



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

1959 · 50 · 2009

FIFTH SECTION

CASE OF KRIVENKO v. UKRAINE

(Application no. 19547/06)

JUDGMENT

STRASBOURG

15 October 2009

FINAL

15/01/2010

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 Krivenko v. Ukraine,

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

Peer Lorenzen, *President*,

Renate Jaeger,

Karel Jungwiert,

Rait Maruste,

Isabelle Berro-Lefèvre,

Mirjana Lazarova Trajkovska, *judges*,

Mykhaylo Buromenskiy, *ad hoc judge*,

and Claudia Westerdiek, *Section Registrar*,

Having deliberated in private on 22 September 2009,

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

PROCEDURE

1. The case originated in an application (no. 19547/06) 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 Nikolay Nikolayevich Krivenko (“the applicant”), on 8 May 2006.

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

3. On 20 May 2008 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 1963 and lives in the city of Ivano-Frankivsk, Ukraine.

5. The applicant, a former military serviceman brought proceedings against military unit A-3339, where he had served before retirement, claiming compensation for his uniform. On 2 October 2003 the

Ivano-Frankivsk Court found for the applicant and awarded him 2,393.62¹ Ukrainian hryvnias (UAH).

6. On 13 November 2003 the Ivano-Frankivsk Bailiffs' Service initiated enforcement proceedings.

7. On an unspecified date the above military unit was liquidated and the judgment debt was transferred to its legal successor, military unit A-1807.

8. Following this event the enforcement writ was transferred to the Yaremcha Bailiffs' Service. On 11 February 2008 the latter instituted enforcement proceedings in respect of the judgment.

9. On 24 June 2008 the enforcement writ was returned to the applicant. The judgment has not been enforced due to the debtor's lack of funds.

II. RELEVANT DOMESTIC LAW

10. 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 AND OF ARTICLE 1 OF PROTOCOL No. 1 TO THE CONVENTION

11. The applicant complained about the State authorities' failure to enforce the judgment given in his favour in due time. He relied on Articles 6 § 1 and 13 of the Convention and Article 1 of Protocol No. 1, which provide, in so far 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.”

¹ About 394 euros (EUR).

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....”

A. Admissibility

12. The Government submitted that Article 6 § 1 was inapplicable to the proceedings at issue, as the dispute concerned a military officer's career and therefore was not a “civil” dispute for the purposes of the impugned Convention provision. They further contested the applicability of Article 1 of Protocol No. 1 in the present case, stating that the uniform at issue was the property of the State. The Government finally argued that the applicant had failed to exhaust all domestic remedies available to him under the law.

13. The applicant disagreed.

14. The Court notes that similar objections have already been rejected in a number of judgments adopted by the Court (see *Mitin v. Ukraine*, no. 38724/02, §§ 20-28, 14 February 2008). The Court considers that these objections must be rejected in the instant case for the same reasons.

15. 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

16. In their observations the Government contended that there had been no violation of Articles 6 § 1 and 13 of the Convention or Article 1 of Protocol No. 1.

17. The applicant disagreed.

18. The Court notes that the judgment given in the applicant's favour has remained unenforced for about five years and eight months.

19. The Court reiterates that it has already found violations of Article 6 § 1 of the Convention and Article 1 of Protocol No. 1 in a substantial number of cases raising issues similar to the present application (see, for example, *Bondar and Others v. Ukraine*, no. 12380/05, § 13, 19 February 2009).

20. Having examined all the material submitted to it, the Court considers that the Government have not put forward any fact or convincing argument capable of persuading it to reach a different conclusion in the present case. There has, accordingly, been a violation of Article 6 § 1 of the Convention and Article 1 of Protocol No. 1.

21. 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

22. 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

23. The applicant claimed Ukrainian hryvnias 4,244.58¹ (UAH) and UAH 31,650² in respect of pecuniary damage. The first amount included the unsettled court award plus UAH 1,850.96³ in inflation losses. However, the applicant failed to present detailed calculations of these losses. The applicant additionally claimed UAH 35,000⁴ in respect of non-pecuniary damage.

24. The Government contested these claims. With respect to the claims for inflation losses they submitted, *inter alia*, that this claim should be rejected since the applicant failed to provide detailed calculations.

25. The Court finds that the Government should pay the applicant the outstanding debt under the judgment given in his favour by way of compensation for pecuniary damage. 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). 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 1,800 euros (EUR) in respect of non-pecuniary damage.

B. Costs and expenses

26. The applicant also claimed UAH 7,390⁵ in legal costs. He furnished a receipt as evidence of payment made to a law firm in respect of

¹ About EUR 413

² About EUR 3032

³ About EUR 177

⁴ About EUR 3,408

⁵ About EUR 720

unspecified legal services. He further claimed UAH 520¹ for postage expenses.

27. The Government contested these claims.

28. 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 legal costs and considers it reasonable to award the sum of EUR 50 for postage expenses.

C. Default interest

29. 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 1 of Protocol No. 1 to the Convention;
4. *Holds* that there is no need to examine the complaint under Article 13 of the Convention;
5. *Holds*
 - a) that the respondent State is to pay, within three months from the date on which the judgment becomes final in accordance with Article 44 § 2 of the Convention the following sums:
 - (i) the outstanding debt under the judgment of the Ivano-Frankivsk Court of 2 October 2003 in respect of pecuniary damage;
 - (ii) EUR 1,800 (one thousand eight hundred euros) in respect of non-pecuniary damage and EUR 50 (fifty euros) in respect of costs and expenses, 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 to the applicant;

¹ About EUR 50

(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;

6. *Dismisses* the remainder of the applicant's claim for just satisfaction.

Done in English, and notified in writing on 15 October 2009, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Claudia Westerdiek
Registrar

Peer Lorenzen
President