



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

FIFTH SECTION

CASE OF KRASOVSKIY v. UKRAINE

(Application no. 36772/04)

JUDGMENT

STRASBOURG

12 March 2009

FINAL

12/06/2009

This judgment may be subject to editorial revision.

In the case of Krasovskiy v. Ukraine,

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

Peer Lorenzen, *President*,

Rait Maruste,

Karel Jungwiert,

Mark Villiger,

Mirjana Lazarova Trajkovska,

Zdravka Kalaydjieva, *judges*,

Stanislav Shevchuk, *ad hoc judge*,

and Claudia Westerdiek, *Section Registrar*,

Having deliberated in private on 17 February 2009,

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

PROCEDURE

1. The case originated in an application (no. 36772/04) 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 Vladimir Petrovich Krasovskiy (“the applicant”), on 1 October 2004.

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

3. On 6 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

I. THE CIRCUMSTANCES OF THE CASE

4. The applicant, Mr Vladimir Petrovich Krasovskiy, is a Ukrainian national who was born in 1942 and lives in the town of Dniprodzerzhynsk, Ukraine.

A. Enforcement of the judgment of 28 October 2003.

5. On 28 October 2003 the Dniprovsky District Court of Dniprodzerzhynsk awarded the applicant 2,199 Ukrainian hryvnas (UAH)

in salary arrears and UAH 2,743.29 in other payments, to be paid by the open joint stock company Dniprovsky Mineral Fertilizers Plant (“the debtor”).

6. On 4 November 2003 the Bagliysky District Bailiffs’ Service of Dniprodzerzhynsk initiated enforcement proceedings.

7. On 25 October 2004 the debtor paid the applicant UAH 2,199 in salary arrears.

8. On unspecified date the debtor paid the applicant UAH 106,19.

9. On 7 April 2004 the Dnipropetrovsk Regional Commercial Court initiated bankruptcy proceedings against the debtor.

10. By a letter of 22 December 2005, the bailiffs notified the applicant that they were unable to collect the full amount of the award, referring to the fact that financial assets of the debtor were insufficient. They further explained that other assets could not be sold, as the State owned 40 % of the debtor’s share capital. The debtor was therefore subject to the Law of 29 November 2001 “on the Introduction of a Moratorium on the Forced Sale of Property”.

11. The judgment remains partly unenforced.

B. Civil proceedings concerning payment of UAH 4,775.90

12. On an unspecified date the applicant instituted proceedings against the debtor in the Dniprovsky District Court of Dniprodzerzhynsk claiming payment of UAH 4,775.90.

13. On 16 December 2004 the court found against the applicant.

14. On 17 February 2005 the Dnipropetrovsk Regional Court of Appeal upheld this judgment. On 20 July 2007 the Court of Appeal of the Autonomous Republic of Crimea dismissed the applicant’s appeal in cassation.

II. RELEVANT DOMESTIC LAW

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

THE LAW

I. ALLEGED VIOLATION OF ARTICLE 6 §1 OF THE CONVENTION

16. The applicant complained about the non-enforcement of the judgment of 28 October 2003. He relied on 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

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

18. The Court concludes that the application raises issues of fact and law under the Convention, the determination of which requires an examination on the merits. The Court finds no grounds for declaring it inadmissible. The Court must therefore declare it admissible.

B. Merits

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

20. The applicant disagreed.

21. The Court notes that the judgment of 28 October 2003 was enforced only in part.

22. The Court observes that it has already found violations of Article 6 § 1 of the Convention in a number of similar cases (see *Sokur v. Ukraine*, cited above, § 37, and *Lapinskaya v. Ukraine*, no. 10722/03, § 22, 18 January 2007)

23. 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.

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

II. OTHER ALLEGED VIOLATIONS OF THE CONVENTION

25. The applicant complained under Articles 6 § 1 of the Convention about the outcome of the proceedings in his case concerning payment of UAH 4,775.90.

26. The Court, in the light of all material before it and in so far as these remaining complaints fall within its competence, finds that they do not disclose any appearance of a breach of this provision and rejects this part of the application in accordance with Article 35 §§ 3 and 4 of the Convention as being manifestly ill-founded.

III. APPLICATION OF ARTICLE 41 OF THE CONVENTION

27. 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

28. The applicant claimed 2,000 euros (EUR) in respect of non-pecuniary damage and UAH 7,413 (around EUR 801.42) in respect of pecuniary damage.

29. The Government contested the applicant's claims.

30. The Court notes that, as the judgment given in favour of the applicant remains unenforced, the Government should pay the applicant the outstanding debt in order to satisfy his claim for pecuniary damage. Otherwise, it does not discern any causal link between the violation found and the pecuniary damage alleged; it therefore rejects the remainder of the applicant's claims under this head.

31. The Court further takes the view that the applicant has suffered some non-pecuniary damage as a result of the violation found. The Court finds it reasonable, ruling on an equitable basis, to award the applicant EUR 1,600 in respect of non-pecuniary damage.

B. Costs and expenses

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

C. Default interest

33. 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 complaint under Article 6 § 1 of the Convention concerning the non-enforcement of the judgment in the applicant's favour 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*
 - (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 judgment debt still due to the applicant on the date of the Court's judgment, as well as EUR 1,600 (one thousand six hundred euros), plus any tax that may be chargeable, 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;
 - (b) that from the expiry of the above-mentioned three months until settlement simple interest shall be payable on the above amounts 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 of 12 March 2009, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Claudia Westerdiek
Registrar

Peer Lorenzen
President