



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

SECOND SECTION

CASE OF SHARKO v. UKRAINE

(Application no. 72686/01)

JUDGMENT

STRASBOURG

19 April 2005

FINAL

19/07/2005

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 Sharko v. Ukraine,

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

Mr J.-P. COSTA, *President*,

Mr I. CABRAL BARRETO,

Mr R. TÜRMEŖEN,

Mr V. BUTKEVYCH,

Mr M. UGREKHELIDZE,

Mrs E. FURA-SANDSTRÖM,

Ms D. JOČIENĖ, *judges*,

and Mrs S. DOLLÉ, *Section Registrar*,

Having deliberated in private on 22 March 2005,

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

PROCEDURE

1. The case originated in an application (no. 72686/01) 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, Mr Georgiy Alekseyevich Sharko (“the applicant”), on 30 December 2000.

2. The Ukrainian Government (“the Government”) were represented by their Agents, Ms Valeria Lutkovska, succeeded by Ms Zoryana Bortnovska.

3. The applicant’s complaints under Articles 6 § 1 of the Convention were communicated to the respondent Government on 9 May 2003. On the same date the Court decided that Article 29 § 3 of the Convention should be applied and the admissibility and merits of the complaint be considered together.

4. The applicant and the Government each filed observations on the admissibility and merits (Rule 54A).

THE FACTS

5. The applicant is a Ukrainian national who was born in 1939 and currently resides in Donetsk.

I. THE CIRCUMSTANCES OF THE CASE

6. The facts of the case, as submitted by the parties, may be summarised as follows.

A. Disablement benefit proceedings

7. On 23 May 1987 the applicant was injured in an accident at a State mine belonging to the *Trest Donets'ke Shakhtobudivel'ne Upravlinnia No. 6* (the “DSU”). On 26 August 1987 the Medical Expert Commission recognised the applicant as falling within the third category of invalidity (*третья группа инвалидности*). From 1987 to September 1996 the applicant received disablement benefits from the DSU.

8. In September 1996 the DSU stopped paying the disability allowance to the applicant.

9. In April 1998 the applicant instituted proceedings in the Voroshylovsky District Court of Donetsk against the DSU, seeking compensation for the disablement benefits which had not been paid to him since 1996.

10. On 25 January 1999 the Voroshylovsky District Court of Donetsk allowed the applicant’s claims in part. It ordered the DSU to pay the applicant UAH 3,496.03¹ in compensation for material damage. On 18 February 1999 the Donetsk Regional Court partly quashed that decision in respect of the amount of compensation and remitted the case for fresh consideration.

11. The applicant’s complaints to the Presidents of the Donetsk Regional Court and the Supreme Court of Ukraine, with a view to initiating a supervisory review, were rejected on 1 April 1999 and 26 September 2000, respectively, as being unsubstantiated.

12. On 1 July 1999 the Voroshylovsky District Court of Donetsk allowed the applicant’s claims. It also ordered the DSU to pay the applicant UAH 7,336.22² in compensation.

13. Later, the applicant introduced a claim against the DSU with the Kuybyshevsky District Court of Donetsk, requesting reimbursement of the disability allowance for the period between 1 July 1999 and 1 December 2000. On 16 May 2001 court awarded the applicant the amount of UAH 5,962.22³.

14. On 1 November 1999 the applicant received UAH 25⁴ in execution of the judgment of 1 July 1999.

15. On 7 February 2000 the Donetsk Regional Department of Justice informed the applicant that no breaches of the law were found in the course of the execution proceedings or the auctioning of the DSU’s property by the Voroshylovsky District Execution Service.

16. In March 2000 the Voroshylovsky District Execution Service informed the applicant that the judgment could not be executed in full due

1. EUR 847.08.

2. EUR 1,797.40.

3. EUR 1,255.63.

4. EUR 5.23.

to the DSU's lack of funds and its outstanding debt of UAH 800,000¹ in salary and social benefit payments.

17. On 27 April 2000 the Donetsk Municipal Council, in response to the applicant's complaints, informed him that there was no finding of a breach of the law in the course of the execution proceedings or the auctioning of the DSU's property.

18. On 16 May and 27 June 2001 the Kuybyshevsky District Court of Donetsk respectively awarded the applicant UAH 5,962.22² and UAH 714.15³ in compensation for unpaid disablement benefits for the period from 1 July 1999 to January 2001.

19. The aforementioned judgments were presented to the Kuybyshevsky District Bailiffs' Service for enforcement on 5 June and 27 August 2001, respectively. The enforcement proceedings were initiated on the same date.

20. During 1999-2002 the judgment of the Voroshylovsky District Court of 1 July 1999 was partially enforced in instalments: in 1999 the applicant received UAH 413⁴, in 2000 – UAH 476⁵, in 2001 – UAH 1,560⁶ and UAH 2,403.85⁷, and in 2002 – UAH 2,514⁸.

21. Pursuant to payment order no. 247 of 15 July 2003, the applicant received the remaining part of the debt (UAH 6,645.74).

22. On 16 July 2003 the Bailiffs' Service terminated the enforcement proceedings on the writs of execution of the Kuybyshevsky District Court for the judgments of 16 May and 27 June 2001 (UAH 714.15⁹ and UAH 5,962.22¹⁰) and the writ of execution of the Voroshylovsky District Court of Donetsk of 1 July 1999 (UAH 7,336.22¹¹), in view of the full enforcement of the respective judgments given in the applicant's favour. The proceedings concerning the judgment of 1 July 1999 were terminated on 16 July 2003 due to the payment in full in 2002 (date unspecified). The judgments of 16 May and 27 June 2001 were enforced on 16 July 2003 only.

23. On 15 October 2003 the Donetsk Regional Department of Justice informed the applicant that his complaints about the failure of the Bailiffs' to enforce the judgment of 1 July 1999 and to pay him UAH 413¹² were unsubstantiated.

1. EUR 147,808.

2. EUR 1,255.63.

3. EUR 154.99.

4. EUR 75.49.

5. EUR 99.91.

6. EUR 326.50.

7. EUR 503.11.

8. EUR 483.13.

9. See reference 2 above.

10. See reference 1 above.

11. EUR 1,797.40.

12. See reference 3 above.

B. The applicant's complaints about his eviction

24. The applicant alleges that on 7 July 1998 he was evicted from his room in the DSU's dormitory. The applicant was on the waiting list for State housing but was not provided with an apartment.

C. Savings Bank deposits of the applicant

25. The applicant maintains that he has 11,395.65 Soviet Rubles deposited with the Savings Bank. The applicant alleges that in 1991, after Ukraine declared its independence, the deposits disappeared.

II. RELEVANT DOMESTIC LAW

26. The relevant domestic law and practice is set out in the judgments of *Romashov v. Ukraine* (no. 67534/01, §§ 16-18, 27 July 2004) and *Dubenko v. Ukraine* (no. 74221/01, §§ 21-23, 11 January 2005).

THE LAW**I. ADMISSIBILITY OF THE APPLICANT'S COMPLAINTS****A. The applicant's complaints about the enforcement proceedings under Article 2 § 1 of the Convention**

27. The applicant complains that his right to life was violated by the non-enforcement of the judgments in his favour. He invokes Article 2 § 1 of the Convention, which provides:

“Everyone's right to life shall be protected by law.”

28. However, the Court recalls its case-law to the effect that neither Article 2 nor any other provision of the Convention can be interpreted as conferring on an individual a right to enjoy any given standard of living (*Wasilewski v. Poland*, no. 32734/96, 20.4.1999). Moreover, the applicant has not shown that he suffers such destitution as to put his life at risk.

29. It follows that this complaint is incompatible *ratione materiae* with the provisions of the Convention and must be rejected in accordance with Article 35 §§ 3 and 4 of the Convention.

B. Complaints about the applicant's eviction

30. The applicant also complains about his eviction from the dormitory room which he occupied. He does not refer to any provision of the Convention.

31. However, the Court finds that the applicant has not raised this complaint before any domestic court. The applicant has not, therefore, as required by Article 35 § 1 of the Convention, exhausted the remedies available under domestic law. It follows that this complaint must be rejected pursuant to Article 35 §§ 1 and 4 of the Convention.

C. Complaints about the inability to recover savings

32. The applicant complains about his alleged inability to recover his indexed deposits with the State Savings Bank of Ukraine, their alleged disappearance and as a result refusal of the domestic courts to award their recovery. He alleges, in substance, a violation of Article 1 of Protocol No. 1 to the Convention, which provides as follows:

“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 or to secure the payment of taxes or other contributions or penalties.”

33. The Court recalls that it has previously held that the recovery of indexed deposits is not a matter protected by the Protocol and, accordingly, was outside the Court's competence *ratione materiae* (see *Gayduk and Others v. Ukraine* (dec.), no. 45526/99, decision of 2 July 2002). The Court finds no reason to distinguish the present case from the previous decision. It follows that this aspect of the complaint is incompatible *ratione materiae* with the provisions of the Convention within the meaning of Article 35 § 3 and must be rejected in accordance with Article 35 § 4.

34. In so far as the applicant alleges that his deposits disappeared altogether, the Court finds no evidence whatsoever in the case-file to substantiate that claim. It follows that this aspect of the complaint must be rejected as being manifestly ill-founded, pursuant to Article 35 §§ 3 and 4 of the Convention.

D. The Government's preliminary objections as to the applicant's victim status and exhaustion of domestic remedies in relation to enforcement of the judgment (Article 6 § 1)

35. The Government contend that the applicant may no longer claim to be a victim of a violation of the Convention, as understood by Article 34, because all the judgments in his case have been enforced. Moreover, the applicant made insufficient use of the possibilities to sue the Bailiffs' Service for the delays in execution, and therefore did not exhaust domestic remedies, as required by Article 35 § 1 of the Convention.

36. The applicant contested these arguments.

37. The Court recalls that similar issues have been examined and dismissed in previous cases (see *Voytenko v. Ukraine*, no. 18966/02, judgment of 29 June 2004, § 35; *Shmalko v. Ukraine*, no. 60750/00, judgment of 20 July 2004, § 34). It finds no reason to reach a different conclusion in the present case. Accordingly, it dismisses the Government's preliminary objections.

38. The Court considers, in the light of the parties' submissions, that the applicant's complaints under Article 6 § 1 of the Convention raise serious issues of fact and law under the Convention, the determination of which requires an examination of the merits. In conclusion, it finds no grounds for declaring this complaint inadmissible.

II. AS TO THE ALLEGED VIOLATION OF ARTICLE 6 § 1 OF THE CONVENTION

39. The Court recalls that Article 6 § 1 secures the right to the enforcement of a final judgment given by a court without undue delay (see the aforementioned *Shmalko* judgment). The Court notes that a delay in the execution of a judgment may not be such as to impair the essence of the right protected under Article 6 § 1 (see *Immobiliare Saffi v. Italy* [GC], no. 22774/93, § 74, ECHR 1999-V). In the instant case, the applicant should not have been prevented from benefiting from the decisions given in his favour, which was of major importance to him in view of his disability, on the ground of the State's alleged financial difficulties.

40. The Court notes that there were three judgments given in the applicant's favour that remained unenforced for a lengthy period of time (from two to four years). The judgment of the Voroshylovsky District Court of Donetsk of 1 July 1999 and the judgments of 16 May and 27 June 2001 of the Kuybyshevsky District Court remained partially unenforced until 16 July 2003 when the full amount of the sums due was paid to the applicant. It also notes, notwithstanding the fact that the debts were paid to the applicant in instalments, that a substantial amount of arrears was fully

paid to the applicant only after the communication of the application to the respondent Government.

41. The Court considers therefore that by failing for over four years (as regards the judgment of 1 July 1999, terminated on 16 July 2003 only) and for more than two years (as regards the judgments of 16 May and 27 June 2001, enforced on 16 July 2003 only) to comply with these judgments, and by delaying the payment to the applicant of much needed disablement benefits, the authorities deprived the provisions of Article 6 § 1 of the Convention of much of their useful effect.

42. There has, accordingly, been a violation of Article 6 § 1 of the Convention.

III. APPLICATION OF ARTICLE 41 OF THE CONVENTION

43. 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 and costs and expenses

44. The applicant, who was not legally represented before the Court, originally claimed pecuniary damage relating to the amounts awarded to him by the domestic court judgments and non-pecuniary damage in the amount of UAH 100,000 (EUR 18,300).

45. The Government contested the applicant's claims. They alleged that they were unsubstantiated and excessive.

46. The Court considers that the sum claimed by the applicant is excessive. Making its assessment on an equitable basis, as required by Article 41 of the Convention, the Court awards the applicant the global sum of EUR 2,000 in respect of all his claims and expenses in pursuing his application before the Court.

B. Default interest

47. 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 applicant's complaint under Article 6 § 1 of the Convention admissible and the remainder of the application inadmissible;
2. *Holds* that there has been a violation of Article 6 § 1 of the Convention;
3. *Holds*
 - (a) that the respondent State is to pay the applicant, within three months from the date on which the judgment becomes final according to Article 44 § 2 of the Convention, the global sum of EUR 2,000 (two thousand euros), plus any tax that may be chargeable;
 - (b) that this 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 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 19 April 2005, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

S. DOLLÉ
Registrar

J.-P. COSTA
President