



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

1959 · 50 · 2009

FIFTH SECTION

CASE OF LOGACHOVA AND OTHERS v. UKRAINE

(Applications nos. 4510/05, 13273/05, 26704/06 and 30757/06)

JUDGMENT

STRASBOURG

10 December 2009

FINAL

10/05/2010

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 Logachova 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,

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 four applications against Ukraine lodged with the Court under Article 34 of the Convention for the Protection of Human Rights and Fundamental Freedoms (“the Convention”) by four Ukrainian nationals (“the applicants”):

- i. no. 4510/05, lodged on 22 January 2005 by Mrs Zinaida Yevgenyevna Logachova, who was born in 1948 and lives in Illichivsk, Odessa region, Ukraine;
- ii. no. 13273/05, lodged on 30 March 2005 by Mr Leonid Vladimirovich Ostroverkhov, who was born in 1956 and lives in Donetsk, Ukraine;
- iii. no. 26704/06, lodged on 20 June 2006 by Mr Aleksandr Ivanovich Gorovenko, who was born in 1937 and lives in Snezhnoye, Donetsk region, Ukraine;
- iv. no. 30757/06, lodged on 14 July 2006 by Mr Ivan Fedorovich Antipenko, who was born in 1940 and lives in Slovyansk, Donetsk region, Ukraine.

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

3. On 15 October 2008 the President of the Fifth Section decided to communicate to the Government the applicants' complaints under Article 6 § 1 of the Convention concerning the lengthy non-enforcement of decisions in their favour. 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. On various dates each of the applicants received one or more final decisions awarding payments from companies (see appendix for details) in which the State holds at least 25% of the share capital, and instituted enforcement proceedings to collect the payments.

5. Some of the applicants disagreed with the amounts awarded to them in the above decisions. Mr Ostroverkhov, for instance, appealed against the decision of 26 June 2000 in his favour but it appears that he failed to comply with the procedural requirements and his appeals were rejected. He did not appeal against the decision of 24 May 2002.

6. After the decisions in the applicants' favour had become final, insolvency or liquidation proceedings against the debtors were initiated. On that account, the State Bailiffs' Service terminated the enforcement proceedings against them and transferred the applicants' writs of enforcement to the relevant bankruptcy trustees or liquidation commissions for further processing. At the end, some of the debtors were liquidated.

7. The decisions in the applicants' favour remain unenforced.

II. RELEVANT DOMESTIC LAW

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

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. LENGTHY NON-ENFORCEMENT OF THE DOMESTIC COURT DECISIONS

10. The applicants complained that the State authorities had failed to enforce the decisions in their favour in due time, contrary to Article 6 § 1 of the Convention. Mr Gorovenko also complained under Article 3 of the

Convention in this respect. The Court, being master of characterisation to be given in law to the facts of the case, will consider these complaints solely under Article 6 § 1 of the Convention, which reads as follows:

“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

1. The parties' submissions

11. The Government submitted that the applicants had failed to exhaust domestic remedies as required by Article 35 § 1 of the Convention. In particular, they maintained 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 companies, and had failed to challenge the liquidation commission's inactivity before the relevant commercial court or to apply to any domestic court to challenge the allegedly inadequate enforcement by the Bailiffs' Service of the decisions in their favour.

12. The Government also contended that Mrs Logachova had lodged her application eight months before the impugned decision had been taken in her favour. They further maintained that the applicant had failed to clarify her complaints before the Court as regards either the date of the decision or the amount awarded that remained unpaid. They thus concluded that the applicant could not be considered the “victim” of the alleged violation.

13. The Government further asserted that Mr Gorovenko had failed to comply with the six-month rule laid down in Article 35 § 1 of the Convention. In particular, according to them, the debtor company Ukrvugleekologiya was private and the State's responsibility had been limited to the conduct of the State Bailiffs' Service only. As the bailiff had terminated the enforcement proceedings in the applicant's case on 10 July 2001 and transferred his writ of enforcement for further processing to a bankruptcy trustee, the six-month time-limit had started to run on that date but the applicant had not lodged his application with the Court until 20 June 2006. The Government did not provide any documents in support of their contention as to the private nature of the debtor company.

14. The applicants disagreed with the Government. In particular, Mr Gorovenko furnished a copy of a letter of 14 November 2006 by which the Lugansk Commercial Court had informed him that the insolvency proceedings against the debtor company Ukrvugleekologiya had been suspended because the State's share in that company exceeded 25% and,

pursuant to the Forced Sale of Property Moratorium Act of 29 November 2001, the forced sale of its property had been barred.

2. The Court's assessment

15. As regards the Government's objection that the applicants had failed to exhaust domestic remedies, the Court notes that similar objections have already been dismissed in a number of judgments it has adopted (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 dismissed in the instant case for the same reasons.

16. As to the victim status of Mrs Logachova, the Court notes that in her initial submissions the applicant complained about the matters other than the lengthy non-enforcement of court decision given in her favour; the latter was actually raised in her application form of 8 April 2006. The Court further does not agree with the Government's assertion that the applicant had failed to formulate her complaint in more clear terms as she expressly referred in her above-mentioned application form to the court decision and to the sum awarded, which, according to her, remained unpaid. Accordingly, the Court dismisses the Government's objection.

17. As to the alleged failure by Mr Gorovenko to comply with the six-month rule, the Court, having regard to the parties' submissions, comes to the conclusion that the debtor company was not private and that the enforcement of the court decision at issue was impeded by the insolvency proceedings and the moratorium on the forced sale of the debtor's property. On numerous occasions the Court has held that there is no effective remedy under Ukrainian law against the lengthy non-enforcement of a court decision (see, among other authorities, *Sychev*, cited above, § 63). As long as the court decision at issue remains unenforced, the six-month time-limit has not yet started to run, contrary to what the Government argued. The Court therefore dismisses the Government's objection.

18. The Court notes that the complaints concerning the lengthy non-enforcement of the court decisions in the applicant's favour 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

19. The Government advanced the standard arguments they usually put forward in cases concerning the lengthy non-enforcement of domestic court judgments, concluding that there had been no violation of Article 6 § 1 of the Convention.

20. The applicants disagreed with the Government.

21. The Court notes that the decisions in the applicants' favour remained unenforced for two years and five months, at least.

22. The Court reiterates that it has already found violations of Article 6 § 1 of the Convention in cases similar to the present applications (see, among other authorities, *Sokur*, cited above, § 37).

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 in respect of the lengthy non-enforcement of the decisions in each of the applicants' favour in the present case.

III. OTHER ALLEGED VIOLATIONS OF THE CONVENTION

25. Mrs Logachova and Mr Ostroverkhov, relying on Article 6 § 1 of the Convention, challenged the amounts awarded to them by the domestic courts.

26. Mr Ostroverkhov additionally complained under Articles 1, 8 and 14 of the Convention that the State authorities had failed to implement the social guarantees to which he was entitled under domestic law as a result of his work-related injury.

27. Having carefully considered the applicants' submissions in the light of all the material in its possession, the Court finds that, 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.

28. It follows that these parts of the applications must be declared inadmissible as being manifestly ill-founded, pursuant to Article 35 §§ 3 and 4 of the Convention.

IV. 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. The applicants submitted different claims (see appendix) in respect of pecuniary and non-pecuniary damage.

31. The Government contested these claims as excessive and unsubstantiated.

32. The Court notes that it is undisputed that the State still has an outstanding obligation to enforce the decisions at issue. It further dismisses the remainder of the applicants' claims for pecuniary damage as unsubstantiated (see, by contrast, *Maksimikha v. Ukraine*, no. 43483/02, § 29, 14 December 2006) and, ruling on an equitable basis, makes the following awards in respect of non-pecuniary damage: Mrs Logachova – EUR 1,600, Mr Gorovenko – EUR 2,000 and Mr Antipenko – EUR 2,600.

B. Costs and expenses

33. Mr Ostroverkhov and Mr Gorovenko also claimed 273.51 and 70.26 Ukrainian hryvnias (about 24 and 6 euros (EUR)), respectively, in reimbursement of their costs and expenses incurred before the Court.

34. The Government contested these claims.

35. 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. In the present case, regard being had to the information in its possession and the above criteria, the Court considers it reasonable to award appropriate sums for the proceedings before the Court.

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 concerning the lengthy non-enforcement of the decisions in the applicants' favour admissible and the remainder of the applications inadmissible;
3. *Holds* that there has been a violation of Article 6 § 1 of the Convention;

4. *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 debts resulting from the decisions given in the applicants' favour and the following amounts for non-pecuniary damage and costs and expenses:

- Mrs Logachova – EUR 1,600 (one thousand six hundred euros) in respect of non-pecuniary damage;
- Mr Ostroverkhov – EUR 24 (twenty four euros) in respect of costs and expenses;
- Mr Gorovenko – EUR 2,000 (two thousand euros) in respect of non-pecuniary damage and EUR 6 (six euros) in respect of costs and expenses; and
- Mr Antipenko – EUR 2,600 (two thousand six hundred euros) in respect of non-pecuniary damage;
- plus any tax that may be chargeable to the applicants;

(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;

5. *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

APPENDIX

No.	Appl. no.	Applicants	Decision taken in the applicant's favour	Awarded sum (UAH)	Enforcement proceedings initiated on	Debtor	Just satisfaction claims			Just satisfaction award
							Pecuniary damage	Non-pecuniary damage	Costs and expenses	
1.	4510/05	LOGACHOVA Zinaida Yevgenyevna	28 September 2005, Prymorsky District Court of Odessa	6,338.56 ≈ EUR 1,052	11 November 2005	Black and Azov Seas' Shipping Lanes Enterprise (Чорноморсько-Азовське виробничо-експлуатаційне управління морських шляхів "Чоразморшлях")	Outstanding debt in accordance with the domestic decision	EUR 50,000	Not claimed	EUR 1,600 (in respect of non-pecuniary damage)
2.	13273/05	OSTROVERKHOV Leonid Vladimirovich	26 June 2000, Petrovsky District Court of Donetsk	26,305.20 ≈ EUR 5,168.45 and 123.77 ≈ EUR 24.32 in monthly payments	12 July 2000	Petrovska State Mine (державне підприємство «Шахта «Петровська»)	Outstanding debts in accordance with the domestic decisions	Not claimed	UAH 273.51 ≈ EUR 24 (incurred before the Court)	EUR 24 (in respect of costs and expenses)
			24 May 2002, Petrovsky District Court of Donetsk	3,387.63 ≈ EUR 716.84	16 July 2002					
3.	26704/06	GOROVENKO Aleksandr Ivanovich	22 April 1997, Snezhnoye Town Court	1,242.50 ≈ USD 674.17	2 June 1997	Mechanisation Department of the Ukrvugleekologiya Regional Production Association (Виробниче управління механізації Регіонального виробничого об'єднання «Укрвуглеєкологія»)	EUR 2,000	EUR 2,000	UAH 70.26 ≈ EUR 6 (incurred before the Court)	EUR 2,000 (in respect of non-pecuniary damage) + EUR 6 (in respect of costs and expenses)
4.	30757/06	ANTIPENKO Ivan Fedorovich	19 July 2000, Labour Disputes Commission	406.32 ≈ EUR 80.16	not specified	Sloviansky Keramichny Kombinat JSC (BAT «Слов'янський керамічний комбінат»)	UAH 35,000 ≈ EUR 3,095.27 (inflation losses) + UAH 20,000 ≈ EUR 1,768.72 (damage to health)	UAH 35,000 ≈ EUR 3,095.27	Not claimed	EUR 2,600 (in respect of non-pecuniary damage)
			15 November 2000, Slovyansk Town Court	14,732.17 ≈ EUR 3,158.50 and 240.33 ≈ EUR 51.53 in monthly payments	22 December 2000					
			15 January 2001, Labour Disputes Commission	421.80 ≈ EUR 81.60	26 January 2001					
			15 January 2001, Labour Disputes Commission	48.97 ≈ EUR 9.5	26 January 2001					
			15 March 2001, Labour Disputes Commission	720.99 ≈ EUR 146.11	21 March 2001					
			12 September 2001, Slovyansk Town Court	13,029.79 ≈ EUR 2,674.26	22 October 2001					