



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

FIFTH SECTION

CASE OF DEREVYANKO AND BELETSKIY v. UKRAINE

(Applications nos. 35765/05 and 37847/05)

JUDGMENT

STRASBOURG

11 October 2007

FINAL

11/01/2008

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 Derevyanko and Beletskiy 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,
Mr R. MARUSTE,
Mr M. VILLIGER, *judges*,

and Mrs C. WESTERDIEK, *Section Registrar*.

Having deliberated in private on 18 September 2007,

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

PROCEDURE

1. The case originated in two applications (nos. 35765/05 and 37847/05) 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 Mikhail Ivanovich Derevyanko of Gorlivka born in 1955 and Mr Leontiy Adamovich Beletskiy of Kirovske born in 1959 (“the applicants”), on 3 September and 5 October 2005 respectively.

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

3. The applicants complained about the unreasonable delay in enforcement of the final judgments given in their favour.

4. On 30 May 2006 the Court decided to give notice of the applications 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

5. On 23 August 2002 the Kirovske Court (*Кіровський міський суд Донецької області*) awarded the second applicant UAH 25,579.40¹ in

1. EUR 5,136.74.

disability benefits from his former employer, the State OJSC Mine “Svitanok” (ДВАТ „Шахта „Світанок” ДП ДХК „Жовтеньвугілля”).

6. On 1 March 2004 the Central District Court of Gorlivka (Центрально-міський суд м. Горлівка) awarded the first applicant UAH 45,678.80¹ in disability benefits from the Donetsk Regional Board of Mine Liquidation. On 1 June 2004 the court rectified the judgment by stating that the proper name of the debtor was the State Company “Donvuglerestrukturyzatsiya” (ДП „Донвуглереструктуризація”).

7. The judgments given in the applicants' favour were not appealed against, became final, and enforcement proceedings were instituted to collect the debts.

8. The judgments have not been enforced in full to the present day on account of the debtor-companies' lack of funds and statutory restrictions on selling their assets.

II. RELEVANT DOMESTIC LAW

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

THE LAW

I. JOINDER OF THE APPLICATIONS

10. 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

11. The applicants complained about the State authorities' failure to enforce the final judgments given in their favour in due time. They invoked Article 1 of Protocol No. 1, which provides, insofar as relevant, as follows:

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.

1. EUR 7,048.34.

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”

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

13. The Court concludes that the applicants' complaints 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

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

15. The applicants disagreed.

16. The Court notes that the judgment given in the first applicant's favour has remained unenforced for a period exceeding three years and seven months and the judgment given in favour of the second applicant has remained unenforced for more than five years and one month.

17. The Court recalls that it has already found a violation of Article 1 of Protocol No. 1 in a number of similar cases (see, for instance, *Sharenok v. Ukraine*, no. 35087/02, §§ 37-38, 22 February 2005 and *Shcherbakov v. Ukraine*, no. 75786/01, § 34, 19 April 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 1 of Protocol No. 1.

IV. APPLICATION OF ARTICLE 41 OF THE CONVENTION

20. 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

21. The first applicant claimed 25,000 euros (EUR) in respect of non-pecuniary damage.

22. The second applicant claimed the unsettled judgment debt and UAH 200,000 (28,600 euros (EUR)) in non-pecuniary damage.

23. The Government contested these claims.

24. The Court observes that the first applicant failed to submit any claim for enforcement of the outstanding debt or for any other pecuniary damage; the Court therefore makes no award. It further finds that the Government should pay the second applicant the outstanding judgment debt in settlement of his pecuniary damage claim. The Court also considers that the applicants must have suffered non-pecuniary damage on account of the violation found. Ruling on an equitable basis, it awards the first applicant EUR 1,300 and the second applicant EUR 2,100 in respect of non-pecuniary damage.

B. Costs and expenses

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

C. Default interest

26. 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 1 of Protocol No. 1 to the Convention;
4. *Holds*
 - (a) that the respondent State is to pay, within three months from the date on which the judgment becomes final in accordance with Article 44 § 2 of the Convention, the outstanding debt under the judgment of 23 August 2002 to Mr Leontiy Beletskiy and the following amounts in respect of non-pecuniary damage to the applicants:
 - Mr Mikhail Derevyanko - EUR 1,300 (one thousand and three hundred euros);
 - Mr Leontiy Beletskiy – EUR 2,100 (two thousand and one hundred 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' claim for just satisfaction.

Done in English, and notified in writing on 11 October 2007, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Claudia WESTERDIEK
Registrar

Peer LORENZEN
President