



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

1959 · 50 · 2009

FIFTH SECTION

CASE OF RUKAS v. UKRAINE

(Application no. 15879/06)

JUDGMENT

STRASBOURG

15 October 2009

FINAL

15/01/2010

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 Rukas v. Ukraine,

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

Peer Lorenzen, *President*,

Karel Jungwiert,

Rait Maruste,

Mark Villiger,

Mirjana Lazarova Trajkovska,

Zdravka Kalaydjieva, *judges*,

Mykhaylo Buromenskiy, *ad hoc judge*,

and Claudia Westerdiek, *Section Registrar*,

Having deliberated in private on 22 September 2009,

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

PROCEDURE

1. The case originated in an application (no. 15879/06) 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, Ms Tamara Vasilyevna Rukas (“the applicant”), on 3 April 2006.

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

3. On 20 May 2008 the President of the Fifth Section decided to give notice of the application to the Government. It was also decided to examine the merits of the application at the same time as its admissibility (Article 29 § 3).

THE FACTS

I. THE CIRCUMSTANCES OF THE CASE

4. The applicant was born in 1950 and lives in the town of Armyansk, Ukraine.

5. On 6 November 2003 the Armyansk Court awarded the applicant 1,399.61 Ukrainian hryvnas (UAH) in salary arrears, to be paid by her former employer, the State company Sivashsky Anilinokrasochniy zavod (“the company”). On an unspecified date the judgment was enforced in full.

6. On 20 February 2004 the same court awarded the applicant UAH 2,206.56¹ in compensation for the pecuniary and non-pecuniary damage caused by the delay in payment of the salary. The judgment became final. On 24 March 2004 the State Bailiffs' Service instituted enforcement proceedings.

7. On 10 October 2006 the company was declared insolvent. The liquidation proceedings instituted against the company are still pending.

8. The judgment of 20 February 2004 has not been enforced due to the company's lack of funds.

II. RELEVANT DOMESTIC LAW

9. 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 1 OF PROTOCOL No. 1 TO THE CONVENTION

10. The applicant complained about the State authorities' failure to enforce the judgment of 20 February 2004. She relied on Article 1 of Protocol No. 1, which provides, in so far as relevant, as follows:

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....”

A. Admissibility

11. The Government submitted that the applicant had failed to exhaust domestic remedies as required by Article 35 § 1 of the Convention. In particular, they maintained that she had not availed herself of the opportunity to be registered as a creditor in the insolvency proceedings, and had failed to challenge the liquidation commission's inactivity before the relevant commercial court.

¹ Approximately EUR 209 at the material time

12. The applicant disagreed.

13. The Court notes that similar objections have already been rejected in a number of judgments adopted by the Court (see *Sokur v. Ukraine* (dec.), no. 29439/02, 16 December 2003; *Sychev v. Ukraine*, no. 4773/02, §§ 42-46, 11 October 2005; and *Trykhlil v. Ukraine*, no. 58312/00, §§ 38-43, 20 September 2005). The Court considers that these objections must be rejected in the instant case for the same reasons.

14. The Court notes that the 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

15. In their observations on the merits the Government advanced the arguments they have frequently put forward in cases like the present one (see, for example, the *Romashov* judgment, cited above, § 37).

16. The applicant disagreed.

17. The Court has frequently found violations of Article 1 of Protocol No. 1 to the Convention in cases raising similar issues to those in the present case (see *Voytenko v. Ukraine*, no. 18966/02, § 55, 29 June 2004).

18. Having examined all the material 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 1 of Protocol No. 1 to the Convention.

II. NON-ENFORCEMENT OF THE JUDGMENT OF 6 NOVEMBER 2003

20. Lastly, the applicant complained under Article 1 of Protocol No. 1 about the lengthy non-enforcement of the judgment of 6 November 2003. She submitted that the judgment had been enforced, but did not provide any information about the date of its enforcement.

21. Having regard to all the material in its possession, and in so far as this complaint falls within its competence, the Court finds that it does not disclose any appearance of a violation of Article 1 of Protocol No. 1 of the Convention. It follows that this part of the application is manifestly ill-founded and must be rejected in accordance with Article 35 §§ 3 and 4 of the Convention.

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 payment of the outstanding debt under the judgment of 20 February 2004. She also asked that the judgment debt be indexed to the rate of inflation, though she did not indicate the sums in question. She further claimed 2,000 euros (EUR) in respect of non-pecuniary damage.

24. The Government agreed to pay her the outstanding debt and contested the remainder of her claims.

25. The Court finds that the Government should pay the applicant the outstanding debt under the judgment of 20 February 2004 by way of compensation for pecuniary damage. It further dismisses the claim for inflation adjustment as unsubstantiated (see, *a contrario*, *Maksimikha v. Ukraine*, no. 43483/02, § 29, 14 December 2006). The Court further takes the view that the applicant must have sustained non-pecuniary damage as a result of the violation found. Making its assessment on an equitable basis, as required by Article 41 of the Convention, it awards the applicant EUR 1,800 under this head.

B. Costs and expenses

26. The applicant lodged no claim in that connection; the Court, therefore, makes no award under this head.

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.

FOR THESE REASONS, THE COURT UNANIMOUSLY

1. *Declares* the complaint concerning the non-enforcement of the judgment of 20 February 2004 admissible and her complaint about the non-enforcement of the judgment of 6 November 2003 inadmissible;

2. *Holds* that there has been a violation of Article 1 of Protocol No. 1 to the Convention;
3. *Holds*
 - (a) that the respondent State is to pay to 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:
 - (i) the outstanding debt under the judgment of 20 February 2004 in respect of pecuniary damage;
 - (ii) EUR 1,800 (one thousand eight hundred 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 amounts at a rate equal to the marginal lending rate of the European Central Bank during the default period plus three percentage points;
4. *Dismisses* the remainder of the applicant's claim for just satisfaction.

Done in English, and notified in writing on 15 October 2009, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Claudia Westerdiek
Registrar

Peer Lorenzen
President