



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

FIFTH SECTION

CASE OF KACHANOV v. UKRAINE

(Application no. 9062/04)

JUDGMENT

STRASBOURG

13 December 2007

FINAL

13/03/2008

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 Kachanov 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 20 November 2007,

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

PROCEDURE

1. The case originated in an application (no. 9062/04) 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 Igor Petrovich Kachanov on 13 February 2004.

2. The Ukrainian Government (“the Government”) were represented by their Agent, Mr Y. Zaytsev.

3. On 30 May 2006 the Court decided to give notice of 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 was born in 1960 and lives in Shakhtarsk, the Donetsk region.

5. On 20 October 2000 the Shakhtarsk City Court (*Шахтарський міський суд Донецької області*) awarded the applicant 4,815.28 hryvnyas (UAH)¹ in salary arrears and compensations from his former employer, the Municipal Communal Service Department (“the Company,” *Шахтарське міське госпрозрахункове управління комунального господарства*).

1. EUR 1,050.62.

6. This judgment was not appealed against, became final and the enforcement proceedings were instituted to collect the judgment debt.

7. On 7 April 2003 the Company was declared bankrupt and subsequently liquidated.

8. The applicant unsuccessfully attempted to seek compensation from the Bailiffs for their failure to enforce the judgment.

9. The judgment remains unenforced to the present date.

II. RELEVANT DOMESTIC LAW

10. The relevant domestic law is set out in the judgment of 27 July 2004 in the case of *Romashov v. Ukraine* (no. 67534/01, §§ 16-19).

THE LAW

11. The applicant complained about the State authorities' failure to enforce the judgment given in his favour. He invoked Article 6 § 1 of the Convention, which provides, insofar as relevant, as follows:

“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

12. The Government raised objections regarding exhaustion of domestic remedies similar to those which the Court has already dismissed in other cases (see *Sokur v. Ukraine* (dec.), no. 29439/02, 16 December 2003; *Sychev v. Ukraine*, no. 4773/02, §§ 42-46, 11 October 2005 and *Trykhlil v. Ukraine*, no. 58312/00, §§ 38-43, 20 September 2005). The Court considers that these objections must be rejected for the same reasons.

13. The Court concludes that the applicant's complaint raises issues of fact and law under the Convention, the determination of which requires an examination on the merits. It finds no ground for declaring it inadmissible. The Court must therefore declare it admissible.

II. MERITS

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

15. The applicant disagreed.

16. The Court notes that the judgment given in the applicant's favour has remained unenforced for the period exceeding seven years.

17. The Court has frequently found violations of Article 6 § 1 of the Convention in cases raising similar issues, where a debtor was a public enterprise (see e.g., *Kucherenko v. Ukraine*, no. 27347/02, §§ 26-27, 15 December 2005).

18. 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.

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

III. 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.”

A. Damage

21. The applicant claimed the unsettled judgment debt and UAH 2,249.54 (EUR 368) in inflation losses by way of compensation for pecuniary damage. In addition, he claimed EUR 250,000 in respect of non-pecuniary damage.

22. The Government contested the claims in respect of inflation losses and non-pecuniary damage. They did not comment on the applicant's claim for the unsettled debt.

23. The Court finds that the Government should pay the applicant the unsettled judgment debt by way of compensation for pecuniary damage. As regards the applicant's claim for inflation losses, the Court notes that the applicant's relevant calculations are not supported by any official documents, which would enable the Court to determine the amount. Consequently, it rejects this part of the claim (see e.g., *Glova and Bregin v. Ukraine*, nos. 4292/04 and 4347/04, § 29, 28 February 2006).

24. The Court further finds that the applicant must have suffered non-pecuniary damage. Ruling on an equitable basis, it awards the applicant EUR 2,000 under this head.

B. Costs and expenses

25. The applicant did not submit any separate claim under this head; the Court therefore makes no award in this respect.

C. Default interest

26. 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,
 - (i) the unsettled judgment debt still owed to him;
 - (ii) EUR 2,000 (two thousand 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;
4. *Dismisses* the remainder of the applicant's claim for just satisfaction.

Done in English, and notified in writing on 13 December 2007, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Claudia WESTERDIEK
Registrar

Peer LORENZEN
President