



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

1959 · 50 · 2009

FIFTH SECTION

CASE OF SOROKINA AND GONCHARENKO v. UKRAINE

(Applications nos. 41313/06 and 42206/06)

JUDGMENT

STRASBOURG

30 July 2009

FINAL

30/10/2009

This judgment may be subject to editorial revision.

In the case of Sorokina and Goncharenko v. Ukraine,

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

Peer Lorenzen, *President*,

Renate Jaeger,

Karel Jungwiert,

Rait Maruste,

Mirjana Lazarova Trajkovska,

Zdravka Kalaydjieva, *judges*,

Stanislav Shevchuk, *ad hoc judge*,

and Stephen Phillips, *Deputy Section Registrar*.

Having deliberated in private on 7 July 2009,

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

PROCEDURE

1. The case originated in two applications (nos. 41313/06 and 42206/06) 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, Ms Mariya Alekseyevna Sorokina (“the first applicant”) and Ms Goncharenko Lyubov Ivanivna (“the second applicant”), on 9 October 2006.

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

3. On 11 June 2006 the President of the Fifth Section decided to give notice of the applications to the Government. It was also decided to examine the merits of the applications at the same time as their admissibility (Article 29 § 3).

THE FACTS

I. THE CIRCUMSTANCES OF THE CASE

4. The first applicant was born in 1947 and the second in 1949. Both applicants live in the city of Mykolaiv, Ukraine.

5. By two separate judgments of 9 December 2002, the Zavodskoy District Court of Mykolaiv awarded the first applicant 6,932 Ukrainian hryvnias (UAH) ¹ and the second applicant UAH 4,329.73² in salary arrears

¹ About 1,331 euros (EUR)

and other payments, to be paid by the open joint-stock company Chornomormebli (“the debtor company”).

6. The State-owned company Chornomorsky sudnobudivny zavod held 51 % of the shares in the debtor company on the date the judgments were delivered.

7. The judgments became final and enforcement proceedings were instituted.

8. In the period between April and June 2003 the first applicant received UAH 2,425.59 and the second UAH 1,567.38 in part settlement of the judgment debts.

9. By a letter of 15 July 2003 the Bailiffs’ Service notified the applicants that they were unable to collect the full amount of the awards because the financial assets of the debtor company were insufficient. They further explained that other assets could not be sold, as the State owned 51 % of the debtor company’s share capital. The debtor company was therefore subject to the Law of 29 November 2001 “on the Introduction of a Moratorium on the Forced Sale of Property”.

10. Since 5 May 2004 the State has held 9,64 % of the shares in Chornomorsky sudnobudivny zavod.

11. By a letter of 11 April 2006 the State Bailiffs’ Service proposed that the applicants accept the debtor company’s seized property in satisfaction of the judgment debts, but the applicants did not agree.

12. In February 2007 insolvency proceedings were instituted against the debtor company. On 12 June 2007 it was declared insolvent.

13. In September 2007 the enforcement proceedings were discontinued since the debtor company had been declared insolvent. The liquidation proceedings are still pending.

II. RELEVANT DOMESTIC LAW

14. The relevant domestic law is summarised in the judgments of *Romashov v. Ukraine* (no. 67534/01, §§ 16-19, 27 July 2004) and *Sokur v. Ukraine* (no. 29439/02, §§ 17-22, 26 April 2005).

² About EUR 831

THE LAW

I. JOINDER OF THE APPLICATIONS

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

16. The applicants complained under Article 6 § 1 of the Convention and Article 1 of Protocol No. 1 of the debtor company's failure to comply with the judgments that had been given in their favour. The above provisions 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 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...”

A. Admissibility

17. The Government contended that the applicants had not availed themselves of the opportunity to be registered as creditors in the insolvency and liquidation proceedings pending against the debtor company, and had failed to sue the Bailiffs' Service in the domestic courts because of its allegedly inadequate attempts to enforce the judgments in their favour.

18. The applicants disagreed.

19. The Court notes that similar objections have already been rejected in a number of judgments adopted by the Court (see *Sokur v. Ukraine* (dec.), no. 29439/02, 16 December 2003; *Sychev v. Ukraine*, no. 4773/02, §§ 42-46, 11 October 2005; and *Trykhlil v. Ukraine*, no. 58312/00, §§ 38-43, 20 September 2005). The Court considers that these objections must be rejected in the instant case for the same reasons.

20. The Court notes that the applications 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

21. In their observations on the merits, the Government put forward arguments similar to those in the cases of *Voytenko v. Ukraine* and *Solovyev v. Ukraine*, contending that there had been no violation of either Article 6 § 1 of the Convention or Article 1 of Protocol No. 1 (see, *Voytenko v. Ukraine*, no. 18966/02, § 37, 29 June 2004, and *Solovyev v. Ukraine*, no. 4878/04, § 17, 14 December 2006).

22. The Government further maintained that since 5 May 2004 the State had not controlled the debtor company. They submitted, finally, that the domestic authorities had proposed that the applicants accept the debtor company's property in satisfaction of the judgment debts but they had showed no interest.

23. The applicants disagreed.

24. The Court notes that the financial awards made to the applicants by the domestic court have remained unenforced for more than six years and five months.

25. The Court further notes that it has already found violations of Article 6 § 1 of the Convention and Article 1 of Protocol No. 1 in cases like the present one (see, *Solovyev v. Ukraine*, cited above, § 24 and *Logvinov v. Ukraine*, no. 1371/03, § 19, 14 June 2007).

26. Having examined all the materials submitted to it, 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.

27. There has, accordingly, been a violation of Article 6 § 1 of the Convention and of Article 1 of Protocol No. 1 to the Convention.

III. APPLICATION OF ARTICLE 41 OF THE CONVENTION

28. 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

29. The applicants claimed each payment of debts still owed to them under the judgments given in their favour in respect of pecuniary damage.

The first applicant further claimed EUR 5,711 and the second applicant EUR 5,439 in respect of non-pecuniary damage.

30. The Government contested the applicants' claims.

31. The Court finds that the Government should pay the applicants the outstanding debts under the judgments given in their favour by way of compensation for pecuniary damage. It 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, it awards the applicants EUR 2,000 each under this head.

B. Costs and expenses

32. The applicants made no separate claim under this head and the Court therefore makes no award.

C. Default interest

33. 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 applications admissible;
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 to the Convention;
5. *Holds*
 - (a) that the respondent State is to pay, within three months from the date on which the judgment becomes final in accordance with Article 44 § 2 of the Convention the following sums:
 - (i) the outstanding debts under the judgments given in the applicants' favour in respect of pecuniary damage;
 - (ii) EUR 2,000 (two thousand euros) to each applicant 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;

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

Done in English, and notified in writing on 30 July 2009, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Stephen Phillips
Deputy Registrar

Peer Lorenzen
President