



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

1959 · 50 · 2009

FIFTH SECTION

CASE OF RAMUS AND OTHERS v. UKRAINE

*(Application nos. 11867/08, 11868/08, 28969/08, 28971/08, 28979/08
and 37484/08)*

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 Ramus 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,

Rait Maruste,

Mark Villiger,

Isabelle Berro-Lefèvre, *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 six applications (nos. 11867/08, 11868/08, 28969/08, 28971/08, 28979/08 and 37484/08) against Ukraine lodged with the Court under Article 34 of the Convention for the Protection of Human Rights and Fundamental Freedoms (“the Convention”) by six Ukrainian nationals, Ms Taisa Nikolayevna Ramus (“first applicant”), Ms Nadezhda Vladimirovna Gritsenko (“second applicant”), Ms Nina Sergeyevna Klimenkova (“third applicant”), Ms Anna Nikolayevna Akimenko (“fourth applicant”), Ms Tamara Eduardovna Didenko (“fifth applicant”) and Mr Sergey Aleksandrovich Mikhaylov (“sixth applicant”) (together referred to as “the applicants”), on 21 February 2008 (application nos. 11867/08 and 11868/08), 7 June 2008 (application nos. 28969/08, 28971/08, 28979/08) and 23 July 2008 (application no. 37484/08).

2. The sixth applicant had no representative. All the other applicants were represented by Mr Vladislav Bychkovskiy, a lawyer practising in Miusynsk. The Ukrainian Government (“the Government”) were represented by their Agent, Mr Yuriy Zaytsev.

3. On 20 November 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 application at the same time (Article 29 § 3).

THE FACTS

I. THE CIRCUMSTANCES OF THE CASE

4. The applicants are Ukrainian nationals who live in Luhansk Region.

5. On various dates the Krasnyy Luch Court awarded the applicants the following sums in compensation for salary arrears to be paid by the State Open Joint Stock Company “Yanivska” Factory of the State Holding Company “Donbasantratsyt” (*Державне відкрите акціонерне товариство Центральна збагачувальна фабрика «Янівська» Державної холдингової компанії «Донбасантрацит»*):

- first applicant - 1,462.47 Ukrainian hryvnias¹ (UAH) by the judgment of 21 June 2002 and UAH 353.69² and 540.53³ by two separate judgments of 11 August 2005;
- second applicant – UAH 2,906.27⁴ by the judgment of 1 June 2005;
- third applicant – UAH 4,426.51⁵ by the judgment of 8 July 2005;
- fourth applicant – UAH 4,948.23⁶ by the judgment of 11 May 2005;
- fifth applicant – UAH 3,992.99⁷ by the judgment of 17 December 2003 and 1,415.54⁸ by the judgment of 31 August 2005;
- sixth applicant - UAH 5,556⁹ by the judgment of 1 February 2007 and UAH 3,940¹⁰ by the judgment of 21 June 2007.

6. All the judgments became final but remain unenforced owing to the debtor's lack of funds.

7. On 20 March 2007 the Ministry of Coal Industry of Ukraine ordered liquidation of the debtor.

II. RELEVANT DOMESTIC LAW

8. The relevant domestic law is summarised in the judgment of *Sokur v. Ukraine* (no. 29439/02, § 17-22, 26 April 2005).

¹ Approximately 295 euros (EUR).

² Approximately EUR 58.

³ Approximately EUR 88.

⁴ Approximately EUR 465.

⁵ Approximately EUR 738.

⁶ Approximately EUR 767.

⁷ Approximately EUR 625.

⁸ Approximately EUR 232.

⁹ Approximately EUR 886.

¹⁰ Approximately EUR 595.

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 ARTICLE 6 § 1 OF THE CONVENTION AND ARTICLE 1 OF PROTOCOL NO. 1 TO THE CONVENTION

10. The applicants complained about the 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 submitted that the first and the fifth applicants had failed to institute enforcement proceedings in respect of the judgments given in their favour and had therefore not exhausted all the remedies available to them under the Ukrainian law.

12. The applicants disagreed.

13. The Court finds that it is inappropriate to require an individual who has obtained judgment against the State at the end of legal proceedings to then bring enforcement proceedings to obtain satisfaction (see, for example, *Scordino v. Italy (no. 1)* [GC], no. 36813/97, § 198, ECHR 2006-V; and *Lizanets v. Ukraine*, no. 6725/03, § 43, 31 May 2007). It therefore rejects the Government's objection.

14. The Court notes that the applicants' complaints 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

15. The Government maintained that there had been no breach of any of the provisions of the Convention as the applicants' right to have the judgments in their favour enforced has never been contested and the State authorities had taken all necessary measures to enforce the judgments in question.

16. The applicants disagreed.

17. The Court observes that it frequently found violations of Article 6 § 1 of the Convention and Article 1 of Protocol No. 1 in cases raising similar issues to the present applications (see, among many other authorities, *Sokur v. Ukraine*, § 37, cited above; and *Anatskiy v. Ukraine*, no. 10558/03, § 23, 13 December 2005) and that the Government have not put forward any fact or argument capable of persuading it to reach a different conclusion in the present cases.

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

III. APPLICATION OF ARTICLE 41 OF THE CONVENTION

19. 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

20. The applicants claimed the judgments debts due to them and the following amounts in respect of pecuniary losses, in particular, inflation losses and in certain cases 3%-rate exemplary damages, and non-pecuniary damage, respectively:

- first applicant - UAH 3,041.47 and 163,490.8;
- second applicant - UAH 2,548.74 and 77,108.38;
- third applicant - UAH 3,825.49 and 90,010;
- fourth applicant - UAH 4,366.86 and 98,575.45;
- fifth applicant - UAH 6,219.75 and 175,141.39;
- sixth applicant - UAH 4,620 and EUR 3,000.

21. The Government did not question the applicants' right to have the judgments in their favour enforced and contested the remainder of the applicants' just satisfaction claims. In particular, they maintained that the applicants could have claimed compensation for inflation losses at the domestic level.

22. The Court notes that it is undisputed that the State still has an outstanding obligation to enforce the judgments given in the applicants' favour.

23. The Court further observes with regard to the claim for inflation losses that the applicants were not required to pursue the litigation suggested by the Government (see, for example, *Romanchenko v. Ukraine*, no. 5596/03, § 30, 22 November 2005; *Glova and Bregin v. Ukraine*, nos. 4292/04 and 4347/04, § 29, 28 February 2006). It further notes that the applicants submitted detailed calculations of the inflation losses. Taking into account the amounts awarded to the applicants, the periods within which the respondent State failed to enforce the judgments in the applicants' favour and the inflation indexes issued by the State Statistics Committee of Ukraine for the relevant periods, the Court makes the following awards in respect of inflation losses:

- first applicant - EUR 250;
- second applicant - EUR 210;
- third applicant - EUR 320;
- fourth applicant - EUR 370;
- fifth applicant - EUR 520;
- sixth applicant - EUR 440.

24. As regards the claims for exemplary damages based on the provisions of the Ukrainian domestic law, the Court has declined on several occasions to impose any form of punitive or exemplary damages (see, for example, *Akdivar and Others v. Turkey* (Article 50), 1 April 1998, § 38, Reports of Judgments and Decisions 1998-II; *Cable and Others v. the United Kingdom* [GC] nos. 24436/94 *et seq.*, 18 February 1999, § 30; and *Orhan v. Turkey*, no. 25656/94, § 448, 18 June 2002). It therefore rejects these claims.

25. As regards the claims for non-pecuniary damage, the Court notes that the applicants must have sustained some 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, the Court therefore makes the following awards in respect of non-pecuniary damage:

- first applicant - EUR 2,600;
- second applicant - EUR 1,400;
- third applicant - EUR 1,200;
- fourth applicant - EUR 1,400;
- fifth applicant - EUR 2,600;
- sixth applicant - EUR 800.

B. Costs and expenses

26. The first, second, third, fourth and fifth applicants claimed EUR 100 each for the legal assistance provided to them by their representative in the proceedings before the Court. The sixth applicant claimed EUR 140 in respect of the costs and expenses incurred in the domestic proceedings and before the Court.

27. The Government contested these claims stating that the applicants provided no relevant supporting documents in this respect.

28. According to the Court's case-law, an applicant is entitled to the reimbursement of costs and expenses only in so far as it has been shown that these have been actually and necessarily incurred and were reasonable as to quantum. The Court notes that the first, second, third, fourth and fifth applicants had failed to submit any supporting document or calculation in respect of the sums claimed. It makes no award for costs and expenses to these applicants. The Court further notes that the sixth applicant provided relevant supporting documents to the amount of EUR 100. It therefore awards the sixth applicant this amount.

C. Default interest

29. 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 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 the applicants, within three months from the date on which the judgment becomes final in accordance with Article 44 § 2 of the Convention, the outstanding judgments debts and the following sums in respect of pecuniary and non-pecuniary damage, respectively:

- first applicant EUR 250 (two hundred and fifty euros) and 2,600 (two thousand six hundred euros);
- second applicant EUR 210 (two hundred and ten euros) and 1,400 (one thousand four hundred euros);
- third applicant EUR 320 (three hundred and twenty euros) and 1,200 (one thousand two hundred euros);
- fourth applicant EUR 370 (three hundred and seventy euros) and 1,400 (one thousand four hundred euros);
- fifth applicant EUR 520 (five hundred and twenty euros) and 2,600 (two thousand six hundred euros);
- sixth applicant EUR 440 (four hundred and forty euros) and 800 (eight hundred euros),

and EUR 100 (one hundred euros) to sixth applicant for costs and expenses, 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;

(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