



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

1959 · 50 · 2009

FIFTH SECTION

**CASE OF TAMARA VASILYEVNA LEN AND
GRIGORIY KUZMICH LEN v. UKRAINE**

(Application no. 852/05)

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 Tamara Vasilyevna Len and Grigoriy Kuzmich Len
v. Ukraine,

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

Peer Lorenzen, *President*,
Renate Jaeger,
Karel Jungwiert,
Mark Villiger,
Isabelle Berro-Lefèvre,
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 an application (no. 852/05) 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, Ms Tamara Vasilyevna Len and Mr Grigoriy Kuzmich Len (“the applicants”), on 9 December 2004.

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

3. On 16 December 2008 the Court declared the application partly inadmissible and decided to communicate to the Government the complaints under Article 6 § 1 and Article 13 of the Convention and Article 1 of Protocol No. 1 concerning the lengthy non-enforcement of decisions given in the applicants' favour. It also decided to examine the merits of the application at the same time as its admissibility (Article 29 § 3). The case was given priority under Rule 41 of the Rules of the Court.

THE FACTS

I. THE CIRCUMSTANCES OF THE CASE

4. The applicants were born in 1945 and 1937 respectively and live in Slovyansk, Donetsk region, Ukraine.

5. At the material time the applicants worked at the Soda State Plant (BAT «Содовий завод»).

6. On 31 October 1997 and 14 May 2003 the Slovyansk Town Court awarded Mrs Len 1,709.25 and 5,513.92 Ukrainian hryvnias (UAH)¹ in salary arrears and other payments, to be paid by the above-mentioned company.

7. On 3 November 1997 and 22 February 2001 the Slovyansk Town Court, and on 22 September 2003 the Labour Disputes Commission, awarded Mr Len the amounts of UAH 2,211.18 (about USD 1,176.47), UAH 9,157.04 (about EUR 1,855.94) and UAH 2,356.92 (about EUR 399.22) in salary arrears, to be paid by the above-mentioned company.

8. These decisions became final and the State Bailiffs' Service instituted proceedings to enforce them.

9. On 3 January 2001 the Donetsk Arbitration Court (after June 2001 – the Donetsk Commercial Court) instituted insolvency proceedings against the debtor company. On 4 September 2003 the court, having declared the debtor insolvent, ordered its liquidation, which is still pending.

10. The decisions given in the applicants' favour have still not been enforced.

II. RELEVANT DOMESTIC LAW

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

THE LAW

I. LENGTHY NON-ENFORCEMENT OF THE DECISIONS IN THE APPLICANTS' FAVOUR

12. The applicants complained that by failing to enforce the decisions given in their favour the respondent State had violated Article 6 § 1 of the Convention and Article 1 of Protocol No. 1, which read, in so far as relevant, 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. ...”

¹ About 909.66 US dollars (USD) and 923.70 euros (EUR) respectively at the material time.

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.

The preceding provisions shall not, however, in any way impair the right of a State to enforce such laws as it deems necessary to control the use of property in accordance with the general interest”

They also complained that they had no effective remedy for their complaints, in breach of Article 13 of the Convention, which reads as follows:

“Everyone whose rights and freedoms as set forth in [the] Convention are violated shall have an effective remedy before a national authority notwithstanding that the violation has been committed by persons acting in an official capacity.”

A. Admissibility

13. 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 against the debtor company, and had failed to apply to any domestic court to challenge the allegedly inadequate enforcement by the Bailiffs' Service of the decisions in their favour.

14. The applicants disagreed.

15. The Court notes that similar objections have already been rejected in a number of judgments adopted by the Court (see *Sokur v. Ukraine* (dec.), no. 29439/02, 16 December 2003; *Sychev v. Ukraine*, no. 4773/02, §§ 42-46, 11 October 2005; and *Trykhlib v. Ukraine*, no. 58312/00, §§ 38-43, 20 September 2005). The Court considers that the objections in the instant case must be rejected for the same reasons.

16. The Court notes that the 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

17. The Government contended that there had been no violation of Article 6 § 1 or Article 13 of the Convention, or of Article 1 of Protocol No. 1.

18. The applicants disagreed.

19. The Court notes that the decisions in the applicants' favour have remained unenforced for at least six years

20. The Court reiterates that it has already found violations of Article 6 § 1 and Article 13 of the Convention and Article 1 of Protocol No. 1 in similar cases (see, among other authorities, *Sokur v. Ukraine*, no. 29439/02, §§ 30-37, 26 April 2005; *Shmalko v. Ukraine*, no. 60750/00, §§ 55-57, 20 July 2004; and *Voytenko v. Ukraine*, no. 18966/02, §§ 43, 48 and 55, 29 June 2004).

21. 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.

22. There has, accordingly, been a violation of Article 6 § 1 and Article 13 of the Convention and a violation of Article 1 of Protocol No. 1 in respect of the lengthy non-enforcement of the decisions in the applicants' favour in the present application.

II. APPLICATION OF ARTICLE 41 OF THE CONVENTION

23. 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

24. The applicants claimed, in respect of pecuniary damage, the amounts awarded in the decisions given in their favour. They also claimed compensation for inflation losses and loss of profits (Ms Len claimed USD 3,335.72 and EUR 1,299.38; Mr Len claimed USD 4,733.48 and EUR 3,490.51). In support of their claim for inflation losses, the applicants presented calculations based on the average consumer prices inflation index. Additionally, they claimed USD 43,200 and USD 33,600, respectively, in accrued salary arrears allegedly owed to them under domestic law provisions because of their employer's failure to pay them their salary in due time. Lastly, the applicants claimed the same amounts in respect of non-pecuniary damage.

25. The Government submitted that they did not question the necessity to enforce the decisions in the applicants' favour. However, they contested the rest of the claims as excessive and unsubstantiated.

26. In so far as the applicants claimed the amount awarded to them by the decisions concerned, the Court considers that it is undisputed that the

State still has an outstanding obligation to enforce these decisions (see paragraphs 6 and 7 above).

27. As to the claim for inflation losses, the Court notes that the Government merely disagreed with the method of calculation; they did not deny that the applicants had suffered inflation losses, nor did they provide an alternative calculation of the losses involved. The Court further notes that the applicants, in calculating their claims for inflation adjustment, applied the official rates, which are designed for Ukrainian hryvnias, to the awarded sums after conversion into euros and US dollars rather than to the principal sums in Ukrainian hryvnias. The Court cannot, therefore, accept these calculations. Taking into account the amounts awarded to the applicants, the periods within which the respondent State failed to enforce the decisions in the applicants' favour, and the above-mentioned average consumer prices inflation index for the relevant period, the Court calculates the inflation losses at EUR 900 and EUR 1,800, which the Court awards respectively to the applicants. It dismisses the remainder of the claim in respect of pecuniary damage as ill-founded.

28. The Court also awards the applicants, on an equitable basis, EUR 2,600 each in respect of non-pecuniary damage.

B. Costs and expenses

29. The applicants also claimed an unspecified amount for costs and expenses incurred before the Court. In support they provided postal vouchers to a total amount of UAH 230.45 (about EUR 20.55).

30. The Government contested this claim as unsubstantiated.

31. 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 the sum of EUR 20.55 under this head.

C. Default interest

32. 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. *Declares* the complaints under Articles 6 § 1 and 13 of the Convention and Article 1 of Protocol No. 1 to the Convention in respect of the lengthy non-enforcement of the decisions in the applicants' favour admissible;
2. *Holds* that there has been a violation of Article 6 § 1 of the Convention;
3. *Holds* that there has been a violation of Article 13 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 debts under the decisions given in the applicants' favour;
 - (b) that the respondent State is to pay the applicants, within three months from the date on which the judgment becomes final according to Article 44 § 2 of the Convention, the following amounts, to be converted into the national currency of the respondent State at the rate applicable at the date of settlement:
 - (i) EUR 900 (nine hundred euros) to Ms Len and EUR 1,800 (one thousand eight hundred euros) to Mr Len in respect of pecuniary damage;
 - (ii) EUR 2,600 (two thousand six hundred euros) each, plus any tax that may be chargeable, in respect of non-pecuniary damage; and
 - (iii) EUR 20.55 (twenty euros fifty-five cents), plus any tax that may be chargeable, in respect of costs and expenses;
 - (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' 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