



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

FIFTH SECTION

CASE OF RAISA TARASENKO v. UKRAINE

(Application no. 43485/02)

JUDGMENT

STRASBOURG

7 December 2006

FINAL

07/03/2007

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 Raisa Tarasenko v. Ukraine,

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

Mr P. LORENZEN, *President*,

Mrs S. BOTOCHAROVA,

Mr K. JUNGWIERT,

Mr V. BUTKEVYCH,

Mrs M. TSATSA-NIKOLOVSKA,

Mr R. MARUSTE,

Mr M. VILLIGER, *judges*,

and Mrs C. WESTERDIEK, *Section Registrar*,

Having deliberated in private on 13 November 2006,

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

PROCEDURE

1. The case originated in an application (no. 43485/02) 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, Mrs Raisa Ilyinichna Tarasenko (“the applicant”), on 22 November 2002.

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

3. On 5 December 2005 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 1941 and lives in the town of Dniprodzerzhynsk.

5. On 1 August 1999 the applicant's husband died due to the fault of an employee of the Dniprodzerzhynskelektrotrans Municipal Enterprise.

6. On 3 September 2001 the Bagaliyskiy District Court of Dniprodzerzhynsk ordered the company to pay the applicant UAH 5,825.90¹ in compensation.

7. On 26 June 2002 the Zavodskiy District Bailiffs' Service discontinued the enforcement proceedings due to the debtor's lack of funds and the applicant's refusal to take the debtor's property instead of the money.

8. On 17 June 2003 the company was declared bankrupt and the liquidation proceedings were initiated against it.

9. The judgment remains unenforced.

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 ARTICLE 6 § 1 OF THE CONVENTION

11. The applicant complained about the State authorities' failure to enforce the judgment of the Bagaleyskiy District Court of Dniprodzerzhynsk of 3 September 2001. She invoked Article 6 § 1 of the Convention, which reads as follows:

“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

12. The Government contended that the applicant had not exhausted domestic remedies as she had not challenged the decision of the Bailiffs' Service discontinuing the enforcement proceedings, she had not resubmitted the writ of execution for the judgment of 3 September 2001 to the Bailiffs' Service, and she had not lodged a request with the relevant commercial court to be included in the list of the debtor's creditors in the course of bankruptcy proceedings against the debtor. The Government therefore proposed that the application be declared inadmissible.

13. The Court recalls that it has already dismissed the Government's analogous contentions in similar cases (see, for instance, *Romashov*, cited

1. Around 1,198.82 euros – “EUR”.

above, §§ 30-33, and *Garkusha v. Ukraine*, no. 4629/03, §§ 18-20, 13 December 2005) and finds no reason to reach a different conclusion in the present case.

14. The Court concludes that this part of the application raises issues of fact and law under the Convention, the determination of which requires an examination of the merits. It finds no ground for declaring it inadmissible.

B. Merits

15. In their observations, the Government put forward arguments similar to those in the case of *Romashov v. Ukraine*, contending that there had been no violation of Article 6 § 1 of the Convention (see *Romashov*, cited above, § 37).

16. The applicant disagreed.

17. The Court notes that to date the judgment of the Bagaleyskiy District Court of Dniprodzerzhynsk of 3 September 2001 has remained unenforced for more than five years.

18. The Court recalls that it has already found violations of Article 6 § 1 of the Convention in cases raising issues similar to the present application (see, for example, *Romashov*, cited above, §§ 42-46).

19. 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.

II. ALLEGED VIOLATION OF ARTICLE 13 OF THE CONVENTION

20. The applicant further complained that she had no effective domestic remedies for her complaint under Article 6 § 1 of the Convention. She invoked Article 13 of the Convention, which provide as follows:

“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

21. The Court refers to its reasoning in relation to Article 35 § 1 (paragraph 13 above), which is equally pertinent to the applicant's Article 13 claim. Consequently, the Court finds that this complaint is not manifestly ill-founded or indeed inadmissible on any other ground cited in Article 35 of the Convention. It must therefore be declared admissible.

B. Merits

22. The Government contended that the applicant had had effective channels of complaint on the same basis that they had argued that the applicant had not exhausted domestic remedies in respect of her complaint under Article 6 § 1 of the Convention.

23. The Court refers to its findings (at paragraph 13 above) in the present case concerning the Government's argument regarding domestic remedies. For the same reasons, the Court concludes that the applicant did not have an effective domestic remedy, as required by Article 13 of the Convention, to redress the damage created by the delay in the present proceedings. Accordingly, there has been a breach of this provision.

III. ALLEGED VIOLATION OF ARTICLE 2 OF THE CONVENTION

24. The applicant further complained that that the State did not take all necessary measures to protect lives of its citizens, including her and her late husband's lives. She invoked Article 2 § 1 of the Convention.

25. The Court considers that the facts of the present case do not disclose any appearance of a violation of Article 2 of the Convention and that this part of the application must be rejected as being manifestly ill-founded pursuant to Article 35 §§ 3 and 4 of the Convention.

IV. APPLICATION OF ARTICLE 41 OF THE CONVENTION

26. 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

27. The applicant claimed the amount of the judgment debt (see paragraph 6 above) and EUR 1,000 by way of just satisfaction.

28. The Government maintained that the applicant had not substantiated the latter claim.

29. In so far as the applicant claimed the amount awarded to her by the judgment at issue, the Court considers that the Government should pay her the outstanding debt in settlement of her pecuniary damage.

30. As to the applicant's claim in respect of non-pecuniary damage, the Court, making its assessment on an equitable basis, as required by Article 41 of the Convention, awards the applicant the requested amount of EUR 1,000.

B. Costs and expenses

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

C. Default interest

32. 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 Articles 6 § 1 and 13 of the Convention 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 13 of 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 according to Article 44 § 2 of the Convention, the judgment debt still owed to her, as well as EUR 1,000 (one thousand euros) in respect of non-pecuniary damage, plus any tax that may be chargeable, to be converted into the currency of the respondent State at the rate applicable on 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 amount at a rate equal to the marginal lending rate of the European Central Bank during the default period plus three percentage points.

Done in English, and notified in writing on 7 December 2006, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Claudia WESTERDIEK
Registrar

Peer LORENZEN
President