



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

FIFTH SECTION

CASE OF TIKHONCHUK v. UKRAINE

(Application no. 16571/03)

JUDGMENT

STRASBOURG

14 December 2006

FINAL

14/03/2007

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 Tikhonchuk 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 M. VILLIGER, *judges*,

and Mrs C. WESTERDIEK, *Section Registrar*,

Having deliberated in private on 20 November 2006,

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

PROCEDURE

1. The case originated in an application (no. 16571/03) 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 Sergey Viktorovich Tikhonchuk (“the applicant”), on 24 April 2003.

2. The Ukrainian Government (“the Government”) were represented by their Agents, Mrs V. Lutkovska, succeeded by Mr Y. Zaytsev.

3. On 26 May 2005 the Court decided to communicate the complaint under Article 6 § 1 of the Convention concerning the non-enforcement of the judgments 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.

THE FACTS

I. THE CIRCUMSTANCES OF THE CASE

4. The applicant was born in 1977 and lives in Nova Kakhovka, the Kherson region. He is a former employee of the State-controlled OJSC “Pivdennelektromash” (“the Company,” *BAT “Південелектромаш”*).

5. The background facts for the case are described in the case of *Anatskiy v. Ukraine* (no. 10558/03, §§ 5-8, 13 December 2005).

A. First set of proceedings

6. On 7 February 2001 the Nova Kakhovka Court (*Новокаховський міський суд Херсонської області*) ordered the Company to pay the applicant UAH 3,009¹ in salary arrears. This judgment became final.

7. According to the Government, the applicant never submitted the enforcement writ in respect of this judgment for enforcement.

8. The applicant presented a copy of the letter of the Nova Kakhovka Bailiffs' Service ("the Bailiffs," *Відділ Державної виконавчої служби Новокаховського міського управління юстиції*) of 6 May 2005 advising him that the enforcement proceedings in respect of the judgment of 7 February 2001 had been instituted on 26 February 2002.

9. Additionally, the applicant presented a copy of the Bailiffs' decision of 1 July 2002, by which they returned him the enforcement writ in respect of the above judgment unenforced. In particular, the Bailiffs referred to the impossibility of the enforcement in view of the debtor's lack of funds, the pending bankruptcy proceedings against it and the holding of its assets in a tax lien.

10. The judgment of 7 February 2001 remains unenforced to the present day.

B. Second set of proceedings

11. On 29 December 2002 the Nova Kakhovka Court ordered the Company to pay the applicant UAH 3,359² in salary arrears. This judgment became final and on 13 February 2003 the Bailiffs instituted enforcement proceedings in its respect.

12. The judgment of 29 December 2002 remains unenforced to the present day.

THE LAW

II. RELEVANT DOMESTIC LAW

13. The relevant domestic law is summarised in the judgments of *Romashov v. Ukraine* (no. 67534/01, §§ 16-18, 27 July 2004) and *Trykhlub v. Ukraine* (no. 58312/00, §§ 25-32, 20 September 2005).

1. 592.33 euros ("EUR").

2. EUR 623.28.

THE LAW

14. The applicant complained about the State authorities' failure to enforce the judgments of 7 February 2001 and 29 December 2002. 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. ...”

I. ADMISSIBILITY

A. The complaint about the non-enforcement of the judgment of 7 February 2001

15. The Government contended that the applicant had never submitted the enforcement writ in respect of the judgment of 7 February 2001 to the Bailiffs and cannot, therefore, claim to be the victim of the State authorities' failure to enforce the judgment at issue.

16. The applicant did not comment on this point.

17. The Court recalls that the applicant presented documents in evidence that the Bailiffs had instituted the enforcement proceedings in respect of the judgment of 7 February 2001 and had subsequently terminated them due to the Company's lack of funds (see paragraphs 8-9 above). The Government did not comment on these documents and did not present any countervailing evidence. Therefore, the Court dismisses the Government's preliminary objection.

B. The complaint about the non-enforcement of the judgment of 29 December 2002

18. The Government raised objections regarding exhaustion of domestic remedies similar to those which the Court had already dismissed (see *Sokur v. Ukraine* (dec.), no. 29439/02, 16 December 2003 and *Trykhlil v. Ukraine*, cited above, §§ 38-43). The Court considers that these objections must be rejected for the same reasons.

C. Conclusion

19. The Court concludes that the applicant's complaints under Article 6 § 1 of the Convention about the delay in the enforcement of the judgments of 7 February 2001 and 29 December 2002 raise issues of fact and law under the Convention, the determination of which requires an examination on the merits. It finds no ground for declaring these complaints inadmissible. The Court must therefore declare them admissible.

II. MERITS

20. In their observations on the merits of the applicant's claims, the Government contended that there had been no violation of Article 6 § 1.

21. The applicant disagreed.

22. The Court notes that the judgment of 7 February 2001 has remained unenforced for the period exceeding five years and ten months and the judgment of 29 December 2002 - for the period exceeding three years and eleven months.

23. The Court recalls that it has already found violations of Article 6 § 1 of the Convention in a number of similar cases, including the cases concerning the same State-controlled debtor - the OJSC "Pivdenelektromash" (see, for instance, *Trykhliv v. Ukraine*, cited above, §§ 52-53; *Chernyayev v. Ukraine*, no. 15366/03, §§ 19-20, 26 July 2005 and *Anatskiy v. Ukraine*, cited above, §§ 21-23).

24. Having examined all the material in its possession, 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.

25. There has, accordingly, been a violation of Article 6 § 1 of the Convention.

III. APPLICATION OF ARTICLE 41 OF THE CONVENTION

26. 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

27. The applicant claimed the unsettled judgments debts due to him and further pecuniary and non-pecuniary damage without specifying the exact amounts.

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

29. The Court finds that the Government should pay the applicant the outstanding judgments debts still owed to him, which would constitute full and final settlement of his claim for pecuniary damage. The Court also considers that the applicant must have sustained non-pecuniary damage, and awards him EUR 2,300 in this respect.

B. Costs and expenses

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

C. Default interest

31. 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 in accordance with Article 44 § 2 of the Convention, the unsettled debt still owed to him, as well as EUR 2,300 (two thousand three hundred euros) in respect of non-pecuniary damage, to 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;
 - (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 14 December 2006, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Claudia WESTERDIEK
Registrar

Peer LORENZEN
President