



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

SECOND SECTION

CASE OF SHCHERBAKOV v. UKRAINE

(Application no. 75786/01)

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 Shcherbakov 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. TÜRMEŇ,

Mr V. BUTKEVYCH,

Mr M. UGREKHELIDZE,

Mrs E. FURA-SANDSTRÖM,

Ms D. JOČIENĚ, *judges*,

and Mrs S. DOLLĚ, *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. 75786/01) 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 Anatoliy Aleksandrovich Scherbakov (“the applicant”), on 7 March 2001.

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 and Article 1 of Protocol No.1 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 application 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 1956 and currently resides in Lysychansk, Ukraine.

I. THE CIRCUMSTANCES OF THE CASE

6. In 1997-1998 the applicant worked as a miner for the State-owned Lysychansk Mine-Construction Company (*Shakhtobudivél’ne Upravlinnia*; the “LSU”).

7. The Government submitted that from 1997 onwards the LSU experienced financial difficulties and therefore the salaries were paid to its employees irregularly. On 24 July 1997 the Lysychansk State Tax Inspectorate informed the Bailiffs' Service that the LSU's property was in a tax lien.

8. In October 2000 the applicant instituted proceedings in the Lysychansk City Court against the LSU seeking to recover the salary owed to him.

9. On 2 November 2000 the Lysychansk City Court allowed his claims and ordered the LSU to pay the applicant UAH 4,857.53¹ in compensation.

10. On 14 November 2000 the Lysychansk City Bailiffs' Service instituted execution proceedings in respect of the judgment of 2 November 2000.

11. On 23 November 2000 the bailiff passed a resolution collecting an enforcement fee from the debtor and joining the enforcement proceedings in the applicant's case to the combined enforcement proceedings no. 4/2 of 1 September 2000 that concerned other creditors of the mine.

12. On 1 July 2001 the Lysychansk City Bailiffs' Service informed the applicant that his judgment could not be executed due to the LSU's lack of funds.

13. On 28 November 2003 the LSU paid the applicant UAH 4,857.53, in compliance with the judgment of 2 November 2000.

14. On 1 December 2003 the Lysychansk City Bailiffs' Service terminated the proceedings as the judgment had been enforced in full.

15. On 21 January 2004 the applicant informed the Court that he had been paid the sum of UAH 6,665² in compensation for salary arrears, which sum included the judgment debt of 2 November 2000.

II. RELEVANT DOMESTIC LAW AND PRACTICE

16. 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

17. The applicant complained about the non-enforcement of the judgment of the Lysychansk City Court of 2 November 2000 given in his favour. He alleged an infringement of Article 6 § 1 of the Convention and

1. EUR 1,037.71.

2. EUR 1,022.12.

Article 1 of Protocol No. 1 to the Convention, which provide, in so far 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 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 or to secure the payment of taxes or other contributions or penalties.”

I. ADMISSIBILITY

A. The applicant’s victim status

18. The Government stressed that as the judgment of 2 November 2000 had been executed by the national authorities in full, the applicant could no longer be considered a victim of a violation of his rights under Article 6 § 1. They therefore proposed that the application be declared inadmissible or struck out of the Court’s list of cases.

19. The applicant disagreed.

20. The Court notes that this issue has already been examined in a number of its judgments (see *Voytenko v. Ukraine*, no. 18966/02, judgment of 6 June 2004, § 35; *Shmalko v. Ukraine*, no. 60750/00, judgment of 20 July 2004, § 34). In these cases the Court found that the applicant may still claim to be a victim of an alleged violation of the rights guaranteed by Article 6 § 1 in relation to the period during which the decision of which complaint is made remained unenforced (see, *Skubenko v. Ukraine* (dec.), no. 41152/98, 6 April 2004). It therefore rejects the Government’s objection as to the present applicant’s lack of victim status.

B. Objection as to the exhaustion of domestic remedies

21. The Government contended that the applicant has not exhausted domestic remedies as he did not lodge a claim with the domestic courts challenging the inactivity of the State Bailiffs' Service or seeking to expedite the enforcement proceedings in his case.

22. The applicant contested this submission.

23. The Court recalls its recent case-law on this issue (see the *Voytenko* and *Shmalko* judgments cited above, §§ 28-31 and 37-39, respectively). It finds no reason to distinguish the present application from these previous decisions. It concludes therefore that the applicant was absolved from pursuing the remedy invoked by the Government and has therefore complied with the requirements of Article 35 § 1 of the Convention.

C. Conclusions as to the admissibility of the application

24. The Court considers, in the light of the parties' submissions, that the applicant's complaint under Article 6 § 1 of the Convention raises serious issues of fact and law under the Convention, the determination of which requires an examination of the merits. The Court concludes therefore that the complaint cannot be rejected as being manifestly ill-founded within the meaning of Article 35 § 3 of the Convention. No other ground for declaring it inadmissible has been established. On the same basis, the Court finds that the applicant's complaint under Article 1 of Protocol No. 1 cannot be rejected.

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

25. The Government suggested that there was no infringement of Article 6 § 1 of the Convention in view of the enforcement of the judgment.

26. The applicant disagreed.

27. The Court observes that the State is liable for the debts of the mining enterprise at issue (see *Romashov v. Ukraine*, no. 67534/01, § 41, judgment of 27 July 2004). It further notes that a delay in the execution of a judgment may be justified in particular circumstances, but 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 decision given in his favour, which was of major importance to him, on the ground of the State's alleged financial difficulties.

28. The Court notes that the decision of 2 November 2000 remained unenforced for a lengthy period of time (over three years). In particular, it remained so until December 2003 when the full amount of debt was finally

paid to the applicant. It further notes that this decision was enforced only after the communication of the application to the respondent Government.

29. The Court considers therefore that by failing for over three years to take the necessary measures to comply with the aforementioned judgment, the authorities deprived the provisions of Article 6 § 1 of the Convention of much of their useful effect. The Court also finds that there was clearly a delay in the enforcement of the judgment as from November 2000 until the date of communication of the application to the respondent Government for observations. It further considers that the Government have not advanced any justification for this delay (see *Shmalko v. Ukraine*, no. 60750/00, judgment of 20 July 2004, § 45).

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

III. ALLEGED VIOLATION OF ARTICLE 1 OF PROTOCOL NO. 1 TO THE CONVENTION

31. The applicant alleged that there had been an unjustified interference with his property rights, in breach of Article 1 of Protocol No. 1. The substantial delay in the payment of the debt had deprived him of the actual possession of his property.

32. The Government acknowledged that the judgment debt constituted a possession within the meaning of Article 1 of Protocol No. 1. Nevertheless, they maintained that it had not been violated since the applicant's entitlement to the award was not disputed and he was not deprived of his property. They further noted that the delay in payment was due to the insufficient funds of the defendant company.

33. The Court recalls its case-law that the impossibility for an applicant to obtain the execution of a judgment in his or her favour constitutes an interference with the right to the peaceful enjoyment of possessions, as set out in the first sentence of the first paragraph of Article 1 of Protocol No. 1 (the aforementioned *Voytenko* judgment, § 53).

34. The substantial delay of over three years to pay the judgment debt to the applicant is also an interference of this kind, for which the Government have not advanced any satisfactory explanation. The Court considers that the alleged lack of funds of a State-owned enterprise cannot justify such an omission. Accordingly, there has been a violation of Article 1 of Protocol No. 1.

III. APPLICATION OF ARTICLE 41 OF THE CONVENTION

35. 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

36. The applicant, who was not legally represented before the Court, originally claimed pecuniary damage relating to the amounts awarded to him by the judgment and non-pecuniary damage in the amount of UAH 2,000 (EUR 300).

37. The Government contested the applicant's claims as being unsubstantiated.

38. Making its assessment on equitable basis, as required by Article 41 of the Convention, the Court awards the applicant the global sum of EUR 1,500 in respect of all his claims and expenses in pursuing his application before the Court.

B. Default interest

39. 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 to the Convention;
4. *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 1,500 (one thousand five hundred 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;

5. *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