



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

1959 · 50 · 2009

FIFTH SECTION

CASE OF SKALOUKHOV AND OTHERS v. UKRAINE

(Applications nos. 8107/06, 8473/06, 8475/06, 15941/06 and 32116/06)

JUDGMENT

STRASBOURG

19 November 2009

FINAL

19/02/2010

This judgment will become final in the circumstances set out in Article 44 § 2 of the Convention. It may be subject to editorial revision.

In the case of Skaloukhov and Others v. Ukraine,

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

Peer Lorenzen, *President*,

Renate Jaeger,

Rait Maruste,

Mark Villiger,

Mirjana Lazarova Trajkovska,

Zdravka Kalaydjieva, *judges*,

Mykhaylo Buromenskiy, *ad hoc judge*,

and Stephen Phillips, *Deputy Section Registrar*,

Having deliberated in private on 20 October 2009,

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

PROCEDURE

1. The case originated in five applications (nos. 8107/06, 8473/06, 8475/06, 15941/06 and 32116/06) against Ukraine lodged with the Court under Article 34 of the Convention for the Protection of Human Rights and Fundamental Freedoms (“the Convention”) by five Ukrainian nationals, Mr Vladimir Ivanovich Skaloukhov (“the first applicant”), Ms Tamara Petrovna Mikolyuk (“the second applicant”), Mr Aleksandr Nikolayevich Menshchikov (“the third applicant”), Ms Ekaterina Mitrofanovna Kondratyuk (“the fourth applicant”) and Mr Feliks Vatslavovich Bernatskiy (“the fifth applicant”).

2. The first and third applicants lodged their applications with the Court on 10 February 2006, the second applicant on 11 February 2006, the fourth applicant on 3 April 2006, and the fifth applicant on 17 July 2006.

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

4. On 30 April 2008 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

5. The first applicant was born in 1938, the second in 1962, the third in 1959, the fourth in 1940, and the fifth in 1939. All applicants live in the town of Makeyevka, Ukraine.

6. The applicants are former employees of the State company Shachta imeni K.I. Pochenkova (“the company”).

7. The applicants instituted proceedings against the company in the Chervonogvardeysky District Court of Makeyevka (“the first-instance court”) requesting it to recalculate the amount of the salary paid to them from January 1997 to October 2001 and compensate them for losses sustained as a result of alleged miscalculations made by the company. They also claimed compensation for non-pecuniary damage. The court allowed their claims (see Annex 1).

8. The Chervonogvardeysky District Bailiffs' Service of Makeyevka initiated enforcement proceedings in respect of the judgments given in the applicants' favour.

9. On an unspecified date the company was liquidated. The applicants requested the first-instance court to change the debtor in enforcement proceedings to another State company. The court allowed their requests and changed the debtor to the State company Ukrvuglerestrukturizatsiya. The Donetsk Regional Court of Appeal quashed the rulings of the first-instance court and rejected the applicants' requests. The Supreme Court upheld the rulings of the Court of Appeal (for details see Annex 2).

10. Later, the applicants lodged extraordinary appeals against the final decisions given in their cases by the Supreme Court. However, their appeals were unsuccessful.

11. On 3 June 2008 the State Bailiffs' Service returned the enforcement writs to the applicants and terminated the enforcement proceedings. The judgments in the applicants' favour remain unenforced.

II. RELEVANT DOMESTIC LAW

12. The relevant domestic law is summarised in the judgment of *Romashov v. Ukraine* (no. 67534/01, §§ 16-19, 27 July 2004).

THE LAW

I. JOINDER OF THE APPLICATIONS

13. 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 ON ACCOUNT OF NON-ENFORCEMENT OF THE JUDGMENTS

14. The applicants complained about the non-enforcement of the judgments given in their favour. They relied on Article 6 § 1, which reads 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.”

A. Admissibility

15. The Government contended that the applicants had not exhausted domestic remedies as they had not challenged the action taken by the Bailiffs' Service on 3 June 2008. They also maintained that the applicants had failed to resubmit the enforcement writs. They asserted in this regard that the applicants were no longer interested in enforcement of the judgments.

16. The applicants disagreed.

17. The Court notes that similar objections have already been rejected in a number of judgments adopted by the Court (see *Voytenko v. Ukraine*, no. 18966/02, §§ 28-31, 29 June 2004, and *Lizanets v. Ukraine*, no. 6725/03, § 43, 31 May 2007). The Court considers that these objections must be rejected in the instant case for the same reasons.

18. The Court concludes that the applicants' complaint under Article 6 § 1 of the Convention 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

19. The Government made no observations on the merits of the applicants' complaint.

20. The applicants maintained their complaint.

21. The Court observes that the judgments given in the applicants' favour remain unenforced.

22. The Court has frequently found violations of Article 6 § 1 of the Convention in cases raising similar issues to the ones in the present case (see *Romashov*, cited above, § 46).

23. 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.

24. There has accordingly been a violation of Article 6 § 1 of the Convention.

III. ALLEGED VIOLATION OF ARTICLE 6 § 1 OF THE CONVENTION ON ACCOUNT OF THE LENGTH OF THE PROCEEDINGS CONCERNING RECALCULATION OF SALARY

25. The applicants further complained about the length of the proceedings concerning the salary recalculation. They relied on Article 6 § 1 of the Convention.

26. The Court considers that the period of enforcement does not fall within the period to be taken into account in respect of the complaint concerning the length of the proceedings because the applicants have made a separate complaint about the non-enforcement proper (see *Malama v. Greece*, no. 43622/98, § 34 ECHR 2001-II, and *Alekseyev v. Russia* (dec.), no. 5836/05, 13 November 2008). Therefore, the proceedings in question lasted less than thirteen months for one instance (see Annex 1).

27. Given the overall length of the proceedings and that there were no significant periods of inactivity attributable to the State, the Court concludes that the length of proceedings in the instant case did not exceed a reasonable time within the meaning of Article 6 § 1 of the Convention.

28. It follows that this complaint is manifestly ill-founded and must be rejected in accordance with Article 35 §§ 3 and 4 of the Convention.

IV. ALLEGED VIOLATION OF ARTICLE 6 § 1 OF THE CONVENTION ON ACCOUNT OF THE LENGTH OF THE PROCEEDINGS CONCERNING REPLACEMENT OF THE DEBTOR

29. The applicants further complained under Article 6 § 1 of the Convention of the lengthy consideration by the Supreme Court of their cassation appeals lodged against the refusal of the Court of Appeal to replace the debtor in the enforcement proceedings.

30. The Court notes that this complaint is linked to the complaint about the non-enforcement examined above and must therefore likewise be

declared admissible. Having regard to the finding relating to Article 6 § 1 (see paragraph 24 above), the Court considers that it is not necessary to examine whether there has been a violation of Article 6 § 1 in respect of the length of proceedings concerning the replacement of the debtor.

V. OTHER ALLEGED VIOLATIONS OF THE CONVENTION

31. The applicants complained that the Supreme Court had considered their cassation and extraordinary appeals in their absence. They invoked Article 13 of the Convention. Finally, the applicants invoked Article 4 § 1 of the Convention referring to the facts of the case.

32. The Court has examined the remainder of the applicants' complaints and considers that, in the light of all the material in its possession and in so far as the matters complained of are within its competence, they do not disclose any appearance of a violation of the rights and freedoms set out in the Convention or its Protocols. Accordingly, the Court rejects them as manifestly ill-founded, pursuant to Article 35 §§ 3 and 4 of the Convention.

VI. APPLICATION OF ARTICLE 41 OF THE CONVENTION

33. 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

34. All the applicants claimed the amounts of the unsettled debts, converted by them into euros at the rate applicable on 17 October 2008. In particular, the first applicant claimed 487.64 euros [EUR], the second applicant EUR 454.75, the third applicant EUR 664.55, the fourth applicant EUR 284.88, the fifth applicant EUR 846.46. In addition, they claimed the following amounts:

- The first applicant claimed 364.27 euros in inflation losses and EUR 9,148.09 in non-pecuniary damage;
- The second applicant claimed EUR 339.70 in inflation losses and EUR 9,205.55 in non-pecuniary damage;
- The third applicant claimed EUR 496.42 in inflation losses and EUR 8,839.03 in non-pecuniary damage;
- The fourth applicant claimed EUR 212.81 in inflation losses and EUR 9,502.31 in non-pecuniary damage;

- The fifth applicant claimed EUR 632.31 in inflation losses and EUR 8,521.23 in non-pecuniary damage.

35. The Government contested these claims as excessive and unsubstantiated. With respect to the claims for inflation losses they also disagreed with the method of calculation and argued that these claims should be rejected as there had been an effective domestic remedy available to the applicants, which, in the Government's view, they had failed to make use of.

36. With respect to the applicants' claims in respect of pecuniary damage, the Court finds that the Government should pay the applicants the outstanding debts under the judgments given in their favour.

37. As to the claim for inflation losses, the Court notes that the Government merely disagreed with the method of calculation; they did not however deny the fact that the applicants had suffered inflation losses and neither did they provide an alternative calculation of losses at issue. It further notes that the applicants were absolved from pursuing the litigation suggested by the Government (see *Glova and Bregin v. Ukraine*, nos. 4292/04 and 4347/04, § 29, 28 February 2006). The Court notes that the applicants' claims are supported by detailed calculations based on official data on inflation rates (see, for example, *Maksimikha v. Ukraine*, no. 43483/02, § 29, 14 December 2006). The Court finds it reasonable to award the applicants the amounts claimed in inflation losses, namely:

- the first applicant - EUR 365 in inflation losses;
- the second applicant - EUR 340 in inflation losses;
- the third applicant EUR 500 in inflation losses;
- the fourth applicant - EUR 215 in inflation losses;
- the fifth applicant - EUR 635 in inflation losses.

38. Finally, the Court finds that the applicants must have suffered non-pecuniary damage. Ruling on an equitable basis, as required by Article 41 of the Convention, it awards EUR 2,000 to each applicant under this head.

B. Costs and expenses

39. The applicants lodged no claims for costs and expenses; therefore the Court makes no award under this head.

C. Default interest

40. 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 about the non-enforcement of the judgments and the length of the proceedings concerning the replacement of the debtor admissible and the remainder of the complaints inadmissible;
3. *Holds* that there has been a violation of Article 6 § 1 of the Convention in respect of the non-enforcement of the judgments given in the applicants' favour;
4. *Holds* that there is no need to examine the complaint under Article 6 § 1 of the Convention about the length of the proceedings concerning the replacement of the debtor;
5. *Holds*
 - (a) that the respondent State is to pay to 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 sums:
 - (i) the outstanding debts under the judgments listed in Annex 1 in respect of pecuniary damage;
 - (ii) the following sums in respect of just satisfaction, plus any tax that may be chargeable to the applicants:
 - Mr Skaloukhov – EUR 2,365 (two thousand three hundred and sixty five euros);
 - Ms Mikolyuk – EUR 2,340 (two thousand three hundred and forty euros);
 - Mr Menshchikov – EUR 2,500 (two thousand five hundred euros);
 - Ms Kondratyuk – EUR 2,215 (two thousand two hundred and fifteen euros);
 - Mr Bernatskiy – EUR 2,635 (two thousand six hundred and thirty five euros).
 - (b) that the above amounts shall be converted into the national currency of the respondent State at the rate applicable at the date of settlement;
 - (c) 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 19 November 2009, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Stephen Phillips
Deputy Registrar

Peer Lorenzen
President

Annex 1**Proceedings concerning the recalculation of salaries**

No	Appl. no.	Applicants	Court proceedings initiated	Decision of the First-instance court	Sum awarded (UAH)
1.	8107/06	SKALOUKHOV Vladimir Ivanovich	January 2002	18 December 2002	3,267.17
2.	8473/06	MIKOLYUK Tamara Petrovna	January 2002	27 January 2003	3,046.85
3.	8475/06	MENSCHIKOV Aleksandr Nikolayevich	January 2002	15 January 2003	4,452.49
4.	15941/06	KONDRATYUK Ekaterina Mitrofanovna	December 2001	26 December 2002	1,908.7
5.	32116/06	BERNATSKIY Feliks Vatslavovich	December 2001	27 January 2003	5,671.3

Annex 2**Proceedings concerning the replacement of the debtor**

No	Appl. no.	Applicants	Application lodged with the first-instance court in	Ruling of the first-instance court	Ruling of the Donetsk Regional Court of Appeal	The appeal in cassation with the Supreme Court lodged on	Ruling of the Supreme Court given on
1.	8107/06	SKALOUKHOV Vladimir Ivanovich	June 2003	17 July 2003	20 October 2003	November 2003	5 October 2005
2.	8473/06	MIKOLYUK Tamara Petrovna	June 2003	20 June 2003	30 October 2003	November 2003	5 December 2005
3	8475/06	MENSCHIKOV Aleksandr Nikolayevich	June 2003	20 June 2003	3 November 2003	December 2003	4 October 2005
4.	15941/06	KONDRATYUK Ekaterina Mitrofanovna	June 2003	20 June 2003	20 October 2003	November 2003	6 October 2005
5.	32116/06	BERNATSKIY Feliks Vatslavovich	June 2003	17 July 2003	27 October 2003	November 2003	19 May 2006