



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

FIFTH SECTION

CASE OF KRYSHCHUK v. UKRAINE

(Application no. 1811/06)

JUDGMENT

STRASBOURG

19 February 2009

FINAL

19/05/2009

This judgment may be subject to editorial revision.

In the case of Kryshchuk v. Ukraine,

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

Peer Lorenzen, *President*,

Rait Maruste,

Karel Jungwiert,

Renate Jaeger,

Mark Villiger,

Zdravka Kalaydjieva, *judges*,

Stanislav Shevchuk, *ad hoc judge*

and Claudia Westerdiek, *Section Registrar*,

Having deliberated in private on 27 January 2009,

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

PROCEDURE

1. The case originated in an application (no. 1811/06) 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 Anton Ivanovych Kryshchuk (“the applicant”), on 22 December 2005.

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

3. On 13 December 2006 the President of the Fifth Section decided to give notice of the application to the Government. It was also decided to examine the merits of the application at the same time as its admissibility (Article 29 § 3).

THE FACTS

I. THE CIRCUMSTANCES OF THE CASE

4. The applicant was born in 1959 and lives in the town of Chervonograd, Lviv Region, Ukraine.

5. In 2003 the applicant instituted proceedings in the Chervonograd Town Court against the Lvivvugillya State Enterprise, seeking compensation for non-pecuniary damage caused by the failure of the defendant to provide the applicant with an apartment, to which he had been entitled according to an agreement between them.

6. On 10 November 2003 the court partly found for the applicant and ordered the defendant to pay the applicant 42,000 Ukrainian hryvnias¹ in compensation.

7. That judgment became final and on 11 December 2003 the Chervonograd Town Bailiffs' Service instituted enforcement proceedings.

8. On 30 December 2005 the enforcement proceedings were terminated in accordance with the 2005 Law of Ukraine "On Measures to Ensure the Stable Operation of Fuel and Energy Sector Enterprises".

9. The judgment in the applicant's favour remains unenforced.

II. RELEVANT DOMESTIC LAW

10. The Law of 23 June 2005 "On Measures to Ensure the Stable Operation of Fuel and Energy Sector Enterprises" (*Закон України „Про заходи, спрямовані на забезпечення сталого функціонування підприємств паливно-енергетичного комплексу” від 23 червня 2005 року*) introduced a new mechanism for payment and amortisation of companies' debts for energy resources. It also introduced a special register of companies involved in debt payment and amortisation under its provisions. A company's presence on that register suspends any enforcement proceedings against it; domestic courts shall also dismiss any request to initiate insolvency or liquidation proceedings against the company. By the most recent amendments to the Law, the effect of the debt payment and amortisation program was extended until 1 January 2009.

11. The remainder of the relevant law is summarised in the judgment of *Sokur v. Ukraine* (no. 29439/02, § 17-22, 26 April 2005).

THE LAW

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

12. The applicant complained about the lengthy non-enforcement of the judgment of 10 November 2003 and the lack of effective remedy in that respect. He invoked Articles 6 § 1 and 13 of the Convention and Article 1 of Protocol No. 1, which provide, in so far as relevant, as follows:

¹ Approximately 7,042 euros at the material time.

Article 6 § 1

“In the determination of his civil rights and obligations ... everyone is entitled to a ... hearing within a 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.”

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”

A. Admissibility

13. The Government did not submit any observations on the admissibility of the application.

14. The Court notes that the application is not manifestly ill-founded within the meaning of Article 35 § 3 of the Convention. It further notes that it is not inadmissible on any other grounds. It must therefore be declared admissible.

B. Merits

15. In their observations on the merits the Government advanced the arguments they have frequently put forward in cases like the present one (see, for example, the *Sokur* judgment, cited above, § 28).

16. The applicant asked the Court to find violations of the invoked Articles.

17. The Court recalls that it has already found violations of Articles 6 § 1 and 13 of the Convention and Article 1 of Protocol No. 1 in cases like the present application (see the *Sokur* judgment, cited above, §§ 30-37; *Shmalko v. Ukraine*, no. 60750/00, §§ 55-57, 20 July 2004; and *Voytenko v. Ukraine*, no. 18966/02, §§ 46-48, 29 June 2004).

18. 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.

19. There has, accordingly, been a violation of Articles 6 § 1 and 13 of the Convention and a violation of Article 1 of Protocol No. 1 in respect of the lengthy non-enforcement of the judgment in the applicant's favour in the present application.

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.”

A. Damage

21. The applicant claimed that he had incurred inflation losses as a result of the lengthy non-enforcement of the judgment in his favour. He did not, however, indicate the sums.

22. The Government did not comment on this claim.

23. The Court notes that it is undisputed that the State still has an outstanding obligation to enforce the judgment at issue. It further dismisses the remainder of the applicant's claim for pecuniary damage as unsubstantiated (see, *a contrario*, *Maksimikha v. Ukraine*, no. 43483/02, § 29, 14 December 2006).

B. Costs and expenses

24. The applicant did not submit any claim under this head; the Court therefore makes no award in this connection.

C. Default interest

25. 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 has been a violation of Article 13 of the Convention;
4. *Holds* that there has been a violation of Article 1 of Protocol No. 1 to the Convention;
5. *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, the outstanding debt under the judgment of 10 November 2003;
 - (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;
6. *Dismisses* the remainder of the applicant's claim for just satisfaction.

Done in English, and notified in writing on 19 February 2009, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Claudia Westerdiek
Registrar

Peer Lorenzen
President