



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

FIFTH SECTION

CASE OF KOLNOOCHENKO AND OTHERS v. UKRAINE

(Applications nos. 12636/03, 14118/03, 33393/03 and 36734/03)

JUDGMENT

STRASBOURG

13 December 2007

FINAL

13/03/2008

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 Kolnoochenko and others v. Ukraine,

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

Mr P. LORENZEN, *President*,

Mrs S. BOTOUCHAROVA,

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 20 November 2007,

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

PROCEDURE

1. The case originated in four applications (nos. 12636/03, 14118/03, 33393/03 and 36734/03) against Ukraine lodged with the Court under Article 34 of the Convention for the Protection of Human Rights and Fundamental Freedoms (“the Convention”) by five Ukrainian nationals, Mrs Nina Vasilyevna Kolnoochenko, Mr Vladimir Kuzmich Shashkov, Mrs Valentina Mikhaylovna Ignatyeva, Mr Valentin Petrovich Steblina and Mrs Larisa Anatolyevna Dubosar (“the applicants”), on 24 March, 17 April, 7 October and 25 September 2003, respectively.

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. On 5 May 2006 the Court decided to communicate the complaints under Article 6 § 1 of the Convention and Article 1 of Protocol No. 1 concerning the delay in the enforcement of judgments given 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. The applicants were born in 1939, 1940, 1940, 1937 and 1972 respectively. On 30 January 2007 the second applicant died. By letter of

12 April 2007, Mrs Svetlana Ivanovna Shashkova, the second applicant's widow, informed the Court that she wished to pursue the application.

5. The first applicant was employed by a subsidiary of the State-controlled “Pivdenelekromash” OJSC (“the Company,” BAT “Південелектромаши”) until her dismissal on redundancy in 2005. The other applicants were employed by the Company itself.

6. Between January 2001 and May 2004 (see appendix for details) each applicant obtained one or more final judgments from the Nova Kakhovka Court (*Новокаховський міський суд Херсонської області*), awarding him or her salary arrears or other payments against his or her employer.

7. The writs of enforcement in respect of these judgments were transferred to the Nova Kakhovka City Bailiffs' Service (*Відділ Державної виконавчої служби Новокаховського міського управління юстиції*), which initiated the enforcement proceedings. On different occasions the bailiffs informed the applicants that the collection of the debts was impeded by pending bankruptcy proceedings against the Company.

8. In March 2006 the judgment given in favour of the first applicant and two of the three judgments given in favour of the second applicant were enforced in full. Other judgments remain fully or partially unenforced.

II. RELEVANT DOMESTIC LAW

9. The relevant domestic law is summarised in the judgments of *Romashov v. Ukraine* (no. 67534/01, §§ 16-19, 27 July 2004) and *Trykhlib v. Ukraine* (no. 58312/00, §§ 25-32, 20 September 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 SHASHKOVA

11. After the death of the second applicant, Mrs Shashkova, his widow, informed the Court that she wished to pursue the application of her late husband.

12. The respondent Government noted that the second applicant should be replaced by his lawful heir. They did not advance any arguments against the standing of Mrs Shashkova as the applicant's heir.

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

III. SCOPE OF THE CASE

14. The Court notes that after the case had been communicated to the respondent Government and in response to the Court's invitation to provide observations on its merits, the third and the fourth applicant additionally complained about the failure of the domestic authorities to collect certain other debts in their favour.

15. In the Court's view, the new complaints are not an elaboration of the third and the fourth applicants' original complaints, raised with the Court more than three years earlier, on which the parties have commented. The Court considers, therefore, that it is not appropriate now to take this matter up (see e.g., *Zhmak v. Ukraine*, no. 36852/03, §§ 11-12, 29 June 2006).

IV. COMPLAINTS CONCERNING THE NON-ENFORCEMENT OF THE JUDGMENTS

16. 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, which 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”

17. The Government abstained from submitting any observations on admissibility and merits of the applicants' complaints.

A. Admissibility

18. 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

19. The Court observes that the delays in the enforcement of the judgments given in the applicants' favour range from some three to seven years.

20. 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, including in cases concerning the same State-controlled debtor - the "Pivdenelektromash" OJSC (see, for instance, *Trykhliv v. Ukraine*, cited above, §§ 52-53; *Chernyayev v. Ukraine*, no. 15366/03, §§ 19-20 and 25-26, 26 July 2005 and *Anatskiy v. Ukraine*, no. 10558/03, §§ 21-23, 13 December 2005).

21. 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.

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

V. OTHER ALLEGED VIOLATIONS OF THE CONVENTION

23. The first applicant further complained, without a reference to any provision of the Convention or the Protocols thereto, that she had been unfairly dismissed on redundancy. She maintained that the dismissal was connected to her application with the Court. She did not present any evidence in support of her allegation and did not inform the Court whether she had challenged her dismissal before the domestic courts.

24. Having carefully examined the applicant's submissions in the light of available materials 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.

25. 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.

VI. APPLICATION OF ARTICLE 41 OF THE CONVENTION

26. 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

27. The applicants claimed the following amounts in respect of non-pecuniary damage:

- Mrs Nina Kolnoochenko – 2,500 euros (EUR);
- Mr Vladimir Shashkov – EUR 3,500;
- Mrs Valentina Ignatyeva – EUR 5,000;
- Mr Valentin Steblina – EUR 2,800;
- Mrs Larisa Dubosar – EUR 8,000.

Mr Steblina and Mrs Dubosar also claimed the outstanding amounts of the judgments debts due to them by way of pecuniary damage.

28. The Government contested the non-pecuniary damage claims.

29. The Court finds that the Government should pay the unsettled debts due to Mr Steblina and Mrs Dubosar under the judgments given in their favour, which are listed in the appendix. It further observes that other applicants failed to submit any claim for enforcement of the outstanding debt or for any other pecuniary damage within the time-limit allotted for this purpose; the Court therefore makes no award.

30. The Court also takes the view that the applicants must have sustained non-pecuniary damage. Making its assessment on an equitable basis, as required by Article 41 of the Convention, the Court awards the applicants the following amounts in this respect:

- Mrs Nina Kolnoochenko – EUR 900;
- Mrs Svetlana Shashkova (for Mr Vladimir Shashkov) – EUR 2,000;
- Mrs Valentina Ignatyeva – EUR 2,000;
- Mr Valentin Steblina – EUR 1,800;
- Mrs Larisa Dubosar – EUR 2,500.

B. Costs and expenses

31. The applicants claimed the following amounts under this head:

- Mrs Nina Kolnoochenko – UAH 2,200 (EUR 350) in legal fees and EUR 50 for postal services;
- Mr Vladimir Shashkov – EUR 150 in legal fees and EUR 39 for postal services;

- Mrs Valentina Ignatyeva – UAH 2,500 (EUR 397) in legal fees and UAH 250 (EUR 39) for postal services;
- Mr Valentin Steblina – submitted no claim under this head;
- Mrs Larisa Dubosar – UAH 2,500 (EUR 397) in legal fees and UAH 61,71 (EUR 10) for postal expenses.

The applicants (but Mr Steblina) presented documentary evidence for the amounts claimed in legal fees. Only the fifth applicant presented receipts for the postal services justifying the amount claimed.

32. The Government contested these claims.

33. The Court reiterates that, in order for costs and expenses to be included in an award under Article 41, it must be established that they were actually and necessarily incurred in order to prevent or obtain redress for the matter found to constitute a violation of the Convention and were reasonable as to quantum (see, among many other authorities, *Nilsen and Johnsen v. Norway* [GC], no. 23118/93, § 62, ECHR 1999-VIII).

34. The Court considers that these requirements have not been fully met in the instant case. It notes that the case was not particularly complex and the applicants first informed the Court of their representation in their final written submissions to the Court. The Court further notes that the applicants were granted leave to use Russian in the written procedure before the Court that would make unnecessary any expenses for the translation and certification of the documents presented to the Court. Regard being had to the information in its possession and to the above considerations, the Court awards each applicant but Mr Steblina EUR 50 for costs and expenses.

C. Default interest

35. 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 second applicant's widow has standing to continue the present proceedings in his stead;
3. *Declares* admissible the complaints under Article 6 § 1 of the Convention and Article 1 of Protocol No. 1 concerning the delay in enforcement of the judgments listed in the appendix and the remainder of the 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 of Protocol No. 1 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 sums in respect of just satisfaction:
 - Mrs Nina Kolnoochenko – EUR 900 (nine hundred euros) in respect of non-pecuniary damage and EUR 50 (fifty euros) in respect of costs and expenses plus any tax that may be chargeable to her in respect of these amounts;
 - Mrs Svetlana Shashkova (for Mr Vladimir Shashkov) – EUR 2,000 (two thousand euros) in respect of non-pecuniary damage and EUR 50 (fifty euros) in respect of costs and expenses plus any tax that may be chargeable to her in respect of these amounts;
 - Mrs Valentina Ignatyeva – EUR 2,000 (two thousand euros) in respect of non-pecuniary damage and EUR 50 (fifty euros) in respect of costs and expenses plus any tax that may be chargeable to her in respect of these amounts;
 - Mr Valentin Steblina – EUR 1,800 (one thousand and eight hundred euros) in respect of non-pecuniary damage plus any tax that may be chargeable to him in respect of this amount, as well as the unsettled debt due to him by the judgment of 13 June 2002;
 - Mrs Larisa Dubosar – EUR 2,500 (two thousand five hundred euros) in respect of non-pecuniary damage and EUR 50 (fifty euros) in respect of costs and expenses plus any tax that may be chargeable to her in respect of these amounts, as well as the unsettled debts due to her by the judgments of 20 January 2001, 25 December 2002 and 31 October 2003;
 - (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' claims for just satisfaction.

Done in English, and notified in writing on 13 December 2007, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Claudia WESTERDIEK
Registrar

Peer LORENZEN
President

APPENDIX

Status of enforcement of judgments given in the applicants' favour

Applicant	Date of judgment	Date or status of enforcement	The award UAH (EUR)
Mrs Kolnoochenko	21 November 2002	10 March 2006	2,460(476.41)
Mr Shashkov	11 January 2001 11 March 2003 20 May 2004	1 March 2006 1 March 2006 ¹ unenforced	5,633 (1,106.50) 7,082(1,238.46) 12,392.49(2,019.73)
Mrs Ignatyeva	25 September 2001 10 November 2003	unenforced unenforced	710(145.27) 5381.20(902.20)
Mr Steblina	13 June 2002	unenforced	15,438.63(3,182.33)
Mrs Dubosar	20 January 2001 25 December 2002 31 October 2003	unenforced unenforced unenforced	805(157.97) 2,377.58(447.45) 1,600(265.39)

1. This amount included the UAH 5,633 awarded on 11 January 2001.