



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

SECOND SECTION

CASE OF KONYUKHOV v. UKRAINE

(Application no. 1858/03)

JUDGMENT

STRASBOURG

17 January 2006

FINAL

17/04/2006

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 Konyukhov v. Ukraine,

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

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

Mr A.B. BAKA,

Mr I. CABRAL BARRETO,

Mr R. TÜRMEŇ,

Mr V. BUTKEVYCH,

Ms D. JOČIENĚ,

Mr D. POPOVIĆ, *judges*,

and Mrs S. DOLLĚ, *Section Registrar*,

Having deliberated in private on 13 December 2005,

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

PROCEDURE

1. The case originated in an application (no. 1858/03) 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 Oleksandr Vasylyovych Konyukhov (“the applicant”), on 10 December 2002.

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

3. On 23 November 2004 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 1956 and lives in the town of Kramatorsk, Ukraine.

A. First set of proceedings

5. In February 2002 the applicant instituted proceedings in the Kramatorsk Town Court against the Joint Stock Company

“Konstantinovskiy Metzavod” – a State-owned enterprise – seeking recovery of salary arrears and compensation. On 18 June 2002 the court awarded the applicant UAH 4,937.86 (around EUR 815) in salary arrears and other payments.

6. On 15 August 2002 the applicant lodged with the Kostyantynivka Town Bailiffs’ Service a writ of execution for the judgment of 18 June 2002. On the same date the Bailiffs’ Service instituted the enforcement proceedings.

7. On 31 October 2002 the Bailiffs’ Service informed the applicant that the judgment of 18 June 2002 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.

8. The judgment of 18 June 2002 remains unenforced.

B. Second set of proceedings

9. On 23 October 2002 the same court ordered the State Company “Domnaremont” to pay the applicant UAH 5,626.05 (around EUR 925) in salary arrears.

10. The applicant did not apply to the Bailiffs’ Service for the execution of the judgment. It remains unenforced.

II. RELEVANT DOMESTIC LAW

11. Article 18 § 1 (1) of the Law of Ukraine of 21 April 1999 “on Enforcement Proceedings” provides that a creditor must apply to the Bailiffs’ Service with a writ of execution to enable the latter to initiate enforcement proceedings in respect of the decision given in the creditor’s favour.

12. Other provisions of the relevant domestic law are summarised in the judgment of *Romashov v. Ukraine* (no. 67534/01, §§ 16-18, 27 July 2004).

THE LAW

I. ADMISSIBILITY

13. The applicant complained about the State authorities’ failure to enforce the judgments of the Kramatorsk Town Court of 18 June 2002 and

23 October 2002 given in his favour. He invokes Articles 6 § 1 and 13 of the Convention, which provide, 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.”

14. The Court notes that the above complaints concern the length of the non-enforcement of two judgments, one of which was submitted to the Bailiffs’ Service for execution, while the other was not. Thus, the complaints about the length of the non-enforcement of each judgment should be examined separately.

A. The applicant’s complaint about the non-enforcement of the judgment of 18 June 2002

15. The Government raised an objection that the applicant has not exhausted domestic remedies as he did not challenge the actions or alleged inactivity of the State Bailiffs’ Service before the domestic courts.

16. The Court recalls that it has already dismissed such a contention in similar cases (see the *Romashov* judgment, cited above, §§ 28-33) and finds no reason to reach a different conclusion in the present case. Accordingly, it dismisses the Government’s objection.

17. The Court takes the view that this aspect of the case 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.

B. The applicant’s complaint about the non-enforcement of the judgment of 23 October 2002

18. The Government contended that the applicant had not exhausted domestic remedies as he failed to lodge with the Bailiffs’ Service an application, or an execution writ, for the initiation of enforcement proceedings in respect of the judgment of 23 October 2002. The Government further submitted that the applicant had failed to ask to be included in the list of creditors established under the bankruptcy proceedings against the “Domnaremont” State Company.

19. The applicant generally disagreed.

20. The Court observes that the applicant failed to apply to the Bailiffs' Service to enforce the judgment of 23 October 2002 in accordance with the formalities prescribed by Ukrainian law. It considers that the provisions of Article 18 § 1 (1) of the Law "on Enforcement Proceedings" (paragraph 11 above), obliging creditors to go through the Bailiffs' Service, are not arbitrary or unreasonable and did not impose an excessive burden on the applicant. The Court therefore agrees with the Government that the applicant has failed to show that he took all reasonable steps to have this judgment enforced and, therefore, he has not exhausted the domestic remedies available to him under Ukrainian law. It follows that this part of the application must be rejected pursuant to Article 35 §§ 1 and 4 of the Convention.

II. MERITS

21. The Court will now examine the merits of the applicant's complaint about the length of the non-enforcement of the judgment of the Kramatorsk Town Court of 18 June 2002.

22. In their observations, the Government contended that there had been no violation of Articles 6 § 1 and 13 of the Convention (as in the case of *Romashov*, cited above, §§ 28-33 and 37).

23. The applicant disagreed.

24. The Court notes that the judgment of the Kramatorsk Town Court of 18 June 2002 has remained unenforced for over three years and five months.

25. The Court recalls that it has already found violations of Articles 6 § 1 and 13 of the Convention in cases raising issues similar to the present application (see, for instance, *Sokur v. Ukraine*, no. 29439/02, §§ 36-37, 26 April 2005, and *Voytenko v. Ukraine*, no. 18966/02, §§ 46-48, 29 June 2004).

26. 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 Articles 6 § 1 and 13 of the Convention.

III. APPLICATION OF ARTICLE 41 OF THE CONVENTION

27. 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

28. The applicant claimed UAH 4,937.86 (around EUR 815) and UAH 5,626.05 (around EUR 925), corresponding to the amounts of the judgments of the Kramatorsk Town Court of 18 June and 23 October 2002. The applicant further submitted that he suffered some pecuniary and non-pecuniary damage because of the length of the non-enforcement of the judgment. However, he did not specify the amount of his claim and left the matter to the Court’s discretion.

29. The Government maintained that the applicant’s claim was unsubstantiated and left the matter to the Court’s discretion.

30. In so far as the applicant claimed the amounts awarded to him by the judgments at issue, the Court, given its findings above, considers that the Government should pay him the judgment debt of 18 June 2002 in settlement of his pecuniary damage. As to the applicant’s claim for non-pecuniary damage, the Court, making its assessment on an equitable basis, as required by Article 41 of the Convention, awards the applicant EUR 1,640.

B. Costs and expenses

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

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 applicant’s complaints under Articles 6 § 1 and 13 of the Convention about the length of the non-enforcement of the judgment of

the Kramatorsk Town Court of 18 June 2002 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* that there has been a violation of Article 13 of the Convention.
4. *Holds*
 - (a) that the respondent State is to pay, within three months from the date on which the judgment becomes final according to Article 44 § 2 of the Convention, the debt still owed to him under the judgment of the Kramatorsk Town Court of 18 June 2002, as well as EUR 1,640 (one thousand six hundred and forty 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;
5. *Dismisses* the remainder of the applicant's claim for just satisfaction.

Done in English, and notified in writing on 17 January 2006, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

S. DOLLÉ
Registrar

J.-P. COSTA
President