



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

FIFTH SECTION

CASE OF ROGOZHINSKAYA v. UKRAINE

(Application no. 2279/03)

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 Rogozhinskaya v. Ukraine,

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

Mr P. LORENZEN, *President*,

Mrs S. BOTOUCHAROVA,

Mr V. BUTKEVYCH,

Mrs M. TSATSA-NIKOLOVSKA,

Mr R. MARUSTE,

Mr J. BORREGO BORREGO,

Mrs R. JAEGER, *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. 2279/03) 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, Mrs Nina Dmitriyevna Rogozhinskaya (“the applicant”), on 4 December 2002.

2. The Ukrainian Government (“the Government”) were represented by their Agents, Mrs V. Lutkovska and Mr Y. Zaytsev.

3. On 15 March 2005 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 lives in the town of Nizhyn, Chernigov region, Ukraine.

5. The applicant instituted proceedings in the Nizhynskyy Town Court against her former employer, the State-owned “Nizhynsilmarsh” enterprise (*BAT «Ніжинсільмаш»*), to recover salary arrears.

6. On 3 October 2000 the court awarded the applicant 501.49¹ Ukrainian hrivnias (“UAH”) (*Рішення Ніжинського міського суду*).

7. In October 2000 the Nizhyn Town Bailiffs' Service (*Відділ Державної виконавчої служби Ніжинського міського управління юстиції*) initiated the enforcement proceedings. By letter of 28 January 2002, the Bailiffs' Service informed the applicant that it was not possible to sell the debtor's property as, according to the Law on the Introduction of a Moratorium on the Forced Sale of Property, on 26 December 2001 a ban on the forced sale of assets belonging to undertakings in which the State holds at least 25% of the share capital had been introduced. It also stated that the debtor's property was in a tax lien.

8. On 29 May 2003 the judgment was enforced.

9. In June 2001 the applicant instituted new proceedings in the same court against the same enterprise to receive further payments and compensation.

10. On 11 July 2001 the court found for the applicant and awarded her UAH 275. On 13 December 2001 the Chernigiv Regional Court of Appeal quashed this judgment and awarded the applicant UAH 440.24² (*Ухвала Апеляційного суду Чернігівської області*). On 7 June 2002 the Supreme Court of Ukraine rejected the applicant's appeal in cassation.

11. In July 2004 the judgment of 13 December 2001 was enforced.

II. RELEVANT DOMESTIC LAW AND PRACTICE

12. The relevant domestic law is summarised in the judgment of *Romashov v. Ukraine* (no. 67534/01, §§ 16-18, 27 July 2004).

THE LAW

13. The applicant complained about the lengthy non-enforcement of the judgments in her favour. She invoked Article 6 § 1 of the Convention and Article 1 of Protocol No. 1. These Articles provide, insofar 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. ...”

1. At the material time around 104.87 euros “EUR”

2. At the material time EUR 91.58

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”

I. ADMISSIBILITY

14. The Government raised objections regarding the applicant's victim status and the exhaustion of domestic remedies similar to those which the Court has already dismissed in the case of *Romashov v. Ukraine* (cited above, §§ 23-33). The Court considers that the present objections must be rejected for the same reasons.

15. The Court concludes that the applicant's complaint under Article 6 § 1 of the Convention about the delay in the enforcement of the judgments of the Nizhynsky Town Court and the Chernigiv Regional Court of Appeal 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 this complaint inadmissible. For the same reasons, the applicant's complaint under Article 1 of Protocol No. 1 cannot be declared inadmissible.

II. MERITS

16. In their observations the Government commented only on the enforcement proceedings of the judgment of 3 October 2000. In this respect the Government maintained that the responsibility of the State was limited to the organisation and proper conduct of enforcement proceedings and that the length of the enforcement proceedings had been caused by the critical financial situation of the debtor company. The Government contended that the Bailiffs' Service performed all necessary actions and cannot be blamed for the delay. The Government argued that the State could not be considered responsible for the debts of its enterprises. The Government finally maintained that the length of the enforcement in the present case cannot be considered as unreasonable.

17. The applicant disagreed.

18. The Court notes that the judgments in the applicant's favour were not enforced for more than two years and seven months and two years and six months, respectively.

19. The Court recalls that it has already found violations of Article 6 § 1 of the Convention and Article 1 of Protocol No. 1 in cases like the present application (see, among others, *Romashov v. Ukraine*, cited above, §§ 42-46; *Shmalko v. Ukraine*, no. 60750/00, §§ 55-57, 20 July 2004).

20. Having examined all the materials 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.

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

III. 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 UAH 16,665¹ in respect of pecuniary and non-pecuniary damage.

24. The Government maintained that the applicant had not substantiated her claims.

25. The Court does not discern any causal link between the violation found and the pecuniary damage alleged; it therefore rejects this claim. However, the Court considers that the applicant must have sustained non-pecuniary damage, and, deciding on an equitable basis, awards her EUR 800 in this respect.

B. Costs and expenses

26. 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

27. 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.

1. Around EUR 2,754

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;
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 800 (eight hundred euros) in respect of non-pecuniary damage, 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 7 December 2006, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Claudia WESTERDIEK
Registrar

Peer LORENZEN
President