



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

FIFTH SECTION

CASE OF KHOKHLOV v. UKRAINE

(Application no. 26862/03)

JUDGMENT

STRASBOURG

15 May 2008

FINAL

15/08/2008

This judgment may be subject to editorial revision.

In the case of Khokhlov v. Ukraine,

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

Peer Lorenzen, *President*,

Karel Jungwiert,

Volodymyr Butkevych,

Renate Jaeger,

Mark Villiger,

Isabelle Berro-Lefèvre,

Mirjana Lazarova Trajkovska, *judges*,

and Claudia Westerdiek, *Section Registrar*,

Having deliberated in private on 22 April 2008,

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

PROCEDURE

1. The case originated in an application (no. 26862/03) against Ukraine lodged with the Court under Article 34 of the Convention for the Protection of Human Rights and Fundamental Freedoms (“the Convention”) by a Ukrainian national, Ms Semen Yegorovich Khokhlov (“the applicant”), on 18 July 2003. He died on 15 July 2005, in the course of the proceedings. His widow Mrs Favziya Khokhlova wished to pursue the application before the Court. For reasons of convenience, Mr Khokhlov will continue to be referred to as “the applicant” in this judgment.

2. The Ukrainian Government (“the Government”) were represented by their Agents, Mrs Valeria Lutkovska and Mr Y. Zaytsev.

3. On 15 March 2005 and on 22 November 2006 the Court decided to communicate to the Government the complaint under Article 6 § 1 and Article 1 of Protocol No. 1 concerning the non-enforcement of the final judgments given in the applicant’s favour. 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**THE CIRCUMSTANCES OF THE CASE**

4. The applicant was born in 1936 and lived in Novogrodivka.

5. On 2 April 1999 the Novogrodivka City Court awarded the applicant UAH 1,753¹ in salary arrears and compensation for delay in payment of salary against the Novogrodivska coal-mine (a State-owned enterprise).

6. The applicant was unsuccessful in the proceedings against the State Bailiff Service for in respect of its allegedly unlawful inactivity.

7. On 24 February 2004 the Novogrodivka City Department of the State Bailiffs' Service informed the applicant that the Novogrodivska coal-mine had been replaced by the Selydivvugillya State Company in the enforcement proceedings.

8. As of 26 October 2004, the applicant had received UAH 1,530² out of the total award of UAH 1,753.

9. In August 2005 Mrs Khokhlova informed the Court that after the case had been communicated to the respondent Government she had received the remainder of the sum.

THE LAW

I. AS TO THE *LOCUS STANDI* OF MRS KHOKHLOVA

10. On 20 August 2005 Mrs Khokhlova, the applicant's widow, informed the Court that she wished to pursue the application of her late husband.

11. The respondent Government did not lodge any objections with regard to Mrs Khokhlova's standing.

12. The Court considers that the widow of the applicant has standing to continue the present proceedings in his stead (see *Sharenok v. Ukraine*, no. 35087/02, §§ 10-12, 22 February 2005).

II. ALLEGED VIOLATION OF ARTICLE 6 § 1 OF THE CONVENTION AND ARTICLE 1 OF PROTOCOL No. 1

13. The applicant complained about the State authorities' failure to enforce the judgment of the Novogrodivka City Court given in his favour. He invoked Articles 6 § 1 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. ..."

1. Approximately EUR 244

2. Approximately EUR 212

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

14. The Government raised objections regarding exhaustion of domestic remedies similar to those which the Court has already dismissed in a number of similar cases concerning the non-enforcement of the court judgments (see *Sokur v. Ukraine* (dec.), no. 29439/02, 16 December 2003 and *Trykhlil v. Ukraine*, no. 58312/00, §§38-43, 20 September 2005). The Court considers that these objections must be rejected for the same reasons.

15. The Court concludes that the applicant’s complaints raise issues of fact and law under the Convention, the determination of which requires an examination on the merits. The Court finds no ground for declaring them inadmissible. The Court must therefore declare them admissible.

B. Merits

16. In their observations on the merits of the case, the Government contended that there had been no violation of the applicant’s Convention rights.

17. The applicant disagreed.

18. The Court notes that the judgment in the applicant’s favour remained unenforced, at least in part, for almost six years.

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. The applicant complained under Article 2 § 1 of the Convention that the existing situation infringed his right to life, given his low standard of living. The applicant next complained about a violation of Article 4 § 1 of the Convention, referring to the fact that he was forced to work without receiving remuneration.

23. Having regard to all the material in its possession, the Court finds that these complaints do not disclose any appearance of a violation of the rights and freedoms set out in the Convention or its Protocols. It follows that this part of the application must be rejected 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. Mrs Khokhlova claimed EUR 2,122 in respect of pecuniary damage, EUR 2,436 in default interest and EUR 6,000 in compensation for non-pecuniary damage.

26. The Government contested these claims.

27. The Court does not discern any causal link between the violations found and the pecuniary damage alleged; it therefore rejects this claim. As regards Mrs Khokhlova's claims for interest on monies unpaid, the Court notes that these claims are not supported by any relevant material which would enable the Court to determine the amounts claimed. Consequently, it rejects these claims (see e.g., *Glova and Bregin v. Ukraine*, nos. 4292/04 and 4347/04, § 29, 28 February 2006).

28. On the other hand, it awards Mrs Khokhlova EUR 1,800 in respect of non-pecuniary damage.

B. Costs and expenses

29. The applicant did not submit any separate claim under this head; the Court therefore makes no award in this respect.

C. Default interest

30. 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 the Protocol No. 1 concerning the non-enforcement of a final court judgment given in the applicant's favour admissible and the remainder of the application inadmissible;
2. *Holds* that there has been a violation of Article 6 § 1 of the Convention and Article 1 of Protocol No.1;
3. *Holds*
 - (a) that the respondent State is to pay Mrs Khokhlova, within three months from the date on which the judgment becomes final in accordance with Article 44 § 2 of the Convention, EUR 1,800 (one thousand eight hundred euros), plus any tax that may be chargeable, in respect of non-pecuniary damage, to be converted into the national currency of the respondent State at the rate applicable at the date of settlement, plus any tax that may be chargeable;
 - (b) that from the expiry of the above-mentioned three months until settlement simple interest shall be payable on the above amount at a rate equal to the marginal lending rate of the European Central Bank during the default period plus three percentage points;
4. *Dismisses* the remainder of Mrs Khokhlova's claim for just satisfaction.

Done in English, and notified in writing on 15 May 2008, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Claudia Westerdiek
Registrar

Peer Lorenzen
President