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

SECOND SECTION

CASE OF KOTLYAROV v. UKRAINE

(Application no. 43593/02)

JUDGMENT

STRASBOURG

13 December 2005

FINAL

13/03/2006

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 Kotlyarov v. Ukraine,

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

Mr A.B. BAKA, *President*,
Mr I. CABRAL BARRETO,
Mr K. JUNGWIERT,
Mr V. BUTKEVYCH,
Mr M. UGREKHELIDZE,
Mrs A. MULARONI,
Mrs E. FURA-SANDSTRÖM, *judges*,
and Mrs S. DOLLÉ, *Section Registrar*,

Having deliberated in private on 22 November 2005,

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

PROCEDURE

1. The case originated in an application (no. 43593/02) 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 Valeriy Aleksandrovich Kotlyarov (“the applicant”), on 25 October 2002.

2. The Ukrainian Government (“the Government”) were represented by their Agent, Mrs V. Lutkovska.

3. On 24 March 2005 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 1945 and lives in Lugansk.

5. On 26 May 2000, the Leninskyi District Court of Lugansk ordered the State Enterprise “Luganskyi Stankobudivelnyi Zavod” to pay the applicant UAH 1,240.65[1] in salary arrears and other payments.

6. On 8 June 2000 the Leninskyi District Bailiffs’ Service of Lugansk instituted enforcement proceedings.

1. Around 207 euros – “EUR”.

7. In August 2003 the applicant instituted proceedings in the same court against the Bailiffs' Service for failure to enforce the judgment in his favour. On 15 May 2001 the court found against the applicant, finding no fault on the part of the Bailiffs. On 18 June 2001 the Lugansk Regional Court of Appeal upheld the decision of the first-instance court.

8. On 1 February 2002 the Bailiffs' Service informed the applicant that the judgment given in his favour could not be enforced due to the large number of enforcement proceedings against the debtor and the fact that the procedure for the forced sale of assets belonging to the debtor had been suspended because of the moratorium on the forced sale of property belonging to State enterprises introduced by the Law of 29 November 2001.

9. In March 2002 the applicant instituted proceedings in the Leninskyi District Court of Lugansk against the Bailiffs' Service, seeking compensation for failure to enforce the judgment in his favour. On 7 May 2002 the court rejected his claim as being unsubstantiated. On 8 August 2002 and 9 January 2003, respectively, the Lugansk Regional Court of Appeal and the Supreme Court of Ukraine upheld that decision.

10. On 27 April 2005 the applicant received the full amount of the judgment debt.

II. RELEVANT DOMESTIC LAW

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

THE LAW

I. ADMISSIBILITY

12. The applicant complained about the State authorities' failure to enforce the judgment of the Leninskyi District Court of Lugansk of 26 May 2000 in due time. He further alleged that he had no effective domestic remedy by which to recover the debt owed to him by the debtor. He invoked Articles 6 § 1 and 13 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. ..."

Article 13

> "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. The Government's preliminary objections

13. 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* (cited above, §§ 23-33). The Court considers that the present objections must be rejected for the same reasons.

14. The Court concludes that the complaint under Article 6 § 1 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.

15. The Court does not find it necessary in the circumstances to consider the same complaint under Article 13 of the Convention (see *Derkach and Palek v. Ukraine*, nos. 34297/02 and 39574/02, § 42, 21 December 2004; and, *a contrario*, *Voytenko v. Ukraine*, no. 18966/02, 29 June 2004).

B. Other complaints

16. The applicant further complained about a violation of Article 4 of the Convention (freedom from slavery) on account of the non-enforcement of the judgment in his favour.

17. The Court finds that this part of the application is wholly unsubstantiated and must therefore be rejected as being manifestly ill-founded, pursuant to Article 35 §§ 3 and 4 of the Convention.

II. MERITS

18. 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).

19. The applicant disagreed.

20. The Court notes that the judgment of the Leninskyi District Court of Lugansk of 26 May 2000 remained unenforced for almost five years.

21. 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).

22. Having examined all the material submitted, 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.

III. 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 applicant claimed EUR 1,500 in respect of non-pecuniary damage.

25. The Government left the matter to the Court's discretion.

26. Making its assessment on an equitable basis, as required by Article 41 of the Convention, the Court considers it reasonable to award the applicant the requested amount of EUR 1,500 in respect of non-pecuniary damage.

B. Costs and expenses

27. The applicant did not submit any claim under this head. The Court therefore makes no award.

C. Default interest

28. 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 applicant's complaint under Articles 6 § 1 of the Convention admissible, and the remainder of the application inadmissible;

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 1,500 (one thousand five hundred euros) in respect of non-pecuniary damage, 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 equal to the marginal lending rate of the European Central Bank during the default period plus three percentage points;

Done in English, and notified in writing on 13 December 2005, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

S. DOLLÉ
Registrar

A.B. BAKA
President