



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

FIFTH SECTION

CASE OF KRYACHKOV v. UKRAINE

(Application no. 7497/02)

JUDGMENT

STRASBOURG

1 June 2006

FINAL

01/09/2006

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 Kryachkov v. Ukraine,

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

Mr P. LORENZEN, *President*,

Mrs S. BOTOUCHAROVA,

Mr K. JUNGWIERT,

Mr V. BUTKEVYCH,

Mrs M. TSATSA-NIKOLOVSKA,

Mr R. MARUSTE,

Mrs R. JAEGER, *judges*,

and Mrs C. WESTERDIEK, *Section Registrar*,

Having deliberated in private on 9 May 2006,

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

PROCEDURE

1. The case originated in an application (no. 7497/02) 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 Viktor Nikolayevich Kryachkov (“the applicant”), on 15 September 2001.

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

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.

4. On 1 April 2006 this case was assigned to the newly constituted Fifth Section (Rule 25 § 5 and Rule 52 § 1).

THE FACTS

I. THE CIRCUMSTANCES OF THE CASE

5. The applicant was born in 1958 and lives in the town of Makyyvka, the Donetsk region.

6. The applicant is an employee of the State Joint Stock Company “Mine Zuyevska”.

A. First set of proceedings

7. In 2000 the applicant instituted proceedings in the Khartsyzk Town Court against his employer seeking recovery of salary arrears and compensation.

8. On 6 November 2000 the court found for the applicant and ordered the company to pay him UAH 860.90 (around 142 euros – “EUR”). The judgment was not appealed against and became final on 17 November 2000.

9. On 6 December 2000 the Zhdanivskyi Local Bailiffs’ Service instituted enforcement proceedings.

10. According to the Government, by two instalments of 16 and 18 September 2003, the full amount awarded by the judgment was transferred to the applicant’s bank account. The applicant did not contest this fact.

B. Second set of proceedings

11. In 2001 the applicant instituted proceedings in the Khartsyzk Town Court against his employer seeking recovery of salary arrears and higher sums of disability benefits, which had been allegedly incorrectly calculated by the defendant.

12. On 7 May 2001 the court found in part for the applicant. The court ordered the company to pay the applicant UAH 975.94 (around 161 euros – “EUR”) in salary arrears and UAH 590 (around 98 euros – “EUR”) in compensation for non-pecuniary damage, and rejected the applicant’s claim for higher sums of disability benefits.

13. The applicant did not appeal in cassation against this judgment, as he did not trust the higher judicial authorities.

II. RELEVANT DOMESTIC LAW

14. 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

A. Complaint about the non-enforcement of the judgment of 6 November 2000

15. The applicant complained in substance under Article 6 § 1 of the Convention about the State authorities’ failure to enforce the judgment of

the Khartsyzk Town Court of 6 November 2000 in due time. Article 6 § 1 of the Convention 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. ...”

16. 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.

17. The Court considers that the applicant’s complaint under Article 6 § 1 of the Convention about the delay in enforcement of the judgment of the Khartsyzk Town Court of 6 November 2000 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 this part of the application inadmissible.

B. Other complaints

1. Fair hearing

18. The applicant further complained in substance under Article 6 § 1 of the Convention about the outcome of the second set of the proceedings before the domestic courts, as the Khartsyzk Local Court, in its judgment of 7 May 2001, had failed to grant his claim for higher sums of disability benefits.

19. The Court reiterates that the rule of exhaustion of domestic remedies referred to in Article 35 § 1 of the Convention obliges applicants to use first the remedies that are normally available and sufficient in the domestic legal system to enable them to obtain redress for the breaches alleged. The Court notes that the applicant did not appeal in cassation to the Donetsk Regional Court against the judgment of 7 May 2001. The Court recalls that the existence of mere doubts as to the prospects of success of a particular remedy, which is not obviously futile, is not a valid reason for failing to exhaust domestic remedies (see the *Van Oosterwijck v. Belgium* judgment of 6 November 1980, Series A no. 40, p. 18, § 37, and *A.B. v. the Netherlands*, no. 37328/97, 29 January 2002, § 72). The applicant accordingly cannot be regarded as having exhausted all 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.

2. *Article 8 § 1 of the Convention*

20. The applicant finally complained about a violation of his right to a family, as his employer constantly failed to honour its obligation to pay the applicant his salary and other benefits. The applicant invokes Article 8 § 1 of the Convention.

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

II. MERITS

22. In their observations on the merits of the applicant's complaint about the non-enforcement of the judgment of 6 November 2000, 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).

23. The applicant did not submit any additional comments to his original complaint.

24. The Court notes that the judgment of the Khartsyzk Town Court of 6 November 2000 remained unenforced for almost three years.

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

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 Article 6 § 1 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 submitted that he had suffered some pecuniary and non-pecuniary damage because of the length of the non-enforcement of the judgment. However, he was not able to specify the amount of his claim and left the matter to the Court's discretion.

29. The Government maintained that the applicant had failed to submit his just satisfaction claims within the time limit set by the Court. The Government submitted that the finding of a violation would constitute sufficient just satisfaction.

30. The Court observes that the applicant did not submit his just satisfaction claims, as he had been invited by the Court, following the receipt of the Government's observations. Nonetheless, the applicant confirmed the claims which he had made at the time when he had lodged the present application with the Court. Accordingly, the Court, making its assessment on an equitable basis, as required by Article 41 of the Convention, awards the applicant EUR 800 in respect of non-pecuniary damage.

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 complaint under Article 6 § 1 of the Convention about the delay in the enforcement of the judgment of the Khartsyzk Town Court of 6 November 2000 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 800 (eight 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 1 June 2006, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Claudia WESTERDIEK
Registrar

Peer LORENZEN
President