



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

FIFTH SECTION

CASE OF DEREVENKO AND DOVGALYUK v. UKRAINE

(Applications nos. 9956/05 and 13200/05)

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 Derevenko and Dovgalyuk 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 6 November 2007,

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

PROCEDURE

1. The case originated in two applications (nos. 9956/05 and 13200/05) 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 Viktor Leontiyovych Derevenko of Tarashcha born in 1954 and Mr Volodymyr Semenovych Dovgalyuk of Oleksandriya born in 1945 (“the applicants”), on 22 February and 31 March 2005.

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

3. On 13 December 2005 the Court decided to communicate the complaints concerning the delay in enforcement of the final judgments in the applicants' favour 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 12 March 2003 the first applicant obtained a judgment of the Tarashcha Court (*Таращанський районний суд Київської області*) against the OJSC “Tarashcharayagropostach” (*BAT “Таращарайагропостач”*),

awarding him 2,424.55 hryvnias (UAH)¹ in salary arrears and other payments.

5. On 19 March 2001 the second applicant obtained a judgment of the Oleksandriya Court (*Олександрійський міський суд Кіровоградської області*) against the OJSC “ATP-13506” (*BAT ATP-13506*), awarding him UAH 2,765.02² in salary arrears.

6. These judgments were not appealed against, became final and the enforcement proceedings were instituted to collect the judgments debts.

7. On several occasions the bailiffs notified the applicants that they were unable to collect the full amounts of the awards, referring to the fact that financial assets of the debtor-companies were insufficient. They further explained that other assets could not be sold, as the State owned more than 25% of the debtor-companies' share capital. The companies were therefore subject to the Law of 29 November 2001 “on the Introduction of a Moratorium on the Forced Sale of Property”. The first applicant attempted to challenge the alleged inactivity of the bailiffs and to institute criminal proceedings against the debtor-company's chief executive officer, however, his attempts were to no avail.

8. By 10 June and 12 August 2005 the judgments given in favour of the second and the first applicant, respectively, were enforced in full.

II. RELEVANT DOMESTIC LAW

9. 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. 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.

1. EUR 424.76.

2. EUR 568.88.

II. 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

11. The applicants complained about the State authorities' failure to enforce the judgments given in their favour in due time. They invoked Articles 6 § 1 and 13 of the Convention and Article 1 of Protocol No. 1. 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 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.”

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”

A. Admissibility

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

13. 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

14. 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.

15. The applicants disagreed.

16. The Court notes that the judgments given in the applicants' favour were not enforced for considerable periods of time. Notably, the periods of debt recovery were two years and five months and four years and two months, respectively.

17. 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 *Anatskiy v. Ukraine*, no. 10558/03, §§ 21-23, 13 December 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 6 § 1 of the Convention and of Article 1 of Protocol No. 1.

20. 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.

III. OTHER ALLEGED VIOLATIONS OF THE CONVENTION

21. The first applicant additionally complained that the delay in payment of his salary arrears amounted to a violation of his rights under Article 2 of the Convention. He also complained under Articles 6 § 1 and 13 of the Convention about inability to institute criminal proceedings against the debtor's chief executive officer.

22. Having carefully examined these 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.

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

IV. APPLICATION OF ARTICLE 41 OF THE CONVENTION

24. 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

25. The first applicant submitted that he had suffered pecuniary and non-pecuniary damage on account of the prolonged inability to use his money, particularly as at the material time he had been unable to install heating in his house. However, he was not able to specify the amount of this claim and requested the Court to rule on an equitable basis.

26. The second applicant claimed 8,000 euros (EUR) in respect of non-pecuniary damage.

27. The Government submitted that the applicants had failed to substantiate their claims.

28. The Court agrees with the Government as regards the first applicant's failure to substantiate his pecuniary damage claim, and, accordingly, dismisses it.

29. On the other hand, the Court takes the view that both applicants must have suffered some non-pecuniary damage as a result of the violations found (see e.g. *Silka v. Ukraine*, no. 3624/03, § 23, 18 January 2007). Making its assessment on an equitable basis, as required by Article 41 of the Convention, the Court awards the first applicant EUR 600 and the second applicant EUR 1,200 in respect of non-pecuniary damage.

B. Costs and expenses

30. The first applicant also claimed UAH 85.43 (EUR 15) for postal expenses and submitted copies of receipts for postal services.

31. The second applicant claimed UAH 1,900 (EUR 275) in legal fees. He presented a receipt for the above amount dated 26 September 2005, which provides no specific information as to the nature of the legal services received.

32. The Government did not comment on these submissions.

33. 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.

34. In the present case, regard being had to the information in its possession and the above criteria, the Court awards the first applicant the full amount claimed in postal expenses.

35. As regards the second applicant's claim for legal fees, the Court finds that it is not apparent from the applicant's submissions whether he had applied for legal advice in connection with the facts giving rise to the finding of a violation in the present case. Furthermore, as regards the Convention proceedings, the Court observes that the case was of no particular complexity, the applicant was granted leave to use Russian language, and the lawyer made no submissions on his behalf. In these circumstances, the Court gives no award.

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. *Decides* to join the applications;
2. *Declares* the complaints under Articles 6 § 1 and 13 of the Convention and Article 1 of Protocol No. 1 concerning the delay in enforcement of the judgments in the applicants' favour admissible and the remainder of the applications inadmissible;
3. *Holds* that there has been a violation of Article 6 § 1 of the Convention;
4. *Holds* that there has been a violation of Article 1 of Protocol No. 1 to the Convention;
5. *Holds* that there is no need to examine the complaint under Article 13 to the Convention;
6. *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 following amounts in respect of non-pecuniary damage and costs and expenses:
 - Mr Viktor Derevenko – EUR 615 (six hundred and fifteen euros);

- Mr Volodymyr Dovgalyuk – EUR 1,200 (one thousand two 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.

7. *Dismisses* the remainder of the applicants' claim 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