicant further complained that he had no effective remedies for his complaint about the excessive length of the proceedings. He relied on Article 13 of the Convention.

26. The Government contended that there was no violation of Article 13.

27. The Court notes that this complaint is linked to the one examined above. It finds no reason to declare it inadmissible. The Court must therefore declare it admissible.

28. The Court reiterates that Article 13 guarantees an effective remedy before a national authority for an alleged breach of the requirement under Article 6 § 1 to hear a case within a reasonable time (see *Kudła v. Poland* [GC], no. 30210/96, § 156, ECHR 2000-XI).

29. The Court notes that it has already found a violation of Article 13 of the Convention in cases raising issues similar to the present application (see, for instance, *Efimenko v. Ukraine*, no. 55870/00, § 64, 18 July 2006 and *Voytenko v. Ukraine*, no. 18966/02, §§ 46-48, 29 June 2004). The Court finds no ground to depart from its case-law in the present case.

30. There has, accordingly, been a violation of Article 13 of the Convention.

III. OTHER ALLEGED VIOLATIONS OF THE CONVENTION

31. The applicant additionally complained under Article 6 § 1 of the Convention that the courts had incorrectly calculated the compensation due to him and invoked Article 8 of the Convention with regard to the facts of the present case.

32. Having carefully examined the applicant's submissions in the light of all the material in its possession and insofar as the matters complained of are within its competence, the Court finds that there is no appearance of a violation of the rights and freedoms set out in the Convention or its protocols.

33. 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.

IV. APPLICATION OF ARTICLE 41 OF THE CONVENTION

34. 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

35. The applicant claimed UAH 20,259 (3,155 euros (EUR)) in respect of pecuniary damage and UAH 16,500 (EUR 2,570) in respect of non-pecuniary damage.

36. The Government contested these claims.

37. The Court recalls that the matter before it is the length of proceedings and lack of effective remedies in this respect. It does not discern any causal link between the violation found and the pecuniary damage alleged; it therefore rejects this claim. On the other hand, it awards the applicant EUR 400 in respect of non-pecuniary damage.

B. Costs and expenses

38. The applicant also claimed 4,000 hryvnyas (EUR 623) under this head. He presented the receipts for postal, copying and faxing services for the total amount of 755 hryvnyas (EUR 118).

39. The Government noted that the applicant failed to substantiate the amount claimed.

40. 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 awards the applicant EUR 118.

C. Default interest

41. 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 excessive length of the civil proceedings, including their enforcement stage, 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* that there has been a violation of Article 13 of the Convention;
4. *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 518 (five hundred and eighteen euros) in respect of non-pecuniary damage and costs and expenses, 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;
5. *Dismisses* the remainder of the applicant's claim for just satisfaction.

Done in English, and notified in writing on 6 September 2007, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Stephen PHILLIPS
Deputy Registrar

Peer LORENZEN
President