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

FIFTH SECTION

CASE OF KIRILO v. UKRAINE

(Application no. 19037/03)

JUDGMENT

STRASBOURG

10 August 2006

FINAL

10/11/2006

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 Kirilo 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,
Mr J. BORREGO BORREGO, *judges*,
and Mrs C. WESTERDIEK, *Section Registrar*,

Having deliberated in private on 10 July 2006,

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

PROCEDURE

1. The case originated in an application (no. 19037/03) 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 Igor Viktorovich Kirilo ("the applicant"), on 11 April 2003.

2. The Ukrainian Government ("the Government") were represented by their Agents, Mrs Z.Bortnovska, Mrs V.Lutkovska and Mr Y.Zaytsev.

3. On 21 June 2004 the Court decided to communicate the complaints under Article 6 § 1 of the Convention and Article 1 of Protocol No. 1 concerning the non-enforcement of the judgment in the applicant's favour 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 1976 and resides in the town of Novogrodovka, Donetsk region, Ukraine.

6. The applicant instituted proceedings in the Novogrodovskiy Town Court of the Donetsk Region against the Novogrodovskaya Mining

Company No. 1/3 – a State-owned enterprise – to recover salary arrears and compensation for damage to his health.

7. On 28 March 2002 the Novogrodovskiy Town Court found in favour of the applicant (*Решения Новогродовского городского суда Донецкой области*) and awarded him UAH 4,133.81[1]. This judgment was sent for enforcement to the Novogrodovskiy Town Bailiffs' Service (*Отдел Государственной исполнительной службы Новогродовского городского управления юстиции*).

8. The applicant instituted proceedings in the Novogrodovskiy Town Court of the Donetsk Region against the Novogrodovskiy Town Bailiffs' Service for failure to enforce the judgment of 28 March 2002 in his favour. On 10 October 2002 the Town Court rejected the applicant's claim, finding that no fault had been committed by the Bailiffs' Service. The court stated that the Bailiffs' Service had acted properly in enforcing the judgment of 28 March 2002. However, by a number of decisions of the Commercial Court of the Donetsk Region, the Bailiffs' Service had been prohibited from selling the property of the Mining Company, due to the bankruptcy proceedings which had been initiated against the company. On 9 December 2002 the Court of Appeal of the Donetsk Region dismissed the applicant's appeal. On 3 October 2003 the Supreme Court of Ukraine rejected the applicant's appeal in cassation.

9. In June 2004 the applicant withdrew his writ of execution.

10. In August 2004 the judgment in the applicant's favour was enforced in full.

II. RELEVANT DOMESTIC LAW

11. The relevant domestic law is summarised in the judgment of *Sokur v. Ukraine* (no. 29439/02, § 17-22, 26 April 2005).

THE LAW

I. SCOPE OF THE CASE

12. The Court notes that, after the communication of the case to the respondent Government, the applicant introduced new complaint, alleging violation of Article 13 of the Convention on account of the non-enforcement of the judgment in his favour.

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1. At the material time approximately 925.30 euros (EUR).

13. In the Court's view, the new complaint is not an elaboration of the applicant's original complaints, lodged with the Court approximately two years earlier, 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).

II. ADMISSIBILITY

A. Complaint under Article 2 § 1 of the Convention

14. The applicant complained that the existing situation infringed his right to life under Article 2 § 1 of the Convention, given his low standard of living. The Court reiterates that, according to its case-law, neither Article 2 nor any other provision of the Convention can be interpreted as conferring on an individual a right to enjoy any given standard of living (*Wasilewski v. Poland* (dec.), no. 32734/96, 20 April 1999). Moreover, the applicant has not shown that he suffers such destitution as to put his life at risk (see *Sokur v. Ukraine* (dec.), no. 29439/02, 26 November 2002). It follows that this complaint is incompatible *ratione materiae* with the provisions of the Convention and must be rejected in accordance with Article 35 §§ 3 and 4 of the Convention.

B. Complaints under Article 6 § 1 of the Convention and Article 1 of Protocol No. 1

15. The applicant complained about the length of the non-enforcement of the judgment in his favour. He invoked Article 6 § 1 of the Convention and Article 1 of Protocol No. 1. These Articles 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 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 ....”

16. The Government raised objection regarding the applicant’s victim status similar to those which the Court has already dismissed *(*see *Shmalko v. Ukraine*, no. 60750/00, §§ 30-34, 20 July 2004). The Court considers that the present objection must be rejected for the same reasons.

17. The Court concludes that the applicant’s complaint under Article 6 § 1 of the Convention about the delay in the enforcement of the judgment of the Novogrodovskiy Town Court is not manifestly ill-founded within the meaning of Article 35 § 3 of the Convention. It further notes that it is not inadmissible on any other grounds. It must therefore be declared admissible. For the same reasons, the applicant’s complaint under Article 1 of Protocol No. 1 cannot be declared inadmissible.

III. MERITS

18. The Government maintained that the judgment in the applicant’s favour was enforced in full. They further maintained that the responsibility of the State in this situation was limited to the organisation and proper conduct of enforcement proceedings and that the length of the enforcement proceedings had been caused by the critical financial situation of the debtor company and the energy sector of the Ukrainian economy in general. The Government contended that the Bailiffs’ Service performed all necessary actions and cannot be blamed for the delay. The Government pointed out that as on 29 June 2004 the applicant withdrew his writ of enforcement, the Government were not responsible for the non-enforcement of the judgment after this date. The Government argued that the State could not be considered responsible for the debts of its enterprises and that the State annually allocated substantial amounts from its budget to cover part of disability allowances and other compensatory payments to the workers in the mining industry.

19. The applicant disagreed.

20. The Court notes that, notwithstanding the fact that on 29 June 2004 the applicant withdrew the writ of enforcement, by failing for two years and three months to take the necessary measures to comply with the judgment of 28 March 2002, the authorities deprived the provisions of Article 6 § 1 of the Convention of all useful effect. It further considers that the Government have not advanced any convincing justification for this delay.

21. The Court recalls that it has already found violations of Article 6 § 1 of the Convention and Article 1 of Protocol No. 1 in cases like the present application (see, *Sokur v. Ukraine*, cited above, §§ 30-37; *Shmalko v. Ukraine*, cited above, §§ 55-57).

22. Having examined all the material submitted to it, 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.

23. There has, accordingly, been a violation of Article 6 § 1 of the Convention and of Article 1 of Protocol No. 1.

IV. APPLICATION OF ARTICLE 41 OF THE CONVENTION

24. 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

25. The applicant claimed EUR 11,249 in respect of pecuniary and non-pecuniary damage.

26. The Government maintained that the applicant has not substantiated his claims.

27. The Court does not discern any causal link between the violation found and the pecuniary damage alleged; it therefore rejects this claim. However, the Court considers that the applicant must have sustained non-pecuniary damage, and awards him EUR 400 in this respect.

B. Costs and expenses

28. The applicant did not submit any claim under this head within the set time-limit; the Court therefore makes no award in this respect.

C. Default interest

29. 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 complaint under Article 6 § 1 of the Convention and Article 1 of Protocol No. 1 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 1 of Protocol No. 1 of the Convention;

4. *Holds*

(a) that the respondent State is to pay the applicant, within three months from the date on which the judgment becomes final in accordance with Article 44 § 2 of the Convention, EUR 400 (four hundred euros) in respect of non-pecuniary damage;

(b) that the above amount shall be converted into the national currency of the respondent State at the rate applicable at the date of settlement, plus any tax that may be chargeable;

(c) 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 10 August 2006, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Claudia WESTERDIEK
Registrar

Peer LORENZEN
President