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

FIFTH SECTION

DECISION

Application no. 40436/16
Natalya Viktorivna MARMYLOVA
against Ukraine

The European Court of Human Rights (Fifth Section), sitting on 10 November 2022 as a Committee composed of:

Stéphanie Mourou-Vikström*, President*,
Lado Chanturia,
Mykola Gnatovskyy*, judges*,
and Martina Keller, *Deputy Section Registrar,*

Having regard to:

the application (no. 40436/16) against Ukraine lodged with the Court under Article 34 of the Convention for the Protection of Human Rights and Fundamental Freedoms ("the Convention") on 6 July 2016 by a Ukrainian national, Ms Natalya Viktorivna Marmylova ("the applicant"), who was born in 1957 and lives in Odesa;

Having deliberated, decides as follows:

SUBJECT MATTER OF THE CASE

1. The case concerns the applicant's complaints, under Article 1 of Protocol No. 1 to the Convention, that the authorities failed to conduct an effective investigation into her allegations of fraud, and under Article 6 § 1 and Article 13 of the Convention, that proceedings she initiated against her debtor were excessively lengthy.

2. The applicant lent money on many occasions to an acquaintance, Ms T., for T.'s business. When T. failed to repay the money, the applicant on 18 January 2013 initiated criminal proceedings against her for fraud and acquired the status of an "aggrieved party", within the meaning of the Code of Criminal Procedure, in those proceedings. She lodged a civil claim for compensation within the framework of those criminal proceedings on 6 February 2013. The claim was lodged under the Code of Criminal Procedure, notably its Article 128 which provides that a person who has

suffered damage due to a crime can lodge a civil claim against the suspect or accused prior to the criminal trial and such a claim is to be examined under the rules of criminal procedure.

3. The proceedings were discontinued (in particular, from 27 April 2013 to 7 April 2014 and from 2 October to 27 November 2014) for lack of elements of a criminal offence, but following the applicant's complaints those decisions were overruled. The discontinuation decision of 27 April 2013 was overruled by a superior prosecutor as premature since not all possible investigation actions were conducted. The decision of 2 October 2014 was overruled by a court on the grounds that the investigator failed to appear before the court to respond to the applicant's complaint. According to the most recent available information from the applicant, the investigation is still pending.

4. On 26 July 2017 the applicant lodged a separate civil claim against T., seeking to recover the debt. In a final decision, on 7 November 2019 the Odesa Regional Court of Appeal upheld the first-instance court's decision granting the claim in full.

THE COURT'S ASSESSMENT

A. Alleged violation of Article 6 of the Convention

5. As far as the criminal proceedings are concerned, the criminal limb of Article 6 § 1 does not apply to those proceedings. The Court is prepared to accept, however, that Article 6 § 1 was applicable to those proceedings under its civil limb from the moment the applicant lodged a civil claim within the framework of criminal proceedings (see *Perez v. France* [GC], no. 47287/99, §§ 70-74, ECHR 2004-I, and contrast *Kulakov v. Ukraine* (dec.), no. 12944/02, 16 November 2010, and *Skorokhodov v. Ukraine*, no. 56697/09, § 42, 14 November 2013).

6. The Court reiterates that the reasonableness of the length of proceedings must be assessed in the light of the circumstances of the case and with reference to the following criteria: the complexity of the case, the conduct of the applicants and the relevant authorities, and what was at stake for the applicants in the dispute (see *Frydlender v. France* [GC], no. 30979/96, § 43, ECHR 2000-VII). However, certain cases may call for an overall assessment in this respect, without a separate examination of each of those criteria (see, for example, *Mączyński v. Poland*, no. 43779/98, § 33, 15 January 2002, and *Khlebik v. Ukraine*, no. 2945/16, § 69, 25 July 2017).

7. In the present case the Court finds it decisive that the applicant had a more appropriate forum for the determination of her civil rights and obligations in which those rights could have been, and ultimately were, determined within a reasonable time (see paragraph 4 above). The applicant failed to explain why she could not have initiated those proceedings earlier

instead of seeking in vain to have her debtor criminally prosecuted. In those circumstances, the applicant failed to make an arguable claim that the length of the criminal investigation was unreasonable.

8. It follows that this part of the application is manifestly ill-founded and must be rejected in accordance with Article 35 §§ 3 (a) and 4 of the Convention.

9. As far as the separate civil proceedings are concerned, the applicant first submitted her complaint in that respect in her letter of 8 October 2020. Given that those proceedings ended on 7 November 2019, the relevant complaint was lodged outside the six-month time-limit and must therefore be rejected as inadmissible pursuant to Article 35 §§ 1 and 4 of the Convention.

B. Alleged violation of Article 1 of Protocol No. 1 to the Convention

10. There may be situations where the positive obligations under Article 1 of Protocol No. 1 require the respondent State to conduct an effective criminal investigation (see *Blumberga v. Latvia*, no. 70930/01, § 67, 14 October 2008). However, the present case is not one of them. The applicant lent money to an acquaintance on many occasions, and the debtor did not disappear but remained available to be contacted. The applicant was able to lodge a civil claim against her and obtain a judgment regardless of the outcome of the criminal proceedings she had initiated.

11. It follows that this part of the application is manifestly ill-founded and must be rejected in accordance with Article 35 §§ 3 (a) and 4 of the Convention.

C. Alleged violation of Article 13 of the Convention

12. In the absence of any arguable claim under other provisions of the Convention, the Court considers that this complaint is manifestly ill-founded and must be rejected in accordance with Article 35 §§ 3 and 4 of the Convention.

For these reasons, the Court, unanimously,

Declares the application inadmissible.

Done in English and notified in writing on 1 December 2022.

Martina Keller Deputy Registrar	Stéphanie Mourou-Vikström President