



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

FIFTH SECTION

CASE OF KRUTKO v. UKRAINE (no. 2)

(Application no. 33930/05)

JUDGMENT

STRASBOURG

27 November 2008

FINAL

06/04/2009

This judgment may be subject to editorial revision.

In the case of Krutko v. Ukraine (no. 2),

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

Rait Maruste, *President*,
Karel Jungwiert,
Volodymyr Butkevych,
Renate Jaeger,
Mark Villiger,
Mirjana Lazarova Trajkovska,
Zdravka Kalaydjieva, *judges*,

and Stephen Phillips, *Deputy Section Registrar*,

Having deliberated in private on 4 November 2008,

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

PROCEDURE

1. The case originated in an application (no. 33930/05) 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 Nikolayevich Krutko (“the applicant”), on 7 July 2005.

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

3. On 13 December 2007 the Court decided to give notice of the application to the Government. It also decided to examine the merits of the application at the same time as its admissibility (Article 29 § 3).

THE FACTS

4. The applicant was born in 1975 and lives in Kharkiv.

5. In August 2003 the applicant instituted proceedings in the Moskovskyy District Court of Kharkiv against the State-owned company Kharkivskyy Elektromekhanichnyi Zavod, seeking compensation for loss of a part of his salary due to its delayed payment, and compensation for pecuniary and non-pecuniary damage caused by the respondent’s failure to pay his salary in due time.

6. On 3 November 2003 the court awarded the applicant 634.03 Ukrainian hryvnas (UAH)¹ in compensation for loss of a part of his salary due to the delay in its payment.

1. About 105.5 euros (EUR).

7. On 25 December 2003 the Kharkiv Regional Court of Appeal partially modified that judgment and awarded the applicant an additional UAH 1,072.62¹ in compensation for non-pecuniary damage. On the same date the judgment became enforceable.

8. In January 2004 the applicant and the respondent company appealed in cassation.

9. In December 2004 the applicant requested the Moskovskyy District Court to issue a writ of execution in his favour.

10. The court refused to issue a writ of execution on the ground that the case file had been sent to the Supreme Court.

11. On 7 April 2006 the Supreme Court upheld the judgment of the court of appeal.

12. On 20 July 2006 the applicant received the writ of execution.

13. On 27 July 2006 the applicant submitted it to the Bailiffs.

14. On 12 September 2006 the applicant received the amount awarded.

THE LAW

15. Relying on Articles 6 § 1 and 13 of the Convention the applicant complained that the consideration of his case by the courts had been lengthy, as had the non-enforcement of the judgment of 3 November 2003, as amended by the decision of the Kharkiv Regional Court of Appeal of 25 December 2003. The provisions relied on by the applicant read, in so far as relevant, as follows:

Article 6 § 1

“In the determination of his civil rights and obligations ... , everyone is entitled to a ... hearing within reasonable time by [a] ... tribunal ...”

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.”

I. ADMISSIBILITY

16. The Government raised objections regarding admissibility *ratione personae* similar to those already dismissed in a number of similar cases (see, for instance, *Skubenko v. Ukraine* (dec.), no. 41152/98, 6 April 2004).

2. About EUR 166.

The Court considers that these objections must be rejected for the same reasons.

17. The Court notes that the applicant's complaints are not manifestly ill-founded within the meaning of Article 35 § 3 of the Convention. It further notes they are not inadmissible on any other grounds. The application must therefore be declared admissible.

II. MERITS

18. The Government contended that the delay in the enforcement of the judgment in the applicant's favour was not attributable to the State and that the applicant had not been interested in having the judgment enforced, given that he had failed to obtain and lodge with the Bailiffs a writ of execution for the initiation of enforcement proceedings in respect of that judgment before his case had been referred to the Supreme Court.

19. The Court reiterates that court proceedings and enforcement proceedings are stages one and two in the total course of proceedings (see *Scordino v. Italy (no. 1)* [GC], no. 36813/97, § 197, ECHR 2006-...). Therefore, enforcement proceedings should not be dissociated from an action and proceedings are to be examined in their entirety (see *Estima Jorge v. Portugal*, judgment of 21 April 1998, *Reports of Judgments and Decisions* 1998-II, § 35 and, as a recent authority, *Sika v. Slovakia*, no. 2132/02, §§ 24-27, 13 June 2006).

20. The Court notes that the applicant's complaint about the length of the court proceedings in his case is limited to the general statement that his case had been considered by the court for about two years and ten months.

21. The court proceedings started in August 2003 and were completed by the final decision of the Supreme Court on 7 April 2006. The length of proceedings in the judicial phase is therefore two years and eight months for three levels of jurisdiction and there is no discernible period of inactivity which can be attributed to the domestic courts.

22. As regards State responsibility for the delay in the enforcement of the judgment in the applicant's favour, the Court observes that the debtor company was owned by the State. The company therefore attracted the application of the Law "on the Introduction of a Moratorium on the Forced Sale of Property", barring the attachment and sale of its real estate and capital assets. The Court further notes that in the Ukrainian legal system neither the courts nor the Bailiffs have the power to overrule the law or to compel the State to amend its Budget laws. Even assuming that the applicant had applied for enforcement proceedings at an earlier stage, the execution of the judgment against the debtor company would have been substantially impeded due to the above Law (see *Kozachek v. Ukraine*, no. 29508/04, §§ 20-25, 7 December 2006). Moreover, a period of about

one year and a half elapsed between the request for and the issuing of the writ of execution, whilst the case was pending before the Supreme Court.

23. Therefore, the Court finds that, in the particular circumstances of this case, irrespective of the fact that no formal enforcement proceedings were pending during the period of 25 December 2003 to 27 July 2006, such a state of affairs engaged the responsibility of the State for enforcement of the judgment throughout the period of 25 December 2003 to 12 September 2006.

24. The Court further observes that the delay in the enforcement of the judgment of 3 November 2003, as amended by the Kharkiv Regional Court of Appeal on 25 December 2003, constituted about two years and ten months.

25. The Court notes that it has already found violations of Article 6 § 1 of the Convention in a number of similar cases (see, for instance, *Dubenko v. Ukraine*, no. 74221/01, §§ 47 and 51, 11 January 2005).

26. Having examined all the materials 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.

27. There has, accordingly, been a violation of Article 6 § 1 of the Convention in respect of the lengthy non-enforcement of the judgment in the applicant's favour.

28. Having regard to the above findings under Article 6 § 1, the Court considers that it is not necessary to rule whether, in this case, there has been a violation of Articles 13 and 17 of the Convention.

III. APPLICATION OF ARTICLE 41 OF THE CONVENTION

29. 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

30. The applicant claimed 50,000 US dollars¹ in respect of non-pecuniary damage.

31. The Government contested that claim.

32. The Court, making its assessment on an equitable basis, as required by Article 41, awards the applicant EUR 800 in respect of non-pecuniary damage.

1. About EUR 31,747.5.

B. Costs and expenses

33. The applicant also claimed UAH 121.50¹ for the costs and expenses incurred before the domestic courts and UAH 145.48² for correspondence costs in the proceedings before the Court.

34. The Government contested the claim for the expenses before the domestic courts and left for the consideration of the Court the claim for the expenses incurred before it.

35. According to the Court's case-law, an applicant is entitled to the reimbursement of costs and expenses only in so far as it has been shown that these have been actually and necessarily incurred and were reasonable as to quantum. In the present case, regard being had to the information in its possession and the above criteria, the Court rejects the claim for costs and expenses in the domestic proceedings and considers it reasonable to award the sum of EUR 21 for the proceedings before the Court.

C. Default interest

36. 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* that there is no need to examine the complaint under Article 13 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 821 (eight hundred and twenty-one euros), plus any tax that may be chargeable, in respect of non-pecuniary damage and expenses, to be converted into the national currency at the rate applicable at the date of settlement;
 - (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

1. About EUR 17.

2. About EUR 21.

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 27 November 2008, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Stephen Phillips
Deputy Registrar

Rait Maruste
President