



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

FIFTH SECTION

CASE OF KOPYLOVICH AND OTHERS v. UKRAINE

(Applications nos. 1421/03, 11915/06, 11922/06 and 11924/06)

JUDGMENT

STRASBOURG

17 January 2008

FINAL

17/04/2008

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 Kopylovich and Others v. Ukraine,

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

Peer Lorenzen, *President*,
Karel Jungwiert,
Volodymyr Butkevych,
Margarita Tsatsa-Nikolovska,
Javier Borrego Borrego,
Renate Jaeger,
Mark Villiger, *judges*,

and Claudia Westerdiek, *Section Registrar*,

Having deliberated in private on 11 December 2007,

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

PROCEDURE

1. The case originated in four applications (nos. 1421/03, 11915/06, 11922/06 and 11924/06) against Ukraine lodged with the Court on 16 October 2002 and 12 May 2003 under Article 34 of the Convention for the Protection of Human Rights and Fundamental Freedoms (“the Convention”) by twenty Ukrainian nationals:

- Mrs Lyubov Nikolayevna Kopylovich, born in 1951;
- Mrs Nina Stepanovna Gebuza, born in 1937;
- Mr Aleksandr Fedorovich Glukhov, born in 1933;
- Mrs Tamara Ivanovna Ivanova, born in 1940;
- Mr Sergey Nikolayevich Kashaykin, born in 1961;
- Mrs Olga Stepanovna Kharitonova, born in 1959;
- Mrs Alla Grigoryevna Khodunko born in 1942;
- Mrs Aleksandra Pavlovna Konareva, born in 1939;
- Mrs Yelena Grigoryevna Korenchuk, born in 1958;
- Mr Yevgeniy Borisovich Shchepanovskiy, born in 1948;
- Mrs Larisa Dmitriyevna Sidelnikova, born in 1938;
- Mrs Valenina Vladimirovna Soroka, born in 1943;
- Mr Boris Martiyanovich Yevtekhov, born in 1939;
- Mrs Olga Fedorovna Cherkashina, born in 1958;
- Mr Anatoliy Dmitriyevich Gritsyna, born in 1959;
- Mr Vladimir Ivanovich Bachurin, born in 1931;
- Mrs Larisa Valentinovna Boyko, born in 1961;
- Mrs Yelena Yevgeniyevna Romanenko, born in 1959;
- Mr Sergey Vladimirovich Shevkunov, born in 1957;
- Mr Vitaliy Fedorovich Visloguzov, born in 1940.

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 30 May 2006 the Court decided to communicate to the Government the complaints under Articles 6 § 1 and 13 of the Convention and Article 1 of Protocol No. 1 concerning the non-enforcement of the judgments and the labour commission's decisions given in the applicants' favour. 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 live in Kostyantynivka, in the Donetsk region.

5. On various dates between 1997 and 2002 (see appendix for details) the first to fifteenth applicants received final rulings (court judgments, labour commission's decisions) awarding salary arrears and other compensation against the State-owned factory “Avtosklo” (*Виробниче об'єднання завод „Автоскло”*) and instituted enforcement proceedings to recover the debts.

6. On 22 August 2000 a new State-owned company, the “Tekhbudsklo” (*Державне підприємство „Технобудскло”*), was created in the course of the “Avtosklo” factory restructuring.

7. On various dates in 2002 (see appendix for details) the fifteenth to the twentieth applicants received final court judgments awarding salary arrears and other compensation against the “Tekhbudsklo” company and instituted enforcement proceedings to collect the debts.

8. On various dates the bailiffs informed the applicants that the collection of the debts in their favour was impeded by the companies' lack of funds and the statutory moratorium on forced sale of the State property.

9. On 18 February 2002 and 1 November 2005 the Donetsk Commercial Court (*Господарський суд Донецької області*) declared bankrupt the “Avtosklo” and the “Tekhbudsklo” companies respectively and ordered their liquidation.

10. On 19 April and 1 November 2005 the enforcement proceedings concerning “Avtosklo's” and “Tekhbudsklo's” debts respectively were terminated on account of the initiation of the companies' liquidation.

11. The labour commission's decisions and the court judgments given in the applicants' favour remain unenforced to the present date.

II. RELEVANT DOMESTIC LAW

12. 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

13. 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. COMPLAINTS UNDER ARTICLES 6 § 1 AND 13 OF THE CONVENTION AND ARTICLE 1 OF PROTOCOL No. 1

14. The applicants complained about the State authorities' failure to enforce the court judgments and labour commission's decisions given in their favour. 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 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

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

16. 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

17. In their observations on the merits of the applicants' complaints, the Government contended that there had been no violation of the applicants' Convention rights.

18. The applicants disagreed.

19. The Court notes that the periods of debt recovery in the applicants' cases have ranged from five to nine 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 (see, for instance, *Polovoy v. Ukraine*, no. 11025/02, §§ 22 and 25, 4 October 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.

23. 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. COMPLAINT UNDER ARTICLE 3 OF THE CONVENTION

24. The applicants additionally complained under Article 3 of the Convention that the failure of the State authorities to enforce the decisions given in their favour caused them severe moral and physical suffering.

25. The Court observes that it does not appear that the suffering that the applicants might have experienced was sufficient to amount to inhuman and degrading treatment under Article 3 of the Convention (see *Ireland v. the United Kingdom*, judgment of 18 January 1978, Series A no. 25, § 162). Therefore, this part of the application must be declared inadmissible as being manifestly ill-founded in accordance with Article 35 §§ 3 and 4 of the Convention.

IV. 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. All applicants claimed the unsettled debts due to them. In addition, they claimed the following amounts by way of just satisfaction:

- The first applicant claimed EUR 530 (UAH 3,334) in inflation losses and EUR 1,740 (UAH 11,000) in non-pecuniary damage;
- The second applicant claimed EUR 120 (UAH 775) in inflation losses and EUR 23,600 (UAH 149,315) in non-pecuniary damage;
- The third applicant claimed EUR 240 (UAH 1,522) in inflation losses and EUR 800 (UAH 5,044) in non-pecuniary damage;
- The fourth applicant claimed EUR 380 (UAH 2,408) in inflation losses and EUR 680 (UAH 4,320) in non-pecuniary damage;
- The fifth applicant claimed EUR 1,750 (UAH 11,062) in non-pecuniary damage;
- The sixth applicant claimed EUR 480 (UAH 3,028) in inflation losses and EUR 1,850 (UAH 11,720) in non-pecuniary damage;
- The seventh applicant claimed EUR 435 (UAH 2,750) in inflation losses and EUR 1,630 (UAH 10,330) in non-pecuniary damage;
- The eighth applicant claimed EUR 620 (UAH 3,901) in non-pecuniary damage;
- The ninth applicant claimed EUR 910 (UAH 5,766.84) in inflation losses and EUR 3,860 (UAH 24,402.32) in non-pecuniary damage;
- The tenth applicant claimed EUR 335 (UAH 2,126) in inflation losses and EUR 1,670 (UAH 10,582) in non-pecuniary damage;
- The eleventh applicant claimed EUR 600 (UAH 3,745) in non-pecuniary damage;
- The twelfth applicant claimed EUR 270 (UAH 1,719) in inflation losses and EUR 500 (UAH 3,000) in non-pecuniary damage;
- The thirteenth applicant claimed EUR 1,025 (UAH 6,480) in non-pecuniary damage;
- The fourteenth applicant claimed EUR 2,150 (UAH 13,370) in non-pecuniary damage;
- The fifteenth applicant claimed EUR 2,750 (UAH 17,686) in non-pecuniary damage;
- The sixteenth applicant claimed EUR 2,520 (UAH 16,186) in non-pecuniary damage;

- The seventeenth applicant claimed EUR 960 (UAH 6,186) in non-pecuniary damage;
- The eighteenth applicant claimed EUR 1,470 (UAH 9,458) in non-pecuniary damage;
- The nineteenth applicant claimed EUR 2,380 (UAH 15,320) in non-pecuniary damage;
- The twentieth applicant claimed EUR 1,480 (UAH 9,522) in non-pecuniary damage.

28. Those applicants who claimed inflation losses, presented detailed calculations based on official inflation tables published in a newspaper by the Labour Ministry.

29. The Government generally disagreed with the claims, submitted by the applicants. They provided no comments on the applicants' method of the calculation of inflation losses.

30. The Court finds that the Government should pay the applicants the debts, which remain outstanding.

31. The Court further recalls that the principle underlying the provision of just satisfaction is that the applicant should as far as possible be put in the position he would have enjoyed had the violation found by the Court not occurred (*Kingsley v. the United Kingdom* [GC], no. 35605/97, § 40, ECHR 2002-IV). Turning to the instant case, the Court observes that the adequacy of the compensation would be diminished if the debts were to be paid without reference to various circumstances liable to reduce their value, such as an extended delay in enforcement (see *e.g. Reynbakh v. Russia*, no. 23405/03, § 35, 29 September 2005). Taking into account that the first, the second, the third, the fourth, the sixth, the seventh, the tenth and the twelfth applicants presented detailed calculations based on the official tables, and that the Government submitted no objections to the applicants' claim or the method of calculation, the Court finds it reasonable to award these applicants the amounts claimed in inflation losses, namely:

- the first applicant – EUR 530;
- the second applicant – EUR 120;
- the third applicant – EUR 240;
- the fourth applicant – EUR 380;
- the sixth applicant – EUR 480;
- the seventh applicant – EUR 435;
- the tenth applicant – EUR 335;
- the twelfth applicant – EUR 270.

The Court, however, dismisses the claim for inflation loss lodged by the ninth applicant, as compensation for the loss of value of the amount due was part of the judgment debt due to her (see appendix).

32. Finally, the Court finds that the applicants must have suffered non-pecuniary damage. Ruling on an equitable basis, the Court awards the applicants the following amounts under this head:

- the first applicant – EUR 1,740;
- the second applicant – EUR 2,000;
- the third applicant – EUR 800;
- the fourth applicant – EUR 680;
- the fifth applicant – EUR 1,750;
- the sixth applicant – EUR 1,850;
- the seventh applicant – EUR 1,630;
- the eighth applicant – EUR 620;
- the ninth applicant – EUR 1,600;
- the tenth applicant – EUR 1,670;
- the eleventh applicant – EUR 600;
- the twelfth applicant – EUR 500;
- the thirteenth applicant – EUR 1,025;
- the fourteenth applicant – EUR 1,600;
- the fifteenth applicant – EUR 2,600;
- the sixteenth applicant – EUR 1,600;
- the seventeenth applicant – EUR 960;
- the eighteenth applicant – EUR 1,470;
- the nineteenth applicant – EUR 1,600;
- the twentieth applicant – EUR 1,480.

B. Costs and expenses

33. The applicants did not submit any claim under this head. The Court therefore makes no award.

C. Default interest

34. 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

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 admissible and the complaints under Article 3 of the Convention 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 of the Convention;
5. *Holds* that there is no need to examine the complaint under Article 13 of 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
 - (i) the outstanding debts due to them under the judgments and labour commission's decisions listed in the appendix;
 - (ii) the following sums in respect of just satisfaction:
 - Mrs Kopylovich – EUR 2,270 (two thousand two hundred and seventy euros);
 - Mrs Gebuza – EUR 2,120 (two thousand one hundred and twenty euros);
 - Mr Glukhov – EUR 1,040 (one thousand and forty euros);
 - Mrs Ivanova – EUR 1,060 (one thousand and sixty euros);
 - Mr Kashaykin – EUR 1,750 (one thousand seven hundred and fifty euros);
 - Mrs Kharitonova – EUR 2,330 (two thousand three hundred and thirty euros);
 - Mrs Khodunko – EUR 2,065 (two thousand and sixty five euros);
 - Mrs Konareva – EUR 620 (six hundred twenty euros);
 - Mrs Korenchuk – EUR 1,600 (one thousand and six hundred euros);
 - Mr Shchepanovskiy – EUR 2,005 (two thousand and five euros);
 - Mrs Sidelnikova – EUR 600 (six hundred euros);
 - Mrs Soroka – EUR 770 (seven hundred and seventy euros);
 - Mr Yevtekhov – EUR 1,025 (one thousand and twenty five euros);
 - Mrs Cherkashina – EUR 1,600 (one thousand and six hundred euros);
 - Mr Gritsyna – EUR 2,600 (two thousand and six hundred euros);
 - Mr Bachurin – EUR 1,600 (one thousand and six hundred euros);
 - Mrs Boyko – EUR 960 (nine hundred and sixty euros);
 - Mrs Romanenko – EUR 1,470 (one thousand four hundred and seventy euros);
 - Mr Shevkunov – EUR 1,600 (one thousand and six hundred euros);
 - Mr Visloguzov – EUR 1,480 (one thousand four hundred and eighty 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 17 January 2008, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Claudia Westerdiek
Registrar

Peer Lorenzen
President

APPENDIX

N	Applicant	Authority, which issue a decision	Debtor company	Date of decision	Award hryvnias (euros)
1.	Mrs Kopylovich	Labour disputes commission Labour disputes commission Kostyantynivka Court	Avtosklo Avtosklo Avtosklo	11 December 1997 14 November 2000 3 December 2002	1,121.00 (242.13) 2,518.83 (539.78) 1,524.04 (297.12)
2.	Mrs Gebuza	Kostyantynivka Court	Avtosklo	26 November 1999	739.30 (142.70)
3.	Mr Glukhov	Labour disputes commission Kostyantynivka Court	Avtosklo Avtosklo	12 March 2001 8 November 2002	1,000.00 (197.70) 748.55 (143.98)
4.	Mrs Ivanova	Labour disputes commission Kostyantynivka Court	Avtosklo Avtosklo	10 October 2000 21 November 2002	1,912.05 (404.35) 1,086.35 (210.39)
5.	Mr Kashaykin	Labour disputes commission Kostyantynivka Court	Avtosklo Avtosklo	14 May 1998 11 December 2000	2,291.00 (554.54) 3,285.78 (681.66)
6.	Mrs Kharitonova	Kostyantynivka Court Kostyantynivka Court	Avtosklo Avtosklo	19 December 1997 6 August 2002	1,758.00 (380.20) 4,111.72 (815.24)
7.	Mrs Khodunko	Kostyantynivka Court	Avtosklo Avtosklo	16 November 2000 29 November 2002	2,415.57 (518.14) 1,151.00 (224.11)
8.	Mrs Konareva	Kostyantynivka Court	Avtosklo	20 October 2000	1,950.69 (425.61)
9.	Mrs Korenchuk	Kostyantynivka Court	Avtosklo	6 August 2002	6,434.32 (1,275.75) <i>and additional compensation for the loss of value to be calculated on the date of the settlement</i>
10.	Mr Shchepanovskiy	Kostyantynivka Court	Avtosklo	14 November 2001	3,165.00 (1,365.05)
11.	Mrs Sidelnikova	Kostyantynivka Court	Avtosklo	2 April 2001	1,872.92 (395.25)
12.	Mrs Soroka	Labour disputes commission	Avtosklo	16 November 2000	1,433.90 (307.57)

		Kostyantynivka Court	Avtosklo	29 November 2002	755.00 (147.33)
13.	Mr Yevtekhov	Kostyantynivka Court	Avtosklo	25 April 2000	6,479.99 (1,262.28)
14.	Mrs Cherkashina	Kostyantynivka Court	Avtosklo	16 August 2002	6,885.04 (1,362.74)
15.	Mr Gritsyna	Kostyantynivka Court Labour disputes commission Kostyantynivka Court Kostyantynivka Court	Avtosklo Avtosklo Avtosklo Tekhbudsklo	4 December 1997 21 November 2000 26 March 2002 17 December 2002	315.99 (144.89) 2,892.30 (624.70) 4,478.66 (997.97) and <i>additional loss of value compensation to be calculated on the date of the settlement</i> 1,156.89 (219.41)
16.	Mr Bachurin	Kostyantynivka Court	Tekhbudsklo	23 October 2002	8,092.79 (1,609.13)
17.	Mrs Boyko	Kostyantynivka Court	Tekhbudsklo	5 September 2002	3,092.88 (605.51)
18.	Mrs Romanenko	Kostyantynivka Court	Tekhbudsklo	17 December 2002	4,728.80 (896.94)
19.	Mr Shevkunov	Kostyantynivka Court	Tekhbudsklo	25 November 2002	7,660.17 (1,472.09)
20.	Mr Visloguzov	Kostyantynivka Court	Tekhbudsklo	10 December 2002	4,761.37 (913.57)