



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

SECOND SECTION

CASE OF KOSAREVA v. UKRAINE

(Application no. 17304/03)

JUDGMENT

STRASBOURG

13 December 2005

FINAL

13/03/2006

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 Kosareva v. Ukraine,

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

Mr A.B. BAKA, *President*,

Mr I. CABRAL BARRETO,

Mr K. JUNGWIERT,

Mr V. BUTKEVYCH,

Mr M. UGREKHELIDZE,

Ms D. JOČIENĖ,

Mr D. POPOVIĆ, *judges*,

and Mrs S. DOLLÉ, *Section Registrar*,

Having deliberated in private on 22 November 2005,

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

PROCEDURE

1. The case originated in an application (no. 17304/03) 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, Ms Nina Aleksandrovna Kosareva (“the applicant”), on 20 May 2003.

2. The Ukrainian Government (“the Government”) were represented by their Agent, Ms Zoryana Bortnovska and Ms Valeria Lutkovska.

3. On 21 June 2004 the Court decided to communicate 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 resides in the town of Zhovti Vody, the Dnipropetrovsk Region.

5. On 7 May 1999 and 30 August 2001 the Zhovti Vody City Court (hereafter “the City Court”) awarded the applicant a total of UAH 3,124¹ against the State-owned Electrongaz Company (hereafter “the Company”) in salary arrears. Both judgments became final and were sent to the Zhovti

¹ approximately 485 euros (EUR)

Vody City Bailiffs' Office (hereafter "the Bailiffs") for compulsory enforcement.

6. In a letter of 27 February 2003, the Bailiffs informed the applicant that the enforcement of the judgments in her favour was impeded by the entry into force of the Law on the Introduction of a Moratorium on the Forced Sale of Property 2001, which barred the attachment and sale of the Company's assets.

7. On 7 March 2003 the Dnipropetrovsk Regional Commercial Court (hereafter "the Commercial Court") instituted bankruptcy proceedings against the Company and issued an injunction barring any debt recovery. On 10 October 2003 the Commercial Court approved a rehabilitation proposal and appointed a trustee to rehabilitate the Company's business.

8. On 21 October 2004 the Bailiffs terminated the enforcement proceedings in the applicant's favour as both awards were fully paid to her.

II. RELEVANT DOMESTIC LAW

9. The relevant domestic law is summarised in the judgments of *Romashov v. Ukraine* (no. 67534/01, §§ 16-18, 27 July 2004) and *Trykhliv v. Ukraine* (no. 58312/00, §§ 25-32, 20 September 2005).

THE LAW

I. ADMISSIBILITY OF THE COMPLAINTS

1. Alleged violation of Article 17 of the Convention

10. The applicant complained that the introduction of the 2001 Law, barring debt retrieval from State-owned enterprises, violated Article 17 of the Convention. The Court finds no evidence whatsoever in the case file which might disclose any appearance of a breach of this provision. The Court, therefore, rejects this part of the application, in accordance with Article 35 §§ 3 and 4 of the Convention, as being manifestly ill-founded.

2. Alleged violation of Article 6 § 1 of the Convention and Article 1 of Protocol No. 1

11. The applicant complained of the failure of the State authorities to execute the judgments of 7 May 1999 and 30 August 2001 given in her favour. She alleged an infringement of Article 6 § 1 of the Convention and Article 1 of Protocol No. 1 which provide, in so far as relevant, as follows:

Article 6 § 1 of the Convention

“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 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 or to secure the payment of taxes or other contributions or penalties.”

a. The Government’s objections to admissibility

12. The Government contended that, as the judgments in the applicant’s favour had been executed by the national authorities in full, she could no longer be considered a victim of a violation of the Convention. They also submitted that the applicant had failed to exhaust domestic remedies, as required by Article 35 § 1 of the Convention, since she had not challenged the Bailiffs’ inactivity before the domestic courts and had not applied to the Commercial Court for registration as a creditor in the bankruptcy proceedings. The applicant disagreed.

13. The Court notes that these issues have already been discussed and dismissed in a number of its previous judgments (see, for example, the aforementioned cases of *Romashov* and *Trykhhlib*, §§ 23-32 and 36-42, respectively). It finds no reason to draw different conclusions in the present case and it therefore rejects the Government’s objections.

b. Conclusion

14. The Court concludes that this part of 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.

II. MERITS

15. The Government maintained that the lengthy failure to enforce decisions in the applicant’s favour had been caused by the ongoing bankruptcy proceedings against the debtor Company and its critical financial situation. The Government further maintained that the Bailiffs

Service had performed all necessary actions and cannot be blamed for the delay.

16. The applicant doubted the willingness of the Bailiffs to enforce the decisions in her favour. She maintained that the enforcement proceedings were barred first by the Law “on the Introduction of a Moratorium on the Forced Sale of Property” and then by the bankruptcy proceedings against the debtor. The applicant submitted that the steps taken by the State were insufficient to ensure her right to have the judgments enforced without undue delay.

17. The Court will first address the Government’s submissions regarding the ongoing bankruptcy proceedings. It observes that in the course of such proceedings the commercial court may block any debt retrieval from the bankrupt entity, and the latter remains immune from any penalties for the delays in honouring its obligations for the duration of those proceedings. The Court recalls that it has already found in the *Trykhlil* case (cited above, §§ 49-50) that this procedure, applied in similar circumstances, may lead to the violation of Article 6 § 1 of the Convention. The Court finds no reason to depart from this conclusion in the present case.

18. Insofar as the Government refer to the Company’s critical financial situation, the Court recalls that it is undoubtedly a State-owned entity. As such, it attracts the application of the Law on the Introduction of a Moratorium on the Forced Sale of Property 2001 (see paragraph 6 above), barring the attachment and sale of its assets. The Court notes that the domestic law does not offer a creditor like the applicant, or the Bailiffs, any possibility to challenge this restriction in case of an abuse or unjustified application. Nor can a compensation claim be made for the delay in enforcement caused by this restriction (*ibid.* § 51).

19. The Court observes that the judgments in the applicant’s favour of 7 May 1999 and 30 August 2001 remained unenforced until 21 October 2004, i.e. for periods of about five years five months and three years two months respectively, without any convincing justification, thus depriving the provisions of Article 6 § 1 of the Convention and Article 1 of Protocol No. 1 of much of their useful effect. It further notes that these judgments were enforced in full after the communication of the application to the respondent Government.

20. There has accordingly been a violation of Article 6 § 1 of the Convention and Article 1 of Protocol No. 1.

III. APPLICATION OF ARTICLE 41 OF THE CONVENTION

21. 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

22. The applicant claimed 3,000 euros (EUR) in respect of pecuniary and non-pecuniary damage.

23. The Government contested the applicant's claims as being unsubstantiated.

24. The Court considers that the applicant's claims are excessive. Making its assessment on equitable basis, as required by Article 41 of the Convention, the Court awards the applicant a global sum of EUR 2,600 in pecuniary and non-pecuniary damage.

B. Costs and expenses

25. The applicant did not submit any claim under this head within the set time-limit; the Court therefore makes no award in this respect.

C. Default interest

26. 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 complaints under Article 6 § 1 of the Convention and Article 1 of the Protocol No. 1 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 there has been a violation of Article 1 of Protocol No. 1 to 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 2,600 (two thousand six hundred euros) in respect of pecuniary and 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 13 December 2005, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

S. DOLLÉ
Registrar

A.B. BAKA
President