



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

SECOND SECTION

CASE OF SHEVCHENKO v. UKRAINE

(Application no. 10905/02)

JUDGMENT

STRASBOURG

29 November 2005

FINAL

29/02/2006

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 Shevchenko v. Ukraine,

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

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

Mr A.B. BAKA,

Mr I. CABRAL BARRETO,

Mr R. TÜRMEŇ,

Mr V. BUTKEVYCH,

Ms D. JOČIENĚ,

Mr D. POPOVIĆ, *judges*,

and Mr S. NAISMITH, *Deputy Section Registrar*,

Having deliberated in private on 8 November 2005,

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

PROCEDURE

1. The case originated in an application (no. 10905/02) 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 Valentyna Tymofiyivna Shevchenko (“the applicant”), on 10 September 2001.

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

3. On 9 May 2003 the Court decided to communicate to the respondent Government the complaint, under Articles 6 § 1, 13 and Article 1 of Protocol No. 1 to the Convention, concerning the non-enforcement of the judgment of the Zarichny District Court of Sumy given on 15 November 1999 in the applicant’s favour. 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

4. The applicant, Ms Valentyna Tymofiyivna Shevchenko, is a Ukrainian national who was born on 23 February 1970 and lives in Odessa, Ukraine.

I. THE CIRCUMSTANCES OF THE CASE

5. In October 1999 the applicant instituted proceedings in the Zarichny District Court of Sumy (the “Zarichny Court”) against the Department of

Education of the Sumy Municipal Council (Department), seeking the recovery of unpaid salary.

6. On 15 November 1999 the Zarichny Court allowed her claims and ordered the Department to pay the applicant UAH 1,181.71¹ in compensation. On 19 January and 28 January 2000, the Department paid the applicant UAH 199.39² in execution of the judgment.

7. On 1 February 2000 the applicant instituted proceedings in the Zarichny Court against the State Bailiffs' Service of Sumy, seeking the full execution of the judgment of 15 November 1999. She also sought a declaration of unlawfulness as to the actions of the Bailiffs' Service in deciding to join the pending writs of execution against the Department.

8. On 9 March 2000 the Zarichny Court rejected her claims as unsubstantiated. In particular the court found that the judgment of 15 November 1999 could not be fully executed due to the lack of funds of the Department.

9. On 19 April 2000 the Sumy Regional Court (the "Sumy Court") rejected the applicant's cassation appeal against the decision of 9 March 2000.

10. The applicant's complaints with a view to instituting supervisory proceedings, lodged with the President of the Sumy Court, were rejected on 11 May 2000 as being unsubstantiated.

11. On 15 June 2000 the Zarichny Bailiffs' Service informed the applicant that there were 1,152 pending writs of execution that had been issued against the Department for a total sum of UAH 348,529.80³. It also informed the applicant that insufficient funds were available to execute the decision. The applicant was invited to accept UAH 74⁴ in execution of the judgment.

12. On 21 August 2000 the Deputy President of the Sumy Court lodged a *protest* with the Presidium of that court against the judgment of 9 March 2000 of the Zarichny Court. On 4 September 2000 the Presidium of the Sumy Court quashed the decisions of 9 April and 19 April 2000 and remitted the case for fresh consideration.

13. During 2000 the applicant received UAH 411.38⁵ as a result of enforcement measures of the State Bailiffs.

14. On 1 February 2001 the Zarichny Court rejected the applicant's claims as being unsubstantiated. On 23 February 2001 the Sumy Court upheld that decision. In particular, it held that, if there are a number of execution proceedings pending against the same legal entity, these proceedings can be joined (*зведене виконавче провадження*). It also

1. 232.21 euros – "EUR"

2. EUR 39.18

3. EUR 66,908

4. EUR 14.21

5. EUR 78.56

informed the applicant that the partial enforcement of judgments authorised by the Bailiffs' Service was lawful.

15. At the time of lodging the application, the debt owed to the applicant amounted to UAH 770.33¹.

16. On 8 August 2001 the enforcement proceedings were terminated due to the Department's lack of funds.

17. On 5 October 2003 the applicant informed the Court that the judgment given in her favour remained unenforced.

18. On 15 March 2004 the applicant informed the Court that she had received the full amount of the debt due to her. She also confirmed that she had received an additional sum of UAH 500² in compensation³. On 17 May 2004 the Government informed the Court that the judgment had been enforced in full.

II. RELEVANT DOMESTIC LAW

19. The relevant domestic law is set out in the judgment of 27 July 2004 in the case of *Romashov v. Ukraine* (no. 67534/01, §§ 16-19).

THE LAW

I. AS TO THE ALLEGED VIOLATION OF ARTICLES 6 § 1 AND 13 OF THE CONVENTION AND ARTICLE 1 OF PROTOCOL NO. 1

20. The applicant complained about the State authorities' failure to execute the judgment of the Zarichny District Court of Sumy of 15 November 1999 given in her favour. She alleged that the length of the enforcement proceedings was unreasonable. She relied on Articles 6 § 1 and 13 of the Convention and Article 1 of Protocol No. 1, which in so far as relevant provide 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. ..."

1. EUR 151.53

2. EUR 78.74

3. An amount apparently related to different compensation due to the applicant.

Article 13

“Everyone whose rights and freedoms as set forth in [the] Convention are violated shall have an effective remedy before a national authority notwithstanding that the violation has been committed by persons acting in an official capacity.”

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.”

A. ADMISSIBILITY

21. As to the complaint under Article 17 of the Convention, the Court considers that it is wholly unsubstantiated (cf. *Romashov v. Ukraine*, no. 67534/01, § 36, 27 July 2004). It follows that this complaint is manifestly ill-founded and must be rejected pursuant to Article 35 §§ 3 and 4 of the Convention.

22. The Court finds that the applicant’s complaints under Articles 6 § 1 and 13 of the Convention and Article 1 of Protocol No. 1, concerning the lengthy non-enforcement of the final judgment of 15 November 1999 of Zarichny District Court of Sumy, are not manifestly ill-founded within the meaning of Article 35 § 3 of the Convention. It further notes that these complaints are not inadmissible on any other grounds. They must therefore be declared admissible.

B. MERITS

23. The Government submitted that they took all necessary measures under domestic law to enforce the judgment given in the applicant’s favour. They maintained that the delay from 15 November 1999 (the date of the adoption of the judgment of the Zarichny District Court of Sumy) until the date of enforcement (the date the applicant first informed about the full enforcement of a judgment and payment of the full sum due to her under that judgment) did not violate the applicants’ rights and was caused by the difficult financial situation of the education system in Ukraine.

24. The applicant disagreed. In particular, she complained that the execution proceedings had lasted a very long time.

25. The Court notes that the judgment of 15 November 1999 remained unenforced wholly or in part until March 2004, after the case had been communicated to the Government on 9 May 2003. It was only after that date that the debt owed to the applicant was paid.

26. The Court has frequently found violations of Articles 6 § 1 and 13 of the Convention and Article 1 of Protocol No. 1 in cases raising similar issues (see *Voytenko v. Ukraine*, judgment of 29 June 2004, no. 18966/02, §§ 43, 48 and 55).

27. Having examined the materials submitted to it, the Court notes that the Government have not put forward any fact or argument capable of persuading it to reach a different conclusion in the present case. The Court finds that by failing for almost five years to comply with the enforceable judgment in the applicant's favour, the Ukrainian authorities prevented her from receiving the money to which she was entitled. Moreover, she did not have an effective domestic remedy to redress the damage created by the delay in the present proceedings.

28. There has accordingly been a violation of Articles 6 § 1 and 13 of the Convention and Article 1 of Protocol No. 1.

II. APPLICATION OF ARTICLE 41 OF THE CONVENTION

29. 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

30. The applicant claimed UAH 6,700¹ in respect of non-pecuniary damage.

31. The Government maintained that the applicant did not suffer any damage. They suggested that a finding of a violation would of itself constitute sufficient just satisfaction.

32. The Court deciding on an equitable basis, as required by Article 41 of the Convention, awards the applicant the sum requested in respect of non-pecuniary damage – EUR 1,100.

1. Approximately EUR 1,100

B. Costs and expenses

33. The applicant also claimed UAH 2,000¹ for the costs and expenses incurred in the domestic proceedings and before the Court.

34. The Government considered this sum exorbitant and unsubstantiated, as well as being disproportionate to the damage claimed by the applicant. They further contended that the documents submitted to the Court might not be authentic as the costs were not actually and necessarily incurred by the applicant.

35. Having regard to the information in its possession, the fact that the applicant had a representative who submitted observations to the Court and that she did incur some expenses in the proceedings before it, the Court, deciding on an equitable basis, as required by Article 41 of the Convention, awards the applicant EUR 200 for costs and expenses.

C. Default interest

36. 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 complaints under Articles 6 § 1 and 13 of the Convention and Article 1 of Protocol No. 1 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* that there has been a violation of Article 13 of the Convention;
4. *Holds* that there has been a violation of Article 1 of Protocol No. 1;
5. *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 following sums, to be converted into the national currency of the respondent State on the date of payment:
 - (i) EUR 1,100 (one thousand one hundred euros) in respect of non-pecuniary damage;

1. EUR 324.847

- (ii) EUR 200 (two hundred euros) in respect of costs and expenses,
- (iii) 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;

6. *Dismisses* the remainder of the applicant's claim for just satisfaction.

Done in English, and notified in writing on 29 November 2005, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

S. NAISMITH
Deputy Registrar

J.-P. COSTA
President