



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

SECOND SECTION

CASE OF SHCHUKIN v. UKRAINE

(Application no. 16329/03)

JUDGMENT

STRASBOURG

28 February 2006

FINAL

28/05/2006

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 Shchukin 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. JOČIENĖ,

Mr D. POPOVIĆ,

and Mrs S. DOLLÉ, *Section Registrar*,

Having deliberated in private on 7 February 2006,

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

PROCEDURE

1. The case originated in an application (no. 16329/03) 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 Aleksey Dmitriyevich Shchukin (“the applicant”), on 30 April 2003.

2. The Ukrainian Government (“the Government”) were represented by their Agent, Mrs V. Lutkovska.

3. On 21 January 2005 the Court decided to communicate the applicant’s complaint under Article 6 § 1 of the Convention to the Government. 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

I. THE CIRCUMSTANCES OF THE CASE

4. The applicant was born in 1940 and lives in the village of Veseloye, Kherson region, Ukraine.

5. In 2001 the applicant instituted proceedings in the Novokakhovskiy Town Court against his former employer, the State-owned “Uzhelektromash” company, to recover salary arrears. On 17 December 2001 the court awarded the applicant UAH 10,282¹ in salary arrears and compensation.

6. On 26 June 2002 the Novokahovska Bailiffs’ Service returned the writ of execution to the applicant on the ground that the debtor lacked funds that could be attached and the court had prohibited seizure of the debtor’s accounts.

7. On 10 June 2005 the Novokakhovskiy Town Court, following the applicant’s complaint, ordered the Bailiffs’ Service to renew the enforcement proceedings in the case.

8. The judgment in the applicant’s favour remains unenforced.

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

10. The applicant complained about the State authorities’ failure to enforce the judgment of the Novokakhovskiy Town Court of 17 December 2001 in due time. He invoked Articles 6 § 1 and 13 of the Convention, which provide, insofar 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 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.”

1. Around 1,730 euros (“EUR”).

I. ADMISSIBILITY

11. The Government raised objections regarding the State's responsibility for the debts of its enterprise and exhaustion of domestic remedies similar to those which the Court has already dismissed in the case of *Romashov v. Ukraine* (see the *Romashov* judgment, cited above, §§ 28-33 and 41). The Court considers that the present objections must be rejected for the same reasons.

12. The Court concludes that the application raises serious issues of fact and law under the Convention, the determination of which requires an examination of the merits. It finds no ground for declaring it inadmissible.

II. MERITS

13. In their observations, the Government contended that there had been no violation of Article 6 § 1 of the Convention (as in the case of *Romashov*, cited above, §§ 28-33 and 37).

14. The applicant disagreed.

15. The Court notes that the judgment remains unenforced for four years and one month.

16. The Court recalls that it has already found violations of Articles 6 § 1 of the Convention in cases raising issues similar to the present application (see, for instance, the *Romashov* judgment, cited above, §§ 42-46, and *Voytenko v. Ukraine*, no. 18966/02, §§ 46-48, 29 June 2004).

17. Having examined all the material submitted to it, the Court considers that the Government have not put forward any fact or convincing argument capable of persuading it to reach a different conclusion in the present case. There has, accordingly, been a violation of Article 6 § 1 of the Convention.

18. The Court does not consider it necessary in the circumstances to rule on the same complaint under Article 13 of the Convention (see *Derkach and Palek v. Ukraine*, nos. 34297/02 and 39574/02, § 42, 21 December 2004).

III. APPLICATION OF ARTICLE 41 OF THE CONVENTION

19. 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

1. Pecuniary damage

20. The applicant claimed UAH 16,842.81 (the equivalent of EUR 2,854) in respect of pecuniary damage. This amount corresponds to two judgment debts in the applicant's favour.

21. The Government maintained that they could not be held responsible for the debts of the enterprise. They further maintained that the applicant in his claim for pecuniary damage referred to two judgments of the domestic courts of 17 December 2001 and 15 April 2005, but only the former judgment was under examination in the present application.

22. In so far as the judgment of 17 December 2001 in the applicant's favour has not been enforced (paragraph 8 above), the Court considers that, if the Government were to pay it¹, this would constitute full and final settlement of his claim for pecuniary damage. The Court rejects the remainder of the claim as being outside the scope of the present application.

2. Non-pecuniary damage

23. The applicant claimed UAH 85,000.00 (the equivalent of EUR 14,400) in respect of non-pecuniary damage.

24. The Government maintained that this claim is exorbitant and unsubstantiated.

25. The Court takes the view that the applicant has suffered some non-pecuniary damage as a result of the violations found which cannot be made good by the Court's mere findings. Nevertheless, the amount claimed is excessive. Making its assessment on an equitable basis, as required by Article 41 of the Convention, the Court awards the applicant EUR 1,800 under this head.

B. Costs and expenses

26. The applicant also claimed EUR 300 for the costs and expenses incurred before the Court.

27. The Government maintained that only those expenses which were actually and necessarily incurred should be awarded. Given that the applicant did not support this claim by any documents, they proposed to reject the claim.

28. The Court reiterates that, in order for costs and expenses to be included in an award under Article 41, it must be established that they were actually and necessarily incurred in order to prevent or obtain redress for the matter found to constitute a violation of the Convention and were

1. UAH 10,282 (currently around EUR 1,730).

reasonable as to quantum (see, among many other authorities, *Nilsen and Johnsen v. Norway* [GC], no. 23118/93, § 62, ECHR 1999-VIII).

29. The Court considers that these requirements have not been fully met in the present application. It notes that the case is not particularly complex. The applicant was not represented and at the same time he was granted leave to use Russian in the written procedure before the Court. Nevertheless, the applicant may have incurred some costs and expenses in the proceedings before the Court.

30. Regard being had to the information in its possession and to the above considerations, the Court awards the applicant EUR 50 for costs and expenses.

C. Default interest

31. 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 is no need to examine separately the complaint under Article 13 of 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 in accordance with Article 44 § 2 of the Convention, the judgment debt still owed to him, as well as the following amounts:
 - EUR 1,800 (one thousand eight hundred euros) in respect of non-pecuniary damage; and
 - EUR 50 (fifty euros) in respect of costs and expenses;
 - (b) that the above amounts shall 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;
 - (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 28 February 2006, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

S. DOLLÉ
Registrar

J.-P. COSTA
President