



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

FIFTH SECTION

CASE OF KHURKUNOV v. UKRAINE

(Application no. 5079/04)

JUDGMENT

STRASBOURG

18 January 2007

FINAL

18/04/2007

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 Khurkunov v. Ukraine,

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

Mr P. LORENZEN, *President*,
Mr K. JUNGWIERT,
Mr V. BUTKEVYCH,
Mrs M. TSATSA-NIKOLOVSKA,
Mr J. BORREGO BORREGO,
Mrs R. JAEGER,
Mr M. VILLIGER, *judges*,

and Mrs C. WESTERDIEK, *Section Registrar*,

Having deliberated in private on 11 December 2006,

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

PROCEDURE

1. The case originated in an application (no. 5079/04) against Ukraine lodged with the Court under Article 34 of the Convention for the Protection of Human Rights and Fundamental Freedoms (“the Convention”) by Mr Vladimir Ivanovich Khurkunov (“the applicant”) on 22 December 2003.

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

3. On 15 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, a Ukrainian national was born in 1941 and lives in the town of Zhovti Vody, the Dnipropetrovsk region, Ukraine.

5. In 1998, 2000 and 2001 the applicant instituted three separate sets of proceedings in the Zhovtovodskyi Town Court (*hereinafter* – the Town Court) against the Joint Stock Company “Electron-Gaz” (the “EG”) – in which the State held 99.9% of the share capital – to recover unpaid salary and compensation. By three judgments of 12 January 1999, 9 June 2000 and

21 February 2001 the court awarded the applicant the total of UAH 8,634.89¹ in salary arrears and other payments.

6. On 7 March 2003 the Commercial Court of the Dnipropetrovsk Region initiated bankruptcy proceedings against the EG, which are still pending.

7. On 22 September 2003, in the course of bankruptcy proceedings against the EG and following Article 86 of the Code of Commercial Proceedings and Articles 14 and 15 of the Law of Ukraine “On the Restoration of a Debtor's Solvency or the Declaration of Bankruptcy”, the Commercial Court of the Dnipropetrovsk Region ordered the inclusion of the Town Court's awards given in the applicant's favour, as well as his additional claim for UAH 4,332.05², which the EG had recognised as salary arrears due him for 2000 - 2002, into the list of creditors' claims.

8. On 17 May 2002 the applicant was informed by the Bailiffs' Service that the judgments in his favour were not executed due to the lack of funds of the debtor and that the procedure for the forced sale of assets belonging to the debtor was barred by the Law on the Introduction of a Moratorium on the Forced Sale of Property of 29 November 2001.

9. In August 2005 the judgments of 12 January 1999, 9 June 2000 and 21 February 2001 were fully enforced.

10. On 7 April 2006 the applicant instituted one more set of proceedings against the same debtor (EG) in the Town Court, seeking, *inter alia*, compensation of UAH 4,332.05 recognized by the defendant as salary arrears due him for 2000 - 2002. On 5 June 2006 the court partly allowed his claim and ordered the defendant to pay him UAH 3,829.94³ in salary arrears and UAH 500⁴ in compensation of non-pecuniary damage. This decision was not appealed against and became final.

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).

12. Article 86 of Code of Commercial Proceedings provides that if the Commercial Court does not examine the merits of the case, it issues a procedural ruling.

13. Article 14 of the Law of Ukraine “On the Restoration of a Debtor's Solvency or the Declaration of Bankruptcy” (*Закон України “Про відновлення платоспроможності боржника або визнання його банкрутом”*) envisages that the creditors of a bankrupt who claim salary arrears may lodge relevant requests with the Commercial Court, before

1. EUR 1,243.22.

2. EUR 623.72.

3. EUR 592.

4. EUR 77.3.

which the bankruptcy proceedings are pending. Creditors' claims recognised by the bankrupt should be included in the list of creditors' claims. According to Article 15 of the Law, the Commercial Court issues a ruling by which it approves the list of creditors' claims.

THE LAW

I. ADMISSIBILITY

A. Complaints under Articles 6 § 1 and 17 of the Convention and Article 1 of Protocol No. 1

14. The applicant complained about the State authorities' failure to enforce the judgments of the Town Court of 12 January 1999, 9 June 2000 and 21 February 2001 in due time. He invoked Articles 6 § 1 and 17 of the Convention and Article 1 of Protocol No. 1, 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 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”

Article 17

“Nothing in [the] Convention may be interpreted as implying for any State, group or person any right to engage in any activity or perform any act aimed at the destruction of any of the rights and freedoms set forth herein or at their limitation to a greater extent than is provided for in the Convention.”

15. The Government raised objections regarding the exhaustion of domestic remedies similar to those which the Court has already dismissed in the case of *Romashov v. Ukraine* (see *Romashov*, cited above, §§ 28-33) and *Trykhlid v. Ukraine* (see, *Trykhlid v. Ukraine*, no. 58312/00, §§ 40-43, 20 September 2005). The Court considers that the present objections must be rejected for the same reasons.

16. The Government further maintained that, although the debtor company was a State-owned enterprise, it was a separate legal entity and the State could not be held responsible for its debts under domestic law. In this respect the Court refers to its findings in the case of *Mykhaylenko and Others v. Ukraine* (nos. 35091/02 et seq., §§ 44-45, ECHR 2004-XII) that the respondent State's Convention responsibility under Articles 6 and 1 of Protocol No. 1 was engaged on account of the failure of a State-owned enterprise to pay the applicants the amount awarded to them in the final judgments given against that company. It sees no reason to depart from this conclusion in the instant case.

17. The Court concludes that this part of the application raises 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. Other complaints

18. The applicant further complained that the State had infringed his right to the peaceful enjoyment of his possessions as a result of the failure to pay the salary arrears allowed by a procedural decision of 22 September 2003. He invoked Article 1 of Protocol No. 1 to the Convention.

19. The Court considers that the applicant did not have a final enforceable claim in respect of the aforementioned sum. The impugned decision was only a procedural ruling given within the framework of the bankruptcy proceedings, by virtue of which the Commercial Court regulated the list of creditors' claims and did not decide on merits (see paragraphs 12 and 13). Moreover, in order to receive this sum the applicant had to lodge a valid claim with the Town Court, which he did in April 2006 and the Town Court allowed his claim only in part. Therefore, it cannot be said that the impugned amount constituted a possession within the meaning of Article 1 of Protocol No. 1 to the Convention. Consequently, this part of the application should be rejected in accordance with Article 35 §§ 3 and 4 of the Convention, as being manifestly ill-founded.

II. MERITS

20. The Government contended that the applicant's entitlement to the judgment awards had not been disputed and he was not deprived of his

property. They further maintained that the responsibility of the State in this situation had been 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. The Government stressed that the Bailiffs' Service had performed all necessary actions and could not be blamed for the delay.

21. The applicant disagreed.

22. The Court notes that the judgments of the Zhovtovodskyi Town Court of 12 January 1999, 9 June 2000 and 21 February 2001 remained unenforced for around six years and seven months, five years and two months, and four years and six months, respectively.

23. 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 raising issues similar to the present application (see, for instance, *Romashov*, cited above, §§ 42-46, and *Mykhaylenky and Others*, cited above, §§ 54-55 and §§ 63-64).

24. 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.

25. There has, accordingly, been a violation of Article 6 § 1 of the Convention and Article 1 of Protocol No. 1. In view of this conclusion, no separate issue arises under Article 17 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.”

27. The applicant submitted his claim for just satisfaction out of time.

28. The Court observes that the applicant failed to comply with the requirements set out in Rule 60 § 2 of the Rules of Court. In these circumstances, it makes no award under this head (Rule 60 § 3).

FOR THESE REASONS, THE COURT UNANIMOUSLY

1. *Declares* the complaints concerning the lengthy non-enforcement of the judgments in the applicant's favour 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 to the Convention;
4. *Holds* that no separate issue arises under Article 17 of the Convention;
5. *Dismisses* the applicant's claim for just satisfaction.

Done in English, and notified in writing on 18 January 2007, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Claudia WESTERDIEK
Registrar

Peer LORENZEN
President