



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

FIFTH SECTION

CASE OF TSARUK v. UKRAINE

(Application no. 42476/04)

JUDGMENT

STRASBOURG

14 December 2006

FINAL

14/03/2007

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 Tsaruk v. Ukraine,

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

Mr P. LORENZEN, *President*,

Mrs S. BOTOCHAROVA,

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 20 November 2006,

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

PROCEDURE

1. The case originated in an application (no. 42476/04) 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, Mrs Valentina Grigoryevna Tsaruk (“the applicant”), on 19 July 2004.

2. The applicant was represented before the Court by Mr V. Bychkovskiy. 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 1941 and lives in the town of Krasnyy Luch, Lugansk region, Ukraine.

5. In 2003 the applicant instituted proceedings in the Krasnolutskyy Town Court against her former employer, the Knyagyninska State Mining Company (*Шахта «Княгинінська» ДХК «Донбасантрацит»*), for salary arrears and compensation for moral damage. On 29 October 2003 the court

awarded the applicant 2,479.19¹ Ukrainian hryvnias (“UAH”) (*Рішення Краснолуцького міського суду Луганської області*).

6. In December 2003 the Krasnolutsky Town Bailiffs' Service (*Міський відділ Державної виконавчої служби Красно луцького міського управління юстиції*) initiated the enforcement proceedings.

7. By letter of 2 June 2004, the Bailiffs' Service informed the applicant that the debtor's accounts had been seized but that it was impossible to deal in the debtor's property because the debtor was a State enterprise.

8. On 25 March 2005 the Lugansk Regional Commercial Court initiated bankruptcy proceedings against the debtor enterprise.

9. The applicant received UAH 1,386.34; according to the applicant, the rest of the debt remains unpaid.

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

11. The applicant complained about the length of the enforcement of the judgment 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. ...”

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”

¹ At the material time around 410.02 euros (“EUR”)

I. ADMISSIBILITY

12. The Government raised objections regarding the exhaustion of domestic remedies similar to those which the Court has already dismissed in the case of *Romashov v. Ukraine* (cited above, §§ 28-32). The Court considers that the present objections must be rejected for the same reasons.

13. The Court concludes that the applicant's complaint under Article 6 § 1 of the Convention about the delay in the enforcement of the judgment of the Krasnolutskyy Town Court 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

14. The Government maintained that the right of the applicant to have a judgment in her favour enforced has been never questioned. The Government further maintained that the limitations of this right in the present case were aimed at the protection of the public interests and did not breach the very essence of the right in question. The Government argued that the State could not be considered responsible for the debts of its enterprises and, consequently, the responsibility of the State was limited to the organisation and proper conduct of enforcement proceedings only. The Government contended that the Bailiffs' Service had performed all necessary actions and could not be blamed for the delay. The Government finally maintained that the length of the enforcement in the present case was caused by a difficult financial situation of the debtor enterprise and could not be considered as unreasonable.

15. The applicant disagreed.

16. The Court notes that the judgment in the applicant's favour has not been enforced for more than two years and eleven months.

17. 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).

18. 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.

19. 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

20. 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

21. The applicant claimed in respect of pecuniary damage the amount of the judgment debt, and EUR 1,000 per year of non-enforcement of this judgment as non-pecuniary damage.

22. The Government maintained that the judgment in the applicant's favour was enforced in part, the remaining debt being UAH 1,092.85. The Government further maintained that the applicant's non-pecuniary claims were exorbitant and non-substantiated.

23. 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 (see paragraph 9 above) in settlement of her pecuniary damage. As to the remainder of the applicant's just satisfaction claims, the Court, making its assessment on an equitable basis, as required by Article 41 of the Convention, awards the applicant EUR 800 in respect of non-pecuniary damage.

B. Costs and expenses

24. The applicant claimed costs and expenses without indicating any particular amount.

25. The Court considers that the applicant has not provided any substantiation of her costs and expenses claimed; therefore, it 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 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, the judgment debt still owed to her as well as EUR 800 (eight hundred euros) in respect of non-pecuniary damage plus any tax that may be chargeable;
 - (b) that the above amount shall be converted into the national currency of the respondent State at the rate applicable at the date of settlement;
 - (c) 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 14 December 2006, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Claudia WESTERDIEK
Registrar

Peer LORENZEN
President