



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

FIFTH SECTION

CASE OF ROMANOVA v. UKRAINE

(Application no. 33089/02)

JUDGMENT

STRASBOURG

13 December 2007

FINAL

13/03/2008

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 Romanova v. Ukraine,

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

Mr P. LORENZEN, *President*,

Mr K. JUNGWIERT,

Mr V. BUTKEVYCH,

Mrs M. TSATSA-NIKOLOVSKA,

Mr J. BORREGO BORREGO,

Mrs R. JAEGER,

Mr M. VILLIGER, *judges*,

and Mrs C. WESTERDIEK, *Section Registrar*,

Having deliberated in private on 20 November 2007,

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

PROCEDURE

1. The case originated in an application (no. 33089/02) 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 Tatyana Leonidovna Romanova (“the applicant”), on 8 August 2002.

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

3. On 14 February 2006 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 born in 1951 and lives in Mykolayv.

A. Proceedings concerning the applicant's initial dismissal

5. In 1991-1996 the applicant was employed with a private company N., which provided maintenance services for student dormitories of the Ukrainian State Marine Technical University (*Український державний*

морський технічний університет, hereafter “the USMTU”). In 1996 the USMTU, following a year's litigation with N., terminated their contract and re-employed most of N.'s former employees, but not the applicant.

6. In May 1996 the applicant sued N. and the USMTU for unfair dismissal. On 26 July 1996 the Tsentralny District Court of Mykolayv (*Місцевий суд Центрального району м. Миколаєва*, hereafter “the District Court”) approved a settlement between the parties and discontinued the proceedings.

7. On 4 September 2001 the District Court, at the applicant's request, reopened the proceedings on the ground of new circumstances. In the course of the proceedings the applicant dropped her claims against N.

8. On 24 September 2001 the District Court, composed of a single judge, Mr A., granted the applicant's claim against the USMTU and ordered her immediate reinstatement. The USMTU appealed.

9. On 27 February 2002 the Mykolayv Regional Court of Appeal (*Апеляційний суд Миколаївської області*, hereafter “the Court of Appeal”) quashed that judgment and remitted the case to the District Court for a fresh consideration by a different judge.

10. The case was again considered by Judge A., who on 12 July 2002 rejected the applicant's claim as unsubstantiated. The applicant filed an appeal. On 25 September 2002 the Court of Appeal upheld the judgment rejecting the applicant's claim. The question of the competence of Judge A. to re-examine the case on the merits was not addressed in this decision.

11. The applicant appealed in cassation arguing, *inter alia*, that her case had been heard by a judge who was not competent. On 19 February 2003 the Supreme Court dismissed her appeal, finding that no procedural or substantive breaches had occurred before the lower courts.

B. Subsequent proceedings

1. Proceedings concerning the reinstatement order

12. In October 2002 the USMTU applied to the District Court for permission not to comply with its order of 24 September 2001 to reinstate the applicant. On 24 December 2002 the District Court found that the impugned order had lost its validity on 27 February 2002, when the Court of Appeal quashed the judgment on the basis of which it had been issued. The court also invited the USMTU “to resolve the issue of [the applicant's] dismissal”. The applicant appealed.

13. On 13 March 2003 the Court of Appeal excluded from the judgment the reference to the need to resolve the issue of the applicant's dismissal and upheld the remainder of the District Court's findings. On 19 May 2003 the Supreme Court dismissed the applicant's appeal in cassation.

2. Proceedings concerning the second dismissal

14. On 26 December 2002 the applicant was dismissed from the USMTU. She brought a claim for reinstatement and loss of earnings. On 23 April 2003 the District Court rejected her claim, noting that the applicant had been employed with the USMTU pursuant to the reinstatement order of 24 September 2001, which had lost its validity on 27 February 2002.

15. The applicant's appeals were dismissed by the Court of Appeal on 22 July 2003 and by the Supreme Court on 31 October 2003.

3. Claim for unpaid wages

16. On 27 August 2003 the applicant brought proceedings against the USMTU in which she claimed that her salary had not been paid to her in full. On 1 December 2003 rejected this claim as unsubstantiated. On 13 February 2004 the Court of Appeal dismissed the applicant's appeal against this judgment.

II. RELEVANT DOMESTIC LAW

17. The relevant part of Article 21 of the Code of Civil Proceedings of 18 July 1963 (hereafter “the Code”), as worded at the material time, read as follows:

“A judge who has been involved in the resolution of the case at first instance shall not consider the same case on appeal or on a cassation appeal, or participate in a fresh consideration by the court of first instance following a reversal of the judgment...”

18. Article 336 of the Code listed the grounds on which the cassation instance court could quash the lower courts' decisions and remit the case for fresh consideration.

This Article, in so far as relevant, provided:

“The court decision shall be quashed and the case remitted for fresh consideration if:

1) the case has been considered by a judge who, or panel which, was not competent to hear it [*неправомочним суддею або складом суду*]”

THE LAW

I. ALLEGED VIOLATION OF ARTICLE 6 OF THE CONVENTION

19. The applicant complained under Article 6 of the Convention that the proceedings concerning her initial dismissal were unfair. She stated in particular that the District Court, when hearing her case in the second set of

proceedings, was, contrary to domestic law, composed of the same single judge as in the first set. The applicant claimed to have suffered a violation of her right to have her case heard by an “independent and impartial tribunal established by law” within the meaning of 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 ... hearing ... by an independent and impartial tribunal established by law.”

A. Admissibility

20. The parties did not make submissions as to the admissibility of the case. The Court notes that this complaint 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. It must therefore be declared admissible.

B. Merits

21. The applicant submitted that, contrary to Article 21 of the Code of Civil Proceedings, Judge A. had twice participated in the examination of her civil case at first instance.

22. The Government did not submit any observations on the merits of the case.

23. The Court first notes that the issues of the lack of an “impartial” tribunal and a tribunal “established by law” coincide in substance in the present case.

24. Article 21 of the Code, which lays down that a judge who has been involved in the first instance examination of the case shall not be permitted to participate in its rehearing on a remittal from a higher court (see paragraph 17 above) must be taken to manifest the national legislature's concern to remove all reasonable doubts as to the impartiality of that court (see *Pfeifer and Plankl v. Austria*, judgment of 25 February 1992, Series A no. 227, § 36). Accordingly the failure to abide by this rule means that the applicant's appeal was heard by a tribunal whose impartiality was recognised by national law to be open to doubt (see *Oberschlick v. Austria (no. 1)*, judgment of 23 May 1991, Series A no. 204, § 49).

25. In conclusion, there has been a violation of Article 6 § 1 of the Convention.

26. In these circumstances the Court does not find it necessary to examine the applicant's complaint of general unfairness in the proceedings concerning her initial dismissal.

II. OTHER ALLEGED VIOLATIONS OF THE CONVENTION

27. The applicant complained of the length of the proceedings concerning her initial dismissal and of unfairness in the proceedings concerning the reinstatement order, her second dismissal and her claim for unpaid wages.

28. The Court has examined these complaints as submitted by the applicant. However, in the light of all the material in its possession, and in so far as the matters complained of were within its competence, the Court finds that they do not disclose any appearance of a violation of the rights and freedoms set out in the Convention or its Protocols.

29. Accordingly, it rejects this part of the application in accordance with Article 35 §§ 3 and 4 of the Convention as being manifestly ill-founded.

III. APPLICATION OF ARTICLE 41 OF THE CONVENTION

30. 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

31. The applicant claimed EUR 68,000 in respect of loss of earnings, caused by the allegedly unfair court decisions and UAH 500,000 (approximately EUR 145,000) in respect of non-pecuniary damage.

32. The Government argued that there was no causal link between the alleged violation and the pecuniary damage claimed. As regards the non-pecuniary claim, the Government maintained that it was exorbitant and unsubstantiated.

33. The Court does not discern any causal link between the violation found and the alleged pecuniary damage; it therefore rejects this claim.

34. However, it considers that the applicant must have suffered distress which cannot be compensated for solely by the finding of a violation. Deciding on an equitable basis, the Court awards the applicant EUR 500 as compensation for non-pecuniary damage, plus any tax that may be chargeable on that amount.

B. Costs and expenses

35. The applicant also claimed EUR 114 for costs and expenses incurred before the Court, including EUR 49 for medical expenses paid during the Convention proceedings.

36. The Government invited the Court to restrict any award to such costs and expenses as were actually and necessarily incurred and reasonable as to quantum.

37. Applying the criteria laid down in its case-law and making its assessment on an equitable basis, the Court considers it reasonable to award the applicant EUR 65 for her costs and expenses together with any value-added tax that may be chargeable.

C. Default interest

38. 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 complaint concerning the alleged unfairness of the proceedings concerning her dismissal admissible and the remainder of the application inadmissible;
2. *Holds* that there has been a violation of Article 6 § 1 of the Convention in respect of the consideration of the applicant's case by a court which was not an “independent and impartial tribunal established by law”;
3. *Holds* that there is no need to examine the complaint under Article 6 § 1 of the Convention of general unfairness in the proceedings concerning the applicant's initial unfair dismissal action;
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 following sums, to be converted into the national currency of the respondent State at the rate applicable on the date of payment:
 - (i) EUR 500 (five hundred euros) in respect of non-pecuniary damage;
 - (ii) EUR 65 (sixty five euros) for costs and expenses;

(iii) plus any tax that may be chargeable on the above amounts;
(b) that from the expiry of the above-mentioned three months until settlement simple interest shall be payable on the above amounts 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 2007, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Claudia WESTERDIEK
Registrar

Peer LORENZEN
President