



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

FIFTH SECTION

CASE OF PARINTSEV AND OTHERS v. UKRAINE

*(Applications nos. 22606/04, 43060/04, 43139/04, 8453/05, 24385/05,
27307/05, 27309/05, 30198/05, 36033/05, 36479/05, 45526/05 and
45527/05)*

JUDGMENT

STRASBOURG

29 November 2007

FINAL

29/02/2008

*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 Parintsev and Others 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 Mr J.S. PHILLIPS, *Deputy Section Registrar*,

Having deliberated in private on 6 November 2007,

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

PROCEDURE

1. The case originated in twelve applications against Ukraine lodged with the Court under Article 34 of the Convention for the Protection of Human Rights and Fundamental Freedoms by twelve Ukrainian nationals:

- Mr Aleksandr Nikiforovich PARINTSEV of Novogrodivka born in 1930 (no. 22606/04);
- Mr Viktor Petrovich VOLOKHOV of Krasnyy Kut¹ (no. 43060/04);
- Mr Nikolay Ivanovich BULANKIN of Sofiyivka born in 1937 (no. 43139/04);
- Mr Viktor Dmitriyevich IGNATOVICH of Gorlivka born in 1946 (no. 8453/05);
- Mr Nikolay Nikolayevich CHERNYKH of Gorlivka born in 1955 (no. 24385/05);
- Mr Ivan Nikolayevich GERASIMOV of Cherkasy born in 1939 (no. 27307/05);
- Mr Vitaliy Danilovich VASHCHENKO of Novogrodivka born in 1940 (no. 27309/05);
- Mr Vasyl Vasylyovych MUNITSYN of Vugledar² (no. 30198/05);
- the limited liability company “DONBASINDUSTRIYA” of Lugansk (no. 36033/05);
- the limited liability company “DONBASPROMPOSTAVKA” of Lugansk (no. 36479/05);
- Mr Vladimir Arsenyevich ISHCENKO of Vakhrushevo born in 1949 (no. 45526/05);

1. Date of birth unspecified.

2. Date of birth unspecified.

- and Ms Valentina Vasilyevna SHVETS of Krasnyy Luch born in 1941 (no. 45527/05).

2. 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. The Court decided to communicate the complaints concerning the delay in enforcement of the final judgments given in the applicants' favour against the State-owned mining companies 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. On various dates each of the applicants received one or more final judgments awarding payments from a State-owned mining company (see appendix for details) and instituted enforcement proceedings to collect the payment.

5. The judgments given in favour of the second and the third applicant were enforced on 24 December 2004 and 7 August 2006, respectively.

6. The judgments given in favour of the other applicants remain fully or partly unenforced on account of the debtor-companies' lack of funds.

7. Some of the applicants attempted to claim compensation against various State entities for the delay in the enforcement of the judgments given in their favour, however, these attempts have been to no avail.

8. After the institution of the Convention proceedings, the second and the seventh applicants died. Their widows, Mrs Lidiya Mikhaylovna Volokhova and Mrs Galina Aleksandrovna Vashchenko, informed the Court that they wished to pursue the applications of their late husbands.

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. AS TO THE LOCUS STANDI OF MRS VOLOKHOVA AND MRS VASHCHENKO

11. The respondent Government did not advance any arguments against the standing of the widows of the second and the seventh applicant.

12. Having regard to the circumstances of the case and the information in its possession, the Court considers that the widows of the second and the seventh applicants have standing to continue the present proceedings in their stead (see *Sharenok v. Ukraine*, no. 35087/02, §§ 10-12, 22 February 2005). However, reference will still be made to the applicants throughout the ensuing text.

III. COMPLAINTS UNDER ARTICLES 6 § 1 AND 13 OF THE CONVENTION AND ARTICLE 1 OF PROTOCOL No. 1 ABOUT THE DELAY IN THE ENFORCEMENT OF JUDGEMENTS

13. The applicants complained about the State authorities' failure to enforce the judgments given in their favour in due time. They invoked Article 6 § 1 of the Convention and Article 1 of Protocol No. 1. The first, the fifth, the seventh, the ninth and the tenth applicant additionally invoked Article 13 of the Convention, complaining about their inability to obtain the judgments debts within a reasonable time. The impugned provisions 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”

Article 13

“Everyone whose rights and freedoms as set forth in [the] Convention are violated shall have an effective remedy before a national authority notwithstanding that the violation has been committed by persons acting in an official capacity.”

A. Admissibility

14. The Government provided no observations on the admissibility of the above complaints.

15. The Court notes that these complaints are not manifestly ill-founded within the meaning of Article 35 § 3 of the Convention. It further notes that they are not inadmissible on any other grounds. They must therefore be declared admissible.

B. Merits

16. The Government abstained from observations on the merits of the complaints brought by the first applicant. In their observations on the merits of the complaints raised by other applicants, the Government contended that there had been no violation of their Convention rights.

17. The applicants disagreed.

18. The Court notes that the judgments in the applicants' favour were not enforced for considerable periods of time. Notably, the periods of debt recovery in each of the applicants' cases have lasted for more than two years and two months.

19. 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).

20. 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.

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

22. The Court does not find it necessary in the circumstances to examine under Article 13 of the Convention the same complaint as under Article 6 § 1.

IV. OTHER COMPLAINTS

23. The third applicant additionally invoked Article 3 to the facts of the present case.

24. The seventh applicant additionally complained under Article 6 § 1 about the unfairness and excessive length of his proceedings concerning compensation for the delay in enforcement of the judgment.

25. The ninth and the tenth applicant also invoked Article 1 of the Convention in respect of the facts of the case without further substantiation.

26. Having carefully examined these applicants' 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 they do not disclose any appearance of a violation of the rights and freedoms set out in the Convention.

27. 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.

V. APPLICATION OF ARTICLE 41 OF THE CONVENTION

28. 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

29. The first applicant claimed the unsettled judgment debt and an additional amount of EUR 1,300 by way of pecuniary damage. He also claimed EUR 3,500 by way of non-pecuniary damage;

30. The second applicant claimed UAH 8,797 (EUR 1,300) in default interest and EUR 2,500 in respect of non-pecuniary damage;

31. The third applicant claimed UAH 6,818 (EUR 980) in default interest and EUR 2,500 in respect of non-pecuniary damage;

32. The fourth applicant claimed the unsettled judgment debt, UAH 1,483 (EUR 220) in punitive payments and UAH 3,609.56 (EUR 520) in inflation adjustment by way of pecuniary damage. He presented no documentary proof to support his calculations of inflation rates. He also claimed EUR 2,500 in respect of non-pecuniary damage;

33. The fifth applicant claimed the unsettled judgments debts and EUR 2,400 in punitive payments by way of pecuniary damage, as well as EUR 2,500 in non-pecuniary damage;

34. The sixth applicant claimed 5,268 U.S. dollars (EUR 3,900) by way of just satisfaction, including the amount of the unsettled judgment debt;

35. The seventh applicant claimed EUR 8,000 by way of just satisfaction (including the unsettled debt and non-pecuniary damage);

36. The eighth applicant claimed the unsettled judgment debt and UAH 5,812.55 (EUR 950) in inflation adjustments by way of pecuniary damage. He presented a respective inflation indexes certificate issued by the State Statistics Committee (*Державний комітет статистики України*) to support his detailed calculations. He also claimed UAH 14,000 (EUR 2,200) in non-pecuniary damage;

37. The ninth applicant claimed the unsettled judgment debt and an additional amount of EUR 10 by way of pecuniary damage as well as EUR 7,000 by way of non-pecuniary damage;

38. The tenth applicant claimed the unsettled judgment debt and an additional amount of EUR 25 by way of pecuniary damage as well as EUR 7,000 in non-pecuniary damage;

39. The eleventh applicant claimed the unsettled judgments debts by way of pecuniary damage and EUR 2,500 by way of non-pecuniary damage; and

40. The twelfth applicant claimed the unsettled judgments debts and EUR 1,000 in punitive payments by way of pecuniary damage, as well as EUR 3,000 by way of non-pecuniary damage.

41. The Government contested these claims.

42. The Court finds that the Government should pay the applicants the respective judgments debts, where they remain outstanding, by way of pecuniary damage.

43. It further notes that the eighth applicant's claim for inflation adjustment is supported by extensive calculations and an official certificate of inflation indexes. Taking into account that the Government did not dispute the method of calculation employed by the applicant (see e.g., *Maksimikha v. Ukraine*, no. 43483/02, § 29, 14 December 2006), the Court awards him the amount of EUR 950 claimed in this respect.

44. Otherwise, the Court does not discern any causal link between the violations found and the pecuniary damage alleged; it therefore rejects the remainder of the claims for pecuniary damage.

45. The Court further finds that the applicants must have suffered non-pecuniary damage on account of the violations found. Ruling on an equitable basis, it awards the applicants the following amounts in non-pecuniary damage:

- the first applicant – EUR 2,000;
- the second applicant – EUR 1,000;
- the third applicant – EUR 1,200;
- the fourth applicant – EUR 2,000;
- the fifth applicant – EUR 2,500;

- the sixth applicant – EUR 2,000;
- the seventh applicant – EUR 1,600;
- the eighth applicant – EUR 2,000;
- the ninth applicant – EUR 2,000;
- the tenth applicant – EUR 2,000;
- the eleventh applicant – EUR 1,800; and
- the twelfth applicant – EUR 2,100.

B. Costs and expenses

46. The second, the eighth, the eleventh and the twelfth applicant also claimed various sums in costs and expenses. However, they did not present any supporting documents.

47. The Government contested these claims as unsubstantiated.

48. 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 rejects the claims for costs and expenses.

C. Default interest

49. 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. *Holds* that the Mrs Volokhova and Mrs Vashchenko have standing to continue the present proceedings instead of their late husbands;
3. *Declares* the complaints under Articles 6 § 1 and 13 of the Convention and Article 1 of Protocol No. 1 to the Convention in respect of the delay in the enforcement of the judgments admissible and the remainder complaints inadmissible;
4. *Holds* that there has been a violation of Article 6 § 1 of the Convention;

5. *Holds* that there has been a violation of Article 1 Protocol No. 1 of the Convention;
6. *Holds* that there is no need to examine the complaint under Article 13 of the Convention;
7. *Holds*
 - (a) that the respondent State is to pay the applicants, within three months from the date on which the judgment becomes final in accordance with Article 44 § 2 of the Convention the outstanding amounts under the judgments given in their favour, where they remain unpaid, as well as the following sums in respect of just satisfaction:
 - Mr Parintsev – EUR 2,000 (two thousand euros);
 - Mr Volokhov – EUR 1,000 (one thousand euros);
 - Mr Bulankin – EUR 1,200 (one thousand two hundred euros);
 - Mr Ignatovich – EUR 2,000 (two thousand euros);
 - Mr Chernykh – EUR 2,500 (two thousand five hundred euros);
 - Mr Gerasimov – EUR 2,000 (two thousand euros);
 - Mr Vashchenko – EUR 1,600 (one thousand six hundred euros);
 - Mr Munitsyn – EUR 2,950 (two thousand nine hundred fifty euros);
 - The “Donbasindustriya” LLC – EUR 2,000 (two thousand euros);
 - The “Donbasprompostavka” LLC – EUR 2,000 (two thousand euros);
 - Mr Ishchenko – EUR 1,800 (one thousand eight hundred euros);
 - and
 - Ms Shvets – EUR 2,100 (two thousand 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.
8. *Dismisses* the remainder of the applicants' claims for just satisfaction.

Done in English, and notified in writing on 29 November 2007, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Stephen PHILLIPS
Deputy Registrar

Peer LORENZEN
President

APPENDIX

Applicant	Court	Debtor company	Date of decision	Amount of the award/ hryvnyas (euros)
Mr Parintsev	Novogradivka Court (Новгородівський міський суд Донецької області)	The “Novogradivska 1/2” Mine (ДВАТ Шахта «Новгородівська 1/2»)	27 June 2000	21,574 (4,236.57)
Mr Volokhov	Krasnyy-Luch Court (Краснолучський міський суд Луганської області)	The “Krasnokutska” Mine of the State Holding Company “Donbasantratsyt” (Шахта «Краснокутська» ДХК «Донбасантрацит»)	24 May 2001	7,999.16 (1,726.20)
Mr Bulankin	Krasnyy-Luch Court (Краснолучський міський суд Луганської області)	The “Izvestiya” Mine of the State Holding Company “Donbasantratsyt” (Шахта «Ізвестія» ДХК «Донбасантрацит»)	10 July 2002	5,131.17 (1,000.25)
Mr Ignatovich	Mykytivsky District Court of Gorlivka (Микитівський районний суд м. Горлівка)	The “Komsomolets” Mine of the “Artemvugillya State Company (Шахта «Комсомолец» ДВАТ «Артемвугілля»)	11 November 1999	3,744.36 (720.68)
Mr Chernykh	Mykytivsky District Court of Gorlivka (Микитівський районний суд м. Горлівка)	The “Komsomolets” Mine of the “Artemvugillya State Company (Шахта «Комсомолец» ДВАТ «Артемвугілля»)	9 December 1999 1 November 2002	3,423.63 (608.95) 711.25 (139.49)
Mr Gerasimov	Antratsyt Court (Антрацитівський міський суд)	State Company “Antratsytshakhtobud” (ДВАТ «Антрацитшахтобуд»)	21 January 1999	15,013.80 (3,202.69)

Mr Vashchenko	Novogradivka Court (Новгородівський міський суд Донецької області)	The “Novogradivska 1/3” Mine (ДВАТ Шахта «Новгородівська 1/3»)	28 December 2002	13,105.23 (2,432.68)
Mr Munitsyn	Vugledar Court (Вугледарівський міський суд Донецької області)	The “Pivdennodonbaska” Mine no. 1 (Шахта «Південнодонбаська №1»)	28 February 2000	13,389.37 (2,456.01)
“Donbasindustriya” LLC	Lugansk Arbitration Court (Арбітражний суд Луганської області)	Mine “Cherkaska” of the State Holding Company “Luganskvugillya” (Шахта «Черкаська» ДХК «Луганськвугілля»)	12 June 2001	11,210.57 (2,461)
“Donbasprompostavka” LLC	Lugansk Arbitration Court (Арбітражний суд Луганської області)	“The XIX Assembly of the CPSU” Mine (ДВАТ Шахта «і.м. XIX З’їзду КПРС»)	24 April 2001	7,806.45 (1,605.40)
Mr Ishchenko	Krasnyu-Luch Court (Краснолуцький міський суд Луганської області)	The “Yanivska” Factory of the State Holding Company “Donbasantratsyt” (ДВАТ ЦЗФ «Янівська» ДХК «Донбасантрацит»)	14 August 2003 7 July 2005	1,222.48 (209.10) 2,166.14 (554.38)
Ms Shvets	Krasnyu-Luch Court (Краснолуцький міський суд Луганської області)	The “Yanivska” Factory of the State Holding Company “Donbasantratsyt” (ДВАТ ЦЗФ «Янівська» ДХК «Донбасантрацит»)	16 September 2002 19 May 2005	2,769.15 (374.22) 6,292.53 (989.54)