



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

FIFTH SECTION

CASE OF KRIVONOZHKO AND DEMCHENKO v. UKRAINE

(Applications nos. 7435/05 and 7715/05)

JUDGMENT

STRASBOURG

6 November 2008

FINAL

06/02/2009

This judgment may be subject to editorial revision.

In the case of Krivonozhko and Demchenko v. Ukraine,

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

Rait Maruste, *President*,
Volodymyr Butkevych,
Renate Jaeger,
Mark Villiger,
Isabelle Berro-Lefèvre,
Mirjana Lazarova Trajkovska,
Zdravka Kalaydjieva, *judges*,

and Claudia Westerdiek, *Section Registrar*,

Having deliberated in private on 7 October 2008,

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

PROCEDURE

1. The case originated in two applications (nos. 7435/05 and 7715/05) 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 Valeriy Nikitovich Krivonozhko and Mr Vladimir Alekseyevich Demchenko (“the applicants”), on 15 February 2005.

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

3. On 15 November 2006 the Court decided to communicate the applications 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 1946 and 1951 respectively and live in Lysychansk, in the Lugansk region, Ukraine.

5. At the material time they worked at the State Machinery and Repair Plant (*ДБАТ «Ремонтно-механічний завод»* – “the plant”). In 2004 they were dismissed. Before the domestic authorities they were represented by a lawyer, M.

6. On 13 March 2000 the Lugansk Regional Court of Arbitration instituted bankruptcy proceedings against the plant.

7. On 10 April 2001 the court commenced the procedure of financial rehabilitation of the plant and appointed a bankruptcy trustee responsible for that procedure. It is not clear from the materials submitted whether the rehabilitation procedure has ended or is still pending.

8. On 12 October 2004 the Commercial Court of the Lugansk Region (the former Lugansk Regional Court of Arbitration) ordered the bankruptcy trustee to inform the creditors of the measures adopted in the course of the debtor’s rehabilitation and to provide them with financial documents concerning the payment of salary arrears. The applicants maintained that the trustee did not comply with this decision.

9. By the decisions of 29 November 2004, 11 April and 6 June 2005 the Labour Disputes Commission and the Lysychansk Town Court awarded the first applicant salary arrears and other payments due to him from his former employer in the total amount of 13,539.56 Ukrainian hryvnias (UAH)¹.

10. By the decisions of 29 November 2004, 5 April and 4 May 2005 the same authorities awarded the second applicant salary arrears and other payments due to him from his former employer in the total amount of UAH 6,281.11².

11. Furthermore, in decisions of 5 and 11 April 2005 the Lysychansk Town Court, *inter alia*, ordered the applicants’ reinstatement.

12. In so far as the above-mentioned decisions became final, the local department of the State Bailiffs’ Service instituted proceedings to enforce them.

13. According to a letter of 6 September 2006 from the local department of the State Bailiffs’ Service, the parts of the decisions of 5 and 11 April 2005 relating to the applicants’ reinstatement were fully enforced and the relevant enforcement proceedings were terminated by decisions of the State Bailiffs’ Service of 17 April 2005. The applicants submitted that in fact they

¹ About 2,000.64 euros (EUR).

² About EUR 970.06.

were not reinstated as they were still not admitted to their workplaces. They did not, however, inform the Court whether they had challenged before the domestic courts the decisions of 17 April 2005 to terminate the enforcement proceedings in question.

14. The applicants requested the local prosecutor's office to intervene in the enforcement proceedings and to institute criminal proceedings against the relevant persons, but apparently to no avail.

15. The applicants maintained that these decisions remain unenforced.

II. RELEVANT DOMESTIC LAW

16. 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

17. The Court considers that, pursuant to Rule 42 § 1 of the Rules of Court, the applications should be joined, given their common factual and legal background.

II. THE LENGTHY NON-ENFORCEMENT OF THE DECISIONS IN THE APPLICANTS' FAVOUR

18. Relying on Articles 6 and 13 of the Convention and Article 1 of Protocol No. 1, the applicants complained about the lengthy non-enforcement of the decisions given in their favour. These Articles provide, in so far 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

19. The parties did not submit any observations in respect of the admissibility of these complaints.

1. As regards the decision of 12 October 2004

20. The Court notes that this decision concerned no more than an incidental matter which arose in the course of the bankruptcy proceedings against the debtor company. Having examined this complaint, it finds nothing in the case file which might disclose any appearance of a violation of these Convention provisions.

21. It follows that this part of the applications must be rejected as being manifestly ill-founded, pursuant to Article 35 §§ 3 and 4 of the Convention.

2. As regards the parts of the decisions of 5 and 11 April 2005 relating to the applicants’ reinstatement

22. The Court observes that, according to the documents submitted by the parties, the parts of the decisions of 5 and 11 April 2005 relating to the applicants’ reinstatement were fully enforced by 17 April 2005.

23. The applicants contested this fact contending that they were still not admitted to their workplaces.

24. The Court finds that it is not clear from the parties’ submissions whether the relevant parts of the decisions at issue have been enforced in full. However, it assumes that these parts of the decisions were enforced by 17 April 2005, given the fact that, on that date, the Bailiffs’ Service established that the applicants were reinstated, which the applicants did not contest at the national level (see, *mutatis mutandis*, *Gavrilenko v. Ukraine*, no. 24596/02, § 18, 20 September 2005).

25. However, the fact that the decisions in the applicants’ favour were enforced does not deprive them of their victim status in relation to the period during which the court decisions in their favour remained unenforced (see *Romashov v. Ukraine*, no. 67534/01, §§ 26-27, 27 July 2004). Given that these decisions were enforced within nine days, at maximum, the Court

finds that this part of the applications must be rejected as being manifestly ill-founded, pursuant to Article 35 §§ 3 and 4 of the Convention.

3. As regards the remainder of the decisions in the applicants' favour

26. The Court notes that this part of the applications is not manifestly ill-founded within the meaning of Article 35 § 3 of the Convention. It further notes that it is not inadmissible on any other grounds. It must therefore be declared admissible.

B. Merits

27. The parties did not submit observations on the merits.

28. The Court notes that the decisions in the applicants' favour have not been enforced for more than three years and **six months**³.

29. The Court observes that it has already found violations of Article 6 § 1 of the Convention and Article 1 of Protocol No. 1 in cases similar to the present one (see, among other authorities, *Voytenko v. Ukraine*, no. 18966/02, §§ 43 and 55, 29 June 2004, and *Dubenko v. Ukraine*, no. 74221/01, §§ 47 and 51, 11 January 2005). It finds no ground to depart from its case-law in the present case.

30. There has, accordingly, been a violation of Article 6 § 1 of the Convention in respect of the lengthy failure to enforce the decisions in the applicants' favour and a violation of Article 1 of Protocol No. 1 in the present case.

31. The Court does not find it necessary in the circumstances to examine the same complaints under Article 13 of the Convention (see *Derkach and Palek v. Ukraine*, nos. 34297/02 and 39574/02, § 42, 21 December 2004).

III. OTHER COMPLAINTS

32. The applicants also complained under Article 6 § 1 of the Convention about the alleged inability of M. to represent them effectively before the courts and other State authorities. They also relied on Articles 1, 3, 14 and 17 of the Convention in relation to the issue of non-enforcement examined above.

33. 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 applications must be rejected as being manifestly ill-founded, pursuant to Article 35 §§ 3 and 4 of the Convention.

³ **To be updated when the judgment is adopted**

IV. APPLICATION OF ARTICLE 41 OF THE CONVENTION

34. 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

35. The applicants claimed UAH 38,228⁴ each in respect of pecuniary damage. In support of their claim, they submitted copies of certificates issued by the debtor company in which it had acknowledged the applicants’ salary arrears for the period from August 2002 to September 2007 in the stated amount. The first and second applicants further claimed EUR 15,000 and EUR 10,000 respectively in respect of non-pecuniary damage.

36. The Government submitted that they did not question the necessity to enforce the decisions in the applicants’ favour. However, they found these claims exorbitant and unsubstantiated. Furthermore, they contended that the claims in respect of pecuniary damage did not relate to the subject matter of the present case.

37. The Court notes that it is undisputed that the State still has an outstanding obligation to enforce the decisions at issue. However, the Court does not discern any causal link between the violations found and the remainder of the pecuniary damage alleged; it therefore dismisses these claims. The Court further takes the view that the applicants must have sustained non-pecuniary damage as a result of the violations found. Making its assessment on an equitable basis, as required by Article 41 of the Convention, the Court awards the applicants EUR 800 each under this head.

B. Costs and expenses

38. The applicants claimed EUR 1,000 each for the legal costs and expenses they had incurred before the domestic authorities and the Court. In support of their claim, they submitted copies of certificates issued by M., acknowledging that each of the applicants had paid him the sum mentioned for his legal services.

39. The Government maintained that this amount was manifestly excessive and unsubstantiated.

40. 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

⁴ About EUR 5,558.72.

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). The Court considers that these requirements have not been met in the instant case. In particular, it notes that costs of the domestic proceedings claimed by the applicants have no connection with the violation found in the present case. The Court further notes that the applicants were not legally represented before it and, as their cases are not particularly complex, they were not required to be.

Regard being had to the information in its possession and to the above considerations, the Court makes no award under this head.

C. Default interest

41. 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 Article 6 § 1 and Article 13 of the Convention and Article 1 of Protocol No. 1 relating to the State authorities' failure to pay the applicants the amounts awarded to them in the decisions of 29 November 2004 and 5 and 11 April, 4 May and 6 June 2005 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;
5. *Holds* that there is no need to examine the complaints 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, the following amounts:

- (i) the outstanding debt in accordance with the decisions of 29 November 2004 and 5 and 11 April, 4 May and 6 June 2005;
- (ii) EUR 800 (eight hundred euros) each 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 to the applicants;
- (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;

7. *Dismisses* the remainder of the applicants' claims for just satisfaction.

Done in English, and notified in writing on 6 November 2008, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Claudia Westerdiek
Registrar

Rait Maruste
President