



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

SECOND SECTION

CASE OF KRUTKO v. UKRAINE

(Application no. 22246/02)

JUDGMENT

STRASBOURG

22 November 2005

FINAL

22/02/2006

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 Krutko v. Ukraine,

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

Mr J.-P. COSTA, *President*,

Mr I. CABRAL BARRETO,

Mr V. BUTKEVYCH,

Mrs A. MULARONI,

Mrs E. FURA-SANDSTRÖM,

Ms D. JOČIENĖ,

Mr D. POPOVIĆ, *judges*,

and Mrs S. DOLLÉ, *Section Registrar*,

Having deliberated in private on 3 November 2005,

Delivers the following judgment, which was adopted on that date:

PROCEDURE

1. The case originated in an application (no. 22246/02) against Ukraine lodged with the Court under Article 34 of the Convention for the Protection of Human Rights and Fundamental Freedoms (“the Convention”) by a Ukrainian national, Mr Sergey Nikolayevich Krutko (“the applicant”), on 2 May 2002.

2. The Ukrainian Government (“the Government”) were represented by their Agents, Mrs V. Lutkovska and Mrs Z. Bortnovska.

3. On 2 July 2003 the Court decided to communicate the application to the Government. Under the provisions of Article 29 § 3 of the Convention, it decided to examine the merits of the application at the same time as its admissibility.

THE FACTS

I. THE CIRCUMSTANCES OF THE CASE

4. The applicant was born in 1975 and lives in Kharkiv, Ukraine.

5. On 18 January 2000 the Moskovskyi District Court of Kharkiv ordered the State Enterprise “Kharkivskyi Elektromekhanichni Zavod” to pay the applicant UAH 1,730.48¹ in salary arrears.

6. On 6 February 2000 the Moskovskyi District Bailiffs’ Service instituted enforcement proceedings in respect of that judgment.

1. Around 285 euros – “EUR”.

7. In August 2003 the applicant instituted proceedings in the same court against the Bailiffs' Service seeking compensation for failure to enforce the judgment in his favour. On 17 September 2003 the court found against the applicant, finding no fault on the part of the Bailiffs. The applicant did not appeal against that decision.

8. On 8 August 2003 the applicant received the full amount of the judgment debt.

II. RELEVANT DOMESTIC LAW

9. The relevant domestic law is summarised in the judgment of *Romashov v. Ukraine* (no. 67534/01, §§ 16-18, 27 July 2004).

THE LAW

I. SCOPE OF THE CASE

10. The Court notes that, after the communication of the case to the respondent Government, the applicant introduced new complaints about the alleged non-enforcement of the judgment of the Moskovskyi District Court of Kharkiv of 3 November 2003, amended by the decision of the Kharkiv Regional Court of Appeal of 25 December 2003, and about the alleged failure of the Supreme Court of Ukraine to consider his appeal in cassation in due time.

11. According to the above decisions, the courts ordered the State Enterprise "Kharkivskyi Elektromekhanichnyi Zavod" to pay the applicant UAH 1,634.03¹ in compensation for the delay in payment of salary arrears. The applicant's appeal in cassation against these decisions is still pending before the Supreme Court of Ukraine.

12. In the Court's view, the new complaints are not an elaboration of the applicant's original complaint to the Court, lodged approximately two years earlier, about the State authorities' alleged failure to enforce the judgment of the Moskovskyi District Court of Kharkiv of 18 January 2000, and on which the parties have commented. The Court considers, therefore, that it is not appropriate now to take these matters up separately (see *Piryanik v. Ukraine*, no. 75788/01, § 20, 19 April 2005).

1. Around EUR 269.

II. ADMISSIBILITY

13. The applicant complained about the State authorities' failure to enforce the judgment of the Moskovskyi District Court of Kharkiv of 18 January 2000 in due time. He invoked Article 6 § 1 of the Convention, which provides, insofar 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. ..."

14. The Government raised objections regarding the applicant's victim status and exhaustion of domestic remedies similar to those which the Court has already dismissed in the case of *Romashov v. Ukraine* (see the *Romashov* judgment, cited above, §§ 23-33). The Court considers that the present objections must be rejected for the same reasons.

15. The Court concludes that the application raises serious issues of fact and law under the Convention, the determination of which requires an examination of the merits. It finds no ground for declaring it inadmissible.

III. MERITS

16. In their observations, the Government contended that there had been no violation of Article 6 § 1 of the Convention (as in the case of *Romashov*, cited above, § 37).

17. The applicant disagreed.

18. The Court notes that the judgment of the Moskovskyi District Court of Kharkiv of 18 January 2000 remained unenforced for three years and six months.

19. The Court recalls that it has already found violations of Article 6 § 1 of the Convention in cases raising issues similar to the present application (see, *Romashov* judgment, cited above, §§ 42-46).

20. Having examined all the material submitted to it, the Court considers that the Government have not put forward any fact or convincing argument capable of persuading it to reach a different conclusion in the present case. There has, accordingly, been a violation of Article 6 § 1 of the Convention.

IV. APPLICATION OF ARTICLE 41 OF THE CONVENTION

21. 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, costs and expenses

22. The applicant claimed UAH 3,634.03¹ in respect of pecuniary damage and UAH 335.60² in relation to his legal and postal expenses. He also claimed UAH 10,000³ in respect of non-pecuniary damage.

23. The Government contended that the applicant had not substantiated the amounts claimed and submitted that the finding of a violation would constitute sufficient just satisfaction.

24. Making its assessment on an equitable basis, as required by Article 41 of the Convention, the Court considers it reasonable to award the applicant a global sum of EUR 1,680 in respect of pecuniary and non-pecuniary damage, costs and expenses.

B. Default interest

25. 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 application admissible;
2. *Holds* that there has been a violation of Article 6 § 1 of the Convention;
3. *Holds*
 - (a) that the respondent State is to pay the applicant, within three months from the date on which the judgment becomes final according to Article 44 § 2 of the Convention, EUR 1,680 (one thousand six hundred and eighty euros) in respect of pecuniary and non-pecuniary damage, costs and expenses, plus any tax that may be chargeable, to be converted into the currency of the respondent State at the rate applicable on the date of settlement;
 - (b) that from the expiry of the above-mentioned three months until settlement simple interest shall be payable on the above amount at a rate

1. Around EUR 598.

2. Around EUR 55.

3. Around EUR 1,645.

equal to the marginal lending rate of the European Central Bank during the default period plus three percentage points;

4. *Dismisses* the remainder of the applicant's claim for just satisfaction.

Done in English, and notified in writing on 22 November 2005, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

S. DOLLÉ
Registrar

J.-P. COSTA
President