



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

1959 · 50 · 2009

FIFTH SECTION

CASE OF OSOKIN AND OSOKINA v. UKRAINE

(Applications nos. 8437/06 and 8470/06)

JUDGMENT

STRASBOURG

10 December 2009

FINAL

10/03/2010

This judgment has become final under Article 44 § 2 of the Convention. It may be subject to editorial revision.

In the case of Osokin and Osokina 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,

Mark Villiger,

Mirjana Lazarova Trajkovska, *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 that date:

PROCEDURE

1. The case originated in two applications (nos. 8437/06 and 8470/06) 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, Mr Andrey Aleksandrovich Osokin (“the first applicant”) and Mrs Nina Nikiforovna Osokina (“the second applicant”), on 10 February 2006.

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

3. On 30 April 2008 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 1976, the second in 1946. Both applicants live in the town of Makeyevka, Ukraine.

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

6. 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 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. In their initial submissions the applicants stated that they had instituted these proceedings in April 2002. In their further submissions they alleged that they had instituted them on 19 December 2001. However, according to the registration stamp of the domestic court on the copies of their claims, those claims were registered by the court on 28 March 2003. The applicants did not provide any documents in support of their statement that their claims had been lodged prior to that date.

7. By two separate judgments of 4 April 2003, the court allowed their claims and awarded the first applicant 2,075.99 Ukrainian hryvnias (UAH)¹ and the second applicant UAH 2,301.46².

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. In June 2003 the applicants requested the court to change the debtor in enforcement proceedings to another State company. By two separate rulings on 17 July 2003 the court allowed their requests and changed the debtor to the State company Ukrvuglerestrukturizatsiya. On 16 and 20 October 2003 the Donetsk Regional Court of Appeal quashed the rulings of the first-instance court and rejected the first and second applicant's requests, respectively. By two separate rulings of 4 and 5 October 2005 the Supreme Court upheld the rulings of the court of appeal given in the first and second applicant's cases.

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).

¹ About 374 euros (EUR)

² About EUR 414

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 that the judgments given in their favour remain unenforced. 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 the 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

25. The applicants further complained under Article 6 § 1 of the Convention about the length of the proceedings. In particular they alleged that they had lodged their claims in December 2001 and that there had been no procedural activity in the period prior to March 2003. They also noted the lengthy consideration by the Supreme Court of their cassation appeals. The applicants relied on Article 6 § 1 of the Convention.

26. The Court notes that, according to copies of the applicants' claims, dated 19 December 2001, they were registered by the domestic court on 28 March 2003. Even assuming that the claims were lodged in December 2001, the Court finds that the length of the judicial stage of the proceedings was not excessive. The Court further notes that, notwithstanding that certain delays in the judicial stage of the proceedings at issue might have taken place, the most significant delays took place during the enforcement stage of the proceedings. 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 separately the issue of the length of the proceedings in the present case (see *Lukyanchenko v. Ukraine*, no. 17327/02, § 34, 15 May 2008).

IV. OTHER ALLEGED VIOLATIONS OF THE CONVENTION

27. 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.

28. 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.

V. APPLICATION OF ARTICLE 41 OF THE CONVENTION

29. 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

30. Both 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 EUR 309.85, the second applicant EUR 343.50. In addition, they claimed the following amounts:

- The first applicant claimed EUR 231.46 in inflation losses and EUR 9,458.69 for non-pecuniary damage;
- The second applicant claimed EUR 256.60 in inflation losses and EUR 9,399.90 for non-pecuniary damage;

31. 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.

32. 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.

33. 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 235 in inflation losses;
- the second applicant - EUR 260 in inflation losses;

34. 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

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

C. Default interest

36. 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 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;
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 of 4 April 2003 given in the applicants' favour;
 - (ii) the following sums in respect of just satisfaction, plus any tax that may be chargeable to the applicants:

- Mr Osokin – EUR 2,235 (two thousand two hundred and thirty-five euros);
 - Ms Osokina – EUR 2,260 (two thousand two hundred and sixty 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 10 December 2009, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Claudia Westerdiek
Registrar

Peer Lorenzen
President