



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

1959 · 50 · 2009

FIFTH SECTION

CASE OF ILCHYSHYN AND OTHERS v. UKRAINE

*(Application nos. 8802/07, 8729/07, 8739/07, 8991/07, 8996/07, 9447/07
and 10058/07)*

JUDGMENT

STRASBOURG

10 December 2009

FINAL

10/03/2010

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 Ilchyshyn and others v. Ukraine,

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

Peer Lorenzen, *President*,

Renate Jaeger,

Karel Jungwiert,

Isabelle Berro-Lefèvre,

Mirjana Lazarova Trajkovska,

Zdravka Kalaydjieva, *judges*,

Mykhaylo Buromenskiy, *ad hoc judge*,

and Claudia Westerdiek, *Section Registrar*,

Having deliberated in private on 17 November 2009,

Delivers the following judgment, which was adopted on the last-mentioned date:

PROCEDURE

1. The case originated in seven applications (nos. 8802/07, 8729/07, 8739/07, 8991/07, 8996/07, 9447/07 and 10058/07) against Ukraine lodged with the Court under Article 34 of the Convention for the Protection of Human Rights and Fundamental Freedoms (“the Convention”) by seven Ukrainian nationals, Ms Galyna Mykhaylivna Ilchyshyn (first applicant), Ms Galyna Ilyarivna Sosyak (second applicant), Mr Roman Yaroslavovych Blyshchak (third applicant), Mr Volodymyr Vasylyovych Buryy (fourth applicant), Ms Nataliya Vasylivna Shevchenko (fifth applicant), Ms Svitlana Bogdanivna Blyshchak (sixth applicant) and Ms Nina Petrivna Onyshchak (seventh applicant) (together referred to as “the applicants”), on 7 February 2007.

2. The applicants were represented by Mr Andriy Sokolov. The Ukrainian Government (“the Government”) were represented by their Agent, Mr Yuriy Zaytsev.

3. On 8 September 2008 the President of the Fifth Section decided to give notice of the applications to the Government. It was also decided to rule on the admissibility and merits of the applications at the same time (Article 29 § 3).

THE FACTS

I. THE CIRCUMSTANCES OF THE CASE

4. The applicants are Ukrainian nationals residing in the Lviv Region.

5. By a judgment of 20 May 2004 the Drohobych Court awarded the fourth applicant 774.33 Ukrainian hryvnias (UAH)¹ in compensation for various work-related payments and teachers' benefits due to him under Article 57 §§ 1(8) and 1(10) of the Education Act and legal costs to be paid by the Drohobych State Department of Education.

6. By separate judgments of 28 September 2004 the Drohobych Court awarded the first applicant UAH 342.06², the second applicant UAH 1,053.05³, the third applicant UAH 976.95⁴, the fifth applicant UAH 1,355.50⁵, the sixth applicant UAH 456.64⁶, and the seventh applicant UAH 543.50⁷ in compensation for similar payments and teachers' benefits as above.

7. The judgments became final and enforceable. Parts of the judgment debts were paid to the first, third, fourth, fifth, sixth and seventh applicants during 2006. The judgments were enforced in full on 2 October 2008.

II. RELEVANT DOMESTIC LAW AND PRACTICE

8. The relevant domestic law and practice are summarised in the judgments of *Piven v. Ukraine* (no. 56849/00, §§ 25-31 29 June 2004), *Zhovner v. Ukraine* (no. 56848/00, §§ 23-29, 29 June 2004), and *Skrypnyak and Others v. Ukraine* (nos. 9177/05, 14241/05, 10596/06, 17346/06, 20912/06 and 34604/06, §§ 7-13, 10 July 2008).

¹ Approximately 125 euros (EUR).

² Approximately EUR 54.

³ Approximately EUR 166.

⁴ Approximately EUR 154.

⁵ Approximately EUR 213.

⁶ Approximately EUR 72.

⁷ Approximately EUR 85.

THE LAW

I. JOINDER OF THE APPLICATIONS

9. 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. ALLEGED VIOLATION OF ARTICLES 6 § 1 OF THE CONVENTION AND ARTICLE 1 OF PROTOCOL NO. 1 TO THE CONVENTION

10. The applicants complained of the lengthy non-enforcement of the judgments in their favour. They relied on Article 6 § 1 of the Convention and Article 1 of Protocol No. 1 to the Convention, which, in so far as relevant, read as follows:

Article 6 § 1

“In the determination of his civil rights and obligations ... everyone is entitled to a ... 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.”

A. Admissibility

11. The Government maintained that the judgments at issue had been fully enforced and therefore the applicants could no longer claim to be victims of violations of Article 6 § 1 of the Convention and Article 1 of Protocol No. 1. They submitted copies of the applicants' statements addressed to the State Bailiffs' Service in which the applicants had declared that they did not have any further complaints about enforcement.

12. The applicants maintained their complaints concerning the lengthy period for which the judgments had remained unenforced.

13. The Court rejects the Government's preliminary objection as enforcement of the judgments does not deprive the applicants of their victim status in relation to the period during which they remained unenforced (see *Romashov v. Ukraine*, no. 67534/01, §§ 26-27, 27 July 2004).

14. It notes that the applicants' complaints are not manifestly ill-founded within the meaning of Article 35 § 3 of the Convention and further notes that they are not inadmissible on any other grounds. They must therefore be declared admissible.

B. Merits

15. The Government maintained that there had been no breach of any of the provisions of the Convention as the State authorities had taken all necessary measures to enforce the judgments in question and the judgments had been enforced in full.

16. The applicants disagreed.

17. The Court notes that the judgment in favour of the fourth applicant had remained unenforced, at least in part, for four years and three months. The judgments in favour of all the other applicants had remained unenforced, at least in part, for three years and eleven months.

18. The Court has frequently found violations of Article 6 § 1 of the Convention and Article 1 of Protocol No. 1 to the Convention in cases raising issues similar to those in the present case (see, for example, *Romashov v. Ukraine*, § 46, cited above; *Pashuk v. Ukraine*, no. 34103/05, §§ 24-25 and 28-29, 12 June 2008; and *Skrypnyak and Others v. Ukraine*, §§ 23-24 and 27-28, cited above). The Government have not put forward any fact or argument capable of persuading it to reach a different conclusion in the present case.

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

III. APPLICATION OF ARTICLE 41 OF THE CONVENTION

20. 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

21. The applicants claimed EUR 10,000 for non-pecuniary damage.

22. The Government contested these claims.

23. The Court notes that the applicants must have sustained non-pecuniary damage as a result of the violation found. Making its assessment on an equitable basis, as required by Article 41 of the Convention, the Court awards each of the applicants EUR 600 (six hundred euros) in respect of non-pecuniary damage.

B. Costs and expenses

24. The applicants claimed EUR 15 each for the costs and expenses incurred by each of them before the Court, but provided relevant supporting documents to the amount of only EUR 5 for each of them.

25. The Court considers it reasonable to award each of the applicants EUR 5 for costs and expenses.

C. Default interest

26. 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. *Dismisses* the Government's preliminary objection and *declares* the applicants' complaints under Article 6 § 1 of the Convention and Article 1 of Protocol No. 1 to the Convention 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 each of the applicants, within three months of the date on which the judgment becomes final in accordance with Article 44 § 2 of the Convention, EUR 600 (six hundred euros) in respect of non-pecuniary damage and EUR 5 (five euros) for costs and expenses, to be converted into the national currency of the respondent State at the rate applicable on 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 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' claim for just satisfaction.

Done in English, and notified in writing on 10 December 2009, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Claudia Westerdiek
Registrar

Peer Lorenzen
President