



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

FIFTH SECTION

CASE OF KULIKOV v. UKRAINE

(Application no. 36367/04)

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 Kulikov v. Ukraine,

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

Mr P. LORENZEN, *President*,

Mrs S. BOTOUCHAROVA,

Mr V. BUTKEVYCH,

Mrs M. TSATSA-NIKOLOVSKA,

Mr R. MARUSTE,

Mr J. BORREGO BORREGO,

Mrs R. JAEGER, *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. 36367/04) against Ukraine lodged with the Court under Article 34 of the Convention for the Protection of Human Rights and Fundamental Freedoms (“the Convention”) by a Ukrainian national, Mr Nikolay Aleksandrovich Kulikov (“the applicant”), on 29 September 2004.

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 complaints under Article 6 § 1 of the Convention and Article 1 of Protocol No. 1 concerning the lengthy 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.

THE FACTS

I. THE CIRCUMSTANCES OF THE CASE

4. The applicant was born in 1947 and resides in the town of Makeyivka, Donetsk region, Ukraine.

5. On an unspecified date, the applicant instituted proceedings in the Gornyatsky District Court against his former employer, the Makeyivvugillya State Mining Company (ДП «Макеїввугілля»), for salary arrears and other payments. On 24 July 2002 the court awarded the

applicant 30,713.88¹ Ukrainian hryvnias (“UAH”) (*Рішення Гірняцького районного суду м.Макеївки*).

6. On an unspecified date, the Sovetskiy District Bailiffs' Service initiated the enforcement proceedings. In November 2003 these proceedings were transferred to the Tsentralno-misky District Bailiffs' Service (*Відділ Державної виконавчої служби Центрально-міського районного управління юстиції м. Макеївки*).

7. In 2002-2004 the applicant received UAH 8,948.10; according to him the rest of the sum remains unpaid.

II. RELEVANT DOMESTIC LAW

8. The relevant domestic law is summarised in the judgment of *Romashov v. Ukraine* (no. 67534/01, §§ 16-18, 27 July 2004).

THE LAW

I. ALLEGED VIOLATION OF ARTICLES 6 § 1 AND 13 OF THE CONVENTION AND ARTICLE 1 OF PROTOCOL NO. 1

9. Relying on Article 13 of the Convention, and Article 1 of Protocol No. 1 the applicant complained about the lengthy non-enforcement of the judgment given in his favour. These Articles provide, insofar as relevant, as follows:

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.”

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”

¹ At the material time around 5,830.61 euros (“EUR”)

10. The Court finds that the applicant's complaint about the lengthy non-enforcement of the judgment given in his favour also required examination under Article 6 § 1 of the Convention which reads 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. ...”

A. Admissibility

11. The Government raised objection regarding the exhaustion of domestic remedies similar to that which the Court has already dismissed in the case of *Romashov v. Ukraine* (cited above, §§ 28-32). The Court considers that the present objection must be rejected for the same reasons.

12. The Court concludes that the applicant's complaints under Articles 6 § 1 and 13 of the Convention about the delay in the enforcement of the judgment of the Gornyatsky District Court are not manifestly ill-founded within the meaning of Article 35 § 3 of the Convention. It further notes that they are not inadmissible on any other grounds. They must therefore be declared admissible. For the same reasons, the applicant's complaint under Article 1 of Protocol No. 1 cannot be declared inadmissible.

B. Merits

13. The Government maintained that the judgment in the applicant's favour was enforced in part. The Government argued that the State could not be considered responsible for the debts of its enterprises. The Government 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 not been unreasonable and had been caused by the critical financial situation of the debtor company. The Government contended that the Bailiffs' Service had performed all necessary actions and could not be blamed for the delay.

14. The applicant failed to comment on the Government's observations within the provided time-limit.

15. The Court notes that the judgment in the applicant's favour has not been enforced for more than four years and three months.

16. 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, among others, *Romashov v. Ukraine*, cited above, §§ 42-46; *Shmalko v. Ukraine*, no. 60750/00, §§ 55-57, 20 July 2004).

17. Having examined all the materials 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.

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

19. The Court does not consider it necessary in the circumstances to rule on the same complaint under Article 13 of the Convention.

II. APPLICATION OF ARTICLE 41 OF THE CONVENTION

20. 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.”

Damage, costs and expenses

21. In the present case the applicant failed to submit any claims; the Court therefore makes no award.

22. The Court, however, notes that it is undisputed that the State still has an outstanding obligation to enforce the judgment at issue. Accordingly, the applicant remains entitled to recover the principal amount of the debt awarded to him in the course of the domestic proceedings.

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* that it is not necessary to rule on the applicant's complaint under Article 13 of the Convention;
4. *Holds* that there has been a violation of Article 1 of Protocol No. 1 of the Convention.

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