



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

FIFTH SECTION

CASE OF KALASHNYKOV v. UKRAINE

(Application no. 22709/02)

JUDGMENT

STRASBOURG

11 December 2008

FINAL

11/03/2009

This judgment may be subject to editorial revision.

In the case of Kalashnykov v. Ukraine,

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

Peer Lorenzen, *President*,

Rait Maruste,

Karel Jungwiert,

Volodymyr Butkevych,

Renate Jaeger,

Mark Villiger,

Mirjana Lazarova Trajkovska, *judges*,

and Claudia Westerdiek, *Section Registrar*,

Having deliberated in private on 18 November 2008,

Delivers the following judgment, which was adopted on the last-mentioned date:

PROCEDURE

1. The case originated in an application (no. 22709/02) 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 Mykola Vasylyovych Kalashnykov (“the applicant”), on 27 July 2001.

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

3. On 11 September 2007 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 1948 and lives in the city of Mykolaiv, Ukraine.

5. The applicant is a former employer of the open joint-stock company “Avtobaza” (“the company”) situated in the town of Ochakiv, the Mykolaiv region. The State have not held any share in the company since February 1999.

A. Proceedings against the company and enforcement of the judgment of 3 April 2001

6. On 13 May 1998 the Ochakiv Court ordered the company to pay the applicant UAH 3.176¹ in salary arrears. This judgment was enforced in full on an unspecified date in 2002.

7. While the enforcement proceedings in respect of the above judgment were still pending, the applicant instituted proceedings in the Ochakiv Court against the Ochakiv Bailiffs' Service and the company claiming compensation for pecuniary damage caused to him due to the non-enforcement of the judgment of 13 May 1998 in due time.

8. On 3 April 2001 the court ordered that the company pay the applicant UAH 2.283² in compensation for inflation losses. By the same judgment, the court rejected the applicant's claims against the Bailiffs' Service as unsubstantiated. This judgment became final and the enforcement writ was transferred to the Bailiffs' Service for enforcement.

9. On 8 May 2003 the Bailiffs' Service terminated the enforcement proceedings on the ground that the company had been declared bankrupt by the decision of the Mykolayiv Regional Commercial Court of 17 December 2002.

10. The judgment of 3 April 2001 remains unenforced.

B. Proceedings against the Bailiffs' Service and enforcement of the judgment of 26 November 2002

11. In September 2001, while the enforcement proceedings in respect of the judgment of 3 April 2001 were still pending, the applicant instituted proceedings in the Ochakiv Court against the Ochakiv Bailiffs' Service seeking compensation for the latter's failure to act.

12. On 26 November 2002 the court found in part for the applicant and ordered the Bailiffs' Service to pay him UAH 825³ in compensation for non-pecuniary damage caused as result of the non-enforcement of the judgment of 3 April 2001.

13. On 12 May 2003 the Ochakiv Bailiffs' Service terminated the enforcement proceedings in view of their own lack of funds.

14. The judgment of 26 November 2002 remains unenforced.

¹ Approximately EUR1,400

² Approximately EUR 478

³ Approximately EUR 123

II. RELEVANT DOMESTIC LAW

15. 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

16. The applicant complained under Article 6 § 1 and 13 of the Convention about the State authorities' failure to enforce the judgments of the Ochakiv Court of 3 April 2001 and 26 November 2002. These provisions of the Convention 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 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."

A. Admissibility

1. *Non-enforcement of the judgment of 3 April 2001*

17. The Government submitted that the applicant had not exhausted domestic remedies in respect of his complaint, as he never requested to be registered as a company creditor in bankruptcy proceedings. They further maintained that since February 1999 the State had not held any share in the company and therefore the State could not be held responsible for its debts.

18. The Court observes that the company became private in 1999, i.e. before the judgment of 3 April 2001 was pronounced. Thus the State's responsibility in the present case extends no further than the involvement of State bodies in the enforcement procedures (see *Shestakov v. Russia*, no. 48757/99, decision of 18 June 2002).

19. The Court notes that the applicant's complaint concerns two different periods of time, in particular, the period prior to

26 November 2002, i.e. the date on which the Ochakiv Court ruled on his complaint about the inactivity of the Bailiffs' Service in respect of enforcement of the judgment of 3 April 2001, and the period after 26 November 2002.

20. In respect to the period prior to 26 November 2002, the applicant cannot be considered a "victim" of a violation of his rights guaranteed by Article 6 §1 as the Bailiffs' inactivity for the period in question was established, acknowledged and compensated. The fact that the applicant did not receive the compensation awarded to him is a separate issue of non-enforcement (see *Terem Ltd, Chechetkin and Olius v. Ukraine*, no. 70297/01, § 32, 18 October 2005). Therefore this complaint should be rejected under Article 35 §§ 3 and 4 of the Convention as incompatible *ratione personae*.

21. As to the period after 26 November 2002, the applicant failed to challenge the allegedly inadequate enforcement of the judgment of 3 April 2001 by the Bailiffs' Service before the domestic courts and therefore has not exhausted all domestic remedies available to him under Ukrainian law (see *Golovin v. Ukraine*, cited above, § 26 and *Dzizin v. Ukraine* (dec.), no 1086/02, 24 June 2003). This part of the application should be rejected under Article 35 §§ 1 and 4 of the Convention for *non-exhaustion* of domestic remedies.

22. In the light of the above conclusions, the Court finds that the applicant's complaint under Article 13 should be rejected as manifestly ill-founded.

2. Non-enforcement of the judgment of 26 November 2002

23. The Government contended that the applicant had not exhausted all domestic remedies available to him since he had not challenged the actions of the Bailiffs' Service before the domestic courts.

24. The applicant disagreed.

25. The Court observes that it has already dismissed the Government's similar contentions in the cases in which the non-enforcement of judgments against State bodies was prevented because of the failure of the State to take any budgetary or legislative measures, rather than by a bailiffs' misconduct (see, for instance, *Voytenko v. Ukraine*, no. 18966/02, § 30-31, 29 June 2004).

26. The Court finds no reason to reach a different conclusion in the present case. Accordingly, the applicant's complaint must therefore be declared admissible.

B. Merits

27. In their observations on the merits of the applicant's claims, the Government contended that there had been no violation of Article 6 § 1 of the Convention or Article 13.

28. The applicant disagreed.

29. The Court notes that the judgment of the Ochakiv Court of 26 November 2002 remains unenforced for more than five years and seven months.

30. The Court recalls that it has frequently found violations of Article 6 § 1 of the Convention in cases raising similar issues to the present application (see, for example, *Voytenko v. Ukraine*, no. 18966/02, §§ 39-43, 29 June 2004, and *Golovin v. Ukraine*, cited above, §35).

31. Having examined all the material 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. Having regard to its case-law on the subject, the Court considers that by delaying for more than five years and seven months the enforcement of the judgment in the applicant's favour, the State authorities deprived the provisions of Article 6 § 1 of the Convention of much of their useful effect. There has, accordingly, been a violation of Article 6 § 1 of the Convention.

32. The Court does not find it necessary in the circumstances to examine the same complaint under Article 13 of the Convention (see *Derkach and Palek v. Ukraine*, nos. 34297/02 and 39574/02, § 42, 21 December 2004).

II. APPLICATION OF ARTICLE 41 OF THE CONVENTION

33. 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

34. The applicant claimed EUR 758 in respect of pecuniary damage. The applicant further claimed EUR 1,800 in respect of non-pecuniary damage.

35. The Government considered these claims unsubstantiated and exorbitant.

36. In so far as the judgment of 26 November 2002 has not been enforced, the Court considers that the full and final settlement of the applicant's claim for pecuniary damage would be the payment of the judgment debt still owed to him.

37. As regards the applicant's claim for non-pecuniary damage, the Court, making its assessment on an equitable basis, as required by Article 41 of the Convention, considers it reasonable to award the applicant EUR 900 in respect of non-pecuniary damage.

B. Costs and expenses

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

C. Default interest

39. 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 applicant's complaint under Articles 6 § 1 and 13 of the Convention concerning the non-enforcement of the judgment of 26 November 2002 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 it is not necessary to examine the applicant's complaint under Article 13 of the Convention;
4. *Holds*
 - (a) that the respondent State is to pay to 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 under the judgment of 26 November 2002, as well as EUR 900 (nine 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;
5. *Dismisses* the remainder of the applicant's claim for just satisfaction.

Done in English, and notified in writing on 11 December 2008, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Claudia Westerdiek
Registrar

Peer Lorenzen
President