



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

FIFTH SECTION

CASE OF BONDAR AND OTHERS v. UKRAINE

(Application no. 12380/05)

JUDGMENT

STRASBOURG

19 February 2009

FINAL

19/05/2009

This judgment may be subject to editorial revision.

In the case of Bondar and Others v. Ukraine,

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

Peer Lorenzen, *President*,

Rait Maruste,

Karel Jungwiert,

Renate Jaeger,

Mark Villiger,

Zdravka Kalaydjieva, *judges*,

Stanislav Shevchuk, *ad hoc judge*,

and Claudia Westerdiek, *Section Registrar*,

Having deliberated in private on 27 January 2009,

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

PROCEDURE

1. The case originated in an application (no. 12380/05) against Ukraine lodged with the Court under Article 34 of the Convention for the Protection of Human Rights and Fundamental Freedoms (“the Convention”) by Ukrainian nationals, Mr Sergiy Oleksandrovykh Bondar, Ms Ganna Valeriyivna Shelekhova, Mr Vitaliy Borysovykh Boyko, Mr Mykola Ivanovych Shershak, Ms Nina Gennadiyivna Prokudina, Ms Alla Yakivna Klymenko, Mr Bogdan Vyacheslavovych Burda, Mr Andriy Viktorovych Lobko, Ms Olga Ivanivna Sobyna, and Ms Tetyana Mykhaylivna Moyiseyenko.

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

3. On 14 January 2008 the Court decided to give notice of the application to the respondent Government. It also decided to examine the merits of the application at the same time as its admissibility (Article 29 § 3).

THE FACTS**THE CIRCUMSTANCES OF THE CASE**

4. The applicants are acting judges residing in Sumy.

5. By the judgment of 7 November 2003 the Sumy Town Court ordered the State Treasury to pay Mr Bondar 6,486 Ukrainian hryvnias (UAH)¹, Ms Shelekhova UAH 7,277², Ms Moyiseyenko UAH 7,277³, Mr Shershak UAH 6,486⁴, Mr Boyko UAH 6,486⁵, Ms Klymenko UAH 4,843⁶, Ms Prokudina UAH 7,277⁷, Mr Burda UAH 4,167⁸, Mr Lobko UAH 3,393⁹, Ms Sobyna UAH 3,914¹⁰ in compensation for their official clothes (uniform).

6. On 28 January 2004 the Sumy Regional Court of Appeal upheld that judgment and it became final.

7. On 2 September 2006 the judgment was enforced in full.

THE LAW

I. NON-ENFORCEMENT OF THE JUDGMENT IN THE APPLICANTS' FAVOUR

8. The applicants complained under Article 6 § 1 of the Convention and Article 1 of Protocol No. 1 about the delay in the enforcement of the judgment of 7 November 2003. The above provisions of the Convention read, 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 ... hearing within a reasonable time by [a] ... tribunal ...”

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.

-
1. About 1,073 euros (EUR).
 2. About EUR 1,204.31.
 3. About EUR 1,204.31.
 4. About EUR 1,073.
 5. About EUR 1,073.
 6. About EUR 801.
 7. About EUR 1,204.31.
 8. About EUR 689.
 9. About EUR 561.
 10. About EUR 647.

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 ...”

9. The Government raised an objection regarding the applicability of Article 6 § 1 similar to those which the Court has already dismissed in a number of judgments (see, for example, *Mitin v. Ukraine*, no. 38724/02, §§ 20-24, 14 February 2008).

10. The Government contested the applicability of Article 1 of Protocol No. 1 in the present case, stating that the uniform at issue was the property of the State, and not of the applicants. The Court observes that the case concerns the failure of the State to pay the applicants’ the money awarded by the final judgment. In this context, the Court reiterates that a judgment debt constitutes possession for the purposes of Article 1 of Protocol No.1, and therefore it is applicable in the present case (see *Voytenko v. Ukraine*, no. 18966/02, §§ 51-54, 29 June 2004). For that reason the Government’s latter objection must also be rejected.

11. The Court notes that the judgment of 7 November 2003 remained unenforced for about two years and seven months after it became final on 28 January 2004.

12. The Court reiterates that it has already found violations of Article 6 § 1 of the Convention and Article 1 of Protocol No. 1 in a substantial number of cases raising issues similar to the present application (see, for example, *Voytenko v. Ukraine*, cited above, §§ 43 and 55). There is nothing in the parties’ submissions capable of persuading the Court to reach a different conclusion.

13. Accordingly, the Court declares the application admissible and finds that there has been a violation of Article 6 § 1 of the Convention and Article 1 of Protocol No. 1.

II. APPLICATION OF ARTICLE 41 OF THE CONVENTION

14. 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

15. The Court, having examined the applicants’ claims for just satisfaction with which the Government disagreed, makes its assessment on an equitable basis as required by Article 41 of the Convention and considers that the Government should pay each applicant EUR 600 in respect of non-pecuniary damage.

B. Costs and expenses

16. The applicants did not submit any claims for costs and expenses; therefore the Court makes no award.

C. Default interest

17. 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 application admissible;
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 to the Convention;
4. *Holds*
 - (a) that the respondent State is to pay each applicant, within three months from the date on which the judgment becomes final in accordance with Article 44 § 2 of the Convention, EUR 600 (six hundred euros) for non-pecuniary damage;
 - (b) that the above amount shall 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;
 - (c) 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;
5. *Dismisses* the remainder of the applicants' claims for just satisfaction.

Done in English, and notified in writing on 19 February 2009, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Claudia Westerdiek
Registrar

Peer Lorenzen
President