



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

FIFTH SECTION

CASE OF BORISOV AND OTHERS v. UKRAINE

(Application no. 34091/03)

JUDGMENT

STRASBOURG

24 April 2008

FINAL

24/07/2008

This judgment may be subject to editorial revision.

In the case of Borisov 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,

Rait Maruste,

Mark Villiger,

Isabelle Berro-Lefèvre,

Mirjana Lazarova Trajkovska, *judges*,

and Claudia Westerdiek, *Section Registrar*,

Having deliberated in private on 25 March 2008,

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

PROCEDURE

1. The case originated in an application (no. 34091/03) against Ukraine lodged with the Court under Article 34 of the Convention for the Protection of Human Rights and Fundamental Freedoms (“the Convention”) by 43 Ukrainian nationals on 30 August 2003.

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

3. On 14 May 2007 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 application at the same time as its admissibility.

THE FACTS**I. THE CIRCUMSTANCES OF THE CASE**

4. All forty-three applicants are Ukrainian nationals who live in the Lugansk Region. They are represented by Mr Nikolay Kozyrev.

1. Enforcement proceedings against the State-owned mining companies

5. The forty-two applicants (see Annex) are/were employees or relatives of employees of State-owned mining companies. During 1999 - 2003 the Krasny Luch Court rendered decisions the applicants' favour concerning the recovery of salary and/or social benefits arrears, which were enforced in full in 2004 - 2005 with the exception of the judgment in favour of Mr Korniyenko, which remains unenforced (see Annex for details).

6. Some of the applicants attempted to claim compensation against the Bailiffs' Service for the delay in the enforcement of the judgments given in their favour, however, these attempts have been to no avail.

7. After the institution of the Convention proceedings, Mr Boiko Vladimir Ivanovich, Mr Bakushev Valentin Ivanovich, and Mr Butorin Viktor Nikolayevich died. Their widows, Mrs Boiko Valentina Iosifovna, Mrs Bakusheva Tamara Trofimovna, and Butorina Irina Nikolayevna, informed the Court that they wished to pursue the applications of their late husbands.

2. Enforcement proceedings against KSP "Krasnoluchsky"

8. The 43rd applicant, Mrs Melnikova Inessa Gennadiyevna, is a former employee of the collective agricultural enterprise "Krasnoluchsky" (KSP). The decision given by the Krasny Luch Court on 26 December 2001 ordering KSP to pay her UAH 3,519 in salary arrears was enforced in full on 4 April 2007.

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. AS TO THE *LOCUS STANDI* OF Mrs BOIKO, Mrs BAKUSHEVA AND Mrs BUTORINA

10. The respondent Government did not advance any arguments against the standing of the widows of Mr Boiko, Mr Bakushev, and Mr Butorin.

11. Having regard to the circumstances of the case and the information in its possession, the Court considers that the widows of these 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 text.

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

12. 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 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"

A. Admissibility

1. As to the enforcement of the judgments against the State-owned mining companies

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.

2. As to the enforcement of the judgment against KSP "Krasnoluchsky"

14. The Court observes that the lengthy non-enforcement of the judgment given in favour of Mrs Melnikova was due to the private entity's lack of funds. However, the State cannot be considered responsible for such lack of funds and its responsibility extends no further than the involvement

of State bodies in the enforcement proceedings (see *Shestakov v. Russia* (dec.), no. 48757/99, 18 June 2002). Moreover, the applicant did not apply to any domestic court against the alleged omissions or inactivity of the Bailiffs' Service in the impugned enforcement proceedings (see, for instance, *Dzizin v. Ukraine* (dec.), no. 1086/02, 24 June 2003).

15. 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.

B. Merits

16. The Government contended that there had been no violation of the 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.

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.

III. OTHER ALLEGED VIOLATIONS OF THE CONVENTION

22. Lastly, the applicants complained under Article 14 of the Convention, in conjunction with Article 6 § 1 of the Convention and Article 1 of Protocol No. 1, that the non-enforcement of the judgments given in their favour amounted to discrimination against them.

23. However, in the light of all the materials in its possession, the Court finds that they do not disclose any appearance of discrimination in the exercise of one of the rights or freedoms set out in the Convention or its Protocols.

24. 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.

IV. APPLICATION OF ARTICLE 41 OF THE CONVENTION

25. 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

26. The applicants claimed the amounts of judgments’ debts in compensation of pecuniary damage as well as amounts raring from EUR 2,500 to EUR 4,000 in compensation of non-pecuniary damage.

27. The Government contested these claims.

28. The Court finds that the Government should pay to Mr Nikolay Stepanovich Korniyenko the respective judgment’s debt, where it remains outstanding, by way of pecuniary damage.

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

30. The Court further finds that the applicants must have suffered non-pecuniary damage on account of the violations found. It, therefore, makes awards in respect of non-pecuniary damage (see Annex).

B. Costs and expenses

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

C. Default interest

32. 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. *Declares* the complaints under Article 6 § 1 of the Convention and Article 1 of Protocol No. 1 concerning the lengthy non-enforcement of the judgments against the State-owned mining companies admissible and the remainder of the application inadmissible;

2. *Holds* that there has been a violation of Article 6 § 1 of the Convention;
3. *Holds* that there has been a violation of Article 1 of Protocol No. 1;
4. *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 amounts for non-pecuniary damage as indicated in the Annex, plus any tax that may be chargeable, to be converted into the national currency of the respondent State at the rate applicable at the date of settlement;
 - ii. the outstanding debt under the judgment of 24 June 1999 given in favour of Mr Nikolay Stepanovich Korniyenko, to be converted into the national currency of the respondent State at the rate applicable at the date of settlement;
 - (b) 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 24 April 2008, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Claudia Westerdiek
Registrar

Peer Lorenzen
President

ANNEX

No	Applicant	Employer	Judgments' debts (UAH)	Period of non-enforcement	Non-pecuniary damage award (EUR)
1	Borisov Vladimir Aleksandrovich	"Knyagininska" mine	4,508	03.01.2001 – 22.12.2004	1,600
2	Bagriy Ivan Ivanovich	"Khrustalskaya" mine	7,747	03.01.2001 – 02.11.2004	1,600
3	Klyagin Ivan Ivanovich	"Knyagininska" mine	3,942	10.09.2001 – 12.10.2004	1,000
4	Usatenko Sergey Ivanovich	"Miusinska" mine	1,006	23.01.2002 – 27.08.2004	800
			1,189	03.04.2002 – 15.11.2004	
5	Kovalev Vasiliy Vladimirovich	"Knyagininska" mine	4,776	28.08.2001 – 12.10.2004	1,000
6	Kozlov Sergey Viktorovich	"Knyagininska" mine	1,530	10.04.2002 – 20.09.2004	800
7	Kozlova Ekaterina Aleksandrovna	"Miusinska" mine	2,447	17.04.2002 – 09.06.2004	500
8	Kozlov Viktor Mikhaylovich	"Knyagininska" mine	6,300	04.04.2001 – 12.10.2004	1,300
9	Khvorostyanko Aleksandr Anatolyevich	"Knyagininska" mine	4,096	21.06.2001 – 12.10.2004	1,300
10	Yatsenko Vasiliy Grigoriyevich	"Knyagininska" mine	6,137	04.04.2001 – 12.10.2004	1,300
11	Demidenko Vladimir Grigoriyevich	"Knyagininska" mine	3,196	10.12.2001 – 12.10.2004	800
12	Kononchuk Vasiliy Nilokayevich	"Knyagininska" mine	5,806	20.06.2001 – 12.10.2004	1,300
13	Grebenyuk Nikolay Nikolayevich	Department on mining equipment	6,764	14.03.2002 – 12.10.2004	800
14	Korniyenko Nikolay Stepanovich	"Donbasanratsyt"	1,458	24.06.1999 – present	2,600
15	Troyanovskiy Yaroslav Vladimirovich	"Knyagininska" mine	6,628	20.06.2001 – 20.09.2004	1,000
16	Kalinina Galina Vladimirovna	"Izvestiy" mine	1,861	27.06.2001 – 08.10.2004	1,300
17	Volkova Valentina Nikolayevna	"Izvestiy" mine	2,194	27.06.2001 – 02.11.2004	1,300
18	Adzhigitov Karibulla Nurullovich	"Knyagininska" mine	1,327	18.10.2000 – 26.08.2004	1,600

No	Applicant	Employer	Judgments' debts (UAH)	Period of non-enforcement	Non-pecuniary damage award (EUR)
19	Timinskaya Svetlana Nikolayevna	"Miusinska" mine	14,431	18.10.2000 – 18.11.2004	1,600
20	Oderiyev Yuriy Fedorovich	"Izvestiy" mine	4,260	13.06.2001 – 02.11.2004	1,300
21	Oderiyev Nikolay Fedorovich	"Izvestiy" mine	6,405	31.06.2002 – 02.11.2004	1,300
22	Vodyannik Ivan Fedorovich	"Knyagininska" mine	3,518	05.06.2001 – 20.09.2004	1,000
			1,292	05.08.2002 – 12.10.2004	
23	Predybaylo Aleksey Dmitriyevich	"Knyagininska" mine	5,963	28.01.2001 – 12.10.2004	1,300
24	Zhygulina Vera Stepanovna	"Antratsytugleservis"	1,554	10.04.2001 – 25.11.2004	1,300
25	Rechyn Vladimir Nikolayevich	"Knyagininska" mine	4,288	25.07.2001 – 12.10.2004	1,000
26	Gatilov Yuriy Ivanovich	"Miusinska" mine	4,659	20.12.2000 – 25.11.2004	1,600
			19,206	23.10.2002 – 25.11.2004	
27	Gurskaya Nina Vladimirovna	"Knyagininska" mine	1,978	30.08.2001 – 12.10.2004	1,000
28	Garalevich Yefrosinya Petrovna	"Knyagininska" mine	2,924	30.04.2001 – 12.10.2004	1,300
29	Tkachenko Ivan Ivanovich	"Krasnoluchska" mine	3,675	04.04.2001 – 02.11.2004	1,300
30	Sedayev Sergey Vasiliyevich	"Izvestiy" mine	4,021	25.08.1999 – 21.10.2004	2,100
31	Smirnov Yuriy Alekseyevich	"Knyagininska" mine	8,209	03.05.2001 – 12.12.2004	1,300
32	Rodionov Viktor Dmitriyevich	"Izvestiy" mine	7,120	03.04.2001 – 02.11.2004	1,300
33	Kovalev Gennadiy Alekseyevich	"Knyagininska" mine	7,975	25.05.2001 – 13.10.2004	1,300
34	Ptushkin Aleksandr Ivanovich	"Donbasantratsyt"	2,816	19.04.2000 – 27.10.2004	1,800
35	Pedorenko Petr Prokofiyevich	"Krasnokutska" mine	5,581	07.11.2001 – 10.11.2004	1,000

No	Applicant	Employer	Judgments' debts (UAH)	Period of non-enforcement	Non-pecuniary damage award (EUR)
36	Boiko Vladimir Ivanovich	"Donbasanratsyt"	3,580	19.02.2003 – 17.09.2004	300
37	Bakushev Valentin Ivanovich	"Knyagininska" mine	891	19.02.2003 – 19.09.2005	800
38	Butorin Viktor Nikolayevich	"Miusinska" mine	2,487	14.11.2001 – 02.11.2004	1,000
39	Chernenko Aleksandr Sergeyeovich	"Miusinska" mine	1,756	11.10.2000 – 25.11.2004	1,600
40	Sayko Nadezhda Nikolayevna	"Krasnoluchska" mine	4,600	16.07.2001 – 20.09.2005	1,600
41	Kytsyuk Tatyana Vasilyevna	"Donbasanratsyt"	1,980	10.05.2000 – 28.10.2004	1,800
42	Gurskiy Leonid Vladimirovich	"Knyagininska" mine	8,178	12.09.2001 – 29.10.2004	1,000