



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

FIFTH SECTION

CASE OF BALANDINA v. UKRAINE

(Application no. 16092/05)

JUDGMENT

STRASBOURG

6 December 2007

FINAL

06/03/2008

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 Balandina v. Ukraine,

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

Mr P. LORENZEN, *President*,

Mrs S. BOTOUCHAROVA,

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 2007,

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

PROCEDURE

1. The case originated in an application (no. 16092/05) 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 Kateryna Fedorivna Balandina (“the applicant”), on 20 April 2005.

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

3. On 13 December 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 1945 and lives in Kharkiv.

5. On 5 May 2000 the Dzerzhynskiy District Court of Kharkiv (*Дзержинський районний суд м. Харкова*) awarded the applicant 4,489.02 hryvnyas (UAH)¹ against her former employer, the Frunzenskiy District Municipal Renovation Company (*Державне комунальне*

1. EUR 921.88.

ремонтно-будівельне підприємство з ремонту житлового фонду Фрунзенського району м. Харкова) in salary arrears and other payments.

6. This judgment was not appealed against, became final, and the enforcement proceedings were instituted to collect the judgment debt.

7. On 16 June 2000 the Kharkiv City Council (*Харківська міська рада*) ordered liquidation of the debtor-company and on 22 September 2000 the enforcement writ was transferred to the liquidation commission.

8. On various occasions the applicant complained to the State authorities about the failure of the debtor-company to pay her the judgment debt and was informed that the collection of the debt was not possible on account of the debtor-company's lack of funds. The judgment remains unenforced to the present date.

II. RELEVANT DOMESTIC LAW

9. The relevant domestic law is set out in the judgment of 27 July 2004 in the case of *Romashov v. Ukraine* (no. 67534/01, §§ 16-19).

THE LAW

I. ALLEGED VIOLATIONS OF ARTICLES 6 § 1, 13 AND ARTICLE 1 OF PROTOCOL No. 1

10. The applicant complained about the State authorities' failure to enforce the judgment of the Dzerzhynskiy District Court of Kharkiv given in her favour. She invoked Articles 6 § 1 and 13 of the Convention and Article 1 of Protocol No. 1, which 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 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.”

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”

A. Admissibility

11. The Government raised objections, contested by the applicant, regarding exhaustion of domestic remedies similar to those already dismissed in a number of the Court's judgments regarding non-enforcement of judgments against the public companies (see e.g. among many others, *Sychev v. Ukraine*, no. 4773/02, §§ 42-46, 11 October 2005 and *Romashov v. Ukraine*, cited above, no. 67534/01, §§ 28-32). The Court considers that these objections must be rejected for the same reasons.

12. The Court concludes that the applicant's complaints raise issues of fact and law under the Convention, the determination of which requires an examination on the merits. The Court finds no ground for declaring them inadmissible. The Court must therefore declare them admissible.

B. Merits

13. In their observations on the merits of the applicant's case, the Government contended that there had been no violation of her Convention rights.

14. The applicant disagreed.

15. The Court notes that the delay in the enforcement of the judgment given in the applicant's favour has exceeded seven and a half years.

16. The Court has frequently found violations of Article 6 § 1 of the Convention and Article 1 of Protocol No. 1 in cases raising similar issues, where a debtor was a public enterprise (see e.g., *Kucherenko v. Ukraine*, no. 27347/02, §§ 26-27, 15 December 2005).

17. Having examined all the material in its possession, 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.

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

19. The Court does not find it necessary in the circumstances to examine under Article 13 of the Convention the same complaint as under Article 6 § 1.

II. 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 the unsettled judgment debt and 10,000 euros (EUR) in respect of non-pecuniary damage.

22. The Government contested these claims.

23. The Court finds that the Government should pay the applicant the unsettled judgment debt by way of compensation for pecuniary damage. It further finds that the applicant must have suffered non-pecuniary damage on account of the violations found. Ruling on an equitable basis, the Court awards the applicant EUR 2,000 under this head.

B. Costs and expenses

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

C. Default interest

25. 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* 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 the applicant within three months from the date on which the judgment becomes final in accordance with Article 44 § 2 of the Convention,

(i) the unsettled debt still owed to her;

(ii) the sum of EUR 2,000 (two thousand euros) in respect of 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;

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

Done in English, and notified in writing on 6 December 2007, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Claudia WESTERDIEK
Registrar

Peer LORENZEN
President